



**REPORT OF THE
NATIONAL COMMISSION
ON LABOUR**

VOLUME - I

**MINISTRY OF LABOUR
GOVERNMENT OF INDIA**

2002



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CHAPTER-I

THE TERMS OF REFERENCE

The Resolution of the Government of India that announced the appointment of our Commission set two tasks before us: i) "to suggest rationalisation of existing laws relating to labour in the organised sector;" and ii) "to suggest an Umbrella Legislation for ensuring a minimum level of protection to the workers in the unorganised sector." It has also suggested that while conducting our studies, drawing conclusions and formulating our suggestions, we take into account various factors that contributed to the creation of the context in which the Government deemed it necessary to appoint the Commission.

1.2 The Resolution itself identified some of these factors as the emerging economic environment: the globalisation of the economy and liberalisation of trade and industry; the rapid changes in technology and their consequences and ramifications; the effects that these changes were likely to have on the nature and structure of industry, on methods and places of production, on employment and the skills necessary to retain employability and mobility; and the responses that are necessary to

acquire and retain economic efficiency and international competitiveness.

1.3 The Resolution also desires that while considering the demands of international competitiveness, the Commission takes into account the need to ensure a minimum level of protection and welfare to labour, to improve the effectiveness of measures relating to social security, safety at places of work and occupational health hazards; to pay special attention to the problems of women workers, minimum wages, evolving a healthy relation between wages and productivity; and to improve the efficiency of the basic institutional framework necessary to ensure the protection and welfare of labour.

1.4 Another set of factors sharpening the need for an urgent review of the existing laws in the organised sector and of the inadequacy of laws and structures in the unorganised sector, arises from the experiences that all social partners - entrepreneurs, workers and the State and Central Governments - have had, of the way the existing laws have worked during the last few

decades. All three partners have complained that the laws, as they exist, are unsatisfactory. All three wanted a comprehensive review, and a comprehensive reformulation of the legal framework, the administrative framework and the institutional structures in the field of social security. Demands for basic reforms have been voiced in the Labour Conferences for many years, and the Government had assured the tripartite conferences that it would take early steps for review and reform.

1.5 A look at the Terms of Reference that have been set before our Commission, and the terms with which the two earlier Commissions, the Royal Commission on Labour appointed in 1928, and the National Commission on Labour headed by Justice Gajendragadkar, were appointed, shows a high degree of similarity, as far as the core area of enquiry is concerned. The Royal Commission, now known better as the Whitley Commission, was asked to report and make recommendations on "the existing conditions of labour in industrial undertakings and plantations in British-India, on the health, efficiency and standard of living of the workers, and on the relations between employers and

employed." The first National Commission on Labour, referred to as the Gajendragadkar Commission, had more comprehensive and elaborate terms of reference, and different areas received specific mention. But, the core area related to conditions of labour; legislative and other provisions intended to protect the interest of labour, wages, standard of living, efficiency, safety, welfare, social security; relations between employers and workers; the role of trade unions and employers' organisations in promoting healthy industrial relations, and the conditions of rural and unorganised labour. However, the Gajendragadkar Commission had a specific mandate "to advise how far these provisions (labour laws etc.) serve to implement the Directive Principles of State Policy in the Constitution on labour matters and the national objectives of establishing a socialist society and achieving planned economic development."

1.6 The Terms of Reference given to our Commission have attracted some adverse criticism. They have been described by some, as too narrow and too limited, inadequate to cover all the crucial inter-related issues that have

to be considered together. Some have gone so far as to suggest that what they consider the inadequacies of the Terms of Reference reveal a tilt in favour of the demands and interests of one section. Some of them have openly expressed their apprehension that the Commission might not be impartial and unprejudiced, but might act as an instrument of partisan interests. They have, therefore, advocated and adopted a policy of non-cooperation. The Commission deeply regrets this unwarranted and unmerited prejudice, but it is happy and grateful that the overwhelmingly large majority of organisations has not shared this unfortunate view, but has, in fact, given the fullest and most cordial cooperation to the Commission. We once again, place on record, our deep gratitude to all of them.

1.7 However, in view of the apprehensions that have been voiced, we feel that it will be appropriate if we make a few observations on our understanding of the Terms of Reference.

1.8 We do not feel that the terms are too narrow for a comprehensive review of all the relevant crucial issues. We feel that the two specific instructions,

one about the existing laws in the organised sector, and the other about legislation and structures for workers in the unorganised sector, are only to give precision and focus to the area in which we have been asked to make recommendations, not to inhibit or restrict the area of study and review. We feel that the paragraphs of the Resolution that refer to the context of, and the reasons for the review, and the responses to the problems and the new situations that affect all the three 'partners,' give ample scope for a comprehensive survey and study of the field of enquiry. In fact, we feel that it is not possible or desirable to make specific recommendations related to laws and structures in the organised and unorganised sectors without a comprehensive study, to the extent that the time and resources given to us permit.

1.9 Two other points of criticism need to be mentioned and answered. One is that the Terms of Reference talk of 'rationalisation' of existing laws. Some critics have tried to create an impression that the word 'rationalisation' means the retrenchment of workers or cutting down the labour force engaged in an industry or plant, and, therefore, indicates an attempt to

sanctify 'retrenchment.' This is an unwarranted interpretation. In our understanding, rationalisation in this context, means only making laws more consistent with the context, more consistent with each other, less cumbersome, simpler and more transparent. In fact, the word 'rationalisation' of existing laws has been used by many organisations in this sense. The National Labour Laws Association, for instance, undertook a project (in 1989) styled "Simplification, Rationalisation and Consolidation of Labour Laws." The strenuous efforts of the Association resulted in the drafting of a 'Labour Code.' Eminent trade unionists, well-known entrepreneurs and employers, distinguished lawyers, retired members of the labour judiciary and retired judges of the High Courts and the Supreme Court participated in many seminars and workshops that led to the drafting of the 'Labour Code.' Not one of the participants objected to the word 'rationalisation' of labour laws in any of these discussions.

1.10 The second point of criticism is that the Resolution refers to the provision of "the minimum level of labour protection and welfare measures and basic institutional framework for ensuring

the same." The objection is that that only a 'minimum' is visualised and targeted. One does not know whether this caveat is put forward seriously. If it is, one has to point out that assuring a minimum level does not preclude the attainment of higher levels, but only commits the State to ensure at least the targeted or visualised minimum.

1.11 The paragraphs explaining the context and expectations refer to the "minimum level of labour protection and welfare measures." It is obvious, therefore, that the Commission is required to enquire into and define what constitutes the "minimum level of labour protection and welfare measures." It is equally obvious that the protection referred to is not only meant for workers who are in employment at any given moment. It cannot mean that one receives protection from the moment one enters active employment and forfeits it as soon as one retires or ceases to be employed for any other reason. Such a perception of protection will negate all the prerequisites of a continuum of social security upon which hinge the protection, preservation, enrichment, and judicious and beneficial use of the human resources that a community requires. We, therefore, understand that protection and welfare

measures are required for those who are employed, as well as those who are unemployed; those who are prospective entrants to the workforce, as well as those who have been rendered incapable by debilitating disease, accident or old age.

1.12 Protection includes protection of the ability to meet the essential requirements of life and a minimum standard and quality of life, as well as protection of the rights that are essential to 'protect' one's bargaining power and social status. The absence of bargaining power will pave the way to a life of deprivation, distress sale of one's work power, violation of human dignity, and exploitation.

1.13 We are aware that the degree of protection that a society or State is able to assure to the worker, or those who are preparing to enter the workforce, or who have been incapacitated, will depend on the resources available to the State/society and the contributions that citizens/beneficiaries themselves can make.

1.14 But, it is equally clear that a scheme of protection and welfare has to include assistance to meet

exigencies that arise as a result of unemployment, temporary unemployment, under-employment, accidents at places of work; the need for insurance cover against accidents and occupational health hazards; the demands of pensionary, domiciliary and other kinds of care in old age; the need for housing, education of children, medical and nutritional care of the family - particularly dependents - and the constant upgradation of the skills necessary for continued employment.

1.15 One of the two main tasks that have been entrusted to the Commission is to suggest Umbrella Legislation for ensuring a minimum level of protection to the workers in the unorganised sector. It is true that the Gajendragadkar Commission as well as the Commission on Rural Labour have given considerable attention to the problems and needs of rural labour, and labour in the unorganised sector. The Whitley Commission has also made some observations on the conditions of labour in rural areas and the relationship between rural and urban labour, rural unemployment, compulsions behind migration, and related questions. However, we realise that it is for the first time that

a National Commission has been asked to study the conditions of labour in the unorganised sector and to make recommendations for Umbrella Legislation to give protection to the workforce in this field. We also realise the vastness and the importance of a study of the problems in this field. It is well known that approximately 92% of our workforce is in the unorganised sector. When the Commission is asked to review legislation and structures that exist in the organised sector and also to make recommendations for legislation and structures in the unorganised sector, it means that the Commission is expected to suggest measures that will cover the problems and needs of the entire workforce in the country.

1.16 It is very difficult to make a list of all the employments and occupations that fall in the unorganised sector, but it is clear that the workforce in this sector covers a vast spectrum, extending from self-employed workers, part-time workers and domestic workers to workers in employments in the penumbra of the organised sector. It is not necessary here, to give an exhaustive list of all kinds of employments, crafts, etc. in which such workers are engaged. But, to point

out some of the more easily visible and recognisable categories, one may mention, agricultural workers, migrant workers, bonded labour, construction workers, weavers, spinners, cobblers, vendors, employees in Dhabas or wayside restaurants, domestic service, repair shops and so on.

1.17 When one surveys the problems and needs of workers in the organised and unorganised sectors, one has also to take special note of workers who are employed in small-scale industries and tiny industries. There are many minds in which the word 'Industry' invokes only the picture of big industry. But statistics reveal that a much larger section of the workforce is employed in small-scale industries than in large-scale industrial undertakings. In 1999, while the organised industry, both in public and private sectors together employed 67.4 lakh workers, the small-scale sector employed 171.6 lakh workers, almost thrice the number. The problems of the entrepreneurs and the workers in this field need special attention.

1.18 As we stated in an earlier paragraph, organisations of employers

as well as employees have been asking for a review of existing legislation. We have numerous Acts in this field. Some of them date back to the last decade of the 19th century or the early decades of the 20th century. Laws have been put in the Statute Book in a piecemeal manner, as and when the need for some kind of legislation was felt. So, it can be said that our labour laws have not flowed from any vision of a harmonious and just social order that takes into account the needs of an efficient and non-exploitative society, or a vision of the rights, duties and responsibilities of the different social partners to themselves, to each other, and to the totality of the community. They have been criticised as being ad hoc, complicated, mutually inconsistent, if not contradictory, lacking in uniformity of definitions and riddled with clauses that have become outdated and anachronistic, in view of the changes that have taken place after they were introduced many years ago. It has been pointed that the number of laws that are in the Statute Book in the Centre and the States, runs into many scores. Some have said that we have a plethora of legislation with laws that are unenforceable and self-defeating. The demand for simplification and

codification has, therefore, come from all sides. There is a growing volume of opinion which demands simple and transparent laws that are part of one comprehensive code, laws which can be easily understood by the common worker, as well as those who run small industries.

1.19 The paragraphs on context and expectations make a special mention of the need to attain and retain the degree of 'international competitiveness' that our economy - particularly industry - needs in the era of globalisation. The progress that any nation makes, depends on the efficiency of its industries and agriculture, and the quality and adequacy of the services it can offer to its citizens. The importance of efficiency and quality is crucial when one has to compete in the global arena with nations that have had a head start over us and are, therefore, in a position of vantage, countries that are far ahead of us in all the indices of economic development. To succeed in this competition, we need the highest degree of efficiency. Our industry must be able to compete in the excellence and variety of our products, and the cost at which they are produced. This is a national

imperative and, therefore, a matter of common concern to the entire nation. Competitiveness in the global arena should not, therefore, be regarded as the need of any single sector of our society or economy. It is a common need, of equal importance to every citizen.

1.20 Competitiveness depends not merely on technology, credit, inputs and managerial skills, but also on the contribution that labour makes. The commitment of the workforce to quality and productivity must therefore, be as high as that of any other partner in production. Such a high degree of commitment depends on a sense of belonging, partnership and commonness of purpose that we are able to impart to workers in every plant and industry. This commitment and the new work culture that it calls for, can be created only when workers feel that they are receiving fair wages, a fair share of profits and incentives, and the respect or consideration due to partners and fellow human beings.

1.21 The crucial link between productivity and industrial efficiency (the efficiency of industrial undertakings) cannot be denied. The level of wages depends on the economic efficiency of

an undertaking or industry. Workers have, therefore, to be as interested in productivity as the management is. In fact, genuine partnership in management may be the genuine guarantee of industrial harmony, efficiency and competitiveness.

1.22 The paragraphs of the Resolution that indicate expectations, want the Commission to give special attention to the problems and potential of women workers in the new circumstances that have been created by unforeseen advances in technology as well as globalisation. No one can overlook the fact that women constitute nearly 32% of the workers in the unorganised and self-employed sectors. Their individuality as workers should be inviolate. They are as much entitled to human dignity and equality as men. Any society that ignores the resources or potential that one half of it holds, which treats one half as 'less equal', will fail in mobilising its human resources to the full, and will fail to make the progress that it can make. The Commission, therefore, has given special attention to the problems and potential of women members of the workforce.

1.23 We have already referred to the impact that technological advances are

having on unemployment, on places and conditions of work, on the skills that will be necessary to acquire and retain eligibility for employment and mobility in employment. The future will require concurrent training in multiple skills, and the constant updating and upgradation of skills. A commensurate programme of technical education and the transmission of technical skill will, therefore, have to be visualised. The Commission has attempted to do this in a special Chapter on Skills and Training.

1.24 Both the specific Terms of Reference of the Commission ask us to make proposals that relate to legislation or revision of existing legislation. Laws are enacted to confer and sanctify rights, or to prescribe duties, and to provide for procedures that relate to the resolution of problems that arise between individuals and communities. It is one organ or the other of the State that lays down the law, interprets it, and enforces it.

1.25 At least one of the witnesses, who appeared before us, put forward the view that the State should have no role in regulating industrial relations. He wanted the State to withdraw totally from the field of industrial

relations, leaving it to the two parties to arrive at settlements on all matters, through bilateral negotiations and contracts. The Commission cannot accept this extreme view. The witness who took this extreme view was not a believer in the philosophy of anarchism. Nor was he in favour of the State withering away. He believed in the responsibility and the role of the State in protecting private property, law and order and so on. Where the State disappears or there is no State to promulgate or enforce laws (including laws that protect private property), perhaps altruism or compassion or self-restraint is expected to take the place of the State, or external restraints and the laws promulgated and enforced by external forces.

1.26 Leaving these theoretical issues aside, it has to be recorded that there were quite a few witnesses who held the view that the role of the State in regulating industrial relations should be limited and minimal, and should, in fact, be based on bilateralism and the laws of supply and demand. It is, therefore, necessary to examine some aspects of this view in some depth.

1.27 It is one thing to hold that the role of the State should be minimal,

and quite another to hold that industrial relations should be based only on bilateralism. We have no doubt that bilateralism is an essential ingredient of industrial relations, and that both parties should rely on it as far as possible. But occasions may arise when negotiations between the two parties reach a deadlock or stalemate, because either party or both the parties have taken an inflexible view, and are unwilling to budge. Occasions may arise when disparity in the strength of the two parties may make it difficult for us to hope that the parity or balance of interests of the two parties, or the interests of the society as a whole can be safeguarded merely through bilateral negotiations and the exclusion of third parties, even in the role of mediators or arbitrators. Such situations can lead to violent conflicts, lockouts and closures; the use of tactics like '*Gheraos*' that precipitate violent conflict; State intervention in the name of law and order; misuse of the strength that comes from the preponderance of numbers; and the countervailing threats of reducing large numbers to starvation. In such circumstances, it cannot be denied that there is a role that mediation, arbitration, adjudication or third party intervention can play to ensure industrial peace with justice to both sides and to society.

1.28 In fact, the history of the Industrial Revolution and the subsequent growth of trade unionism show the benefits that have accrued from the intervention of the State to both sides, and to society itself. In the initial days of industrialism, the State protected machinery and capital from irate workers who had been dispossessed of their means of production and livelihood. In later days, the State protected factory workers from inhuman and barbarous conditions of work and the compulsions that led to the distress sale of labour power. The State protected the right of the worker to form associations or unions to protect themselves against cruelty, below subsistence level wages, and exploitation. Whether society would have been able to reap the benefits of technology if the State had not intervened to protect the entrepreneur as well as the employees or wage earners, and to create and maintain a climate conducive to investment and economic activity, is a moot question that is worth pondering over.

1.29 This takes us to the question of the laws, that the State promulgates and enforces to promote fair bilateralism, to regulate third party assistance in the settlement of

disputes, and to ensure the rights of association, safety, security and the like. The laws that the State formulates have to be relevant to the context of social life in the country, and have to be such as are estimated to be effective in dealing with both current and anticipated problems of the immediate or foreseeable future. But, the State conceives or formulates these laws on the basis of the fundamental beliefs on which it has come into being, beliefs in relation to the responsibilities of the State to the individual and the constituent units of the State, the responsibilities of the individual to the State, the individual to other individuals and so on. This bedrock of beliefs may have taken shape from an 'ideology' or from perceptions and axiomatic beliefs and norms that have determined the tradition and ethos of the country. It is not our contention that these are mutually exclusive sources, or sources that do not influence each other. Thus, a totalitarian State cannot be expected to promulgate laws to protect and promote individual liberty or the rights of individuals. A communist State cannot be expected to promulgate laws to protect private property. A socialist State cannot be expected to legislate for the protection of cartels and monopolies.

1.30 It, therefore, becomes necessary for us to look at the bedrock of beliefs on which our State is based. Our State and the Constitution under which we work, reflect the universal aspiration of our people to live in a society that is free, democratic, equalitarian, and non-exploitative. We have described our State as a Sovereign, Secular, Democratic and Socialist Republic. We believe in a regime of Fundamental Rights and adult franchise, a Government that is responsible to freely and democratically elected representatives of the people, a non-partisan bureaucracy, and an independent judiciary that can uphold Fundamental Rights and processes, and the checks and balances prescribed by the Constitution. Such a state, therefore, cannot act in a manner in which a one party State can act, a state with no regime of Fundamental Rights (including the rights of free association), or a judicial system that can enforce these rights; a state in which the state is the sole employer or the only party that controls the organisations of both employers and employees.

1.31 It is, perhaps, necessary to remind ourselves that the Fundamental Rights guaranteed by the Constitution

include: Right to Equality (Article 14-18); Right to Freedom (Article 19-22); Right against Exploitation (Article 23-24); and the Directive Principles of State Policy enshrined in the Constitution include: the State should aim to secure a Social Order for the promotion of welfare of people (Article 28); Principles of the Policies to be followed by the States (Article 39 which includes the issues relating to equal pay and child labour); Equal Justice and Free Legal Aid (Article 39A); Right to Work; to Education and to public assistance in cases of unemployment, old age, sickness, disablement and undeserved want (Article 41); Provision of Just and Humane Conditions of Work and Maternity Relief (Article 43); Living Wage etc. for workers (Article 43); Participation of workers in Management of Industry (Article 43A). The Directive Principles are not justiceable in a court of law, but they have been conceived as signboards that will remind us of the direction in which the policies of the State are expected to take us. In that sense, therefore, they are both Directive Principles for the guidance of the State and a covenant with the people.

1.32 It cannot be gainsaid that our Constitution could not have been what

it is, but for the values and fundamental beliefs and aspirations that sank into our national consciousness during the struggle for Independence, and the identifiable consensus that it produced.

1.33 One of the unique characteristics of our struggle for freedom was the fact that while demanding freedom, our leaders also made intense efforts to educate our unlettered masses both on the value and the meaning of freedom. Our leaders lost no opportunity to explain that the objective of the struggle was to enable the common man to come into his own, to ensure that he enjoyed freedom and equality, and the fruits of freedom and equal opportunities. In fact, they succeeded in creating the belief that the test of Freedom or Independence lay in what it brought to the common man. From the last decade of the 19th century, leaders like Dadabhai Naoroji, S. N. Banerjee, R. C. Dutt, Justice Ranade, Gopal Krishna Gokhale, Bal Gangadhar Tilak and Mahatma Gandhi talked of the causes of poverty and deprivation, and the benefits, rights and security that freedom would bring to the common man.

1.34 With the end of the First World War and the return of Mahatma Gandhi

to India, the Indian National Congress underwent a transformation. It became the spearhead of a mass struggle for Independence. Gandhiji returned to India after leading unique and successful struggles of indentured labourers in South Africa. It is often forgotten that Gandhiji first entered public life and took to the path of non-violent struggle, in defence of the working class, to fight for the rights and human dignity of the lowliest workers. He gladly identified himself with the 'coolie,' as the Indian labourer was called in South Africa. He identified himself with the 'porter and unskilled manual labourer.' When he returned to India, his first struggle was for the rights and interests of the textile workers in Ahmedabad, and of the bonded workers in the Indigo Plantations of Bihar. Both the Whitley Commission and the Gajendragadkar Commission have referred to the role that Gandhiji played in organising workers and leading workers' struggles. We may have more to say about this subject in later paragraphs when we refer to the trade union movement in India. But here, we are pointing out the role that leaders like Gandhiji and Nehru played in creating national awareness about the rights of the workers or the toilers, and forging a national commitment to the protection and welfare of the working class.

1.35 It may not be inappropriate to cite some of the landmarks in the history of the growing commitment of the Freedom Struggle to the cause of the workers or toilers. The leaders of the national struggle were, of course, deeply devoted to the revitalisation and resurgence of indigenous industry as well. But, during the days of the struggle (and the years immediately following the accession to Independence), the Congress, which was the spearhead of the national struggle, never lost an opportunity to explain that the freedom that it was seeking, was for the benefit of the 'teeming' and toiling millions. To cite a spectacular instance, one can quote the declaration that Mahatma Gandhi made at the Round Table Conference that the British Government convened in London in 1931. He was attending the Conference as the only representative of the Indian National Congress, and used the occasion to declare that when India became free, there would be a scrutiny of all interests and privileges, and whatever was found to be in conflict with the interests of the masses, would have to go, with or without compensation¹.

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¹ See speeches at the Round Table Conference, 1931.

1.36 Another declaration of policy and commitment can be found in the Resolution on Fundamental Rights which was passed by the Indian National Congress at its session in Karachi in 1930. It may not be out of place to quote a few paragraphs from this Resolution ".....The State shall safeguard the interest of industrial workers, and shall secure for them, by suitable legislation and in other ways, a living wage, healthy conditions of work, limited hours of labour, suitable machinery for the settlement of disputes between employers and workmen, and protection against the economic consequences of old age, sickness and unemployment [highly reminiscent of the Directive Principles that were later incorporated in the Constitution]... Labour to be freed from serfdom and conditions bordering on serfdom... Protection of women workers... Peasants and workers shall have the right to form unions to protect their interests... The State shall also protect other indigenous industries when necessary against foreign competition... The State shall own or control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport." Subsequently, after the Government of India Act that provided for Provincial

Autonomy was enacted in 1935, the Congress contested elections with a massive campaign in 1936. The manifesto with which the Congress went to the electorate, reiterated the commitments of the Resolution on Fundamental Rights, in the following words "to secure to industrial workers, decent standard of living, hours of work and conditions of labour, in conformity, as far as the new economic conditions in the country permitted, with international standards; suitable machinery for settlement of disputes between employers and workmen, protection against economic consequences of old age, sickness and unemployment; and the right of workers to strive for the protection of their interests."

1.37 A further landmark came when the Indian National Congress accepted the responsibility to form Governments in the States. The first Congress Ministry that took office in Bombay in 1938, issued a declaration which reiterated the commitment to the working class: "The Government are aware that they are in a special sense, responsible for the welfare of the industrial worker... Government will try to adjust the social and economic mechanism in such a way

as to assure to the worker the satisfaction of at least his minimum human needs, security of services, provision of alternative occupations in periods of inevitable unemployment, and maintenance during the period of unavoidable incapacity of work ...To ensure him opportunities for the advancement of his status and a full measure of freedom of action consistently with his obligation to industry and society...The pace at which a programme to achieve these ends can be prosecuted will depend on various factors, foremost among them being the cooperation of the working classes and the employers, the state of the industries concerned and economic conditions generally ...With regard to industries and industrial centres which fail to provide a living wage to the employees, Government have decided to institute an exhaustive enquiry with a view to determining how far wages for these cases are short of the minimum budgetary needs of the workers, to discover what circumstances are responsible for the inadequacy, and to ascertain the ways and means of improving wages to a satisfactory level...For the protection of the industrial population, Government visualise the development of a comprehensive system of social insurance... With

regard to the trade disputes Government are determined to pursue an active policy with a view to maintaining industrial peace in the Presidency, endeavouring all the time to see that the workers obtain a fair deal. It is the intention of the Government to promote legislation aiming at the prevention of strikes and lockouts as far as possible. The basis of this legislation would be the requirement that no reduction in wages or other change in conditions of employment to the disadvantage of the worker should take effect till they have had sufficient time and opportunity for having the facts and merits of the proposed change examined, and all avenues of peaceful settlement of disputes explored either through the channel of voluntary negotiation, conciliation, arbitration, or by the machinery of the law. A corresponding obligation would rest on the workers in respect of demands on their behalf."

1.38 A further landmark came when the Indian National Congress, under the Presidentship of Pandit Jawaharlal Nehru, appointed a National Planning Committee in 1938. Elections had been held under the Government of India

Act of 1935. The Act provided for Provincial Autonomy, and Ministries responsible to elected Assemblies. Popularly elected Ministries, therefore, took office in the Provinces. It was felt that Independence was round the corner, and adequate and detailed efforts had to be made to prepare blueprints or lay down the principles that should govern growth in the different sectors of economic development. Pandit Nehru himself functioned as the Chairman of the National Planning Committee. The Committee set up sub-Committees to deal with different areas of economic activity. The sub-Committee that was entrusted with the task of working out an outline for the labour sector was chaired by a well-known labour leader and Member of the Central Assembly, Shri N. M. Joshi. The Committee consisted of prominent men and women connected with the field of industry and labour. Shri Gulzarilal Nanda, who later served as the Union Minister of Labour, was a member. The Report of the Committee, with the proposals and recommendations of the sub-Committees was edited and presented by Shri K.T. Shah, Honorary General Secretary of the National Planning Committee.

1.39 The views and proposals of this Committee went much further than the earlier pronouncements and promises to which we have referred. In his introduction, Shri K. T. Shah held that labour was the prime or principal factor of production; "and the worker is therefore, entitled to a commensurate share in the wealth, that is produced; ("even more important than nature since the gifts of nature would be unavailable for human consumption unless they were worked up by the labour, knowledge and ingenuity of man") (page: 53); "any share in the distribution of such wealth, which may be reserved for 'capital' would be so much deduction from the share given to labour. The share assigned to 'capital' is justified, if at all, only on the ground that it makes provision for maintaining the apparatus for continued production." The Committee identified some of the primary goals of planning as 'achieving full employment,' 'security of full employment,' 'a guaranteed national minimum wage,' 'a compulsory universal contributory system of social security' to cover all. On the question of the determination of wages and the worker's share of profits Shri Shah's introduction said "the regulation of the worker's share in the national wealth, his wages, is accordingly, not a matter

of individual bargaining, exploiting the need of the workers, but a question of equitable distribution of the National Dividend. Primarily, it must correspond to the cost of living, and next to that, it must bear some relation to the national wealth produced." (page 66). This view flowed from the contention "that labours' share in the sum total of national wealth should be all the wealth produced for the workers, minus such portion as may be necessary" for maintenance and replenishing of machinery, resources, raw material, etc., wear and tear, and investment in the education and training of 'rising generations,' 'upkeep of the disabled' and 'arrangements for the social security of all workers' (page 53). Shri Shah's introduction further declared, "enterprise cannot be left to profit making individuals; employment cannot be left to be the plaything of demand and supply; national economy, social justice and public welfare cannot be entrusted to laissez faire." "They must be the concern of the State" (page 56). Industrial disputes should be avoided or minimised, and the means for doing so would include compulsory unionisation, conciliation through Whitley Councils or similar bodies, mediation, adjudication by the organs

of the State or special judiciary, and if necessary, compulsory arbitration.

1.40 The work of the National Planning Committee was interrupted by the Second World War, the Quit India Movement and the arrest and detention of its Chairman, Pandit Jawaharlal Nehru as well as quite a few of its leading members. It must also be pointed out that the deliberations of the Committee and sub-Committees were attended by the official representatives of quite a few of the provincial Governments of the time (except when the popular Governments were out of office).

1.41 As the Second World War was drawing to a close, there was an increasing feeling that the end of the War would see major constitutional changes, that India would acquire dominion status or some kind of Independence soon. The pattern of political and economic development that India needed and the principles, on which it should be based, were therefore, engaging the attention of many interest groups and leaders of public opinion. We have referred to the vision that the Indian National Congress placed before the people,

and the views that the National Planning Committee formulated. We must now refer to the views put forth by the leading industrialists of the country.

1.42 They also prepared a plan, 'Plan of economic development for India.' Distinguished leaders of industry like Sir Purshotam Das Thakurdas, J. R. D. Tata, G.D. Birla, Sir Shriram, Kasturbhai Lalbhai, A. D. Shroff, John Matthai, were members of the team that formulated the Plan. So was, Sir Ardshir Dalal till he joined the Government of India as Member for Planning in the Viceroy's Executive Council. Dr. John Matthai also became a member of the Central Cabinet and was in charge of the finance portfolio after Independence. Their first memorandum dealt chiefly with the problem of production. The second part dealt with goals and the principles on which the Plan (Bombay Plan as it was called then) was based.

1.43 They saw the primary objective of the Plan as improvement of the 'standard of living of the masses.' This could be achieved only by ensuring 'both increased production and equitable distribution.' The measures that they visualised to achieve these objectives included "i) provision of full employment, ii) increase in

efficiency, iii) improvement in urban and rural wages, iv) security of agricultural prices and development of multipurpose cooperative societies and, v) reforms of the land system." (page-6)

1.44 They recognised "the individual's right to work," and believed that "this could be ensured only with full employment. Provision of full employment would, no doubt, present formidable difficulties, but without it, the establishment of a decent standard of living would remain merely a pious hope."

1.45 "The large increase in production which is postulated in the Plan will be difficult to achieve, if the present disparities in income are allowed to persist" (page-3). For "gross inequality in incomes tends to retard the development of a country's economic resources. They prevent the needs of the vast majority of the population from exercising any influence on the volume of production, which has naturally to be restricted, and lead to social cleavages and disharmony." To this extent, therefore, equitable distribution is necessarily implied in a plan for increased production. A policy which specifically aims at securing

this objective, should have a double purpose: "i) to secure to every person, a minimum income essential for a reasonable standard of living and ii) to prevent gross inequities in the incomes of different classes and individuals." "Concentration of the means of production in the hands of a small group of people has been considered one of the potent causes of the inequalities in income which prevail in the world" (page 3). "To secure an equitable distribution of income, it is, therefore, necessary gradually to reduce the existing inequalities of wealth and property and to decentralise the ownership of the means of production" (page 3-4). The Plan then deals with the means to achieve these objectives and suggests death duties and similar measures, reforms of the system of land tenure and "in the sphere of industry... the fullest possible scope should be provided for small scale and cottage industries, particularly in the production of consumption goods." "The process of decentralisation would be further advanced by encouraging the wide-spread distribution of shares in joint-stock companies by regional distribution of industries, and through the development of cooperative enterprises. Control by the State, accompanied in appropriate cases by

State ownership or management of public utility, basic industries, etc. will also tend to diminish inequalities of income." (page 4)

1.46 The Plan makes it clear "that although gross inequalities are undesirable, total abolition of inequalities, even if feasible, would not be in the interest of the country." It refers to the experience of the Soviet Union, and points out to the role that incentives to increase personal income can play in the growth of the economy.

1.47 The Plan refers to unemployment and under-employment, including seasonal unemployment in the agricultural and rural sector, and advocates the following steps as part of a policy to promote full employment: i) "introduction of mixed farming, i.e. cultivation accompanied by dairying, farming, market gardening, etc. ii) cultivation of more than one crop in a year with the help of better irrigation facilities and increased use of manures, and iii) provision of subsidiary industries which the cultivator can take up when he has no work on the farm. Among such subsidiary industries may be mentioned the following: spinning and weaving, shoe making, paper making, tanning, gur making, soap

making, oil crushing, fruit preserving, basket weaving, flour and starch making etc." (page 8)

1.48 It then speaks of 'gaps in employment policy' caused by the seasonal nature of certain trades and occupations, changes in the techniques of production, variations in demand, etc, and says "it ought to be possible to devise schemes of relief like unemployment insurance for workers subject to unexpected and prolonged periods of unemployment" (page 10). On wages, the Plan holds that "although the establishment of a basic minimum wage for all occupations cannot be considered at this stage, a beginning may be made in certain well-established industries like, cotton textile, sugar, cement, engineering, jute, mining etc." "The minimum should be revised from time to time till it corresponds with a reasonable standard of living. The fixation of a minimum wage and its subsequent revision should be entrusted to a Standing Committee constituted for each industry" (with representatives of employers, workers and a few independent persons). (page 12)

1.49 The Plan takes note of the disparity between the wage rates of

industrial and agricultural labour, wants them to "be gradually adjusted so that the present disparity is reduced." It cites figures to point out that a number of workers lived below the 'subsistence level.'

1.50 The Plan then, advocates the establishment of multi - purpose cooperatives to protect agriculturists and the agricultural worker. It considers "the reform of the land system" as a fundamental reform that is required to improve agricultural production and the conditions of those who depended on agriculture. (page 14)

1.51 The standard of living of a worker depends on incomes or wages as well as the cost of living. Even as wages have to be "gradually raised to approximate to a fair wage which assures a fair standard of living, the cost of living has to be controlled or brought down." "The measures which we propose for reducing the cost of living fall into two categories: i) provision of free social services, e.g. primary and middle school education, adult education and medical treatment; and ii) provision of essential utility services, e.g. electricity and transport at low cost" (page 18). "In order that every person, whatever his means, should be able to secure the benefits

of education and medical relief, we have suggested that primary, middle school and adult education and medical treatment, both in rural dispensaries and in hospitals, should be provided free of charge. This would mean a considerable relief in the cost of living" (page 18).

1.52 The Plan proposed "a large increase in the supply of these utility services such as electricity, gas, transport etc." and said "it is an essential part of our Plan that their cost to the consumer, both for domestic use and for cottage and rural industries, should be as low as possible and within the means of the bulk of the population. In order to achieve this objective, we propose that these services should be subsidised by the State to such extent as may be necessary and that the margin of profit in such services should be subjected to control." (page 19)

1.53 The Plan held that the ultimate objective of economic policy should be to provide "security of income or freedom from want," to provide for "several contingencies such as sickness, old age, technological unemployment, etc." "These contingencies cannot be met except by

a comprehensive scheme of social insurance." "The need for such a scheme is urgently felt in India. But, it will not be possible to introduce it until i) "a policy of full employment has had time to work itself out and some approximation is made to a position of stable employment for the greater part of the population i.e. until the risks insurable are reduced to manageable proportions, and until, ii) the average individual income has risen sufficiently to meet the contributions necessary under a scheme of insurance." (page 20)

1.54 Even as the attempt should be to fix a minimum wage, interest rates should be controlled to ensure full employment. "As a general rule, these rewards namely wages, interests and profits, should continue to be determined on the basis of demand and efficiency... subject to the overriding consideration that wages should not fall below a certain minimum and that interest rates should be controlled with a view to maintaining full employment. Profits should be kept within limits through fixation of prices, restriction of dividend, taxation, etc. But, care should be taken to leave sufficient incentive for improvement in efficiency and expansion of production." (page 5)

1.55 Before concluding these references to the suggestions of the Bombay Plan, prepared by the industrialists, we must briefly refer to the attitude they formulated to the role of the State in the promotion of the economy.

1.56 "As the introduction to the Plan itself clarifies, our approach to these problems is two-fold. On the one hand, we recognise that the existing economic organisation, based on private enterprise and ownership has failed to bring about a satisfactory distribution of the national income. On the other hand, we feel that in spite of its admitted shortcomings, it possesses certain features which have stood the test of time and have enduring achievements to their credit" (page 1). As the introduction further explains "it is our firm belief that if the future economic structure of the country is to function effectively, it must be based on these twin foundations. It must provide for free enterprise, but enterprise, which is principally enterprising, and not a mere cloak for sluggish acquisitiveness. It must ensure at the same time that the fruits of enterprise and labour are fairly apportioned among all who contribute to them and not unjustly withheld by a few from the many." (page 1)

1.57 Let us now turn to what the document thinks of planning itself. "Since planning is primarily a matter of organising the human and material resources of a country, our aim should be to devise a system which would help to utilise them to the maximum advantage. The Plan must fit in with the general outlook and traditions of our people, and the cost of efficiency in terms of human suffering and loss of individual freedom must not be unduly heavy." (page 23)

1.58 On the question of the role of State control, ownership and management, the Plan said, "we believe that planning is not inconsistent with a democratic organisation of society" (page 25). We have already referred to the fact that the Plan believed that there was a role for "control by the State, accompanied in appropriate cases by State ownership or management of public utilities, basic industries, etc."

1.59 The Plan further states that "it is inevitable that in executing a comprehensive plan of economic development, especially in a country where the beginnings of such development have yet to be laid, the State should exercise, in the

interest of the community, a considerable measure of intervention and control. That this would be an indispensable feature of planning, was recognised by us in our first memorandum" (page 23-24).

1.60 The framers of the Plan then pointed out that "the distinction which is generally drawn between capitalism and socialism is somewhat overdone. The principle of laissez faire, which is regarded as the dominant note of capitalism has, during the last hundred years, been so largely modified in the direction of State intervention in various spheres of economic activity that in many of its characteristic aspects, capitalism has been transformed almost beyond recognition. Similarly, countries which, in recent years, set out to organise their economic life on orthodox socialistic lines have found it necessary in several important respects to accept capitalistic ideas in their effort to evolve a workable form of society. As a result of these developments, the distinction between capitalism and socialism has lost much of its significance from the practical standpoint. In many respects, there is now a large ground common to both, and the gulf between the

two is being steadily narrowed further as each shows signs of modifying itself in the direction of the other. In our view, no economic organisation can function effectively or possess lasting qualities unless it accepts as its basis, a judicious combination of the principles associated with each school of thought." (page 25)

1.61 The Plan proceeds to discuss the methods of State intervention and talks of the relative merits and role of ownership, control and management. "Of all the three factors mentioned above, from the point of view of maximum social welfare, state control appears to be more important than ownership or management" (page 27).

1.62 On monopoly and private property, the authors of the Plan say, "we believe that capitalism, in so far as it affords scope for individual enterprise and the exercise of individual initiative, has a very important contribution to make to the economic development of India. We believe at the same time that unless the community is endowed with powers for restraining the activities of individuals seeking their own

aggrandisement regardless of public welfare and for promoting the main objective of economic progress, no plan of economic development will succeed in raising the general standard of living or promoting the common good.” (Page 26)

1.63 On monopolies, the Plan says, “Monopolies, for example, would not be allowed to limit their output with a view to increasing their profits by raising prices. Scarce natural resources would not be allowed to be exploited without consideration for the future requirements of the country. The rights attaching to private property would naturally be greatly circumscribed in the light of these considerations, we indicate below in general terms the sectors of economic activities which should be owned, controlled and managed by the State. State ownership is necessarily involved in all cases where the State finances an enterprise which is important to public welfare or security. State ownership will also arise where, in the public interest, it is necessary for the State to control an industry, but the circumstances of the industry are such that control is ineffective unless it is based on State ownership” (page 28). The document goes on to analyse conditions in which economic activity

should be controlled and managed by the State.

1.64 In these paragraphs in which we have attempted to recall the principles and strategies advocated by the Plan prepared by the leading industrialists of the country in 1944, we have quoted copiously from the document for two reasons: i) our desire to ensure authenticity, ii) to avoid giving an opportunity to any one to feel that we have misunderstood or misinterpreted the views of the distinguished doyens of indigenous industry at that time, and iii) to show the national consensus that had emerged by the early years of independence. We also want to refrain from making comparisons and drawing conclusions about the views that come from many quarters today.

1.65 To revert to the National Planning Committee, its efforts were overtaken by the accession to Independence in 1947. A Constituent Assembly was set up and entrusted with the task of drafting a Constitution for independent India, and it was decided that the Assembly would also function as the Provisional Parliament that would exercise the

power to legislate, and direct and control the Government. Some of the earliest chores of law-making that the Provisional Parliament attended to, related to labour and industries, and the passing of legislation on industrial disputes etc.

1.66 The Constituent Assembly itself had the more fundamental responsibility of laying down the infrastructure on which the people of India could build a free, democratic, equalitarian, non-exploitative and secular society. It had the task of evolving a structure that would be consistent with the goals and aspirations of the freedom struggle, and the rights and responsibilities that different sections of our people, and the people as a whole, had earned as a result of the struggle that they had waged and the sacrifices that they had made, to pay the price of freedom. The masses of India, including the working class, had stood solidly behind the demand for freedom. Their rights had, therefore, to be recognised and assured, and equal opportunities had to be guaranteed to them. The Constituent Assembly took up the task with singular devotion and earnestness, and hammered out an infrastructure which guaranteed Fundamental Rights to every citizen. It laid down Directive

Principles of State Policy to guide the state in the steps and the direction that it had to take to lead the country to the goals that it had set before us.

1.67 It is not necessary to reproduce the clauses on Fundamental Rights and Directive Principles, since we have already referred to them in an earlier paragraph. We have, somewhat elaborately - if not exhaustively - reviewed landmarks on the road that led to the threshold of the Constituent Assembly, only to give some idea of the force of the popular will behind the Fundamental Rights and Directive Principles enshrined in the Constitution, to give some idea of the way aspirations and principles of universal validity were interwoven and got embedded in the national psyche.

1.68 We must now draw attention to some international factors that have contributed to the creation of the new context. Globalisation is, of course, one of the most important immediate factors. But, there are other factors that have preceded globalisation and perhaps paved the way, in some manner, for globalisation itself. They include the end of traditional colonialism and the accession to independence of all the States that were under colonial domination; the birth and growth of the United Nations, and the associated family of organisations; the new winds that

have affected trade and commerce; the realignment of forces, and the introspection on ideological questions and classical and neo-classical theories that followed the end of the cold war and the disintegration of the Soviet 'Bloc,' and the communist system in the countries of the former Eastern Bloc. The new ideas that China is experimenting with in combining 'market economics' with a political system, that some characterise as totalitarian or quasi-totalitarian; the experiments or experiences of other developing countries with different political systems in developing their economies and fighting poverty through aid, trade, foreign collaboration, direct or indirect foreign investment and so on. We do not have to examine all these in any detail. We may have to refer to some of them in the course of our enquiry into factors that have affected ground realities and thoughts, structures and styles of action.

1.69 However, we should make some observations on globalisation, even at this point of our report. We have not been asked to give any opinion on the logic and compulsions behind globalisation or on the merits of globalisation as a policy. Nevertheless,

we have to look at the consequences of globalisation and their effects on industry, trade, commerce; agriculture and other activities in the rural sector; services in the tertiary sector; employment generation, conditions of employment, the responses that trade unions and employers' organisations are making to the new situation, industrial relations and methods of conflict resolution, the new demands for mobility and security in employment, and so on. We propose to do so in one of the chapters that follow.

1.70 But there is another set of factors that should be mentioned here. They are the new concepts of Human Rights and the Conventions and Standards that have emerged from the United Nation and the International Labour Organisation (ILO). It cannot be denied that the Universal Declaration of Human Rights has had a tremendous impact on the minds of human beings wherever they have got acquainted with it. Though it may be difficult to name any country where all the rights in the Declaration are honoured and observed in practice, almost all nations (with few exceptions) have accepted them as standards that humanity should strive to achieve and honour. The rights have so much become part of the human

conscience that nations and groups are embarrassed and humbled when infringement or abridgement of these rights within their territories is exposed, and brought under public gaze within their country and outside.

1.71 The rights that the Universal Declaration of Human Rights talks of include the rights of individuals and constituent groups within nations, and nations themselves. In the realm of industry and labour the declaration sets forth the Right to Work; to Free Choice of Employment; to Just and Favourable Conditions of Work; and to Protection against Unemployment (Article 23); Right to Life, Liberty and Security of a Person (Article 3); Right against Slavery and Servitude (Article 4); Right to Freedom; Peaceful Assembly and Association (Article 20); Right to Social Security (Article 22); Right to Rest, Leisure Period, Holiday with pay and limitation on working hours (Article 24); Right to Standard of Living; adequate for the health and well being (Article 25).

1.72 No discourse about laws that affect the life of human beings can, therefore, easily ignore the standards

that are almost universally accepted as essential for human dignity and progress.

1.73 At this point, we do not have to engage in a detailed description of the Conventions of the International Labour Organisation (ILO) and the Standards set by it. But, we must remind ourselves that the ILO is the oldest international organisation that exists today; that it is the only tripartite organisation that brings together all social partners in any field, since it has the full participation of employers, employees and Governments in all aspects of decision making and programme implementation; that India has been a member of the organisation from the day it was founded; that decisions in the organisations are made after free, full and repeated discussions; that India as a member has accepted and ratified many of its Conventions and accepted many of the standards set by it; that these agreements have, therefore, acquired the status of inviolable commitments to the people of the country and to the international tripartite community of Governments, and the organisations of employers and employees; that, therefore, any law that we make

in our country should not be such as violate or dilute the solemn commitments made by us. In fact, much of the advice that the ILO has offered to the international community is such as would benefit all the three partners in piloting their communities towards industrial harmony, growth and social justice.

1.74 The globalisation that we see today has been triggered off by modern technology. History testifies to the fact that a mix of motives has fuelled the growth of technology. It also shows that the use to which technology is being put, has been influenced by a variety of motives and objectives. Knowledge of the technique of splitting the atom has led to beneficial uses as well as to holocausts and fear for the survival of humanity. Knowledge of techniques of propulsion has been used not only to launch spaceships that explore outer space, but also to launch satellites that can provide bases for 'Star Wars.' Technology has been used to concentrate power, and bolster regimes of terror. It has also shown the possibilities of universalising, or near universalising access to knowledge, and therefore, power, and the possibilities of a

vast increase in accountability, transparency and participation in decision-making.

1.75 It has led to concentration of production, but it has also demonstrated the possibility of decentralising production without diluting efficiency or expedition.

1.76 The main factors that have contributed to the globalisation that we see today are the revolutionary advances that have been made in the use of technologies in the fields of transport, communication and 'Information Systems' like the computer. Advances in transport and communication have replaced distance with proximity. Many barriers that the world considered insuperable have disappeared like mist before the rising sun. They no longer provide one with immunity or permit one to live in isolation. Knowledge and information travel fast, giving one a glimpse of what is happening elsewhere and what can happen in one's own area.

1.77 If the effects of the achievements that technology has chalked up have travelled across frontiers, so have the effects of the pollution that

modern technology has caused to the environment, poisoning the soil, water and air on which humanity and other species depend, endangering health and life, and the environment on which all life and bio-diversity depend.

1.78 Thus, it can be said that globalisation is both a consequence and a reminder of the paradigms of inter-dependence within which humanity lives, survives and prospers. If the paradigms of inter-dependence are unalterable, they impose limits on the role of competition. If competition is the paramount paradigm, the weak may be enslaved or allowed to be eliminated through visible or invisible forms of violence. It may be too much to assume that the weak will meekly submit rather than struggle to survive, and if necessary, to use whatever power they have, to turn tables, or at least to protect themselves by seeking changes in systems and policies.

1.79 Seattle, Vienna, Genoa, Gothenburg and other places are reminders of the indignation and power of the weak who feel deprived, exploited and tricked.

1.80 The fields of industry, agriculture and the services show that

they acquire their viability through inter-dependence. Industry is not an end in itself. Its *raison d'être* is itself the ability to serve society and the needs of the consumer. In that sense, therefore, industry depends on the consumer, and the consumer depends on industry. Industry depends on technology, capital, the worker, the entrepreneur, management, and the consumer, and society in general. Both workers and employers therefore, depend on industry and the cooperation each gives to the other. One cannot prosper at the cost of the other, if industry rather than the individual is to prosper.

1.81 The needs of society can be met only if industry prospers. In the ambience of globalisation, our industry can survive, and our workers and employers can survive only if we fine-tune our ability to compete in the world market. We cannot achieve this if the human factors that determine the success of industry are in conflict with each other. Our economic security and the success of our efforts to abolish poverty, to generate and maintain employment and to improve the standard of living of our people will, therefore, depend on our ability to identify the conditions that can ensure

cooperation between our workers and employers.

1.82 Globalisation will not permit us to remain in a state of isolation and stagnation. Horizons have expanded. New paradigms have emerged. Old clichés and mindsets have lost their relevance. We cannot negotiate the rapids before us unless we revise the mindsets of the days of isolation and confrontation. Attitudes of confrontation must give place to an attitude of genuine partnership. Mechanistic views of industrial relations should yield

place to a view that recognizes that industry is an organic entity. Internal competition will only weaken our ability to increase the competitiveness that we need if we are to hold our own in the face of the new configurations of forces in the world which may adversely affect our progress. Organisations of workers as well as employers, and the State itself, should identify and create the conditions on which the harmonious relations that we need can be created and maintained. It is in this spirit that we have attempted to do justice to the task that has been entrusted to us.

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CHAPTER-II

INTRODUCTORY REVIEW

AN OVERVIEW

As we have seen in the preceding chapter, by the time India became independent, a broad consensus had emerged on the goals of economic development as well as the strategies that were needed to achieve them. To say this is not to deny that there were differences – acute differences - on some issues, especially when they concerned the ultimate order one wanted to see set up in the country or the means that one considered desirable and likely to be used. Even so, there was general agreement that the country should have a democratic order; that sovereignty should vest in the people; that every citizen should enjoy Fundamental Rights that guaranteed freedom and equality; that the aim of the State should be to abolish poverty by assuring full employment and minimum wages; that a concerted attempt should be made to raise the standard of living of the masses through increased production, better technology and a system of distribution of the gains of economic progress that ensured adequate purchasing power; that essential goods and services should be available at fair prices commensurate with the income

level of the masses; that disparities should be reduced by maintaining a ratio between minimum and maximum incomes; that workers and employers should regard each other as partners; that the land tenure system should be reformed to abolish absentee landlordism, and to enable the tiller to own land and earn fair returns; that multipurpose co-operatives and industrial co-operatives should be set up to assist the workers, the peasant and the tiller; that foreign investment should be subject to national interest, and permitted only on conditions that ensured that the control of the economy remained in the hands of the state; that the state had to play a definite and important role in developing the economy and securing the economic goals of the country; that industrial activity should be organised through undertakings with small-scale industries and co-operatives, and large industries in the private sector, and undertakings in the State or public sector. There was also general agreement on the role that planning can play in marshalling and directing the use of resources and achieving growth with social justice.

2.2 The Indian National Congress was the spearhead of the national

struggle for Independence, and therefore, played a very important role in evolving the broad area of agreement that we have referred to in the previous paragraphs. Therefore, it is appropriate to refer to the Resolution that the Congress adopted on the economic policies of the new Government. The Resolution was adopted by the All India Congress Committee (AICC), the supreme policy making body of the Congress, on the 17th of November 1947, almost within three months of the accession to Independence. It said that "political independence having been achieved, the Congress must address itself to the next great task, namely, the establishment of real democracy in the country and a society based on social justice and equality. This can only be realised when democracy extends from the political to the social and economic sphere...[this] necessitates planned central direction as well as decentralisation of political and economic power..." "The smallest territorial unit should be able to exercise effective control over its corporate life by means of popularly elected *Panchayats*. In so far as it is possible, national and regional economic self-sufficiency in the essentials of life should be aimed at. In the case of industries which, in their nature, must be run on a large scale and on a centralised basis, they should be so organised that workers become not only co-sharers in the profits, but also

associated with the management and administration of the industry. Land, with its resources and all other means of production as well as distribution and exchange, must belong to, and be regulated by the community in its own interests." "Our aim should be to evolve an economic structure which will yield maximum production without the operation of private monopolies and the concentration of wealth, and which will create a proper balance between urban and rural economies. Such a social system can provide an alternative to the acquisitive economy of private capitalism and the regimentation of a totalitarian State."

2.3 The Congress also decided to appoint a Committee to draw up an economic programme that flowed from these principles. Pandit Jawaharlal Nehru was the Chairman of the Committee, and the other Members included leaders from most areas of the spectrum, with persons like Maulana Abdul Kalam Azad, Shri Jai Prakash Narayan, Professor N.G. Ranga, Shri Gulzari Lal Nanda, Shri J.C. Kumarappa (well-known Gandhian economist), Shri Achyut Patwardhan, Shri Shankar Rao Deo and Dr. John Matthai (who later became Finance Minister). The Committee appointed sub-Committees. All the sub-Committees submitted unanimous reports. The integrated Report too was unanimous, as Pandit Jawaharlal Nehru pointed out in his letter of submission.

2.4 The Committee formulated five objectives: "(i) A quick and progressive rise in the standard of living of the people which should be the primary consideration governing all economic activities and relevant administrative measures. The achievement of a national minimum standard in respect of all the essentials of physical and social well-being within a reasonable period must be pursued as the practical goal of all schemes of economic development, (ii) A parallel aim of the nation's economic activities should be to afford opportunities for full employment, (iii) For the earliest realisation of this two fold aim, an adequate or expanding volume of production is an indispensable pre requisite. All schemes and measures should be so designed as to obtain the maximum utilisation of the material and manpower resources of the nation, (iv) "To achieve these objectives, it is necessary to bring about equitable distribution of the existing income and wealth, and prevent the growth of disparities with the progress of industrialisation of the country." The Report recommended the fixing of a ceiling for incomes, and stipulated that the maximum should not exceed 40 times the minimum. It further recommended that the maximum should be brought down to 20 times the minimum, (v) The Report recommended that "to secure the widest diffusion of opportunities for gainful occupation... to reduce to the

minimum opportunities for exploitation, the economic organisation of the country should function on a decentralised basis." "Towards the same end, the requirement of national and regional self-sufficiency... [and] balance between rural and urban economy should be kept in view."

2.5 On industry, the Report said that (i) industries providing articles of food and clothing and other consumer goods should constitute the decentralised sector of the Indian economy, and should, as far as possible, be developed on a co-operative basis. (ii) the respective spheres of large scale, small scale and cottage industries should be demarcated as clearly as possible to avoid economic insecurity and destructive competition. (iii) where a cottage industry is allowed to operate in the same field as large scale mechanised industry, its output should be protected from the competition of the latter by subsidies or some methods of price equalisation. The Report also had a section defining village industries and the ways in which the State should promote and protect them. (iv) "Regional self-sufficiency should be the aim with regard to all types of industries. Development on these lines should help to provide full and varied employment of manpower and raw materials in each unit, and to reduce the pressure on the transport system. Location of industry should be planned so as to make a district of

average size... as nearly self-sufficient as possible in respect of consumer goods which supply the needs of the people."

2.6 On foreign trade, the Committee said, "The complexion of the country's foreign trade should be carefully scrutinised to enable the country to build up its economic structure on a sound basis so as to make it possible for the nation to provide its primary needs and thus buttress its independent position."

2.7 On foreign capital, the Committee said, "In the development of the country the place of foreign capital should be carefully examined so as to ensure that the economic control remains with the nationals of the country."

2.8 The primary objectives that emerged as the economic content of *Swaraj* was (i) assuring a fair standard of living to all, (ii) full employment, (iii) decentralisation to assure full employment and the full utilisation of resources, (iv) self-reliance or self-sufficiency in food and primary consumer goods, (v) subjecting foreign trade to national interest, and (vi) strict vigilance over the induction of foreign investment to ensure that "control remained in the hands of nationals." (vii) reduction of disparities in income and wealth.

2.9 The Planning Commission itself was appointed in 1950 in accordance with, and to give effect to, the views set forth in this Report. It may, therefore, be useful to quote from the Government Resolution appointing the first Planning Commission, "The Constitution of India has guaranteed certain Fundamental Rights to the citizens of India and enunciated certain Directive Principles of State Policy, in particular, that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political, shall inform all the institutions of national life and shall direct its policy towards securing, among other things: (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; and (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment." The Government Resolution further says that the Commission should formulate its plans "having regard to these rights and in furtherance of these principles as well as of the desired objective of the Government to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production, and

offering opportunities to all for employment in the service of the community.”

2.10 We have quoted extensively from these documents only to focus attention on: i) the context in which the Government came to the conclusion that “planning” was the most effective way of achieving rapid economic growth and social justice. ii) the Government’s belief that the responsibilities cast on the State by the Fundamental Rights and Directive Principles enshrined in the Constitution, could not be fulfilled without planned economic development. iii) the premises on which the Government came to the view that the State had an important role to play in formulating and implementing plans, in building up industries and services or utilities that fell in a defined category, and in promoting the growth of industry and agriculture in areas in which the State did not have to accept special responsibility.

2.11 There is no doubt that there was general agreement on the policies that the Government adopted at that time and the steps that it took to implement that policy.

2.12 We have already pointed out in the last Chapter that the distinguished leaders of industries of the time had accepted the need for planning, and the role that the State had to play,

especially in the early days of planning, in achieving the general goal of raising the standard of living, achieving full employment, increasing production and reducing disparities.

2.13 Since in the preceding Chapter, we have quoted extensively from the Plan that Industrialists had prepared in 1944, we will refer here only to statements in that document that relate to the role of the State. “It is inevitable that in executing a comprehensive Plan of economic development, especially in a country where the beginnings of such development have yet to be laid, the State should exercise, in the interests of the community, a considerable measure of intervention and control.... An enlargement of the positive as well as preventive functions of the State is essential to any large scale economic planning.”(pages 23/24) The following are illustrations of the form which control, may assume: fixation of prices, limitation of dividends, prescription of conditions of work and wages for labour, nomination of Government Directors on the Board of Management, licensing, and efficiency auditing ...which will be the watchdog of public interest rather than of financial interests in the limited sense.” These statements show that the leaders of industry also accepted the need for state ‘intervention,’ measures of ‘control’ including ‘licensing’ and efficiency–auditing. (page 29)

2.14 Since 1950, the economic

development of the country progressed on the accepted idea that there would be three sectors in the field of industry- the State sector or the public sector, the private large-scale sector, and the small-scale sector (including the co-operative sector). We have not been asked to describe the growth of these sectors and their achievements and failures, or the problems created by the negligence or intervention of the State.

2.15 But it must be pointed out that at least in the beginning, public undertakings grew up in areas like defence, transport and communications, power, mining and other activities and services related to the infrastructure, fulfilling most of the criteria laid down in the Plan proposed by distinguished industrialists in 1944. But, it can be observed that, in course of time, public sector undertakings were set up in areas that were not related to defence or the infrastructure, or the 'commanding heights.' It is doubtful whether in every case, the need to set up an undertaking in the public sector and the justification for doing so, were subjected to scrupulous and rigorous scrutiny before the decision was taken. It is not certain that the form of the undertaking - whether it should be a departmental undertaking - a company, or a corporation set up by a Charter or Resolution of the Parliament, etc. - was chosen after full consideration. Many causes have been adduced for the failure of many public sector

undertakings to rise to the expectations with which they were set up: lack of genuine autonomy; lack of freedom to run the undertaking on business or commercial lines; the structure and powers of the Boards of Directors; bureaucratic control and bureaucratic methods; entrusting the organisations to Managers or Chief Executives who were from the Administration, and had no business acumen or experience of running business undertakings; the role of the Bureau of Public Enterprises and the control exercised by it, grossly diluting autonomy and responsibility; stultification in technology and poor research and development; over-employment; unwarranted political interference; poor work culture and industrial relations, in spite of the fact that the Plan documents and statements of objectives repeatedly declared that public sector undertakings had the responsibility to set an example to all industrial and commercial undertakings in the country, and so on.

2.16 In spite of all these, many undertakings did very well. It is a moot point to consider why private equity participation was not permitted in public sector undertakings, and why even in non-strategic sectors, private undertakings and public sector undertakings were not allowed to exist and compete with each other.

2.17 According to the draft 9th Five

Year Plan, in March 1996, there were 243 Central Public Sector Undertakings (CPSUs) owned by the Government of India with a total investment of Rs. 1,78,628 crores. Out of these 239 were operational enterprises with an employed capital of Rs. 1,73,874 crores and employees' strength of 23 lakhs. Of these, 134 were profit making and 101 were loss making.

2.18 Some undertakings became the arena of industrial strife, although in most such industries, wage determination and revision were undertaken on industry-wise basis, often with the Bureau of Public Enterprises pulling strings from behind the scene and having the ultimate say, thus making it difficult for the management to determine what the plants or industry could do to meet the demands of workers, thus making wage negotiations difficult.

2.19 The private sector had problems of its own. It had to secure licenses and permits and approvals from the letter of intent to the fixation of prices of products and schedule of sale (as in the sugar industry). It had to seek permission to commence. It had to seek permission to close. The net of permits and licenses and approvals grew wider and wider, and began to cover most industrial and commercial operations. This led to delays, uncertainties, whimsical and capricious decisions and

widespread corruption, all lethal to 'competitiveness' and industrial and commercial activities where time and efficiency were of the essence.

2.20 It is difficult to say whether the decisions to increase the number of operations or stages at which permits, or periodic renewal of permits, were made obligatory, came as a result of deliberate discussions of policy and necessity at the ministerial level, or as a result of the tendency of the bureaucracy to increase its discretionary and executive powers and level of dominance.

2.21 This is not to say that private industry did not receive incentives, protection and support from the Government. They were helped to acquire land and raw materials at concessional rates, sometimes at incredibly low prices. They were offered development rebates, tax holidays, subsidies and so on. They were protected from competition from foreign industrial and commercial concerns by a ban or limitations on foreign equity, reservations, high tariff walls, quantitative and other restrictions on imports and so on. It cannot, therefore, be said that industry did not have many years and many forms of protection from the State.

2.22 There were some cases of entrepreneurs misusing these opportunities and facilities by raising

equity capital and loans from banks and financial institutions and closing down enterprises after running up huge unpaid bills for wages, the consumption of electricity and so on. Such cases were not many, but they created tension and hostility in the minds of workers who felt that neither the law nor the State was protecting their genuine interest, even the payment of wages that were legitimately due.

2.23 But on the whole, entrepreneurs availed of the facilities and assistance extended by the State and financial institutions to build up their industrial or commercial enterprises.

2.24 It cannot be forgotten that when India became Independent, it was heavily dependent on Britain and other European countries or countries like Japan even for articles of daily consumption; even pins, clips, pencils and biscuits were being imported. Since then, in the decades after the advent of Independence, we have diversified our production to an incredible extent. There is hardly anything that we do not, or cannot, manufacture today. We are able to use the most modern or sophisticated technologies, where it is available to us. There are Indian entrepreneurs and managers and concerns whose skills are comparable to those of entrepreneurs and managers anywhere in the world. Some of them have earned high respect from their peers in other parts of the world. We

have produced engineers, technicians, physicists and scientists of the highest calibre, so much so that we stand third in the world for the number of trained scientific personnel. It is not the absence of men and women of calibre that has prevented the growth of our economy. It is true that we have lost many of these highly competent persons because of the 'brain drain' to countries in the West. We do not have to list the factors that have promoted this 'brain drain' and caused severe loss of our human resources to other countries. It is common knowledge that absence of facilities for advanced research and training as well as tempting opportunities that combine monetary benefits with job satisfaction and social recognition, have caused this 'brain drain' and kept it going. Our governments, business houses, and institutes of higher learning and research have not been able to counteract this phenomenon, to materially affect the speed of this drain.

2.25 In the decades after we became independent, the volume of production has gone up. The GNP has gone up from Rs. 8934 crores in 1950-51 to Rs. 618969 crores in 1992-93 at current prices (with old series base 1980-81). A review of the increase (Table 2.5) shows that it has increased relatively faster in tertiary and secondary sectors.

2.26 Later in this Chapter, we propose to make a brief review of the state of some of our principal and traditional industries to see where we have gained ground, and where we have lost ground, or are losing ground.

2.27 At this point, we should make some reference to the small-scale industries, artisans and craftsmen. The special role that this sector has played in our economy, in achieving our once acclaimed prosperity, has been recognised and hailed from times even before Independence. The products and skills of our artisans and craftsmen once won universal praise for their excellence, quality and uniqueness. They attracted buyers and traders from all over the world. History records how our craftsmen and artisans were persecuted, and how our cottage industries were systematically destroyed to make us dependent on British industries even for essentials for which resources, technical skills and trained workers were available in our country. It is well known that the policy of imperialism and colonialism was to destroy local industry, cart away natural resources where this could be done, exploit immovable resources with profligacy, and convert countries into captive markets. During the struggle for Independence, and immediately thereafter, there was widespread hope that this process would stop and that small-scale and cottage industries and crafts and artisanry would revive and

enter a period of renaissance. Economists as well as national leaders taught the country to look upon '*Swadeshi*' or the resurrection of indigenous industries as a symbol of Independence and self-reliance, without which there could be, no Independence. It was this conviction that made leaders like Mahatma Gandhi on the one hand, and Jamshedji Tata, Acharya P.C. Ray and others on the other, start movements for the revival of industry, and for building indigenously owned industry. The relation between national Independence and self-reliance and the question whether the goals of national economic policy and the interests of the people of a state can be pursued effectively without retaining the control of economic policy in the hands of those who are answerable to the people, will not lose relevance as long as the concept of the sovereignty of nation-states and their responsibility for the interests and welfare of the people of their territories, retain relevance.

2.28 We have already referred to the crucial role that small-scale industries play in our economy. Units or undertakings in this sector have grown from 20.82 lakhs in 1991-92 to approximately 31.21 lakhs in 1998-99. They now produce about 8000 items of goods ranging from food products to sophisticated electronic equipment. They account for 40% of the total industrial output and 35% of exports.

They provide employment to 171.60 lakh persons (98-99), but they have not been able to perform to their potential or make the contribution that they feel they could have made to the generation of employment and the volume of production (GDP).

2.29 Many reasons have been cited for this performance below potential. Competition from big industry; unsatisfactory access to credit and markets; poor management skills and advertisement; vagaries in the policies of reservation and protection, often giving with one hand and taking away with the other; inadequate support from the Government; inadequate improvement of technology; subjection to the same laws that govern bigger industrial units and inability to bear the responsibilities that big industries could bear (like contribution to the Provident Fund, etc.); harassment by inspectors and officials and so on.

2.30 In some earlier paragraphs, we have referred to technology and research and development. We have also pointed out that the recommendations of the National Planning Committee and the Government that took over at Independence talked of self-reliance. In fact, as we have pointed out earlier, the Congress Resolution on policies and objectives adopted after the coming of Independence, prescribed 'self-sufficiency' in certain matters, and at

certain levels. These created legitimate expectations that the Government would launch an all-out effort on a war footing, to set up the infrastructure necessary for economic growth, to upgrade indigenous technology and use the scientific talent in India to raise it to the level of technology that advanced countries possessed. It is very difficult to say that these expectations were fulfilled either for the technology necessary for industry, or for the technology necessary for defence and defence production. The amounts earmarked for R&D in these years, the record of utilisation of the grants, and awards for inventions that led to import substitution, and the number of improvements and inventions actually made in the different fields of technology to upgrade our industry and increase its competitiveness in the world market, make us wonder, why our efforts were so tardy and incommensurate with the goal of self-reliance and self-sufficiency.

2.31 However, the results of this failure were apparent in many fields. Since we did not create adequate indigenous technological competence on our own, we had to depend on a policy of acquiring technology from elsewhere. The policies that followed, give the impression, that in spite of talks of self-reliance, the Government had decided that India could achieve progress only by following the western model of

industrialism, and that since there was little time to lose, India should depend on acquiring western technology. This raised the question of marshalling the resources necessary to acquire this technology through purchase or as part of package deals in collaboration agreements. We did not succeed in either. We did not have internal resources or foreign exchange resources from which we could pay for the purchase of technology. Foreign undertakings, with which we had collaboration agreements, dodged all requests and commitments and found ways to refrain from transferring technology, particularly technology that was crucial for self-reliance. The aid that was offered to us was often tied to products and areas. These did not always coincide with national perceptions of priorities in development. The foreign exchange reserves that we could build up depended on trade. The terms of trade and the variety of possible export items to other countries were affected by their 'preferences,' necessities and needs of their countries, their policies of substitution of primary commodities through synthetic products, quota systems, and so on. We then, had to seek aid or loans from international financial institutions. These had their own choices and conditionalities for granting aid or loans. These conditions often interfered with national policies. It can well be argued that a prospective creditor has the right to verify the

creditworthiness of a prospective debtor, both to repay loans and to pay interest on an accepted schedule of instalments without defaulting. There was a fear that these conditions would lead debtor nations into a debt trap and the mortgaging of produce, and would even compromise sovereignty.

2.32 The financial institutions also thought that in the circumstances, it was in the interest of both the debtor and the creditor to propose 'system reforms' or 'structural reforms' that fitted their perceptions of what contributed to the growth of national economies and what the priorities of economic development should be. It is this succession of events and developments that led India, as well as many other developing countries, to accept or adopt the policy of globalisation. We are not called upon by our 'Terms of Reference' to make any observations on the decision to globalise. So, we refrain from doing so. But we have been asked to study the impact of globalisation, *inter alia*, on industry, on labour, the 'future labour market,' industrial relations, labour legislation, the security and welfare of workers and so on. We will, therefore, deal with this subject at greater length in a subsequent Chapter.

2.33 We must now refer to the policies that our Five Year Plans had advocated for the protection and welfare of labour and harmonious industrial relations. We have already

referred to the objectives that were defined in the Resolution setting up the Planning Commission.

2.34 The First and Second Five Year Plans elaborated these objectives and made an effort to outline a procedure for the settlement of industrial disputes. The first Plan referred to the "growing consciousness of the importance of industrial labour in the national economy," "the assurances that were given to labour in recognition of its rights which had long been neglected," and made an attempt "to give concrete shape to these assurances and to give labour a fair deal, consistent with the requirements of other sectors of the economy" (page-571: Chapter-27 First Five Year Plan). It also emphasised the need for a strong trade union movement. The Second Five Year Plan reviewed the work of the conciliation machinery and the industrial committees set up by the Government. It pointed out that issues like bonus and profit sharing, still required a satisfactory solution. It also pointed out that the acceptance of a goal of the socialist pattern of society for the country demanded attendant alterations in labour policy. It said further that a socialist society could not be built up solely on monetary incentives, but the worker had to be made to feel that he was participating in the building up of a progressive State. "The creation of an industrial democracy, therefore, is a pre requisite for the establishment of a socialist

society." To achieve this objective, the Plan felt that it was necessary to build up a strong trade union movement, both to safeguard the interests of labour and to realise the targets of production. It suggested that the trade union movement should not be weakened by the multiplicity of trade unions, political rivalries, disunity and lack of resources. Inter alia, it discussed the role that 'outsiders' have played, and may play in the trade union movement. It raised the question of registration and recognition of trade unions and the criteria that should govern the choice of representatives of unions. It underlined the importance of "one union for an industry," and emphasised the need to have effective machinery for the settlement of disputes so that direct industrial action should be the last resort for a trade union. It proposed a scheme of bilateral negotiations, conciliation, voluntary arbitration and adjudication. It felt that agreements should lead to workers' co-operation in measures for higher productivity, for modernisation and expansion, and for the acceptance of schemes of 'job evaluation.' It wanted employers to recognise the desirability of measures "to associate employees in the management of industry" (page-574).

2.35 We do not propose, at this point, to describe the measures that the Plan advocated for harmonious industrial relations, 'association' of labour with management, and so on.

The Plan document also made some proposals about strikes, lockouts, go-slow, stay-in strikes and so on, and wanted provisions to be made for deterrent punishments for illegal strikes and lockouts. It advocated the formulation of a National Wage Policy and made some detailed suggestions on the fixation of minimum wages, the introduction of payment by results in some areas of industry, the provision of adequate safeguards to ensure a minimum fall back wage for workers, and so on. It said that "earnings beyond minimum wage should be necessarily related to results," but, "workers should be consulted before a system of payment by results is introduced in an establishment." It found that the major cause of industrial disputes was 'wages and allied matters,' 'the settlement of bonus and profit sharing.' The Plan also referred to the need for social security and the safeguards that contract labour needed. It wanted that minimum wages should be fixed for agricultural labour and that an effective machinery should be visualised to deal with the problem of enforcement of minimum wages in this field.

2.36 Subsequent Plans have repeated or paraphrased these ideas. Some of the Plans reiterated that the "progressive reduction of unemployment has been one of the principal objectives of economic planning in India." It said that the solution to the

problem of unemployment and the poverty that went with it, ultimately lay in a higher rate of overall economic growth. However, it admitted that there was "some leakage in the percolation effects of growth" and in any case, these percolation effects would not be sufficient to generate the required employment opportunities." It, therefore, formulated a strategy for a supplemental programme for specific target groups, which, it believed, would lead to poverty alleviation, if not employment creation. The Sixth Plan, therefore, talked of the launching of programmes like the National Rural Employment Programme, the Rural Landless Employment Guarantee Programme, the Integrated Rural Development Programme, the Scheme for Training of Rural Youth for Self-Employment, Self-Employment to Educated Unemployed Youth and so on.

2.37 The Seventh Plan talked of the generation of employment in rural areas, the need to improve capacity utilisation, efficiency and productivity in urban industries, the rehabilitation of workers in sick units, improvement of industrial relations, increasing industrial safety, "an appropriate wage policy" with the basic objective of bringing about a rise in the levels of real income "with increase in productivity," effective implementation of the Contract Labour (Regulation and Abolition) Act (1970) the Minimum Wages Act (1948) and the Inter-State Migrant Workmen Act. It

also talked of welfare measures for workers in the rural and unorganised sector including landless labourers, *beedi* workers, handloom workers, etc., and wanted that the scheme should be effectively implemented.

2.38 The Eighth Plan also mentioned the need to provide an adequate level of earning, good working conditions and minimum wages, social security for workers in the organised as well as unorganised sectors. It also talked of increasing productivity. The Plans, in the later years, made proposals for implementing measures to identify, liberate and rehabilitate bonded labour, increasing protection for migrant labour, and dealing with the problems of child labour. It wanted special attention to be given to the protection, welfare and equality legitimately due to women workers. From 1992, the two Plans that followed globalisation, have made mention of the needs that have arisen as a result of globalisation.

2.39 When one reviews the objectives and programmes formulated in the different Plans, one is struck by the fact that in spite of the reiteration of goals and the formulation of programmes, we are still very far from effectively implementing even the proposals that were put forward in the First and Second Plans, and ensuring that the machinery visualised and set up in the early years, was put in place and made effective through

simultaneous periodical reappraisals, consultations and amendments or improvements. It appears that the periodic mid-term appraisals of the Plans were more related to financial provisions and physical targets rather than progress, stagnation and reversals in the pursuit of declared goals and directions. We do not have to go into the question of the responsibility for these shortcomings and the failure to take corrective steps in time.

2.40 At the completion of the first three Five Year Plans, the Government of India appointed the First National Commission on Labour under the distinguished Chairmanship of Justice Gajendragadkar. The Commission was appointed on the 24th December 1966. We are happy and proud to say that the Commission presented a highly commendable Report covering a very difficult and extensive area. It dealt in detail with all the items in the Terms of Reference with which it had been constituted. It made proposals on laws, industrial relations, the means and machinery for the settlement of disputes, safety in workplaces, determination of wages, bonus, schemes of social security and the kind of structures that were necessary to ensure the efficient extension and delivery of the services, promised by the policies on social security, the special conditions of rural and unorganised labour and women and so

on. It made nearly 300 specific recommendations in the Report which it submitted in 1969.

2.41 Our Commission was appointed three decades after the Gajendragadkar Commission completed its work and submitted its Report. We have to record that almost in all the cities where we met representatives of trade unions and industrialists, labour lawyers and academicians, we were asked about the status of the recommendations of the Gajendragadkar Commission – how many of them had been accepted by the Government, how many of the recommendations accepted had been implemented, and why the other recommendations were rejected or not acted upon. We ourselves made efforts with the Ministry of Labour to gather information on these questions that were raised before us and that arose in our minds as well. But we did not receive any information that could help us, either to understand the position or to answer questions that were put to us by witnesses. There were some witnesses who wanted to know why we thought a new enquiry would help when the Report of the earlier enquiry was yet to receive full attention.

2.42 Our answer was that the circumstances that have come into being after globalisation and its visible impact on Indian industry, the working class and the economy, and the need

that the Government itself was experiencing for immediate steps to deal with these new problems, would compel due and expeditious consideration of the recommendations that we may make in our Report.

2.43 We feel that we should now undertake a brief overview of the prevailing situation as far as the number and composition of the workforce, their employment and unemployment status, provisions of security and such other matters that are relevant to the subjects that are covered by our Terms of Reference, are concerned.

DEMOGRAPHIC TRENDS

2.44 One of the major concerns of developmental planning in the country has been the unabated population growth. The population of India has almost doubled from 548 million in 1971 to an estimated 1,027 million in the year 2001, the annual growth rate being about 2.2% through the seventies, and 2.1% during the eighties. The Ninth Plan estimated that the rate might have declined to 1.6% during the period 1996-2001. Provisional results from the 2001 Census place the population in March 2001 at 1,027 million, recording an annual average growth rate of about 2.0% during the decade 1991-2001. Thus, the decline in population growth has been painfully slow over successive decades, and has not also been uniform across the States.

2.45 Urban population accounted for 20% of the total in 1971, the proportion having increased steadily to 26% in 1991. It is now estimated to be about 29%. An undesirable feature of the demographic trends in the country has been the almost steady decline in the share of females in the population as recorded by the successive Censuses in the twentieth century. The sex ratio (number of females per 1000 males) has declined from 972 in 1901 to 927 in 1991. Provisional results for the Census of 2001 have indicated a welcome reversal of this trend, and recorded a higher sex ratio at 933. The age distribution too has been changing as a result of falling mortality rates and, in recent years, falling fertility rates, leading to a decline in the proportion of children below the

age of 15, and an increase in that of the elderly over the age of 60. It is easy to see that these trends have a bearing on the quantum of labour supply. Even though the literacy levels have been improving steadily from Census to Census (43.6% in 1981 to 52.2 in 1991 and 64 in 2001), the country is nowhere near the goal of universal literacy, except in some relatively small regions. The situation is even worse in the case of females where the rate was only 39.3 % in 1991, and has improved to 54.16 % by 2001¹. It has been estimated that in 1991, 56.7 % of the population had less than 3 years of schooling (this figure includes those who have no schooling at all), 23.7 % had 3 to 6 years, 11.0 % had 7 to 11 years, and

6.8% had 12 to 14 years of schooling².

Table 2.1

Age Structure of Population: 1971-2002

Age-Group	Percentage of population in the age-group				
	1971	1981	1991	1997	2002
0-14	42.02	39.55	37.75	37.22	33.59
15-59	52.00	53.91	55.59	55.79	59.41
60+	5.98	6.49	6.66	6.99	7.00

Source: Population Census for 1971, 1981, and Ninth Five Year Plan for 1997 and projected figures for 2002.

2.46 LABOUR FORCE: The size of the labour force, which is a measure of the overall labour supply in the country,

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¹ Population Census 1971, 1981, and 1991, and provisional results from Census 2001

² Manpower profile, India Year Book 1999, Institute of Applied Manpower Research (Table 1.19)

depends on the population in the working age groups and the rates of actual participation of the population in economic activities. Data from the population censuses show (Table 2.1) that there has been a steady increase in the proportion of population in the working age group of 15-59. This, coupled with the fact that the

participation rates in this age group are generally very high, has resulted in a rapid growth in labour force over the years, even though the labour force participation rates themselves have not altered much over the years and, in fact, showed a decline in recent years, particularly for females. The participation rates for different years are given below:

Table 2.2
Labour Force Participation Rates (In Percentages)

Period	Rural Areas			Urban Areas		
	Males	Females	Persons	Males	Females	Persons
1972-73	55.1	32.1	43.9	52.1	14.2	34.5
1977-78	56.5	34.5	45.8	54.3	18.3	37.5
1983	55.5	34.2	45.2	54.0	15.9	36.2
1987-88	54.9	33.1	44.3	53.4	16.2	35.3
1993-94	56.1	33.1	44.9	54.2	16.4	36.3
	(190.38)	(105.24)	(295.62)	(67.86)	(18.46)	(86.32)
1999-2000	54.0	30.2	42.3	54.2	14.7	35.4
	(198.32)	(104.09)	(302.41)	(79.91)	(19.85)	(99.76)

Source: Reports on 27th, 32nd, 38th, 43rd, 50th Round of the National Sample Survey & Key Results for the 55th round of NSS

Data are as per Usual Status (Principal+Subsidiary) criterion.

Figures in brackets are estimated absolute sizes of labour force in different groups in millions.

2.47 Between 1993-94 and 1999-2000, the estimated total labour force grew from 382 million to 402 million or at an average annual rate of about 0.9%. While the growth rate in urban labour force was 2.4 % per annum (2.8% for males and 1.2% for females), in the rural areas it was only 0.4% (0.7% for males and (-) 0.2% for females), primarily due to the sharp decline in the participation rates in the latter. It has been estimated by the Planning Commission that the size of the labour

force (aged 15+) in the country was 397 million in 1997 and would grow to 450 million by 2002 at an annual rate of 2.54%³. In view of the decline in the labour force participation rates in almost all age groups between 1993-94 and 1999-2000, this growth in the labour force aged 15+ would also need downward revision.

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³ Ninth Five Year Plan 1997-2002, Planning Commission (Table 4.5)

2.48 ECONOMIC GROWTH : The demand for labour depends on the pattern and pace of economic growth. Beginning with the Fifth Five Year Plan (1974—79), the gross domestic product of the Indian economy has generally increased at an average rate of 5% or

more per year. This rate is much higher than in the first four Plans (3 to 4% per annum). Since the economic reforms were ushered in, the growth rate has picked up further and has been above 6% per year.

Table 2.3
Growth Performances in the Five Year Plans

(In Percentages)

Plan	Annual Growth Rate in Gross Domestic Product		Growth Rate Achieved In per Capita Income
	Target	Achievement	
(1)	(2)	(3)	(4)
First Plan (1951-56)	2.1	3.7	1.8
Second Plan (1956-61)	4.5	4.2	2.0
Third Plan (1961-66)	5.6	2.8	0.2
Annual Plans (1966-69)		3.8	1.5
Fourth Plan (1969-74)	5.7	3.4	1.0
Fifth Plan (1974-79)	4.4	5.0	2.7
Annual Plans (1979-80)		(-) 5.0	(-) 8.3
Sixth Plan (1980-85)	5.2	5.4	3.1
Seventh Plan (1985-90)	5.0	5.9	3.7
Annual Plans (1990-92)		0.9	0.9
Eighth Plan (1992-97)	5.6	6.8	4.6
Ninth Plan (1997-2002)	7.0	6.0	

Source: Targets from Ninth Five Year Plan, Chapter 2 & achievements from Economic Survey 2000-01

2.49 The Net National Product per capita (Per Capita Income) correspondingly increased at an average annual rate of 2.7% in the Fifth Plan, 3.1% in the Sixth Plan, 3.7% in the Seventh Plan, and 4.6% in the Eighth Plan. It has continued to grow at a rate of over 4% per annum so far in the Ninth Plan period as well.

2.50 SHIFTS IN THE STRUCTURE OF OUTPUT : Half a century of planned development has transformed the structure of the Indian economy. The share of agriculture and allied activities, mining and quarrying in the Gross Domestic Product gradually came down from 59% in 1950-51 to about 35% in 1990-91 and further

down to 28% by 1999-2000. The share of manufacturing, construction, electricity, gas and water supply sectors improved from 13% to 24% in the four decades 1950-51 to 1990-91, and has remained more or less at that level in the subsequent years, with a declining trend in the latter half the nineties. The tertiary sector, comprising various services, accounted for an increasingly large share of the GDP over the entire period. In fact, during the last three decades (from 1980-81),

gross domestic product from the tertiary sector has been growing at an average annual rate of 7.2% in comparison with 3.4% for the primary sector and 6.4% for the secondary sector. Within the tertiary sector, transport and communications grew at an annual rate of 6.7%, financial services, real estate and business services at 9.5% and public administration and other services at 6.4%.

Table 2.4
Structure of Indian Economy

Year	Percentage of Gross Domestic Product From					
	Agriculture, forestry and logging, fishing mining and quarrying	Manufacturing, construction, electricity, gas and water supply	Transport, communication and trade	Banking and insurance, real estate and ownership of dwellings and business services	Public administration & defence and other services	Total
1950-51	58.89	13.22	11.88	6.65	9.36	100.00
1960-61	54.54	16.55	13.69	6.08	9.14	100.00
1970-71	48.02	19.87	15.52	5.93	10.66	100.00
1980-81	41.82	21.59	18.42	6.53	11.65	100.00
1990-91	34.92	24.49	18.73	9.69	12.18	100.00
1995-96	30.58	25.46	20.92	11.43	11.59	100.00
1999-2000	27.50	24.63	21.95	12.43	13.20	100.00

Source: Calculated on the basis of the data from the CSO reproduced in Economic Survey 2000-01, Statistical Table 1.3. Figures are based on 1993-94 prices.

Table 2.5
Growth Rates of Different Sectors of the Economy (In Percentages)

Year	Percentage of Gross Domestic Product From					Total
	Agriculture, forestry and logging, fishing, mining and quarrying	Manufacturing, construction, electricity, gas and water supply	Transport, communication and trade	Banking and insurance, real estate and ownership of dwellings and business services	Public administration and defence and other services	
1950-51 to 1960-61	3.1	6.2	5.4	3.0	3.6	3.9
1960-61 to 1970-71	2.4	5.6	5.0	3.4	5.3	3.7
1970-71 to 1980-71	1.6	3.9	4.8	4.0	4.0	3.0
1980-81 to 1990-91	3.7	7.0	5.8	9.9	6.1	5.6
1990-91 to 1995-96	2.6	6.2	7.7	8.9	4.3	5.4
1995-96 to 1999-2000	3.6	5.5	7.7	9.3	9.9	6.4

Source: Calculated on the basis of the data from the CSO reproduced in Economic Survey 2000-01, Statistical Table 1.3. Figures are based on 1993-94 prices

2.51 The organised sector of the economy has been growing faster than the unorganised segment in terms of value added, the share of the former

increasing from 30% in 1980-81 to 40% in 1995-96, while the share of the latter, declined from 70% to 60% over the same period.

Table 2.6
Shares of Organised and Unorganised Sectors in Value Added

Year	Percent Share of	
	Organised Sector	Unorganised Sector
1980-81	30.0	70.0
1985-86	35.1	64.9
1990-91	36.2	63.8
1995-96	40.3	59.7

Source: Central Statistical Organisation, National Accounts Statistics, 1998

2.52 Similarly, in the case of manufacturing, the share of the registered sector increased from 53.7% in 1980-81 to 62.1% in 1995-96 while that of the unregistered sector declined from 46.3% to 37.9% over the same period.

2.53 In spite of the impressive gains in economic growth, particularly in recent years, widespread inequalities in income persist. Over a quarter of the population lives below the poverty line

(measured in terms of a minimum level of consumption) in both urban and rural areas, but the poverty ratios (percentage of the poor to the total population) have been coming down. Though post-reform years have recorded a significant reduction in the poverty ratios, the improvement has not been uniform across the States. Some States like Uttar Pradesh and Bihar still remain at a high poverty level.

Table 2.7
Percentage and Number of Poor

Year	Poverty Ratio			Number of Poor (in million)		
	Rural	Urban	Combined	Rural	Urban	Combined
1973-74	56.4	49.0	54.9	261.3	60.0	321.3
1977-78	53.1	45.2	51.3	264.3	64.6	328.9
1983	45.7	40.8	44.5	252.0	70.9	322.9
1987-88	39.1	38.2	38.9	231.9	75.2	307.1
1993-94	37.3	32.4	36.0	244.0	76.3	320.3
1999-2000	27.1	23.6	26.1	192.9	66.7	259.6

Source: Ninth Five Year Plan, Chapter 1, Table 1.9

2.54 EMPLOYMENT LEVEL: According to the population Census of 1991, the total number of Workers (Main and Marginal) in India was 314.13 million out of a total population of 838.58 million. Their distribution by rural-urban areas and sex is given in Table 2.8. Economic data from the successive Censuses are beset with problems of comparability (at least up to 1981) due

to varying concepts adopted. The National Sample Survey Organisation (NSSO), on the other hand, provides a comparable series of data on employment for the last two decades (1977-78 to 1999-2000) using a practically uniform set of concepts and definitions. These data are given in Table 2.9.

Table 2.8
Population and Main and Marginal Workers –1991 Census
(In Millions)

Category	Population	Main Workers	Marginal Workers	Total Workers	Worker Participation Rate (% of Population)	
					Main	All Workers Workers
Rural Areas						
Males	321.28	166.29	2.31	168.60	51.8	52.5
Females	301.53	56.00	24.43	80.43	18.6	26.7
Persons	622.81	222.29	28.20	249.03		40.0
Urban Areas						
Males	113.94	55.36	0.40	55.77	48.6	48.9
Females	101.83	8.28	1.06	9.34	8.1	9.2
Persons	215.77	63.64	1.46	65.10	29.5	30.2
All Areas						
Males	435.22	221.66	2.71	224.36	51.0	51.6
Females	403.37	64.27	25.49	89.77	16.0	22.3
Persons	838.58	285.93	28.20	314.13	34.0	37.5

Source: Population Census 1991 excluding J & K

Table 2.9
Usual Status Work Participation Rates and Employment Levels
(1977-78 to 1999-2000)

(In Percentages)

Period	Rural Areas			Urban Areas		
	Male	Female	Persons	Males	Females	Persons
1973-74	54.5	31.8	N.A.	50.1	13.4	N.A.
1977-78	55.2	33.1	44.4	50.8	15.6	34.1
1983	54.7	34.0	44.5	51.2	15.1	34.0
1987-88	53.9	32.3	43.4	50.6	15.2	33.3
1993-94	55.3	32.8	44.4	52.0	15.4	34.7
1999-2000	53.1	29.9	41.7	51.8	13.9	33.7

Source: Employment and Unemployment in India 1999-2000, key Results, NSS 55th Round. Data relate to Usual Principal and Subsidiary Status

2.55 The NSS data indicate that the Usual (Principal and Subsidiary) Status work participation rates have remained stable, and varied around 44 % in rural areas and 34 % in the urban areas over the two decades from 1972-73 to 1993-94. However, after 1993-94, there seems to be a decline in the work participation rate both in the rural

and the urban areas, the decline being more marked in the rural areas. The decline has also been sharper in the case of females. The total estimated workforce using the NSS Usual Status work participation rates and the projected population for 1st Jan. 2000 is given in Table 2.10.

Table 2.10
Estimated Usual Status Work Force (1st Jan 2000)

(In Millions)

Category	1 st January 1994		1 st January 2000	
	UPS	UPSS	UPS	UPSS
Rural Areas				
Males	182.58	187.67	191.71	195.02
Females	74.40	104.29	79.62	103.05
Persons	256.98	291.95	271.33	298.07
Urban Areas				
Males	65.10	65.10	75.64	76.37
Females	13.62	17.34	15.80	18.77
Persons	78.73	82.44	91.43	95.14
All Areas				
Males	247.68	252.77	267.35	271.39
Females	88.02	121.63	95.41	121.82
Persons	335.07	374.40	362.76	393.21

Source: Based on NSS work participation rates and population projections of Registrar General of India. UPS=Usual Principal Status; UPSS Usual Principal + subsidiary status

2.56 INDUSTRIAL STRUCTURE OF WORKFORCE: Table 2.8 indicates the changes that have been taking place in the industrial structure of the workforce since 1972 - 73 up to 1999 - 2000. Over the three decades since 1970, the proportion of the workforce in agriculture and allied activities declined from about 74% to 62% while that in

manufacturing, construction, trade, transport and services improved significantly. During the period 1993-94 to 1999-2000 however, there are indications of a decline in the share of services in employment, perhaps because of stagnancy in public sector employment and decline in some sectors like banking. The changes in

the structure of the workforce have not been as fast as in the contributions of different sectors to output, indicating

continued concentration of labour in agricultural and other activities of low productivity and incomes.

Table 2.11
Industrial Structure of Workforce 1972-73 to 1999-2000

Industry	Percentage of Workforce (UPSS) engaged in the industry					
	1972-73	1977-78	1983	1987-88	1993-94	1999-2000
Agriculture & Allied	73.9	71.0	68.6	65.0	64.7	61.7
Mining & Quarrying	0.4	0.4	0.6	0.7	0.7	0.6
Manufacturing	8.8	10.2	10.7	11.1	10.5	10.7
Electricity, Gas & Water	0.2	0.3	0.3	0.3	0.4	0.3
Construction	1.9	1.7	2.2	3.8	3.2	2.8
Trade	5.1	6.1	6.2	7.2	7.4	9.8
Transport & Storage	1.8	2.1	2.5	2.6	2.8	3.5
Services	7.9	8.1	8.9	9.3	10.3	9.2
All Industries	100.0	100.0	100.0	100.0	100.0	100.0

Source: Structure of the Indian Workforce 1961-94, Parvin Visaria, The Indian Journal of Labour Economics. Oct.- Dec. 1996 except for 1999-2000. For 1999-2000, NSSO, See Table 2.9

2.57 EMPLOYMENT STATUS: The surveys of the NSSO identify the employment status of workers in terms of the self-employed, the regularly employed for salaries/wages and the casually employed. In the rural areas, 55.8% of the workers were self-employed, 6.8% were in regular salary/wage employment, and the remaining 37.4% were working as casual labour in 1999 - 2000. The corresponding percentage for the urban areas was 42.2, 40.0 and 17.8 respectively. The

trends in the distribution of the employed (according to the Usual Status concept) by status are shown in Table 2.10. Important conclusions that emerge from these data are:

- a) A steady decline in the proportion of the self-employed in the rural areas, both among men and women.
- b) A corresponding increase in the proportion of casual labour in the rural areas, both among men and women.

- c) A steady decline in the proportion of regular employment in the case of rural men and a fluctuating situation in the case of rural women.
- d) A gradual decline in the share of regular employment for men and gradual improvement in the case of women in urban areas.
- e) A marked shift from casual employment to regular employment in the case of women in urban areas during the post-reform period (1993-94 to 1999-2000).

Table 2.12
Trends in the distribution of employed by status

(In Percentages)

Year	Rural Areas				Urban Areas			
	Self-Employed	Regular Employees	Casual Labour	Total	Self-Employed	Regular Employees	Casual Labour	Total
Persons								
1972-73	65.3	9.3	25.4	100.0	41.2	46.3	12.5	100.0
1977-78	62.6	7.7	29.7	100.0	42.4	41.8	15.8	100.0
1983	61.0	7.5	31.5	100.0	41.8	40.0	18.2	100.0
1987-88	59.4	7.7	32.9	100.0	42.8	40.3	16.9	100.0
1993-94	58.0	6.4	35.6	100.0	42.3	39.4	18.3	100.0
1999-2000	55.8	6.8	37.4	100.0	42.2	40.0	17.8	100.0
Males								
1972-73	65.9	12.1	22.0	100.0	39.2	50.7	10.1	100.0
1977-78	62.8	10.6	26.6	100.0	40.4	46.4	13.2	100.0
1983	60.5	10.3	29.2	100.0	40.9	43.7	15.4	100.0
1987-88	58.6	10.0	31.4	100.0	41.7	43.7	14.6	100.0
1993-94	57.9	8.3	33.8	100.0	41.7	42.1	16.2	100.0
1999-2000	55.0	8.8	36.2	100.0	41.5	41.7	16.8	100.0
Females								
1972-73	64.5	4.1	31.4	100.0	48.4	27.9	23.7	100.0
1977-78	62.1	2.8	35.1	100.0	49.5	24.9	25.6	100.0
1983	61.9	2.8	35.3	100.0	45.8	25.8	28.4	100.0
1987-88	60.8	3.7	35.5	100.0	47.1	27.5	25.4	100.0
1993-94	58.5	2.8	38.7	100.0	45.4	28.6	26.0	100.0
1999-2000	57.3	3.1	39.6	100.0	45.3	33.3	21.0	100.0

Source: NSSO reports for various rounds

2.58 UNEMPLOYMENT: In 1999-2000, the Usual Principal Status unemployment rate (percentage of the unemployed persons among the labour force) was 1.9 (2.1 for males and 1.5 for females) in the rural areas, and 5.2 (4.8 for males and 7.1 for females) in the urban areas. If, however, the work done in subsidiary capacity is taken into account, these rates drop to 1.5 in rural areas and 4.7 in the urban areas. On the basis of Current Weekly Status, categories.

the rates are higher at 3.8 (3.9 for males and 3.7 for females) in rural areas and 5.9 (5.6 for males and 7.3 for females) in the urban areas. If the Current Day Status is taken into account, the rates go up further to 7.1 (7.2 for males and 7.0 for females) in rural areas, and 7.7 (7.3 for males and 9.4 for females) in urban areas. Table 2.11 gives the trends in the unemployment rates based on Usual Principal Status criterion for various

Table 2.13
Unemployment Rates by Various Criteria

(Percentages to Labour Force)

Year	Unemployment Rate							
	Males				Females			
	UPS	UPSS	CWS	CDS	UPS	UPSS	CWS	CDS
Rural areas								
1972-73	N.A.	1.2	3.0	6.8	N.A.	0.5	5.5	11.2
1977-78	2.2	1.3	3.6	7.1	5.5	2.0	4.1	9.2
1983	2.1	1.4	3.7	7.5	1.4	0.7	4.3	9.0
1987-88	2.8	1.8	4.2	4.6	3.5	2.4	4.4	6.7
1993-94	2.0	1.4	3.1	5.6	1.3	0.9	2.9	5.6
1999-2000	2.1	1.7	3.9	7.2	1.5	1.0	3.7	7.0
Urban Areas								
1972-73	N.A.	4.8	6.0	8.0	N.A.	6.0	9.2	13.7
1977-78	6.5	5.4	7.1	9.4	17.8	12.4	10.9	14.5
1983	5.9	5.1	6.7	9.2	6.9	4.9	7.5	11.0
1987-88	6.1	5.2	6.6	8.8	8.5	6.2	9.2	12.0
1993-94	5.4	4.1	5.2	6.7	8.3	6.1	7.9	10.4
1999-2000	4.8	4.5	5.6	7.3	7.1	5.7	7.3	9.4

Source: NSSO, See Table 2.9 UPS = Usual Principal Status; UPSS = Usual Status taking into account the work done in subsidiary capacity; CWS = current weekly status; CDS = Current Day Status.

2.59 Between 1993-94 and 1999-2000, which roughly coincides with the post-reform years, unemployment rates increased in rural areas according to all the criteria and for both the sexes, while the rates declined for females in the urban areas. In the case of urban males, only the UPS unemployment rate declined.

2.60 The National Commission on Labour that was appointed in 1966 under the Chairmanship of Justice Gajendragadkar was, inter alia, asked "to review the changes in conditions of labour since Independence and to report on existing conditions of labour... To study and report in particular on the levels of workers' earnings... The standard of living and the health efficiency... Of workers – both at the centre and the states." The report of the Commission, therefore, included sections on the conditions of labour, levels of earnings, standard of living and other questions relating to these subjects. Nearly three decades have elapsed since the Gajendragadkar Commission submitted its report. In these years many changes have taken place in the conditions of workers, their standard of living, their rights, social status and so on, and it would have been appropriate and beneficial to undertake a review of these changes as a prelude to a study and review of

the existing labour legislation, the need for an umbrella legislation in the unorganised sector, and the measures needed for the protection and welfare of workers in both the sectors. However, our Commission has not been asked to undertake such a review (Nor have we been given adequate time and resources to undertake such a detailed review). Even so, we found that a brief review of the changes that have taken place in the conditions in the main sectors of employment has to be the starting point for the study and examination of some of the questions that have been entrusted to us, This is also necessary to have a clearer understanding of the situation in the main industries and economic activities in which our workforce is employed today. We propose therefore to devote a few paragraphs to a quick and brief review of the situation in the Plantations and Forestry, Mining and Quarrying, Construction, Textiles, Chemicals, Agriculture, Engineering and other industries before we proceed to a review of legislation, protection, and welfare. We should say once again that the review that we present is by no means comprehensive or exhaustive, for reasons that we have already indicated.

INDUSTRY PROFILES

2.61 **HANDLOOMS:** The art of hand weaving is a part of India's rich heritage. From the dawn of recorded history, Indian handlooms have enjoyed a high reputation throughout the world.

2.62 Till the mid-nineteenth century, the textile industry in India meant only the handloom industry. By the time of the Second World War, however, the scale had tilted in favour of the mill sector. The Great Depression of the 1930s dealt a severe blow to the industry. Competition posed by imported cloth (buttressed by favourable tariffs), mass production by power-looms, import duty on yarn etc., contributed to the precarious conditions to which weavers were reduced. All these contributory factors had the underpinning of colonial exploitative policies.

2.63 The abject condition of the weavers finally prodded the Government of India to waive a part of the import duty on yarn in 1935. It did not, however, lead to any significant relief. A Fact Finding Committee was set up in 1941 to investigate the situation and suggest measures for reorganising

the industry. An All India Handloom Board was set up in 1945. It was reconstituted in 1952. This heralded an upturn in the fortunes of the industry. Initially, the Board was the designated agency for formulating State Plans in the handloom sector in consultation with State Governments. After 1958, however, the Planning Commission changed the procedure and the new arrangement led to a diminished role for the Board. It was reconstituted in 1978, but in 1982, it was merged with the Handicrafts Board. An All India Society was set up in 1953 to give fillip to marketing and exports. Later, it was assisted by the Handloom Exports Promotion Council.

2.64 The Planning Era : The handloom industry was accorded importance during the First Five-Year Plan itself. It was put on par with small-scale industries in matters pertaining to competition from the large-scale sector, and benefited from the scheme of product reservation. A cess was also imposed on mill cloth through an Act passed in 1953 [*Khadi* and other Handloom Industries (Additional Excise Duty on Mill Cloth) Act, 1953]. The proceeds were to be pooled in a fund that was known as the Cess Fund. It was used for promoting marketing,

production and quality control. It was, however, abolished in 1960. To minimise the competition for Handlooms, controls were imposed on mill production. A rebate scheme, initially intended for clearing accumulated stocks, was introduced in 1953. This too was aimed at making handlooms more competitive in the prices of their products. However, the functioning of the Rebate Scheme was prone to misuse and corruption, with the result, that in many situations the benefit often did not reach either the consumer or the producer. All these promotional efforts, however, did not address the problem facing the industry adequately, particularly that of competition from the mill and powerloom sectors. A Textile Enquiry Committee was appointed in 1952 under the Chairmanship of Shri N Kanungo. In 1954, the Committee recommended a phased programme of conversion of handlooms to power-looms, particularly in the rural co-operative sector, to overcome the price handicap that was as high as 24%. The First Plan saw the production more than double from 742 million yards in 1950-51 to 1554 million yards in 1954-55.

2.65 The Industrial Policy Resolution of 1956 became the bedrock for policy

formulation from the Second Plan onwards. It recognised the spin-offs of small-scale and cottage industries like large-scale employment, equitable income distribution and capital and human resources compatibility, and accepted the desirability of supporting such industries. Research and Technological Development in the handloom sector got a fillip during this time. The production increased to 1900 million yards in 1960-61. The looms in the co-operative sector almost doubled from less than 7 lakhs in 1953 to over 13 lakhs by middle of 1960. The Third Plan focussed on higher production through fuller employment and improved technology. It saw a liberal credit regime, supply of improved appliances and other support services. However, the production and co-operativisation did not register significant increase. These policies continued during the Annual plans (1966-69) and the Fourth Plan period (1969-74). The stagnant situation led to the appointment of the high powered Sivaraman Committee in 1973. The Committee made many important recommendations in their report. Among others, it recognised the need to promote the weavers outside the co-operative fold through Handloom Development Corporations. The Fifth Plan saw the introduction of

special schemes for the handloom industry including integrated handloom development projects (for about 10,000 looms each); export production projects (about 1,000 looms each) and *janta* cloth production which started in 1976. Production went up significantly from, 2,100 million metres to 2,900 million metres, and so did employment from 5.2 to 6.2 million. The total number of looms increased to about 3 million of which about 1.3 million were in the co-operative sector. Out of these looms in the co-operative sector only 0.94 million were effective production looms. This represented effective coverage of 31% of the total number of looms against the targeted 60%.

2.66 The Sixth Plan witnessed an approach based on vertical and horizontal integration of programmes in the light of the Industrial Policy Statement of 1980. It saw, *inter alia*, emphasis on augmented supply of hank yarn to weavers, the modernisation of looms, and the establishment of the National Handloom Development Corporation to enhance co-operativisation. During this plan period, production increased from 2900 million to 3600 million metres, and employment, from 6.2 million to 7.5 million workers. However, the effective extent of co-operativisation remained

around 32% through the years, it saw an addition of about 1.7 million weavers to this Sector (Cooperatives).

2.67 The Seventh Plan (1985-90) period was guided by the Textile Policy of 1985. The thrust was on co-operativisation, development of Central/State Government Corporations, loom modernisation, raw material linkage and technological upgradation.

2.68 Post Liberalisation period: The picture in the handloom sector has, however, changed from one of moderate to slow growth to decline in the 1990s. From the data collected during the Handloom Censuses of 1987-88 and 1995-96, it is seen that monthly production has come down from about 298 million metres to 260 million metres. In annualised terms, it shows a decline from about 3600 million metres to about 3100 million metres, or roughly 13%. The number of looms shows a decline of about 8% from 3.78 million to 3.49 million: the number of production units also shows a slightly sharper fall of about 15% from 3 million to 2.54 million, though the number of weavers/workers is virtually stagnant, at 6.55 million (increase of 0.01 million). These figures indicate a higher concentration of both workers and looms in the units in 1995-96 as compared to 1987-88,

from 2.18 workers to 2.58 workers and from 1.26 looms per unit to 1.37 looms per unit. Of the 24 states surveyed, only two viz., Manipur and Himachal Pradesh registered increase in the number of units. The major decline in units was in Assam (-10%), West Bengal (-23%) and Tamil Nadu (-24%). The number of workers fell in absolute terms in U.P., Tamil Nadu and West Bengal (-35%, -14% and -7% respectively).

2.69 The census data also revealed that during the period between the two rounds, the production per loom and per worker declined at the all India level though most states registered increases. This was mainly due to decline in productivity in the States that accounted for the bulk of fabric production (57%), in U.P., West Bengal and Tamil Nadu (overall productivity decline of about 29% in the three states). The average monthly earning of weaver households was merely Rs. 1,459/- in 1995-96. Excluding the North Eastern States which generally (except Tripura) showed a higher level of earning from agricultural and non-agricultural sources vis-à-vis weaving; the average earning of a weaver household declined from Rs. 1,458/- per month to Rs. 1,236/- per month. These broad data reveal the increased

vulnerability of the weaving population to the forces that have been generated by the accentuated economic changes that have been witnessed in recent years.

2.70 The extreme distress in which the families of weavers find themselves in many states is reflected in the waves of suicides that have been reported from states like Andhra Pradesh and Tamil Nadu. No society, and no Government can be impervious to the degree of distress that drives citizens to commit suicide either because of the measures to temper or taper off protection (including from low priced imports) or the failure to create adequate social security systems that can mitigate the suffering and starvation of those who lose employment.

2.71 The portents seem more ominous with the removal of almost all quantitative restrictions on imports from 1st April 2001, and the full opening up of the textiles sector from 2005.

2.72 TEXTILE INDUSTRY: The textile industry is one of the oldest industries in India, which has made a significant contribution to the country's economy over the centuries. We have already

seen that the handloom sector of the industry flourished for a long time before the mill sector achieved a significant presence. The first textile mill in India was set up in 1854 at Bombay by C. N. Daver. Subsequently, other mills were set up in Ahmedabad, Kanpur, Calcutta and Coimbatore. At the time of the Second World War, there were 389 cotton mills in India with about 10.06 million spindles and 2.02 million looms. After the War, there was a steep demand for cotton textiles. During Partition, a large portion of the cotton growing areas in Sind went to Pakistan, and as a result, the growth of the textile industry slowed down for sometime. After Independence, India embarked on planned development, and during the successive Five-Year Plans, the textile industry expanded and extended to States like Andhra Pradesh, Kerala, Bihar, Orissa and so on. The textile industry is today the largest industry in India with a share of 20% in national industrial production. It is the second largest employer, employing over 20 million, and coming only after agriculture. It contributes 4% of the GDP, and has over 30% share of the total export earnings. In addition, a number of other industries like textile engineering, manufacture of dyes, etc., depend upon the textile industry.

2.73 The Indian textile industry has been classified into four product categories i.e. yarn, fabrics, made-ups and garments. Yarn is manufactured by the organised sector as well as the small-scale sector. Fabric manufacturing is further classified into handloom, power-loom, mill-made and knitting. The other two products (made-ups and garments) are manufactured both by small and big undertakings. There are three major sectors in the industry: spinning, weaving and processing. In each of these three major sectors, there are organised and decentralised segments. In the organised segment, there are large spinning and composite mills with spinning, weaving and processing activities, while in the decentralised sector, there are small spinning mills, power-looms, handlooms and weaving and small hand processing units. Out of the hundreds of small spinning mills in the country, a majority is in Tamil Nadu, followed by Karnataka and Gujarat. There are at present (March 1999) 1,824 mills in the organised sector (1,543 spinning and 281 composite mills), and about 800 Spinning mills in the small-scale sector and 16 lakh power-looms in the country. Table 2.14 shows the progress of the textile industry over the past five decades.

Table 2.14
Textile Industry: Growth during the Last Five Decades

Item	Units	1951	1961	1971	1981-82	1991-92	1996-97
No. of mills (total)	No.	383	481	670	723	1117	1719
Spinning mills	No.	107	196	379	442	846	1438
Composite mills	No.	276	285	291	281	271	281
Installed Capacity							
Spindles	Mill No.	11.25	13.83	17.98	21.93	27.82	33.15
Rotors	000 No.	—	—	—	—	113	276
Looms	000 No.	196	199	206	210	169	124
Cotton Statistics							
Cotton Production	Lakh bales	31.33	46.37	65.64	84.00	119.00	177.90
Mills Consumption	-do-	40.71	56.88	63.59	71.23	103.09	157.00
Man-made fibre Production							
Cellulosic	Mill.Kg.	—	26.06	61.02	84.20	158.08	178.78
Non-cellulosic	-do-	—	—	15.03	43.31	183.99	409.44
Man-made Filament Yarn Production							
Cellulosic	Mill.Kg.	2.46	23.47	38.47	41.05	52.69	57.29
Non-cellulosic	-do-	—	—	1.50	38.64	242.49	544.27
Yarn Production							
Cotton yarn	Mill.Kg.	591	862	881	989	1450	2148
Other spun yarn (total)	-do-	11	22	98	260	356	646
Fabrics Production							
Total Production	Mill. Sq. Mtr.	5291	8027	9018	12308	22978	34813
Production in mill sector	-do-	3913	4936	4321	3987	2376	1957
Production in decentralised Sector	-do-	1378	3091	4697	8321	20602	32856
Per Capita Availability of Cloth	Sq. Mtr	11.54	15.50	13.02	17.13	22.87	29.30
Textile exports (Excl. Jute, Coir & Handicrafts).	Rs. Crore	N.A.	N.A.	N.A.	1335.70	12041.15	35477.93

Source: Textile Statistics 1997, Office of the Textile Commissioner

2.74 As is evident from the table that follows (Table 2.15), the growth of the textile industry, which slowed down during the seventies, picked up again and, spear-headed by the spinning and man-made fibre in the organised sector, made impressive gains in almost all respects during the subsequent period, particularly

in the post-liberalisation years. A conspicuous exception is the case of production of cloth in the mill sector, which has suffered substantially. It has consistently recorded fall in production since the sixties. The fall has become steeper in the post-reform period.

Table 2.15

Annual Growth Rates in Textile Industry During the Last Five Decades

(In Percentages)

Item	1951-61	1961-71	1971-82	1982-92	1992-97
No. of mills	2.3	3.4	0.8	4.4	9.0
Installed spindles	2.1	2.7	2.0	2.4	3.6
Cotton production	4.0	3.5	2.5	3.5	8.2
Cotton consumption	3.4	1.1	1.1	3.8	8.8
Man-made fibre production					
Cellulosic	—	8.9	3.3	6.5	2.5
Non-cellulosic	—	—	11.2	15.6	17.3
Man-Made filament yarn production					
Cellulosic	25.3	5.1	0.7	2.5	1.8
Non-cellulosic	—	—	38.4	20.1	17.6
Spun Yarn production					
Cotton yarn	3.8	0.2	1.2	3.9	8.2
Other spun yarn	7.2	16.1	10.2	3.2	12.7
Cloth Production					
Total production	4.3	1.2	3.2	6.4	8.7
Mill sector	2.3	(-)1.3	(-)0.3	(-)5.0	(-)3.8
Decentralised sector	8.4	4.3	5.9	9.5	9.8
Per capita availability of cloth	3.0	(-)1.7	2.8	2.9	5.1
Textile exports	N.A.	N.A.	N.A.	24.6	24.1

Source: Textile Statistics, 1997, Office of the Textile Commissioner

2.75 There is a view that one of the reasons for this was the emphasis that was laid on the role of the handloom industry since Independence, both because of its employment potential, and because of the place that it occupied as part of the national movement. Therefore, while the spinning industry was allowed to expand, the expansion of looms in the mill sector was severely restricted. Between 1980 and 1997, the weaving capacity in the mill sector declined by 84,000 looms. On the other hand, the rate of growth of production of cloth in the decentralised power-loom and hosiery sectors has been impressive throughout the half century. The large gap in the excise levy between the mill and the exempted category of power-looms acted as a direct incentive to the rapid growth of power-looms. Moreover, although the reservation of the fields of production was made to encourage the handloom sector, it equally benefited the power-looms, since they were not prohibited from making the reserved varieties.

2.76 The Textile industry in the mill sector has been plagued by sickness

and industrial unrest. One of the major events that showed the extent of unrest among workers was the strike of textile workers in Bombay, which commenced in January 1982 and continued for more than a year. The strike affected 60 textile units including 12 National Textile Corporation units and caused considerable loss of employment and other kinds of suffering to workers and their families. During the period of the strike, many of the composite mills were forced to close down. However, power-looms prospered. One of the fallouts of the strike was The Textile Workers' Rehabilitation Fund Scheme that the Government introduced in 1986 to provide temporary relief to workers rendered jobless by the permanent closure of textile mills in the private sector. Under this scheme, the workers, whose wages were upto Rs. 2,500/- per month or less, were given relief on a graded scale for three years immediately after their retrenchment from employment. Till 31st March 1999, Rs. 111.59 crores were given to 54,631 workers involving 35 textile mills. With the structural transformation in the mill sector, and the competition faced from power-looms, the textile industry in the mill sector began to face increasing sickness. The other reasons for sickness were comparatively low

productivity, lack of modernisation, increase in cost of inputs, etc. As a consequence of all these factors, the number of mills that has closed down has gone up. The growing incidence of sickness is reflected by the increase in the number of closures which increased from 123 in the year 1992-93 to 349 in 1999-2000. As of September 1999, there were 421 cases of textile mills registered with the Board for Industrial and Financial Reconstruction (BIFR). The incidence of sickness is more in Maharashtra and Gujarat. Besides these closures, a large number of mills is not working to its full capacity due to the spreading sickness in the industry. Globalisation has also had adverse effects on the already sick textile industry as imports have increased and textile products from other countries are available in abundance at cheaper rates. The number of workers employed in the organised sector has decreased from 11,79,000 in 1980-81 to 10,43,000 in 1999-2000.

2.77 The condition of workers in the decentralised sector is very pathetic. The wage levels in this sector are also on the low side. The jobs cuts and retrenchment of labour that is taking place on a large scale have further added to apprehensions of imminent loss of employment and erosion of incomes and standards of living. It is estimated that more than 2.50 lakh textile workers have been affected

adversely due to closure and curtailment of activities. Power-looms were considered to be viable propositions due to cost advantages. But due to the vast expansion of capacity, they are also becoming uneconomical.

2.78 IRON & STEEL INDUSTRY : The Iron & Steel industry is a key industry of national importance. The development of industrial activity in a country is often linked with the development of the steel sector. The level of per capita consumption of steel is often treated as one of the important indicators of economic development and the living standards of the people in any country.

2.79 The first iron and steel plant in Indian was established in 1907 at Jamshedpur by J N Tata. The setting up of the Tata Iron and Steel Company (TISCO) has been hailed as a monument to the daring entrepreneurship of India. In 1948 the production of ingot steel in the country was of the order of 1.25 million tonnes, and that of finished steel, 0.86 million tonnes.

2.80 There were many reasons for the failure of early attempts to introduce European methods of manufacturing iron in India. The then Central Government and the various provincial Governments were hostile to the industrialisation of India and the establishment of modern industries

under indigenous entrepreneurship.

2.81 In its early years, even TISCO derived little benefit from the abundance of inexpensive labour in India. Prior to 1923 TISCO's labour costs per ton of output were substantially higher than the labour costs of comparable steel plants in Europe and the United States. By 1933, there was no appreciable difference between TISCO's direct labour costs and labour costs elsewhere, despite the fact that Indians had by then replaced much of the company's foreign personnel.

2.82 In 1948 the Government of India issued its First Industrial Policy Resolution specifying the industries in which the state would assume a sole or primary responsibility for new investment, and those that would be subject only to normal government controls. The iron and steel industry was included in the second category. The 1948 resolution was superseded in 1958. The list of industries which were to become public sector monopolies, and in which the Government was to have sole or primary responsibility for new undertakings, was enlarged.

2.83 In many instances controlled prices have been kept relatively low, with the result that prices frequently did not cover all costs of production. Controls have not necessarily

discouraged expansion of the industries in which the Government assumed primary or sole responsibility for new investment. However, in industries in which private sector participation has been permitted, unduly low prices have acted as a disincentive to new investment and this was one reason for some of India's frequent commodity shortages.

2.84 In 1964, the Government of India (basing itself on the recommendations of the K. N. Raj Committee) placed the onus of formulating guidelines for production and distribution of steel materials on the Joint Plant Committee (JPC). The Committee was constituted with representatives from Hindustan Steel Ltd (Rourkela, Bhilai and Durgapur), Tata Iron & Steel Co. Ltd., and Indian Iron & Steel Co. Ltd., and the Railways as members. The functions identified for the JPC were:

- a) Co-ordination of work of the main producers with a view to evolving common procedure and action in regard to planning, dispatch and pricing of products and drawing up of rolling programmes;
- b) Assisting the Steel Priority Committee on the dispatch and allocation of Iron & Steel;
- c) Reviewing the general market situation and fluctuation of free market prices, trends of production, movement and availability of Iron & Steel.

2.85 At present the JPC has its Headquarters at Kolkata and six

regional offices at Kolkata, New Delhi, Mumbai, Chennai, Kanpur and Hyderabad.

2.86 The office of the Development Commissioner for Iron & Steel (DCI&S) has continued to perform its advisory, developmental and regulatory functions, through its regional offices.

2.87 The new economic policies being pursued by the Government have opened up new opportunities for the expansion of the steel industry. With a view to accelerating the growth of the steel sector, the Government has initiated a number of policy measures since 1991.

2.88 The Indian Steel Industry recorded a production of 26.71 million tonnes of finished steel in 1999-2000, which was more than that of the previous year. India continued to be the 10th largest steel producing country in the world during 1999-2000. The country is considered a leading producer of carbon steel in the world. This sector represents around Rs. 90,000 crores of capital, and directly provides employment to over 5 lakh people. The Indian steel sector was the first core sector to be completely freed from the licensing regime and pricing and distribution controls. This became possible primarily because of the inherent strength and capabilities demonstrated by the Indian iron and steel industry. During 1996-97, finished

steel production shot up to a record 22.72 million tonnes with a growth rate of 6.2%. However, increases in the production of finished steel in 1997-98 and 1998-99 were only 2.8% and 1.9% respectively as compared to 20% in 1995-96 and 6.2% in 1996-97. The growth rate has improved in 1999 - 2000, and stands at 12.1%. But subsequently, a trend of decrease is visible in the growth rate of steel production. This has been brought about by several factors which inter alia include, general slowdown in the industrial construction activities in the country coupled with lack of growth in major steel consuming sectors, etc.

2.89 India exported 3.34 million tonnes of iron and steel valued at over Rs. 3500 crores during 1999-2000. It produced 5.18 million tonnes of sponge iron during the year 1999-2000, and continues to be the second largest producer of sponge iron in the world. The Steel Authority of India Ltd. (SAIL), a public sector enterprise recorded a turnover of Rs. 16250 crores during 1999-2000. In its four integrated steel plants, SAIL achieved a production of 10.94 million tonnes of Hot Metal, 9.79 million tonnes of crude steel and 9.53 million tonnes of saleable steel during 1999-2000. SAIL exported 0.89 million tonnes (compared to 0.49 million tonnes in the previous year) of steel and pig iron, recording a growth of 81% in exports.

The company earned foreign exchange of Rs. 886 crores during the year through exports and other activities. India exported 32.55 million tonnes of iron ore during 1999-2000 as against 31.02 million tonnes in 1998-99. Another major steel private sector corporate, Tata Iron and Steel Company Ltd., achieved a production of 3.29 million tonnes of saleable steel and 3.43 million tonnes of crude steel, surpassing all previous records.

2.90 The new industrial policy announced in July 1991, has completely opened the iron and steel industry for private investment. Since then, 19 new field steel projects, financed by the financial institutions, involving a total capacity of approximately 13 million tonnes (saleable steel) have been commenced. The aggregate investment in them is over Rs. 30,000 crores. Of the 19 projects, so far 8 units have been fully commissioned, and 4 more have partly commenced manufacturing facilities. Thus, capacity to the tune of approximately 7 million tonnes has been added during the period. Some of the important new players are Essar Steel Ltd., Lloyds Steel & Industries Ltd., Jindal Steel & Power Ltd., Jindal Vijayanagar Steel Ltd., Ispat Industries Ltd., Southern Iron and Steel Company Ltd., Hospet Steel etc.

2.91 Global Impact on Iron & Steel

Industry : The world steel industry has witnessed major ups and downs in the last few decades, especially over the past five years. The pattern of trade has been upset by two important developments.

2.92 The Asian Crisis and the collapse of the USSR have transformed importers of steel into exporters. Till the recent financial crisis, the Asian countries were large importers of steel. During recent years Indian exports have been subjected to anti-dumping/CVD investigations in the European Union, USA and Canada. This has eroded our export base to some extent.

2.93 It is in this global context that the Indian steel industry will have to identify its future role.

2.94 Indian steel is currently exported to China, Japan, USA, Korea, Taiwan, Indonesia, Thailand, Malaysia, Italy, U. K. Germany, Canada, Spain, Australia and other countries.

2.95 After the liberalisation of India's trade policy and the commencement of the general policy and procedures for export-import of iron and steel, ferro scrap etc. are decided by the Ministry of Commerce in consultation with Ministry of Steel.

2.96 Under the general policy and procedures for export-import that have

been decided upon for 5 years (from 1.4.1997 to 31.3.2002), the policy for import and export of iron and steel materials has also undergone sweeping changes. Import of all items of iron and steel is freely allowed. India has been annually importing about 10 to 15 lakh tonnes of steel.

2.97 Efforts are being made by the Ministry of Steel/Development Commissioner for Iron & Steel to ensure adequate supplies of domestic raw materials to meet the requirements of engineering exporters.

2.98 With the coming of liberalisation, the steel industry, especially the public sector, has now to face up, not only to domestic competition but also to global competition in terms of product range, quality and price. The growth of the steel sector is intricately linked with the growth of the Indian economy and especially the growth of the steel consuming sectors. India has been self-sufficient in iron and steel materials in the last 3-4 years. Exports are rising and imports are falling. Production and production capacities are increasing. This position needs to be further consolidated, and issues affecting production and consumption need to be resolved on a continuous basis. India is already recognised as a global player in

the steel industry, and this sector is poised to play a key role in the international steel scenario in the coming years.

2.99 Productivity in Iron and Steel Industry : The factors affecting production and productivity are labour, material, technology and capital. Productivity can be improved through various means like the introduction of new and better technologies, use of appropriate tools, equipment and methods, but the most important factor for the improvement of productivity is the workforce. High productivity is necessary for the survival of the industry. In this sector, PSUs and TISCO establishments have been attempting to ensure the improvement of productivity by motivating its workforce in various ways. In an attempt to improve the skills, the workforce is regularly trained in standard operating practices, told about task and target systems and above all made aware of the advantages of productivity. The establishments in the public sector and the private sector lay stress on productivity, and focus on cost consciousness and cost control, efficient use of raw materials, improvement in yields, systems and procedures, improvement in customer

service and delivery, elimination of unproductive practices, elimination of waste, on safe and healthy environment etc. These methods have helped the industrial units to achieve lower costs and better quality of goods and services. This has also led to overall improvement in the quality of life of the employees. In addition, the units have set up quality circles: Total Quality Systems and the like. In TISCO, labour productivity has almost doubled in the last five years. TISCO is emerging as the World's lowest cost producer of hot rolled coils (HRC).

2.100 Salary/Wage in Steel Industry : Prior to 1965, the pay scales of Board Level executives and below-Board Level executives in Public Sector Enterprises were fixed on an ad hoc basis by the Government, keeping these generally at par with the comparable pay scales of equivalent posts in the Government departments. But in 1990, guidelines were issued in respect of officers of Board level and below Board level positions, and uniformity was introduced rationalising the scales in Public Sector Enterprises. Again, in the salary revision effective from 1.1.92, the Department of Public Enterprises issued guidelines which included 14 scales of pay below board level, but provided for flexibility to allow

the Public Sector Enterprises to adopt these pay scales depending upon their requirements.

2.101 Wage Revision: In the steel industry, there is a bipartite forum known as the National Joint Committee for the Steel Industry (NJCS) which discusses and finalises the wage agreements and other benefits for workers. Till now, the Committee has signed six agreements. This committee is functioning since 1969. NJCS is composed of representatives of employees as well as employers. On the employees' side, there are three members each from the Central Trade Union organisations namely Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU), Hind Mazdoor Sabha (HMS) and one each from the recognised trade unions of SAIL Steel Plants, Indian Iron & Steel Company (IISCO) and TISCO (private sector). The Employers' side is being represented by the Chief Executive of SAIL Steel Plants, IISCO and Vice-President (Human Resource Management), TISCO. From SAIL Corporate Office, Director (Finance) is the member and the Executive Director (Personnel and Administration), is the convener member of this Committee.

2.102 Better Industrial Relation through Participative Management and Welfare: The Industrial Policy Resolution of 1956 had laid stress on industrial peace as one of the prime requirements for industrial progress. Over the years, the industry has developed a participatory culture.

2.103 The voluntarily adopted system of workers' participation in decision-making operates through quality circles, suggestions, schemes, shop improvement groups and by direct contribution of employees to production and productivity at the shop floor. The results and benefits of workers' participation in decision making, in the management of steel plants, are clearly visible from the increasing production and productivity figures, the adoption of production practices leading to lower energy consumption and reduced waste etc.

2.104 The Committee has progressively widened the scope of its working from a forum negotiating and settling wages for workers across the Steel Industry, to a forum addressing issues relating to production, productivity, quality, cost control, establishing productive work practices and issues relating to safety, health and environment. All matters placed before the National Joint Committee for Steel Industry (NJCS) (the national level

tripartite forum in the Steel Industry), are dealt with through consensus, resulting in improvement in the overall performance of the industry and in enhancing the quality of life of steel workers.

2.105 PLANTATION INDUSTRY : According to the Royal Commission on Labour (1929-31) "Plantation represents the development of agricultural resources of tropical countries in accordance with methods of Western Industrialism. It is a large-scale enterprise in agri-culture. The work is essentially agricultural, and is not concentrated in large buildings."

2.106 Convention No. 110 of the ILO defines a plantation as: "An agricultural undertaking regularly employing hired workers which is situated in the tropical or sub-tropical region and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, ground-nuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona, or pineapple. It does not include family or small scale holdings producing for local consumption and not regularly employing hired workers."

2.107 According to the Indian Plantation Labour Act, 1951 a Plantation means any land used or intended to be used for growing tea, coffee, rubber, cinchona, cocoa, oil

palm and cardamom which admeasure 5 hectares or more, and on which 15 or more persons are employed or were employed on any day during the preceding 12 months. However, the main plantations we have are tea, coffee, rubber, cardamom and pepper. Tea is grown in Assam, West Bengal, Tripura, Himachal Pradesh, Karnataka, Kerala and Tamil Nadu. Coffee, rubber and cardamom are grown only in the three southern states namely Karnataka, Kerala and Tamil Nadu (Tripura also has a certain number of rubber plantations). Since tea, coffee, rubber and spices plantations are the main ones that employ large groups of workers, we will confine our attention to them in these brief paragraphs.

2.108 Tea: The number of tea plantations with 5 hectares or more, covered under the Act was 902 in 1967 (with a total area of 25,685.61 hectares). However, the total number of plantations, including those not covered under the Act, is 54,000, and they have a total area of 4,36,100 hectares (1999-2000 figures). In 1999-2000 the total volume of tea produced in India was 7,98,925 tonnes with a total value of Rs. 5,820 crores. Of these 1,90,200 tonnes tea, worth Rs. 1,850 crores, was exported. The total number of workers employed by all tea plantations (including those not covered under the Act) was 7.31 lakhs in the year 1967. It has since risen to 11.38 lakhs in 1999-2000.

2.109 COFFEE: In the year 1967, the number of plantations covered under the Act was 833. The total number of plantations (including those not covered under the Act) stood at 1,40,300 with a covered area of 3,40,300 hectares and total production of 3 lakh tonnes, valued at 1,910 crores. Out of this, 2.35 lakhs tonnes of coffee valued at Rs. 1,840 crores was exported in the year 1999-2000. The number of workers employed in coffee plantations in the year 1967 was 2.60 lakhs. It has since risen to 5.35 lakhs in the year 1999-2000.

2.110 RUBBER: In the year 1967 the number of rubber plantations covered under the Act was 170. It has since risen to 9,71,000 in 1999-2000 (including those not covered under the Act). They have a total area of 5.63 lakhs hectares. The total production of rubber was 6.22 lakhs tonnes, which was entirely consumed within the country. The number of workers employed by rubber plantations in the year 1967 was 1.22 lakh (including plantations not covered under the Act). In the year 1999-2000 the total employment in rubber plantations nearly trebled, and stood at 3.48 lakhs.

2.111 CARDAMOM: Small Cardamom, known as the Queen of Spices, has the second place in importance. India was the largest producer of small cardamom till 1979-80, but Guatemala

has now become the world's leading supplier of cardamom. India still meets about 30 to 35% of the world's demand, and exports to about 50 countries. In the year 1999-2000 there were 30000 plantations with an area of 72,500 hectares. These plantations were employing 30,000 workers.

2.112 PEPPER: Black Pepper is the most popular of spices. Native to the west coast of India (Kerala), its cultivation has now spread to many parts of the world. It is grown on an estimated area of 1.75 lakh hectares (1999-2000) in India. As in the case of Cardamom, pepper is also mostly grown in Kerala and some parts of Karnataka and Tamil Nadu. Efforts are being made to commence its plantation in Pondichery and Maharashtra. Other countries producing pepper are Sri Lanka, Indonesia, Malaysia, Israel and Thailand. According to the figures for 2000, the world production was estimated as 1.85 lakh tones, out of which India accounted for about 32 to 35%.

2.113 Health, safety and working conditions: Plantation operations are carried out in open fields. Employment depends upon the intensity of operations and crop availability, which further depend on seasonal weather conditions. In a sense, therefore, the industry can be described as seasonal. Though a regular workforce is

employed for normal operations such as pruning, weeding, manuring construction and maintenance roads and drainage, irrigation etc., for harvesting the crops i.e. plucking tea leaves and collecting coffee beans etc, a large number of temporary workers are employed, most of whom are migrant workers. Because of the humid conditions in the areas where workers reside and operations take place during the rains, workers are often exposed to malaria. Every plantation is required to provide medical facilities such as dispensaries for the workers and their families, as prescribed under the rules framed by the different State Governments. Bigger plantations employing above a certain number of workers, and in the case of small plantations, a group of smaller plantations are required to establish and maintain hospitals with facilities for out-patients, indoor patients not requiring elaborate diagnosis and treatment, infectious diseases, mid-wifery, simple pre and post natal care, care of infants and children, and periodical medical examination of workers. The Commission had opportunities to see the medical facilities and dispensaries main-tained by some plantations. We realise that there has been some improvement in the past decades. But we are of opinion that much more attention has to be devoted to make the facilities

adequate and satisfactory.

2.114 Wages and working conditions: Being essentially an agricultural operation, the Plantation Industry attracts Part II of the Schedule of the Minimum Wages Act 1948, and the minimum wages fixed for agricultural workers apply to plantation workers as well. In practice, the workers are mostly paid the minimum wages fixed by the State Government for agricultural workers. However, in Kerala, wages are fixed through negotiated settlements or under conciliation settlements. This has its impact on the neighbouring states of Tamil Nadu and Karnataka as well. Workers in these States too have now demanded that wages should be settled through negotiations.

2.115 Welfare of workers: The Plantation Labour Act, 1951 stipulates that the State Governments may provide for medical care, housing, recreation, education for children etc. by framing rules under the Act. The Rules of most of the State Governments lay down that the employer will provide housing accommodation to the workers and their families, in the plantation area. We have already referred to the provisions or rules that require plantations, either singly or in groups to provide medical facilities. All plantations where the number of children of plantation workers between the age

group of six and twelve years exceed 25, have to provide educational facilities of the prescribed standard. The responsibility to provide housing (except the new law for construction workers) and educational facilities are unique to this law, as no other law provides for the provision of housing and education to workers.

2.116 Employers have made representations to this Commission against the provisions of the present law and rules that make it obligatory for the Plantation to provide housing and education etc. on the ground that in the last few decades, village habitations have grown, and schools and hospitals run by the State Governments are available in the proximity of the plantations. Moreover, these days, workers do not necessarily reside within the plantations. Employers also feel that, in the present circumstances, the provision of healthcare should be the responsibility of the State Governments and not of the employers.

2.117 Every plantation employing 150 or more workers is required to maintain one or more canteens. Under this law any plantation employing 300 or more workers is required to employ a Welfare Officer. The hours of work, the provision for earned leave, rest intervals or weekly rest days under the Act are almost similar to those provided under the Factories Act. All other

labour laws that are applicable to manufacturing industries like the Industrial Relations laws, Wage laws, and Social Security laws (excluding Employees State Insurance Act (ESI) but including Workmen's Compensation Act) equally apply to plantations.

2.118 Impact of globalisation on the plantation industry : The

plantation industry is at present facing a severe crisis. The evidence tendered before the Commission by planters, as well as workers in plantations, shows that liberalisation, globalisation and the WTO regime have combined to subject the plantation industry to unprecedented strains. The prices of coffee have come down almost by 50%.

Table 2.16
Coffee Prices

(in Rs/Kg)

Year	Plantation A	Arabica Cherry	Robusta Cherry
1997	131.48	100.66	65.25
1998	106.52	198.10	73.03
1999	80.31	62.53	59.91
2000	80.93	54.24	39.95

Source: United Planters Association of Southern Region.

2.119 The average price of rubber has come down from Rs. 47.50 per kg in 1995-96 to Rs. 27/- per kg in 1998-99. In 2000 the price stood at Rs. 28.50 per kg, which is below the benchmark price of Rs. 34.05 per kg fixed by the Government of India, and about Rs. 14.35 per kg below the cost of production.

2.120 Russia was one of the biggest consumers of Indian tea. But exports

to that country have come down drastically, since Russia has started buying from other countries. Sri Lanka has been accorded most favoured nation status, and the import duty on Sri Lankan tea under the Indo-Sri Lanka trade agreement has been brought down to 7.5%. As a result the prices of indigenous tea, particularly from the Nilgiris have also come down. Producers are losing about Rs. 17/- per kg.

Table 2.17
Production Cost and Price Realisation

(in Rs./Kg.)

Year	Average Period	Anchor Price	All India Cost of Production
1998	1998 (Annual)	68.50	53.06
1999	1999 (Annual)	57.10	57.00
2000	2000 (Annual)	44.67	63.00
2001	Jan – August	47.42	65.00

Source: United Planters Association of Southern Region.

2.121 The total losses of the southern tea industry stood at about Rs. 350/- crores (1999-2000). In conformity with commitments to the WTO, the Government is soon to introduce open auctions for 75% of the tea produced in the country. It is apprehended that this will further reduce the prices of tea.

2.122 In view of these severe strains, the Plantation Industry has demanded that they should be helped to acquire the strength necessary to compete in the global market. They have suggested that the tax burden including the agricultural tax of 60% to 65% imposed by the State Governments of Tamil Nadu and Kerala should be reduced, and other burdens that arise from the level of wages and the obligation to provide statutory benefits to workers should also be reduced. The plantation industry has also contended that unless it resorts to mechanisation, it would not be able to compete in the world market. But mechanisation is bound to affect the

workforce employed in the industry. A good number of workers will become surplus. The representatives of employers, therefore, pleaded that they be permitted to reduce the number of workers by 5% per annum.

2.123 The workforce engaged in the industry is also deeply concerned about the impact of globalisation and mechanisation on the industry. They are concerned about the possibility of loss of employment and the means available for migration to other avenues of employment.

2.124 The Plantation Industry is facing the problem of over supply because many countries have entered into the market. These countries have high output and low cost of production (in comparison to India). This is particularly so of Kenya, Malawi, Sri Lanka and some of the other countries. There is, therefore, need to shift the focus from production revolution to market revolution. For this, marketing infrastructure has to be created. Not

only the Government but also the associations of industry should focus their attention to this. We have also to adopt new strategies like brand building such as 'Indian Tea' or 'Indian Coffee' or 'Indian Spices' and so on, and also to achieve value addition by innovative packing and presentation etc. Not only the growers but also the industry associations and trade unions need to be provided with more information about production estimates, the international demand for the commodities, the position of competitors, the need to increase productivity and to reduce cost of production, market trends, quality, etc. While we strongly feel that planters should be helped to increase competitiveness and reduce costs of production and expenditure on counts that can now be borne by others, we do not see any scope for wage reduction. Competitiveness and low costs of production have to be achieved through increased productivity, improved quality, uniqueness, and so on. The workers/ unions will also have to accept the crucial role that productivity and productivity norms play in ensuring the competitiveness necessary for the survival of the industry.

2.125 As has been pointed out in earlier paragraphs, one of the most potent threats to the viability of the industry has come from competition from other countries including countries

like Vietnam and others, which are new in the ranks of exporters. The cost of production in some of these countries is considerably below what obtains in India. We are being compelled to seek markets at prices that are below the cost of production. It does not need many arguments to prove that no industrial operation can be economically viable if the sale price of its products continues to be below its cost of production. The Government will, therefore, have to urgently examine measures that can be taken to ensure the viability of the industry without adversely affecting the interests of the workforce employed in the industry. There is therefore, a strong case for reducing the tax burden on the industry.

2.126 CHEMICAL INDUSTRY: The Chemical industry is one of the oldest industries in India. It plays a crucial role in meeting the daily needs of the common man and contributes significantly to economic growth and industrialisation. It is fast growing at 12% per annum and is export-oriented. The production of chemicals in South Asia started in a modest way during the inter-war in early forties, with the efforts of a few enterprising individuals. After the war, and when India became free, two petroleum refineries, the Sindri Fertiliser Factory, units of a few pharmaceutical and dyestuff industries as well as soda ash

were among the first under-takings to be established in this sector. By 1956, the growth of the chemical industry gained momentum, and great strides were made in the field of synthetic drugs, antibiotics, DDT, insecticides, sulpha-drugs, etc. In the latter period, the chemical industry grew faster with the entry of a large number of new companies and undertakings in the public sector. Fertilisers, petrochemicals, pharmaceuticals, plastics, synthetic fibres, etc. received priority in the initial stage, but later, many types of chemical production have started in various centres in the country.

2.127 The main branches of the chemical industry are drugs and pharmaceuticals, petrochemicals, plastics and polymers, pesticides and insecticides, dyestuffs and dye-intermediates, inorganic and organic chemicals, etc. These chemical industries offer employment opportunities to millions of workers and are regarded as industries with a high employment potential. As a large part of chemical production is from employment oriented small-scale units, the overall existing employment in the industry is rated around 4.5 million. The industry generates additional indirect employment to nearly 12 million workers in transport, distribution, sales, packaging, exports, etc. It is expected that despite the ongoing restructuring and job cuts in certain sections and units, the chemical

industry will continue to offer high job opportunities.

2.128 The industry is currently in a phase of transition adjusting itself to structural changes necessitated by liberalisation and reforms. The protection levels enjoyed in the form of high import duties have been drastically reduced. This transition from a protected environment to the environment of international competition has resulted in a slow-down in growth. The adverse situation is attributed to: i) inadequate infrastructure, ii) high capital cost, iii) fragmented plant size, iv) expensive raw material, and v) lack of research and development.

2.129 As part of the process of liberalisation, the requirement of obtaining licences has been withdrawn except in the case of a few hazardous chemicals. Entrepreneurs and foreign investors are now free to set up chemical industries. In the new environment of market driven global economy, the country's export competitiveness is likely to be affected adversely since exports from South-East Asian countries are cheaper. There is also a threat of dumping, and increase in input costs due to the depreciation of the Indian Rupee. Most of the inputs in many segments of the industry are imported from developed countries.

2.130 India's main competitive strength lies in speciality chemicals. It appears that in the future one of the main competitors of India would be China, which is becoming a major force in the global petrochemicals and polymer business. There are large investments being made by foreign companies in China in the field of chemicals. In the dyestuffs and dye-intermediates industry, China is already strong in the international market. It is also concentrating on speciality chemicals, surfactants, and agro-chemicals, and emerging as the largest producer of synthetic fibre in the world. In pharmaceuticals too China is emerging as a strong competitor for India.

2.131 Chemical industries in the small-scale sector: The Small-Scale Sector constitutes an important segment of the chemical industry and accounts for 35% of the production of chemicals and allied products. It undertakes the processing of chemicals and other raw materials available from large units. The majority of production activities relates to chemicals based on downstream products/by-products and other chemicals like soaps, detergents, paints, pesticides, drugs, plastics, dyestuffs, cosmetics, rubber products, adhesives etc.

2.132 The production of synthetic detergents has grown to 10 lakh metric tonnes. Out of this, 60% is produced

in the Small-Scale Sector. The Small-Scale industries account for more than 50% of the total dyestuffs production. In drugs and pharmaceuticals, the small-scale units account for 40% of the total production with more than 11,000 manufacturing units. Around 70% of the total products of pharmaceutical formulations are from the small-scale sector. The Small-Scale Industries in the drugs and pharmaceutical industry provide employment to more than 1,70,000 workers directly. In the plastic processing industry there are around 18,000 units in the Small-Scale Sector, providing employment to 1,65,000 persons directly. In the export of plastic products the Small-Scale Sector contributes 40%. In the rubber goods industry, there are 5,200 Small-Scale and tiny units providing employment to about three lakhs persons directly. The share of the small scale industries in the production of rubber products is 30%. In the surface coatings industry, i.e. paints, varnishes, etc. there are 20,000 small-scale units producing around 50% of the total production. The toiletries, cosmetics and *agarbatti* industry include toothpaste, powder, mouthwash, fragrant products, cologne, hair oil, etc., and most of these are manufactured in small-scale units. There are more than 15,000 units for the manufacture of these products in the small-scale sector. About 40% of the production of these units in the small-scale sector is exported.

2.133 The Small Scale Industry (SSI) Chemical Units have some inherent limitations and problems that relate to the procurement of raw materials, technical know-how, financial resources, lower scales of operation, etc. However, the industrial climate is turning conducive for the speedy growth and development of these units.

2.134 EXPORTS : The data on various chemicals and petro-chemicals upto 1996, according to the Economic Survey 1998-99, give a glimpse of the progressive role that the chemical industry has played in our economy.

Table 2.18
Sector-Wise Export

(million \$ US)

Year	Organic	Dye etc.	Oil Perfume	Inorganic	Chemicals	Total	Total including PC&PI
1970	9	8	10	0	0	27	38
1975	22	23	18	0	0	63	92
1980	17	65	86	26	8	202	314
1985	25	62	56	22	28	193	328
1990	232	233	240	59	76	840	1322
1994	557	381	186	86	147	1357	2107
1995	720	360	169	109	224	1582	2531
1996	832	345	118	115	62	1472	2039

Share of each sector in the total (percentage-wise)

Year	Organic	Dye etc.	Oil perfume	Inorganic	Chemicals
1970	23.7	21.1	26.3	0.0	0.0
1975	23.9	25.0	19.6	0.0	0.0
1980	5.4	20.7	27.4	8.3	2.5
1985	7.6	18.9	17.1	6.7	8.5
1990	17.5	17.6	18.2	4.5	5.7
1994	26.4	18.1	8.8	4.1	7.0
1995	28.4	14.2	6.7	4.3	8.9
1996	40.8	16.9	5.8	5.6	3.0

Source: Economic Survey 1998-99

2.135 The data on exports of various chemicals, quoted in the United Nations International Statistics Year

Book, indicates India's position in the World Market.

Table 2.19

Sector	India's Position in the World	India's share in World exports (%)	Growth in World exports (%)	Growth in India's exports (%)
Pesticides	13	1.46	51	126
Organic and Inorganic Compounds	24	0.38	515	124
Dyes and Dye intermediates	9	3.25	21	20

Source: United Nations International Statistics Year Book

2.136 There are many Public Sector Undertakings in the production of chemicals, petrochemicals, fertilisers, agrochemicals and pesticides. Some of them are sick, and require remedial measures. The Indian Drugs and Pharmaceutical Ltd., Hindustan Antibiotics Ltd., Bengal Chemical and Pharmaceutical Ltd., Smith Stainstreet Pharmaceutical Ltd., U.P. Drugs and Pharmaceutical Ltd., Karnataka Antibiotic Pharmaceutical Ltd., etc. are sick public sector units and certain disinvestment proposals seem to be under consideration. However, there are many other under-takings which are making profits. It is also reported that the Government is working for the revival of some sick companies.

2.137 In the field of research, the main Government institutions are the National Institute of Pharma-ceutical Education and Research (NIPER), Mohali, Central Institute of Plastic Engineering and Technology (CIPET) (located at 10 different centres) and the Institute of Pesticide Formulation Technology (IPFT).

2.138 The industry carries out many hazardous processes and operations. Workers in chemical factories are often exposed to dangerous chemicals, fumes, and gases. Many chemicals are hazardous in nature and accidents, injuries and health hazards in this industry need special attention. High standards of safety, and a clean and

safe environment have to be ensured. There is an imperative need for periodical medical check-ups for early identification of occupational health hazards as well as technological upgradation of safety norms.

2.139 There are provisions in the Factories Act 1948 to deal with, and to minimise safety risks, dangerous operations, and hazardous processes. After the Bhopal Gas Tragedy in the Union Carbide plant in the year 1984, when thousands of innocent people died, and a very large number suffered serious injuries and lingering ailments, these provisions have been modified, made more specific, and more stringent. In the Factories Act, Chapter IV-A relating to hazardous processes (Section 41-A to 41-H) was added. These sections deal with the location of such factories, responsibilities of the occupier, setting up of special inquiries, fixing standards and assuring the right of workers for information and participation etc. These modifications and amendments were made in 1987 to ensure the safety of workers in the chemical industries.

2.140 All labour laws relating to industrial relations, wage payment, social security, etc. are applicable to the workers engaged in the chemical industry in the same way as they apply in other manufacturing industries. However, many of these laws relating to social security and wages require

modification to extend the coverage and to ensure that no worker is deprived of the benefits and security that these laws provide for.

2.141 Considering that the industry has accounted for export earning of over Rs. 14,000 crores, almost 14% of the exports from the manufacturing sector and 7% of total export of the country during 2000-01, the industry seems poised to grow at a faster rate. This will only increase the need to ensure better safety norms, pollution control and consistent Human Resource Development policies.

2.142 MINING INDUSTRY: Minerals constitute the backbone of the economy and provide a base for building up the infrastructure for many industries. There is hardly any industry or productive activity which does not depend on minerals or mineral products, be it for plants and machinery, construction, transport or agriculture. We may have a brief look at the state of the mining industry in the coal and non-coal sectors.

2.143 Coal mining: At the time of independence in 1947, a total number of 3,21,537 people were employed in the coal mining industry in about 900 coalmines. Coal production was around 26.89 million tonnes. In the year 1966, the total coal produced was 70.38 million tonnes. The total number of employees employed was 4,25,488.

The coal industry was nationalised between 1971 and 1973. In June 1973, the Coal Mines Authority was set up to take over, own and manage all non-coking coalmines. The coking coalmines were left to Bharat Coking Coal Ltd. A Department of Coal was created under the Ministry of Energy. It has since been separated and is now an independent Ministry. In 1975, Coal India Ltd. was set up with five subsidiaries namely, The Eastern Coal Field Ltd., Bharat Coking Coal Ltd., Central Coalfields Ltd., Western Coalfields Ltd., and Central Mine Planning & Design Institute Ltd. In 1986 two more subsidiaries were carved out of the existing subsidiaries, namely Northern Coalfields Ltd., and South Eastern Coalfields Ltd. In the year 1992, Mahanadi Coalfields was created by setting up a new subsidiary. In the year 1999-2000 the Coal Industry employed about 5,50,000 workers. The total output was about 300 million tonnes.

2.144 The States of Jharkhand, Madhya Pradesh, West Bengal, Orissa, Assam, Maharashtra, Andhra Pradesh, Bihar and Uttar Pradesh are the main coal producing states. After the nationalisation of coalmines, there has been considerable improvement in the welfare measures taken for the workers.

2.145 The nationalisation of the industry brought about considerable

change in the lives of the workers engaged in coal mining. They now get the wages settled through negotiations, whereas before nationalisation their wages were very low. The number of houses constructed by the industry before the nationalisation stood at 1,18,366. It has now risen to 4,06,812. The housing satisfaction in percentage terms has increased from 21.71% to 75.05%. There is considerable increase in the number of hospitals, and there is a quantum jump in the number of hospital beds (from 1,482 to 5,965). The number of schools and colleges too has increased from 287 to 1,254.

2.146 Globalisation has had an adverse impact on the coal industry in India. Indian coal is of poor quality due to its drift origin. Low ash coking coal required for making steel is not available in the country to the extent that is required, and so the steel industry has had to import coking coal. The coal produced in the country is basically used by the thermal power plants and metal industries. Because of the high cost of transportation, distant states, particularly the western coastal states like Gujarat, Maharashtra Karnataka and Kerala that do not produce coal, or where surface transportation cost to consumption centres is high, find imported coal much cheaper, especially after import duties were reduced in conformity with the WTO

commitments. The cost of production of coal in India is very high. It is pointed out that the labour cost of Indian coal is as high as 50% of the total cost of production, whereas it is only 20% in some of the other coal producing countries in the world.

2.147 NON-COAL MINES: The major non-coal mines include metalliferous and other mineral mines. Notable among these are iron ore, manganese ore, chromite ore, copper ore, zinc ore, lead ore, mica, limestone, clay, stone and some other minerals such as apatite, barites, bauxite, gypsum, magnisite, gold etc. In the year 1947, non-coal mines employed 85,726 persons in about 1,074 non-coal mines. In the year 1966, the total number of persons employed in non-coal mines rose to 2,73,765, and the value of output to around Rs. 114.28 crores. According to 1998 figures, the non-coal mine industry including oil employed about 1,95,000 persons. (The figures pertain to mines whose returns were received by Director General, Mines Safety). The value of minerals produced during 1998-99 including non-metallic minerals and crude oil was Rs. 81,293.46 crores.

2.148 There is practically no demand for mica now because of the substitutes that are available. Mica mining has, therefore, been almost stopped. The mining of gold in the Kolar mines has become uneconomic, as the cost of production of gold in

India is very high due to low contents in the ore. The production of copper has also been adversely affected after globalisation, as imported copper is cheaper than indigenously produced copper. The production of ore is sliding from 4.5 million tonnes in 1997-98 to 3.1 million tonnes in 1999-2000. The Hindustan Copper Ltd., which owns most of the mines, is incurring heavy losses. However, some of the sectors of non-coal mining industry are fairly strong and are able to withstand competition. These are iron ore, zinc ore, and bauxite out of which aluminium is produced. This is mainly due to the intrinsic quality of our minerals. Some of these minerals particularly iron ore and other metallic ores are exported. Out of the total of 73.5 million tonnes of iron ore produced 30.6 million tonnes were exported. The known resources of chromite ore and manganese ore are limited, and there is a ceiling on the mining of these minerals. Out of the total 1,418 tonnes of chrome ore produced, 385 tonnes were exported. Similarly, out of 1,538 tonnes of manganese ore produced, 202 tonnes were exported in the year 1998-99. The total value of ores and minerals exported during the year 1998-99 was Rs. 24,622 crores.

2.149 SAFETY AND HEALTH: The Mining Industry in India came to be regulated first by the Indian Mines Act 1901. The Act of 1901 was repealed when the present Act i.e. the Mines Act

of 1952 was enacted. The working conditions in mines whether underground or above ground, are very harsh – in fact one of the harshest in any industry. While the workers working in underground mines often face situations like flooding of the mines, falling of roof or caving in of side, fire, lack of oxygen, emission of lethal gasses, etc. the workers working above ground, particularly those working in open cast mines have to work under open skies, in scorching heat and in rain. They are also exposed to the risks of being injured by collapse of sides, falling of flying objects, moving dumpers etc. There is a very high incidence of accidents resulting in deaths and grievous injuries to the workers in mines. (Comparative table appears in Chapter XI)

2.150 Under the Mines Act 1952 different rules and regulations have been framed such as Coal Mines Regulations 1957, Metalliferous Mines Regulations 1961, Oil Mines Regulations 1984, Mines Rules 1955, Mines Vocational Training Rules, 1956, Mines Rescue Rules 1985, Mines Crèche Rules 1966, Coal Mines Pithead Bath Rules 1959. Apart from the Mines Act and the Rules framed thereunder, the provisions of certain other enactments are also attracted in the working of Mines e.g. the Indian Electricity Act, Factories Act, Mines and Mineral (Regulation and Development) Act and the Environmental Protection Act. Since

mines and safety in mines are in the Union List in the Seventh Schedule of the Constitution of India the enforcement of Mines Act and the Rules and Regulations made thereunder is within the responsibility of the Central Government (except where the provisions of the Indian Electricity Act and the Factories Act are attracted). For the purpose of enforcing safety standards, the Directorate General of Mines Safety has been set up with Headquarters at Dhanbad. There are Zonal and Regional Headquarters at various places. Initially, the organisation was known as the Bureau of Mines Inspection when it was set up in 1902 with its headquarters at Calcutta. The name of the organisation was changed to the Department Of Mines in 1904, and its headquarters was shifted to Dhanbad in the year 1908. In 1960, the organisation was renamed as the Office of the Chief Inspector of Mines. Since 1967, the organisation has been re-designated as Directorate General of Mines & safety. Specialist staff officers in mining, electrical and mechanical engineering, occupational health, law, survey, statistics, and administration areas assist the Director General, who is the head of the Organisation.

2.151 Accidents in mines have to receive immediate attention from the Ministry in charge. No degree of vigilance, precaution and pre-emptive steps can be considered too high.

There must be constant vigilance and commitment to use the most modern measures to detect and remove flaws that lead to accidents. The frequency of accidents in mines in India in terms of fatal and serious accidents calculated on the basis of per 1000 persons employed is not worse than that in many other countries, but it is perhaps the highest in terms of million tonnes of minerals produced. For example, India's death rate per million tonnes of coal raised was 0.77 as compared to 0.32 in Japan, 0.26 in Yugoslavia, 0.12 in France and 0.05 in U.S.A. in the year 1995, for which comparable data is available. While rope haulage (19.81%), fall of objects (22.46%), fall of roof (10.75%), other machinery (10.45), dumpers (6.08), fall of sides (6.86%), were responsible for most fatal and serious accidents in coal mines, the fall of persons (18.38%) fall of objects (22.90%), other machinery (16.13%), dumpers (6.13%), and explosives (1.61%) were responsible for most of the accidents in non-coal mines. The corresponding figures for 1966 of trends in death rate per million tonnes of coal raised were as follows: India – 3.4%, Japan – 6.77%, France – 2.02%, U.S.A. – 0.47%. During that year most serious accidents were caused by haulage – 27.20%, fall of roof and sides – 18.36%, Machinery – 4.55%, explosives – 2.02%, miscellaneous – 48.04% in coal mines and haulage – 9.59%, fall of roof and

sides – 5.06%, machinery – 6.04% explosives – 1.95%, miscellaneous 77.09% in non-coal mines.

2.152 Wages and conditions of service: The wages and other conditions of service of employees in the coal mining industry are decided directly between the employers and the All India Federations affiliated to Central Organisation of Workers, through a joint negotiating forum called the Joint Bipartite Committee of Coal Industry (JBCCI). So far there, have been six such bipartite settlements starting from 1975, the sixth, having been signed in December 2000. As per the last wage agreement, the revised minimum wage of an unskilled worker working on surface is Rs. 3,689.23. The wages in captive iron-ore mines of SAIL and TISCO are decided along with the wages for steel workers through the National Joint Committee of Steel (NJCS) (The last joint agreement has been signed in July 2001). The wages in iron ore mines of the Kudremukh Iron-ore Project and those under NMDC are also decided by bipartite settlements. As regards other non-coal mines, the wages in major metalliferous minerals such as copper ore, manganese ore, chromite ore, gold ore and bauxite are also largely decided by bipartite settlements wherever these mines are owned by large public sector companies or are worked as captive mines of large plants. But in other metalliferous and non-metalliferous mines, by and large, there is no system

of settling wages and other conditions of service by bipartite negotiations, and wages are paid mostly as fixed by the Central Government under the Minimum Wages Act.

2.153 Welfare of workers in mines : The Coal Mines Welfare Fund established under the Coal Mines Workers Welfare Cess and Welfare Fund Laws has since been disbanded by repealing the respective laws and the welfare of workers in coal mines is now looked after by the employers. However, the coal industry workers continue to be governed by the Coal Mines Provident Fund and Bonus Act, 1948. Welfare funds have been established for the welfare of workers in mica, iron ore, manganese ore, chrome ore, lime stone and dolomite mines under respective welfare cess and welfare fund laws. The cess is collected on the basis of minerals consumed/purchased by different industries using these minerals. The cess collected is deposited in the Consolidated Fund of India, and by re-appropriation, it is allocated to different funds established under the laws for the welfare of workers. The Welfare Division of the Ministry of Labour manages the funds. The workers are provided grants and loans for construction of houses, and scholarships for education of children. Workers and their families are provided medical care, and the women workers are paid maternity benefit out of these funds.

2.154 Though several labour laws apply to workers in mines e.g. the Industrial disputes Act 1947, the Payment of Wages Act 1936, the Payment of Gratuity Act 1974, the Payment of Bonus Act 1965, the Maternity Benefits Act 1961, the Minimum Wages Act 1948, the Workmen's Compensation Act 1923, the Trade Unions Act 1926, the Industrial Employment (Standing Orders) Act, 1946, the Contract Labour (Regulation and Abolition) Act 1970, the Equal Remuneration Act 1976, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the Employees Provident Fund and Miscellaneous Provisions Act 1952, the workers in smaller unorganised mines do not normally get the benefits of these laws because of the absence of trade unions in inaccessible areas, the illiteracy of workers etc. It has been pointed out that people with political clout or money power or muscle power control most of such mines.

2.155 Construction industry in India : Construction has been variously defined as a product, considering the nature of the construction process and features, or as a series of related but discrete activities and outputs.

2.156 According to the ILO, "Building and civil engineering may be divided into four main parts: work above ground, work in open excavation,

underground work and under water work," involving the following operations: (a) construction, alteration, repairs, maintenance or demolition of a building, flooring, mosaic flooring, sawing, jally work, concrete work, carpentry, painting, centring welding smithy work, electric work, plumbing and fittings, hut making or any such work which goes into the making of aforesaid construction or the preparation for, and the laying of the foundation of an intended building including boundary walls, or construction of wells, and includes the construction of furnace, chimney, well or any ancillary structure; (b) construction of any railway line or siding other than upon an existing railway, the construction, structural alteration or repair, maintenance and laying of foundation or demolition of any dock, harbour, canal, dams, embankments including river-valley projects, tanks and water course, inland navigation, road, tunnel, bridge, viaduct, water works, reservoir, pipelines, aqueduct, sewer, sewerage works, river works, air fields, sea defence works, gas works and any steel or reinforced concrete structure other than a building, or any other civil or constructional engineering work of a nature similar to any of the foregoing works or construction operations connected with the installation of machinery in any of the aforesaid construction activities."

2.157 It can, thus, be seen that 'construction' covers a wide field of activities and therefore, provides employment for workers of various levels of skills. It is also clear that much of the work in this field goes on in inhospitable areas without the facilities available in townships, villages or other residential sites, and under conditions that are often very strenuous and hazardous.

2.158 The construction industry has registered enormous growth throughout the world during the last few decades. The growth has been diverse in nature. The industrialised countries invest more on civil works, projects associated with energy, space research, armaments industry, new building materials and machinery and on retrofitting, upgrading and maintenance of existing structures. The developing countries are engaged more in the construction of civic, social and developmental infra-structure projects, roads, projects like dams, housing and other structures required for economic growth and improving the quality of life. The size of the world construction market is around 1.5 trillion US Dollars. Over 100 million workers are engaged in construction trades around the globe. Construction workers constitute 6 to 7% of the world labour force: in some countries the figure is as high as 20%.

2.159 Role in economy: Construction industry is the second largest economic activity in India, and plays an important role in the nation's economy. It is a vanguard activity of several other key sectors of economy whose performance is dependent on the satisfactory performance of this industry. A change in the level of construction activity affects the GDP and manufacturing, and the general employment and incomes of people. Construction has accounted for about 40% of the investment in the country during the last 45 years. Around 16% of the nation's working population depends on it for their livelihood. During the 8th Five Year Plan (1992-97), the annual capital outlay on construction was approximately Rs. 3,30,000 million at 1991-92 prices. An estimated 14.6 million persons were directly employed in construction work in 1995-96. It contributes 5% to GDP annually, and accounts for 78% of the gross capital formation.

2.160 Roads, dams, irrigation works, schools, houses, hospitals, factories and other construction works provide the essential infrastructure for development, and contribute to better living standards. The products of the industry with the exception of repair and maintenance, are financed out of savings in the economy, and have linkages with the rest of the economy in terms of output and employment.

2.161 The Government, along with

institutions sponsored or supported by it, is one of the biggest clients of the industry. It initiates most of the infrastructure development projects, civic and social services either by itself or through Built Operate Transfer (BOT) and other mechanisms. Capital outlay provided for construction of such works in budgets and development plans is an important determinant of the volume of construction activity. Government often uses investments in construction to regulate the economy as well as to introduce desired changes in it, e.g. projects for the construction of roads, relief works and so on. Construction activity is perhaps the first activity to be affected during recession. Buoyancy in construction can make the economy healthy. Thus, government as client, as regulator of the industry, and as initiator of economic changes through construction plays a significant role in this industry. Any increase or decrease in construction activity, caused by factors other than government policies, can also affect the economy as a whole because of the characteristics of this industry. Fluctuations in construction demand affect the demand for labour and materials as well as the time taken to supply the industry's output. Backward linkages can have widespread impact because much of the raw, semi-processed and processed materials can be provided by relatively unsophisticated labour - intensive domestic sources and by

basic industries such as cement and steel manufacturing. Forward linkages affect practically all other sectors of the economy. In fact, construction has been ranked among the top four out of the twenty economic sectors in terms of inter-sectoral linkages. These linkages, combined with a high value added-to-output ratio, indicate that construction provides a substantive growth stimulus for, and in the economy. Its importance as an agent of development is enhanced by its ability to provide gainful employment to a large number of workers. Much of the demand for labour is often met by taking unskilled workers from rural areas, who can subsequently be trained for more demanding jobs. Construction is often the only significant alternative to farm labour, particularly as it can adjust to the fluctuating needs of harvesting seasons to a larger degree than manufacturing.

2.162 Size of employment: According to an estimate of the National Building Organisation, every one million rupees spent on construction generates 3000 man days of skilled and semi-skilled employment, and 1300 man-days of managerial/technical employment. A recent study of the NICMAR gives estimates and projections on employment in the industry for the period 1995-96 to 2004-05 according to which total employment in the industry is expected to increase to 32.6 million in 2004-05 from 14.6 million in 1995-

96. While in 1995-96, unskilled workers comprised 73.08% of the workforce; in 2004-05 it is likely to be 55.08%. Comparatively, the percentage of skilled workers is likely to increase from 15.35 to 27.62.

2.163 The bulk of the demand for employment is expected to come from the housing sector. It is expected to rise from 8.58 million in 1995-96 to 20.5 million in 2004-05. For the existing workforce of 14.6 million, and against an annual increase of 1.2 million employees in construction, the average rate of formal training is around 10,000 persons per year since 1989 in 15 construction trades and 8 manufacturing skills through the national network of building centres, and vocational training schemes.

2.164 Construction technology: Construction is an age-old activity that has largely used traditional methods, techniques and materials. However, today's construction activity is not altogether traditional. High rise buildings, complex design, heavy reliance on concrete and new materials, vertical transportations, pressure to complete building projects quickly etc., demand innovative work methods, new construction techniques, mechanisation of transportation and material handling systems and better quality workmanship. At the same time, there are constraints on the modernisation of construction activity. Some of these

constraints are inherent in the technology itself, and others exist due to the social linkages of technology. First, the current state of the building industry does not lend itself to mass production techniques. Limitations arise due to variations in the site conditions and owners' desire to make their buildings unique. Each facility has to be designed and produced to meet the requirements of a given site as well as of the owner. There is difficulty in standardising constructed products. Further, the site operation must conform to local regulatory requirements of design and building plans which may vary from one place to another. Use of local materials may not always lend itself to standardisation. Secondly, building work is subject to the conditions that the seasons create. Most of the work is done on sites exposed to inclement weather, rains etc. The intermittent and seasonal nature of building activity leads to uneconomic and under utilisation of construction resources and, therefore, increased construction costs and low levels of capital investment by contractors. Thirdly, due to the scope for easy entry, small firms with scant resources and limited technical capabilities proliferate. Sub-contracting and low wages justify the continued use of archaic methods of construction. Low wages produce poverty on the one hand, and low productivity on the other. Thus, conditions of economic destitution and

social backwardness are perpetuated, along with lack of skills, poor workmanship and low productivity.

2.165 Workers are exploited because they are illiterate, socially backward, unskilled, unorganised, uninformed and poor. The industry functions at low productivity because the technology it employs is among the 'most backward in the world.'

2.166 Technological upgradation of the construction process, improvements in the social standing of the workforce and economic size of the firm must move hand in hand if efficiency and productivity are to be improved. A contractor will have to hire highly skilled labour and pay better wages if he desires to mechanise construction operations. And as mechanisation calls for the use of equipment, the contractor needs to have financial resources to buy such equipment and the technical personnel in the firm to handle it.

2.167 Labour based technologies can be best used in construction operations such as excavation, earthmoving, on-site handling and moving of construction material and mixing and pouring of concrete. Labour based construction methods may be adopted because they save capital and generate employment. However, they should be encouraged wherever they are competitive with capital-intensive

construction. Labour based construction enhances technological flexibility since labour can be redeployed more easily than capital equipment e.g. skilled craftsmen are required on low cost housing programmes, sites and services and on schemes to upgrade slums and squatter settlements. But the on-site requirements for skilled labour might be reduced by off-site activities to manufacture, assemble and pre-finish larger building components and systems.

2.168 Structure of industry: In spite of its large size, this industry is in the informal sector of the economy primarily because of its structure. Broadly categorised, the industry comprises over 200 firms which may be called the corporate sector of the industry. These firms are large by Indian standards. Besides, about 90,000 firms are classified as class 'A' contractors registered with various government construction client bodies. These firms may be of medium or large size in terms of the volume of business turnover. Then there are about 0.6 million small firms of contractors/sub-contractors who compete for small jobs or work as sub-contractors of prime or other contractors.

2.169 Construction firms are heterogeneous, and small firms predominate. The preponderance of small firms is

often considered undesirable in developed countries.

2.170 Nature of industry: (a) High Cost: The products of the construction industry are very expensive. A power project, a dam, an industrial structure, buildings for a university or a hospital, demands huge capital outlays. A house is perhaps the costliest item a person may buy in his life. (b) Nature of Work: Construction is relatively labour intensive. However, the physical nature of the work and the conditions at the workplace make construction unattractive to the bulk of the workforce. Construction work takes place in the open. Extreme weather conditions have been found to have severe adverse effects on construction productivity. The industry has also a high burden because of claims for compensation arising from occupational hazards and accidents.

2.171 Construction labour : Construction labour comprises three segments, namely, the *Naka/Mandi* segment, the Institutional segment and the intermediaries segment. The former two segments are relatively small in size.

2.172 The *Naka/Mandi* segment refers to the market that caters to the mass of individual householders and petty contractors who need casual labour for odd jobs. *Naka/Mandis* can be found at mid points between various neighbourhoods of major cities. They

function from about 8 a.m. to 10 a.m. on all days of the week. Workers, who are in search of work, present themselves at one of the locations in the morning. They come there and wait for customers, needing small jobs to be done in their houses like masonry, plumbing, carpentry, painting, plastering, tiling, water proofing etc. The clients visit *Naka/Mandis*, hire the required persons after negotiating wage rates and take them to their respective workplaces.

2.173 Large construction companies and government departments constitute the second segment of construction labour. Large contractors function like other business corporations. They maintain regular complements of technical manpower, both regular as well as project based. They invest on manpower training and development, and generally retain the core group of workforce required by them at all times. Several medium size firms retain a basic complement of workers and technical personnel on their regular payroll and hire additional hands when sites become active. Consequently, they also make some contribution to skill formation.

2.174 They accounted for approximately 73% of total construction workforce in 1995-96. Most of the unskilled workers (10.7 millions out of 12.9 millions in (1995-96) belong to this segment. This segment is controlled by

mistris and *jamadars* who also constitute the bridge between unskilled labour seeking work and contractors who can offer work. After securing a job, a typical contractor breaks it into several units i.e. earthwork, piling, masonry, R.C.C. work, plastering, plumbing, electrical work, carpentry etc. and sub-contracts each unit to speciality job contractors or *mistris*. The latter bring their own helpers to the site, perform the job using materials and equipments supplied by the contractor and get paid by results. The *mistri* is the doer, a first line supervisor, trainer, instructor and quality controller – all rolled into one.

2.175 With rapid industrialisation requiring the use of more advanced technology and skilled personnel, industrial workers engaged in the formal sectors of the economy are often looked upon as a privileged category. They unionise themselves and demand for, and compel the concession of major wage-welfare benefits. They are able to eliminate the institution of 'jobbers,' and restructure their employment relations. Such is not the case with the construction workers. The construction sector is an aggregate of numerous discrete elements. This facilitates contracting. Fluctuations in demand for construction services contribute to instability in the workforce and encourage the paradigm of owner-contractor-subcontractor – worker relationship. The worker wants

improvement in his economic and social situation in the construction labour market. This he can secure by functioning through unions as well as by acquiring skills, upgrading existing skills etc. There is enough evidence to show that skilled workers can influence their terms and work schedules. As elsewhere, skills and organisations are what can strengthen workers in the construction industry.

2.176 Profile of construction labour: Some studies have found that construction labour is dominated by young, married, illiterate and unskilled males, mostly belonging to the scheduled caste and scheduled tribe, backward classes and the Muslim community, with a high family dependency load. Workers in the construction industry are often rural migrants who were mostly landless labour and on the brink of starvation in villages. They move to cities in search of work, or are helped to do so by *jamadars* and *mistris*. About half of the total workers start as unskilled labour. Many remain unskilled. 90 % of the workers says they entered jobs in the construction sector due to the compulsion of circumstances.

2.177 Labour laws for contract labour in the construction industry are, by and large, at par with those for other categories of labour employed in various industry groups. However,

mention must be made of some laws which are of direct relevance to construction labour, namely (i) Contract Labour (Regulation and Abolition) Act, 1970; (ii) Inter-State Migrant Labour (Regulation of Employment and Conditions of Service) Act, 1979; (iii) Building and Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; (iv) Building and other Construction Workers Welfare Cess Act, 1996. Many witnesses told us that the problem is not that the laws are inadequate, but that laws are not implemented in the construction industry. Inspection too is inadequate, both to verify facts on the sites and to see whether laws are being adhered to. Construction labour does not get the benefits of the ESI Act, but is covered by the Workmen Compensation Act, 1923. While the Employees Provident Fund Act, 1952 applies to the construction industry both the employer and employees normally prefer to avoid implementing the Act for their own reasons. Similarly, while the Maternity Benefit Act of 1961 applies to the construction industry, the number of beneficiaries is likely to be limited due to the intermittent nature of employment. It must be mentioned, however, that the industry does employ a sizeable number of women workers, although largely as unskilled labour. It is estimated that the percentage of women in the construction industry is 30-40. The actual number could be

higher because, at times, payment is made to the male head of the family, and only he is shown on records.

2.178 Trade Unionism in the construction industry started in the Government Sector with the formation of the CPWD Workers Union in 1934. In the private sector companies, it started with the formation of the Hindustan Construction Workers Union in 1946. For the general construction workers, it started in 1950 with the registration of the All India Building Workers Union at New Delhi.

2.179 The extent of unionisation in the construction industry has been very low.

2.180 Important leaders of Trade Unions often attribute the low level of unionisation in the construction industry to the migratory and seasonal nature of the work, the scattered location of work sites, and the fear of victimisation by *jamadars* and contractors.

2.181 Living and working conditions: Wages in the industry are by and large at the minimum or sub-minimum level. As has been pointed out, the nature of the industry proves to be a deterrent for wage negotiations. It has already been stated that the industry functions in the open. Workers are thus exposed

to scorching heat, rain, cold, dust, hazardous molten materials etc. They, and their family, live in huts or under canvas, exposed to hazardous conditions. When working on site, they live in temporary shelters which lack toilet facilities. There is no access to clean drinking water. The water they drink is normally drawn from the same source that is used for construction. It is a paradox that those who build the most imposing modern structures themselves have to live under the sky, or in hovels, and in sub-human conditions.

TRADE UNION MOVEMENT

2.182 The beginnings of the industrial working class in India can be traced back to the last decade of the 19th century. Britain had completed its conquest of India. The Crown had taken over the responsibility for the Administration of India after the revolt in 1857. Britain had become aware of the tremendous potential that India held both as a supplier of raw materials and cheap labour, and as a vast market for goods manufactured in Britain. Indian industry based on craftsmanship and cottage units of production, had been considerably battered and was in the process of being destroyed. Repeated droughts and famines had ravaged the villages in many areas, and reduced people to poverty and dearth of avenues of

gainful employment. There was pressure on the soil. All these resulted in the migration of population from their traditional homes in many areas. Uprooted people were looking for land and work in the areas to which they moved. Around this time, British entrepreneurs started establishing units of production in India, and discovered the promise that large-scale plantations held. Vast areas, particularly in the North-East of India, were converted into plantations for growing tea. Simultaneously, or even earlier, British planters had initiated the plantation of indigo in North Bihar and compelled thousands of cultivators to cultivate indigo in their lands. The British indigo planters reduced the people of the areas to conditions of bondage and fleeced them with extractions and impositions of many kinds. The peasants of North Bihar were ground down by many forms of economic exploitation and lived on the margin of slavery and deprivation.

2.183 British planters who were eager to develop plantations in the Northeast, had to find cheap labour to work in the plantations. They, therefore, looked to the impoverished villages to recruit workers from among those who had no employment and no agricultural income to fall back upon and were ready to move from their own homes and districts, to distant places in search of work and

employment. It is not possible for us, in these paragraphs, to describe the areas from which recruitment took place and the methods that were employed by British companies and recruiting agents to visit such areas and recruit workers. The conditions, in which this section of the workforce, which was often described as 'coolie labour,' had to work, were indeed unbearable. They had been uprooted from their homes. There was hardly any residential accommodation. Wages were nominal. They had to work for long hours. Their access to amenities was almost marginal. They were often subjected to violent and inhuman treatment. The report of these conditions caused considerable embarrassment to the British Government. A Commission had to be appointed to enquire into the conditions of plantation labour.

2.184 The condition of workers, who were recruited to work in the factories, was hardly better. There were no restrictions on the employment of child labour in factories. There were no rest days or holidays, there were no holidays, and there were no limitations of the hours of work for which a worker –including women and children – could be forced to work. The condition of these workers again compelled the British Parliament to legislate. A number of commissions were appointed to enquire into the

conditions of workers in mines and factories. The Report of the Indigo Commission of 1860 had led to the enactment of a Transport of Native Labourers Act in 1863. This was further amended in 1870 and 1872. The first Factory Act was passed in 1881 (this was succeeded by the Indian's Mines Act 1901). The Inland Migration Act of 1882 and the Assam Migration Act of 1901 had followed suit.

2.185 The first Factory Act of 1881 was amended in 1891. The first Act had only been applicable to factories employing more than 100 workers. The Act of 1891 extended coverage to factories employing more than 50 persons. It introduced a compulsory rest period of half-an-hour during the day, provided for a weekly holiday, prohibited the employment of children under nine, fixed a maximum of 11 hours work for the day and prohibited night work for women between 8 p.m. and 5 a.m. Since, it is not our intention to deal elaborately with the different laws that were enacted during this period or later, we refrain from going into the limitations and inadequacies of the provisions of these laws of the period.

2.186 In the meanwhile, many more factories had come into existence, particularly in the field of cotton textiles and jute. The development of Railways led to the employment of large

numbers in the railway system. The Public Works Departments of the Government also started recruiting large masses of workers for work on roads, embankments, canals, and so on.

2.187 As Shri K.T. Shah pointed out in his introduction to the Report of the labour sub-Committee of the National Planning Committee, there were no efforts at labour legislation between 1891 and 1911. No trade unions had come into being. But, the conditions of workers employed in the factories and plantations, and the railways, were resulting in misery and rising indignation. The introduction of electricity and the outbreak of Bubonic plague also had their effect on the industrial scene. It became possible for factories to work round the clock. But, the fear of plague, which was the worst in the towns, led to an exodus from the towns to the villages. There was a dearth of workers in factories. They had to be coaxed to continue to work in factories with ploys like the plague allowance. According to Mr. Shah, there were auctions of workers at street corners in places like Bombay.

2.188 The outbreak of the First World War in 1914 brought about a big change in the circumstances that were prevailing before the war. Many able-bodied men were recruited to the Army. The risk of attack affected shipping on the high seas. This in turn

restricted imports of goods and commodities from the U.K. Efforts had to be made to increase manufacturing in India. This led to the growth of more units and varieties of production in the country in India. But, shortages also led to increase in the prices of essential commodities. This led to an increase in the cost of living of the workers. However, though entrepreneurs were making high profits, wages were pegged to previous levels. This led to steady erosion of the real incomes of the workers. Ground down by erosion of wages and the compulsion to work on terms dictated by the entrepreneurial class and the interests of the British Government, the working class began to look for ways of organising itself to secure justice and to fight for their rights. There were some sporadic cases of industrial action, but no union had yet been formed for "continuous association and continued action."

2.189 The number of factories in India had grown from 656 in 1892 to 2403 in 1911. The average daily attendance of workers in these factories increased from 3,16,816 to 7,99,944. Two Commissions that were appointed in 1906-07 endorsed complaints that employers were consistently evading factory legislation. Unanimously, they recommended amendments 'essential in public interest.' A new Factory Act had been enacted in 1911. An

Industrial Commission was appointed during the World War itself (1914-1918) to investigate the condition of industry.

2.190 The end of the First World War saw the impact of many ideas and movements on the Indian working class and those who were engaged in organising and leading them. We must refer to two specific streams of thought and action that influenced the working class and those who were committed to the struggle for social justice. One was the influence of the Trade Union Movement and the leaders of the Labour party in the U.K. and the thoughts of Marx and Lenin. The other was the thought and the struggles of Mahatma Gandhi.

2.191 The victory of the communist movement and the establishment of the Soviet system in Russia raised new hopes in the working class, and placed patterns of organisation and action before those who visualised struggles for a new socialist society. To some extent, it can be said that this pattern of struggle was based on the theories of class conflict and the role of the working class and its organisation in putting an end to bourgeois capitalism and the bourgeoisie, and establishing the dictatorship of the proletariat and socialism. The tactics of struggle that were visualised, were, therefore, based on the concept of class struggle, and the elimination of the bourgeoisie. It

was believed that the bourgeoisie and the proletariat could not co-exist; that the apparatus of the bourgeois state and bourgeoisie economic order had to be smashed to usher in the era in which the State would wither away. It is not necessary for us, in these paragraphs, to refer to unforeseen developments that followed the introduction of adult franchise and the foundation of Trade Unions, the acquisition of effective access to political and economic power, and the effects of the industrial power that trade unions could generate, which led to doubts about some of the corollaries of pristine theory, or led to modifications in orthodox theory to explain departures from the lines or from denouements that had been foreseen, or to justify modifications that had to be made. Nor is it necessary for us to examine the merits or demerits of perceptions about the revolutionary role of the working class and the 'distortions' or deviations caused by the 'bourgeoisification' of the proletariat or what was described as 'economism.'

2.192 But perhaps, it will be beneficial to reflect on the running debate that the Marxist-Leninist, Social-Democratic and communist traditions have witnessed on the 'dual tasks of the proletariat,' and their implications on the organisations of the working class and the party, and the choice of, and emphasis on programmes and

tactics. The debate has been reflected in the different, if not conflicting, views of 'Legal Marxists,' Economists and, later, the Mensheviks on the one hand, and the orthodox Marxist-Leninist Bolsheviks on the other. Perhaps, it is right to say that both believed in the necessity of a bourgeois revolution as well as a proletarian revolution which would overthrow bourgeois capitalism and establish socialism. Both believed that the working class had to provide the steam for both revolutions, through the Party as well as other organisations of the working class. But, 'the distinctive tenet of the 'Economists,' as E.H. Carr points out, "was the sharp separation of economics from politics; the former was the affair of the workers; the latter of the intellectual leaders of the party. According to this thesis the workers were interested not in political, but only in economic ends, the class struggle for them reduced itself to a form of trade unionism – a struggle of men against masters for better conditions of work and social improvements within the framework of the existing order." The 'Economists' preferred the economic concept of class to the political concept of party, that the only concrete aim that could be offered to the workers at the present stage was the improvement of their economic lot. Lenin rebutted Economism, *inter alia*, in his 'What is to be Done,' and said "A trade union policy of the working class is simply a bourgeoisie policy for the

working class." His contention was that political as well as economic struggles were needed to arouse the class-consciousness of the masses; that the two could not be separated, "Since every class struggle was essentially political." (Carr) The Economists "held that the development of economic action among the masses (trade unionism, strikes etc.) would make them 'spontaneously' ripe for revolution. Lenin argued not only that the workers should be encouraged to put forward political as well as economic demands, but that they should be imbued with a conscious revolutionary purpose and conduct a consciously planned revolutionary campaign." Though a study of the implications and corollaries of the different positions can be extremely fascinating, it is not necessary for us to pursue the subject here. The effect of the considerations that different schools of Marxists have urged are perhaps still perceptible in the thinking of many Marxists active in the Trade Unions. The Trade Union movement in Great Britain - or at least the overwhelming majority in the Trade Union movement in Great Britain - has become the base of a Political Party - the Labour Party- and has adopted goals and methods of action that conform to the framework of a Parliamentary Democracy based on adult franchise and a government responsible to the people. This has not happened in India. Some European countries have had a different history.

It is obvious that the strategy and tactics, and methods of struggle of Trade Unions that are only concerned with the economic interests of workers will not necessarily be the same as the strategy and tactics and methods of struggle of Trade Unions that believe in combining economic and political considerations, and trying simultaneously to serve the economic interests of the working class, and the political and revolutionary interests of the Party of the working class, or looking upon Trade Union action only as a part of, and a preparation for revolutionary action to change the very nature of the State. In short, to destroy the bourgeoisie State.

2.193 We must now turn to the impact that Gandhi had on the working class and on those who were engaged in the struggle to eliminate exploitation. It has already been pointed out in an earlier chapter that Gandhi had come to India after leading successful struggles of the Indian workers in South Africa. He had succeeded in organising and deploying the strength of the most exploited sections of the working class who lived in conditions of slavery, 'indentured labourers.' On his return to India, at the end of the world war in 1918, he commenced his work in India with a struggle in Champaran to liberate Indian peasants and workers from the regime of exploitation and near enslavement that British indigo planters

had established in North Bihar. This was followed by the great strike of textile workers that Gandhi led in Ahmedabad. We do not propose to deal with these struggles in any detail, but the words that Gandhi used to describe the textile strike revealed his attitude to all struggles of the exploited. He said that the strike was a "*Dharmayudh* or righteous struggle."

2.194 Gandhi's perception of the struggle of the working class, or of any exploited group or individual was based on his philosophy of *Satyagraha*. In particular, his attitude to the struggles of the working class flowed from his belief about work itself. He believed that "work" was essential for the dignity and the fulfilment (self-realisation) of the human being; that the social and economic order must be such as provides every individual with the opportunity to work; that all socially useful work had the same value; that industrial activity was a social necessity; that different factors relevant to industrial activity came together or was brought together to serve the interests of society; that workers and managers and the owners of capital were, therefore, equally important partners who contributed to the success of an economic activity; that "if capital was power, so was labour;" that incomes and incentives should not lead to inequality; that owners of capital and all that generated power, should regard their power, e.g. capital power or labour

power as a trust that they held for the benefit of society; that both workers and entrepreneurs were trustees who were expected to use their power in the interests of society which was the community of beneficiaries in whose name the sources of power were held; that any difference of opinion between partners in a social activity or economic or industrial activity should be settled through dialogue, mediation and arbitration; that if these methods did not lead to solutions satisfactory to both sides, they had the Fundamental Right, human right, to non-cooperate with anything that led to their own undoing; that workers, therefore, had the right to 'non-cooperate' in their own exploitation; that this non-co-operation could take the form of a strike, but the purpose of the strike had to be to make the exploiter realise that his prosperity, and the profits that he sought, depended on the co-operation of the workers; that since both workers and employers depended on each other for the success of industry, their relationship as well as their conflicts had to be ruled by the logic of interdependence which dictated fairness to each other, and respect for the rights and interests of each; that workers' organisations should not be exploited to serve the interests of ambitious individuals or political groups.

2.195 The textile strike that he led in Ahmedabad was a demonstration of the dynamics and strategies of struggle that he visualised for the working class.

2.196 He wanted a continuing association of workers engaged in industrial undertakings. He believed that a trade union of this kind should not get involved in day-to-day political activity or be exploited by its leaders for their own political interests. He believed that a trade union must be an organisation that not merely leads workers in a specific struggle, but continuously serves the all round interests of the workers. He, therefore, held the view that Trade Unions were not merely instruments of combat. They had also to play a constructive role in promoting the welfare of the working class. They had to protect the rights and interests of the working class, and also to promote their welfare. The Textile Labour Association or *Majur Mahajan* that he established in Ahmedabad, therefore, ran schools, looked after sanitation, conducted co-operative societies and banking operations, and so on.

2.197 Apart from this example of organisation and struggle that Gandhi placed before workers who were engaged in the struggle for social justice, he also inspired the leaders of the national movement at various levels, to take interest in the organisation of the working class. He himself has been described in the report of the Royal Commission on Labour, as the leader of the strongest trade union, comprising of the maximum numbers, in the early days of the Trade Union Movement in the

country. Under his leadership, as has been stated earlier, many leaders at many levels became active in the Trade Union Movement.

2.198 In some earlier paragraphs, we have talked of the kind of impact that different streams of thought have had on the methods of struggle adopted by the TUs, the perceptions of the working class and its organs, including TUs, as instruments of a proletarian revolution as well as instruments for achieving amelioration of economic and social conditions, as also the influence of the methods of struggle employed by the national movement for Independence. Gandhi believed in *Satyagraha* and non-co-operation, but he also believed, in the inescapable paradigms of interdependence. So he believed that conflicts should be resolved not by the extinction of adversaries, but by the discovery of what is common, that is, that which is of common interest. But at the gross or ostensible level, *Satyagraha* and non-co-operation often took the form of *hartals* or strikes or boycott. That he characterised even derisive talk as repugnant to the method of *Satyagraha* did not mean that all those who adopted the externals of his methods also adhered to the precautions and purity of means that he believed in. The results have been evident in many *Satyagrahas* in the country, and the *Satyagrahas* in the field of industrial relations have not

been exempt from the same weakness or distortions. It is not necessary for us here to discuss these questions in greater detail. In some earlier paragraphs, we have talked of the kind of impact that different streams of thought have had on the methods of struggle adopted by the TUs, the perceptions of the working class and its organs, including TUs, as instruments of a proletarian revolution as well as instruments for achieving amelioration of economic and social conditions, as also the influence of the methods of struggle employed by the national movement for Independence. Gandhi believed in *Satyagraha* and non-co-operation, but he also believed, in the inescapable paradigms of interdependence. So he believed that conflicts should be resolved not by the extinction of adversaries, but by the discovery of what is common, that is, that which is of common interest. But at the gross or ostensible level, *Satyagraha* and non-co-operation often took the form of *hartals* or strikes or boycott. That he characterised even derisive talk as repugnant to the method of *Satyagraha* did not mean that all those who adopted the externals of his methods also adhered to the precautions and purity of means that he believed in. The results have been evident in many *Satyagrahas* in the country, and the *Satyagrahas* in the field of industrial

relations have not been exempt from the same weakness or distortions. It is not necessary for us here to discuss these questions in greater detail.

2.199 Thus, subtle differences in theory have often led to a mix of economic (Economist) and political motivations, with their perceptible impact on methods of "industrial action" (strikes, etc), reflecting varying nuances of the political or the revolutionary on the one hand, and the economic and the strictly Trade Unionist on the other. This has led to tussles between those who wanted to preserve the Party's domination over fraternal Trade Unions and those who wanted to preserve the autonomy of the Trade Unions in spite of ideological loyalties or approximations. This has also led to the creation of separate Trade Union departments in Political Parties and tussles between the political apparatus and the Trade Union oriented sections in Political Parties. India cannot claim to have been an exception.

2.200 Meanwhile, the first trade union in India was established in Chennai in 1918 under the leadership of B.P. Wadia, a political and social worker. The period from 1918 to 1928

can be described as a landmark in the history of the Indian Trade Union Movement. Trade unions began to be formed in many cities of India, including Bombay and Calcutta. In 1919, ten new unions were formed. The most important among them were the MSM Railway Employees Union in Madras and the Seamen's Union in Bombay. In succeeding years, unions sprang up among railway men, dockworkers, textile workers, engineering workers and others. The first Central Federation of trade unions came into existence with the formation of the All India Trade Union Congress (AITUC) in 1920.

2.201 In 1921, Shri N.M. Joshi, a trade union leader, who was also a member of the Central Legislative Assembly, spearheaded the demand for legislation on the registration and protection of trade unions. This led to the Assembly passing the Trade Unions Act in 1926.

2.202 We have referred earlier to the formation of the AITUC in 1920. One of the factors that quickened the formation of the Central Federation was the fact that India had become a member of the newly established

International Labour Organisation which was a tripartite body, and therefore, needed representation of organisations of the employees and or the working class. The AITUC came into existence with over 107 affiliated unions and a claimed membership of over 1,40,000.

2.203 As we stated earlier, the national movement for Independence also contributed to the growth of the Trade Union Movement in India. Lala Lajpatrai, a well-known leader of the Congress movement was the first President of the AITUC. Other leaders of the Congress like Pandit Jawaharlal Nehru, C. R. Das and Subhash Chandra Bose also held office as Presidents of the AITUC.

2.204 There was no Communist party in India before 1920, but some time after 1923, communists began to play an active role in the Trade Union Movement, and after 1926 a number of trade unions came to be led by communists. Leaders like Dhundiraj Thengdi, S.V. Ghate, S.A. Dange were elected to high offices in the AITUC. We give below a table that gives information about the trade unions affiliated and sympathetic to the AITUC in 1920.

Table 2.20
Trade Unions Affiliated and Sympathetic to AITUC in 1920

According to industries	No. of affiliated and sympathetic unions	No. of affiliated unions	Membership of affiliated unions
Railways	21	11	91,427
Textiles	12	9	7,719
Shipping	4	3	19,800
Transport	4	2	2,470
Chemical	7	6	856
Engineering	8	7	7,590
Posts and Telegraph	15	5	1,685
Printing and Paper	7	3	1,844
General	29	18	7,463
Total	107	64	140,854

Source: Trade Union Movement in India; A.S. Mathur and J.S. Mathur, 1962.

2.205 A large number of strikes followed the growth and spread of trade unionism. There were strikes in Madras, Bengal, Bihar, Orissa and Assam. This does not mean that there were well-established trade unions that led the strikes. 'Strike Committees' were formed to launch and lead strikes, but many of them did not continue after the strikes ended.

2.206 The condition of the trade unions of the time has been described by Rushbrook Williams, in a passage cited by Justice Desai and G.B. Pai in their introduction to the 'labour code' proposed by the National Labour Lawyers Association: "Very often as

soon as a strike is settled, the union disappears since it has no regular constitution or definite subscription, no system of auditing or publishing accounts, and no funds for providing help to women and children in times of distress. As a result, the progress of the Trade Union Movement during the last few years has been disappointing, its existence being too much bound up with the occurrence and ...definite and real grievances, and particularly when there is a marked gap between nominal wages and the cost of living, the combination generally characteristic of Trade Unions in India, are comparatively effective. But when the economic stringency begins to pass

away, the bond, which unites the workers setting out all but the few really well organised unions in India, tends greatly to weaken. This tendency, already noticed in 1923, continued to prevail during the period under review. The Trade Union Movement made but little progress, and in some places actually received a setback. The interest of the operations in the movement diminished; and all but the better conducted unions suffered a considerable loss of membership."

2.207 But, gradually the landscape began to change. More and more trade unions came into being. There was increasing realisation of the need for 'continuing association' to fight for the cause and interest of the workers. The successes that the Trade Union Movement and the working class were achieving in European countries, including the United Kingdom, began to instil a new hope and sense of urgency in the leaders of the Independence movement and those who were interested in the working class coming into its own. The conditions in the country led to the passing of a number of Acts relating to the condition of workers and the organisations. We have already referred to the Central Assembly passing a Trade Union Act in 1926. Even before this a Workmen's Compensation Act had been enacted in 1923.

2.208 It was during this period, in 1929 that the first Royal Commission on Labour was appointed by the British Government. As has been stated earlier, this Commission was headed by Whitley, a well-known leader of the Labour Movement in the United Kingdom. Its members were distinguished leaders from the world of industry, the Trade Union Movement and public life, persons like, the Rt. Hon'ble V.S. Srinivas Shastri, G.D. Birla, N.M. Joshi, Sir Victor Sassoon and others.

2.209 The appointment of the Commission was a landmark in the history of the Trade Union Movement and Labour Legislation in India. With meticulous care and devotion, the Commission enquired into all aspects of the situation of labour and industrial relations in India, beginning from the sources from which workers employed in plantations and factories were drawn, the methods of recruitment, wages, conditions of living, settlement of disputes, and so on. It made elaborate recommendations on all aspects of the rights, conditions and needs of the workers and their organisations, and the method and machinery needed to settle disputes. It is not necessary for us to recount the findings and recommendations of the Commission here, but it is necessary for us to place on record our deep appreciation of the pioneering work done by the Commission.

2.210 In the meanwhile, there were other developments that quickened the pace of the growth of trade unions, and the aspirations and expectations of the working class. The Indian National Congress adopted a Resolution on Fundamental Rights in 1931 which devoted many paragraphs to the rights of the working class and their organisations. We have referred to the

ideas and promises contained in the Resolution, in earlier paragraphs in the First Chapter of our Report.

2.211 The interests and hopes raised by the Report of the Royal Commission led to increase in the number of trade unions registered between 1928 and 1930.

Table 2.21

Progress of Registered Trade Unions, 1927-30

Year	No. of registered TU	TU submitting returns	Total Membership
1927-28	29	28	100,619
1928-29	75	65	181,077
1929-30	104	90	242,355

Source: Trade Union Movement in India: A.S. Mathur and J.S. Mathur, 1962.

2.212 This period also witnessed the occurrence of splits in the Trade Union Movement. Pandit Nehru presided over the Nagpur Session of the AITUC in 1929. This Session, following the international communist line, passed a Resolution deciding to boycott the Royal Commission on Labour, to affiliate with the League against Imperialism and the Pan-Pacific Trade Union secretariat, and to appoint the Workers' Welfare League as its agent in Britain. The conference also denounced the Asian Labour Conference, the Round Table Conference and the ILO. The passage of these resolutions led to a split in the

AITUC, with leaders like, N.M. Joshi, V.V. Giri and Mrinal Kanti Bose, walking out of the AITUC and forming the Indian Trade Union Federation.

2.213 In 1930, M.N. Roy with his rich experience in the Communist Movement in Europe returned to India. His thoughts and leadership had their own impact on the Trade Union Movement in India.

2.214 The adoption of the United Front line by the Comintern, led to the return of the Red Trade Union Congress to the AITUC in 1938. The

National Trade Union Federation (NTUF) and the Red Trade Union Congress merged in the AITUC.

2.215 Soon afterwards, elections were held all over the country on the basis of the Government of India (GOI) Act of 1935. In these elections, the Congress came to power in most Provinces. This again resulted in a tremendous fillip to the Trade Union Movement in India. We have already referred to the promises made by the Congress in its election manifesto in 1936. The Ministries that came to power in the States felt compelled to try to implement the promises that the Congress had made to the working class in its election manifesto. Many, if not, most of the Congress Ministries in the provinces, had leaders of the trade union movement as members of the Cabinet, often in charge of the portfolio of labour. Thus, trade union leaders like Gulzarilal Nanda, V.V. Giri and others joined the Ministries in their respective Provinces as Labour Ministers. Some of the Provincial Ministries introduced legislation to deal with the protection and welfare of labour and the machinery needed for the settlement of industrial disputes. The Ministry in Bombay was responsible for the enactment of the Bombay Industrial Disputes Act in 1938.

2.216 In earlier paragraphs, we have referred to the declaration that the Congress Ministry in Bombay made in 1938 setting out its views on minimum wages, trade disputes, collective bargaining and the like. We will not repeat them here. But, it must be pointed out that the declaration also emphasised the need to ensure the growth of strong organisations that would represent the 'organised strength of the working class.'

2.217 The growth of the Trade Union Movement in India was in a sense interrupted by the outbreak of the Second World War in 1939. The Congress Ministries in the Provinces resigned in protest against the failure of the British Government to consult the representative Governments in the Provinces before declaring that India too was at war with Germany. The British Government of India was anxious to ensure industrial peace and uninterrupted production in India. The national movement under the leadership of Gandhi was against 'Nazism and Fascism,' and therefore, the Axis powers, but was keen that the British Government should agree on a schedule for the full transfer of power to the Indian people as soon as possible. We do not consider it necessary here to describe the history of the Indian National Movement and the Civil Disobedience Movement including the Quit India Movement which was started under the leadership

of the Congress during the Second World War. We are concerned here with the impact of the war on the Trade Union Movement. The communist oriented section in trade unions, particularly in the AITUC, was first against co-operation in the War effort of the Government, but when the Soviet Union joined the War on the side of the British Government (Allies), they believed that the War had become a 'people's war,' and therefore, wanted people to cooperate in the War effort. It is well known that during this period, the Communist Movement worked against the policies and programmes of struggle of the Indian National Congress and the nationalist movement in the country. The communist oriented section in the AITUC, therefore, had difficulties in formulating its line. Royists and leaders like Jamnadas Mehta argued for unconditional support to the War effort. Other leaders like N.M. Joshi and the Congress oriented leaders were against extending unconditional support to the War. Eventually, these differences led to another split in the Trade Union Movement and the formation of the Indian National Trade Union Congress (INTUC).

2.218 As has been stated in an earlier paragraph, the British Government was keen to ensure that there was no disruption of production through strikes or lockouts during the War. It, therefore, formulated a number of rules and regulations under the Defence

of India Act. All strikes were prohibited under Rule 81(a) of Defence of India Rules. However, the Rule also provided for the adjudication of disputes between employers and employees.

2.219 With the end of the War, India became Independent, and acquired the power to fashion a new deal for the working class and industrial relations, in conformity with the declarations of intentions and policies that had been made during the struggle for Independence. The responsibility for formulating a constitutional set-up that guaranteed the rights of the working class devolved on the Constitutional Assembly. The responsibility for formulating laws that created a new set-up for the exercise of rights and duties, and the evolution of harmonious industrial relations, fell on the Provisional Parliament. We have already referred to the Articles in the Constitution that relate to Fundamental Rights and Directive Principles. We have also referred to some of the laws like the Industrial Disputes Act, Minimum Wages Act etc., that were passed by the provisional Parliament as early as 1947 and 1948.

2.220 The increase in political activity that followed the introduction of adult franchise and the formation of new political parties also had their impact on the Trade Union Movement. When

India became Independent, there were only two Central Federations of Trade Unions in the country, namely, the AITUC and the INTUC. But, the desire of political parties and groups of distinct tendencies to influence the working class and the Trade Union Movement led to the formation of new Central Federations of Trade Unions, each of which was conceived to be platforms that would provide footholds to different political parties and groups. Thus, the Hind Mazdoor Sabha (HMS) and the United Trade Union Congress (UTUC) came into existence, and soon thereafter, in 1955, the Bhartiya Mazdoor Sangh (BMS) was formed. It must, however, be stated that all these Central Trade Unions, particularly the HMS and the BMS, were set up with declarations about the need to free the trade union movement from the control of political parties, and to build up a free and united trade union movement.

2.221 The Bhartiya Mazdoor Sangh Came into existence in 1955. One of the declared objective of those who founded the BMS was to build a trade union movement that was free from the domination or control of political parties. Many of them were persons who have been active in the trade union movement for long, and had felt that the interests of the working class were suffering because trade unions were giving their primary loyalty to political parties, and relegating the

interests of the working class to a secondary position. There were also people who believed that the trade union movement have been under the influence of western ideas and perceptions, and who felt that the working class movement in India had to draw inspiration from traditional Indian concepts about society and the duties and obligations of the individuals and groups of the society. They believe that "philosophy of integral humanism was the philosophy that conformed to the Indian traditional thinking. In a very short time, the BMS set up unions in many sectors of industry and employment and soon built up an organization that could compete with the existing central trade union federation. By the year 1984, it had become the second largest central federation and after the verification of 1996 it has risen to the position of number one central trade union federation.

2.222 Meanwhile, a new chapter of industrial expansion had opened in the country. Many new undertakings came up in the private sector. But, the State itself undertook the responsibility for developing undertakings in the core sector that gave control of the 'commanding heights' to the State. Many new public under-takings and companies grew up in the public sector. Consequently, the number of registered trade unions in the country tripled

during the period 1951-52 to 1961-62. During this period, the State was keen to play an important role in the determination of wages and working conditions. In many areas, wages were determined by Central Wage Boards or industry-wise Wage Boards. Demands and disputes were settled by ad hoc awards or adjudication. In the vast new areas of public enterprises, the Bureau of Public Enterprises set up by the Government, played a crucial, determinant role in negotiations for the fixation of wages. We have already referred to the effects of these on the demands of workers, the attitude of managements, the parameters of negotiations, the resultant residue of

discontent etc. in an earlier paragraph.

2.223 At the enterprise level, the machinery that had been visualised for consultation and prevention of conflicts did not function well enough to fulfil expectations of the contribution they could make to the development of healthy industrial relations from the plant level.

2.224 On the other hand, a number of industrial disputes adversely affected the growth of co-operation and harmony in undertakings. The following table gives an idea of industrial disputes and the growth of trade unions during 1945 to 1954.

Table 2.22

Industrial Disputes and Trade Union Growth during 1945-1954

Year	No. of stoppages	No. of workers involved	Man days lost	No. of Regd. T.U.	Regd. of Number of Unions submitting Returns	Total Membership
1945	820	747,530	40,54,499	865	573	8,89,388
1946	1629	1,961,948	1,27,17,762	1,007	585	8,64,031
1947	1,811	1,840,784	1,65,62,666	1,833	998	13,31,962
1948	1,259	1,059,120	78,37,173	2,766	1,620	16,62,929
1949	920	605,457	66,00,395	3,150	1,848	19,60,107
1950	814	719,883	11,28,06,704	3,522	1,919	18,21,132
1951	1,071	691,321	38,18,928	3,766	2,002	17,56,971
1952	963	809,242	33,36,961	3,744	2,291	18,53,213
1953	772	466,607	33,82,807	6,029	3,295	21,12,695
1954	840	477,138	33,72,630	6,658	3,545	21,71,450

Source: Trade Union Movement in India, A.S. Mathur & J.S. Mathur, 1962.

2.225 In 1954, the Congress and the Government adopted the objective of creating a socialist pattern of society in India. This led to an increase in the growth of industrial activity on the part

of the State. We give below a table that throws light on the growth of unions and industrial disputes from 1955 to 1961.

Table 2.23

Growth of Unions and Industrial Disputes from 1955-61

Year	No. of regd. Unions	No. of regd. Unions Submitting Returns	No. of members (in 000) involved	No. of Stoppages	No. of Workers involved	Man days lost
1955-56	8095	4006	2275	1203	715130	6992040
1956-57	8554	4399	2377	1630	889371	6429319
1957-58	10045	5520	3015	1524	928566	7797585
1958-59	10228	6040	3647	1531	693616	5633148
1959-60	10811	6588	3923	1583	986268	6536517
1960-61	11312	6813	4013	1357	511860	4918755

Source: Indian Trade Unions, V.B. Karnik (1978).

2.226 It can be seen from the table that we have cited, that disputes and strikes resulted in increased industrial tension by 1958. The 15th Indian Labour Conference discussed the situation, and it was decided to develop a 'code of discipline' through tripartite consultation. The 'code of discipline' aimed at evolving harmonious relations between the employer, the employee and the State.

2.227 The political scenario in the country underwent a major change after the elections in 1967, when the Congress lost its near monopoly of power. Other parties or combinations of parties came to power in some States. The economy also began to face severe industrial stagnation, high rates of inflation, rise in the prices of essential commodities like food, increase in unemployment rates and failure to

reach the growth rates targeted by the Five Year Plans. It had also to bear the impact of two wars with Pakistan and a war with China. This period witnessed considerable unrest in the industrial relations scene. The number

of strikes and lockouts increased, and there was an air of distrust and aggressive-ness. We give below a table that indicates the number of industrial disputes and strikes, and the number of man-days lost in the period from 1965 to 1974.

Table 2.24

Industrial Disputes & Strikes 1965-74

Year	Numbers	Workers involved	Man days lost (000)
1965	1,697	8,87,360	46,17
1966	2,353	12,62,224	103,77
1967	2,433	13,39,617	105,65
1968	2,451	14,64,992	110,78
1969	2,344	1,86,943	154,77
1970	2,598	15,51,530	147,49
1971	2,478	14,76,203	118,03
1972	2,857	14,74,656	137,48
1973	2,958	23,58,206	138,62
1974	2,510	27,09,838	336,43

Source: Indian Trade Unions, V.B. Karnik, (1978).

2.228 A number of contributory causes have been identified by analysts: discontent with wages; feeling that labour was not getting a fair share of the profits it was helping to generate; discontent with laws and rules relating to the identification of bargaining agents; competitive militancy among unions; the rise of what has

sometimes been described as adventurism in unions, or leadership more concerned with personal ambitions and un-concerned with the means necessary to ensure healthy and responsible industrial relations that protect the interests of the employers as well as the employees, that protect industry as a common asset of society.

Other causes that have been pointed out are the haughty and irresponsible attitude of some entrepreneurs who used industry as a means of self-aggrandisement, availed of financial and other forms of assistance, and then ran away from their responsibilities as employers or entrepreneurs. The aggressiveness and desperation that we have referred to (in the earlier paragraph), the mix of economic and political motivations and the dictates of competitive militancy, also led to the introduction of new methods of protest and new tactics in the theatre of conflict. This period saw frequent resort to go-slow, work-to-rule, *dharnas*, *gheraos* and *bandhs*. The frequency and fierceness of *gheraos* in the years 1967-71 led to quite a few cases of duress, physical and mental torture, even some cases in which the combination of physical and mental harassment led to heart-attacks and deaths. The resultant conditions became so grave, that the legality of these forms of protests, particularly *gherao* and *bandh*, was questioned before courts of Law, and the High Court of West Bengal (in 1968) and the High Court of Kerala⁴ (in 1997) delivered judgements that held that these forms of protests or

.....
⁴ Upheld by the Supreme Court of India in May, 2002

'struggle' were illegal and constituted an infringement of the Fundamental Rights that the Constitution guarantees to the citizens of the country. Experience shows that industrial action or activities in support of industrial action that deteriorate into or get transferred into law and order situations, whether they be the handiwork of agents, provocateurs or hotheads, does not benefit those who go on strike. It becomes easy for governments to handle such situations on a different plane, i.e. the plane of law and order. Some may even look upon such situations as the result of diversionary tactics.

2.229 Such methods have yet another aspect that cannot be ignored, particularly in days when workers' struggles need public support which cannot be gained by alienating public sympathy. There is no need to detail the sufferings that *bandhs* cause to the public, particularly to those who are in urgent need of medical attention or have to meet unforeseen eventualities. These often lead to the forfeiture of public sympathy. The absence of public sympathy helps those who are on the other side of the conflict, and often creates conditions that justify government intervention. One can cite instances where the courts have had to entertain Public Interest Litigation filed

by common citizens on this count. One telling instance that can be cited, is that of the strike by pharmacists in Bihar, where the strike went on for more than 2 months, causing immeasurable suffering to patients who needed to buy medicines, reportedly resulting in a few deaths because life saving medicines could not be bought. Eventually, the State had to intervene. There have been other similar cases in which the Supreme Court and High Courts⁵ have intervened. In general, it can be said that wherever there are prolonged strikes affecting medical services in hospitals, the public not only suffers, but also turns hostile, and demands administrative or judicial intervention. In fact, there have been cases in the United Kingdom of patients and the public turning on striking medical personnel.

2.230 We can cite an instance nearer home, in our own country: the recent strike by the employees of the State Government of Kerala. It involved nearly half a million government servants of all description. Initially, all the Central Trade Unions supported the strike. Yet, the strike caused considerable indignation in many sections of common citizens. In fact,

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⁵ Judgment delivered by the High Court of Delhi, banning all strikes in the All India Institute of Medical Sciences (AIIMS) reported in the Indian Express, New Delhi on 26.05.02

newspapers reported that there was articulate and active resistance from many sections of the people, including students and parents, youth and others. The television showed pictures of confrontation between those who supported the strike and those who opposed the strike, including physical confrontation, people forcing the opening of schools, forcing teachers to teach, or volunteer-teachers taking classes, and so on. We are citing all this not to express any opinion on the demands of the strikers or the rights and wrongs of the action taken by the Trade Unions. We are aware that the strike was meant only to preserve rights and facilities that the strikers already enjoyed. But here we are concerned with another question: whether workers or Trade Unions who exercise their right to strike as part of industrial confrontation, or 'direct action' in industrial disputes, should take to action that will extend the conflict to other sections, inflict suffering on those who have nothing to do with their employers, and cause adverse effects on the life and interests of those who are not their employers; whether such action on the part of workers or Trade Unions will not estrange public support, and drive the public to range themselves against the strike, and indirectly, in defence or support of those who are opposing the strike.

2.231 We have referred to this question in earlier paragraphs. We would like to reiterate that the Trade Unions that lead and represent workers have to reflect on the current situation, and the likely impact that the tactics they employ in their legitimate struggles will have on the success or failure of the struggles. It is apparent that when the organisations of the working class are weakened by fragmentation, disenchantment, poor unionisation, etc., and the forces ranged against them are strong and further strengthened by multinational forces, and when governments themselves are under pressure to withdraw from the field (of balancing the interests of the social partners), the organisations of the working class have to depend on public sympathy and cannot afford to alienate public sympathy by driving common citizens to the camp of those ranged against them. We feel that these are genuine considerations that every leader and well-wisher of the working class have to keep in mind while choosing the tactics of the struggles that, in fact, they can ignore only at the cost of their objectives.

2.232 What we want to point out here is the need for workers' organisations or employers' organisations to consider the impact of their actions on the common citizen, to consider whether

innocent citizens can be vicariously punished for the guilt or cussedness of others, to consider whether in the present situation in which public support is essential for any social action to succeed, the forms of struggle that are chosen should not be such as to alienate public sympathy.

2.233 To return to the decade between 1965 and 1975, one should recall that it saw industrial direct action by bank employees and municipal employees, and a strike by Central Government employees in 1968. Trade union activities among salaried employees increased during this period. These were years of turbulence in some of the States. The period also revealed a sharp decline in national income, especially during 1966-67 and 1967-68.

2.234 It saw considerable growth in trade union activity. The INTUC emerged as the most important trade union organisation. Some ascribed the ascendancy of the INTUC to its closeness with the Government at the Centre and Governments in many States and the advantage that it derived from the procedure for the recognition of the bargaining agent laid down by laws, like the Bombay Industrial Relations Act. We append a table on the strength of the Central Trade Unions in the period 1965-1972.

Table 2.25
Trade Union Strength, 1965-72

Year	Unions	Members (000)
1965	13,248	37,88
1966	14,686	43,92
1967	15,314	45,25
1968	16,716	51,21
1969	18,837	49,00
1970	20,681	48,87
1971	21,565	37,62
1972	21,757	10,08

Source: Indian Trade Unions Survey, V.B. Karnik, P.391

2.235 The industrial unrest in the country reached its climax when the Railway employees went on strike in the year 1974. This involved direct industrial action by over 16 lakh employees. The paralysis of Railway transportation had a serious impact on the economy.

2.236 In 1975, the country came under the Emergency that was declared by the then Prime Minister Indira Gandhi. Though the Emergency regime suspended and suppressed Fundamental Rights and adversely affected the freedom of trade unions and annulled the payment of the bonus, many central trade union organisations did not take any action to

defend the rights of the working class. The INTUC gave full support to the Emergency and defended even the annulling of the legislation on Bonus. The AITUC also decided to support the measures taken by the Government.

2.237 When the Emergency ended, a new alignment of forces, represented by the Janta Party came to power. The short period for which the Janta Party was in power, witnessed the restoration of Fundamental Rights and the re-emergence of freedom, the restoration of the bonus, removal of all inhibiting orders and amendments to laws, review and revision of wages in most sectors of the economy like steel,

cement, ports and docks, coal, and so on. As a consequence, the number of strikes and man days lost went down appreciably during the days of the Janata rule.

2.238 The years beginning with 1980 saw a number of changes in economic policy. There was considerable growth in the economy, but fall in employment generation. Employers who complained of laws that stifled their freedom began to reduce recruiting permanent employees, and began the policy of 'outsourcing' their production to the unorganised sector.

2.239 The period from 1980 to 1991 saw two major strikes that were both significant to the Trade Union Movement in different ways. The first strike that we refer to is that of all public undertakings in Bangalore during 1980-81. This involved industrial relations in public sector undertakings like the Hindustan Machine Tools, Hindustan Aeronautics, Indian Telephones Industry and the Electronic Corporation of India. This was a massive strike that lasted for many days.

2.240 The second strike that was of considerable significance to the Trade Union Movement was the Bombay Textile Strike of 1982 which lasted for

about two years. The strike was perhaps the most massive strike (industrial conflict-action) that Indian Industry has seen. It was massive in duration as well as in the number of workers and factories involved, the suffering that the working class had to undergo, and the losses that industry sustained. The government too came under severe strain because of the sustained pressure that Trade Unions were able to exert; because of the apprehensions about the law and order situation, and the insistent demand for scrapping of the Bombay Industrial Relations (BIR) Act or at least the provisions relating to the recognition of the bargaining agent. The strike will undoubtedly be described as a milestone in the history of industrial action and Trade Unionism in India. Yet, it is very difficult to say that the social partners, the Trade Unions, the mill owners or the management and the Government have reflected adequately on the different aspects of the strike and learnt the lessons that the strike holds for everybody.

2.241 It is not our intention to chronicle the events that led to the strike, or the progression in the formulation or evolution of the demands that the striking workers put forward. There are some who hold that

the strike was the result of disillusionment with the leadership that the *Rashtriya Mill Mazdoor Sangh* (RMMS) provided, and indignation at the laws that made it easy for the RMMS to continue as the Representative Union and the sole bargaining agent in spite of the fact that workers had lost confidence in the representative character of the RMMS and the sincerity or efficiency with which it was fighting for the interests of the textile workers in Bombay. Those who hold this view also hold that it had, therefore, become necessary to fight for bonuses and wages other than what the RMMS had accepted in agreements with the Mill owners, as also to fight against the BIR Act which permitted the anomaly of an 'unrepresentative' Union to be the sole bargaining agent.

2.242 On the other hand, there are people who ascribe the precipitation of the strike to what they describe as the frustration felt by Unions that were in a minority at their continued inability to dethrone the RMMS, and their willingness to exhort or "mislead workers to take to questionable methods of action to achieve their ends."

2.243 However, it is perhaps accepted by all that it is frustration and

indignation that prompted workers to ignore Trade Union loyalties and turn to the leadership of Dutta Samant, although they were aware that his style and tactics were unconventional, and went beyond the normal action that Trade Unions took and even militated against the norms that trade unions followed. They had admired him for the success he had achieved in securing higher wages and emoluments in the capital-intensive industries in the Thane belt, even when they sometimes looked outside the financial capability and resources of the management.

2.244 To understand the impact of the strike and the challenge that it posed, it is necessary to remind ourselves of the historical and economic importance of the textile industry and the Textile workers' movement in Bombay.

2.245 The textile industry, the single largest manufacturing industry of India has played a pivotal role in the Indian industrialisation experience and in the creation of the industrial relations system. It has had a strong impact on the development of the labour and trade union movement in India. The importance of the industry is

manifested not only by the large number of textile mills, and as the largest employer of organised workers, but also in the large number of allied and ancillary industries that are supported by this industry. Bombay was undoubtedly the premier centre of the Textile Mills industry of India (Ahmedabad, Kanpur, Sholapur and Coimbatore were other important centres) and in the 1980s no less than 62 mills were in operation employing a quarter of million workers. "The textile strike of 1982 proved to be a watershed in the history of trade unionism and the industrial relations system of the country especially as it struck at the very root of functioning of the trade union institution."

2.246 A major transformation came about in the textile sector in the 1970s, alongwith the relative decline in the weightage of the organised textile mills in the industrial structure of Mumbai. These changes had a profound impact on the origin and course of the Strike of 1982. The major trend that emerged in the structure of the cotton textile industry was the rapid growth of the so-called decentralised sector i.e., power looms and handlooms. In 1950, the Textile Mills accounted for 70% of the total cotton woven cloth manufactured in India. By 1970, the

proportion had fallen to 53%, and in 1980, it had declined rapidly to 41%. In 1976, for the first time more cotton yarn came from the decentralised sector (51%) than the mill sector. The massive expansion of the power looms in the 1970s accounted for the bulk of the production. With the emergence of the power loom sector as a competitor, the Mills developed complex relations of subcontracting of output in the mid 1970s. This subcontracting relation provided an important reservoir and staying power for the Mills during the strike of 1982. Alongside the general decline of weightage of mill production, one must also note the persistent absence of modernisation or rather uneven modernisation of the major mills and mill centres. A perceptive observer noted in 1983 that the mills had become 'museums, or worse, graveyards of machinery.' In 1976, a study found that nearly 40% of the machinery in the mills was more than 40 years old. The problem was aggravated by persistent under-utilisation of the installed machinery. However, there were certain measures of modernisation that occurred in the 1960s mainly in the mills owned by large business houses which shifted to finer counts and competed for high quality and price sensitive products, chiefly for the upper classes in the home market and for export. But, for

the bulk of the mills, abundant availability of cheap labour rather than strategic modernisation, remained an important strategy for reducing cost and increasing output.

2.247 This tendency to under-utilisation, low productivity and lack of capital intensification in the textile industry contrasted sharply with the emergent trend in the 'new industries' especially in Bombay-Thane belt in the 1970s. Between 1960-1980, Maharashtra witnessed rapid growth in modern factory industries, both in terms of number of units and in the numbers employed. The bulk of expansion happened outside the old traditional organised industries like textiles, and in sectors like engineering, pharmaceuticals, and chemical products. These new industries accounted for bulk of the rise in capital outlay, which increased by more than ten times between 1960 and 1980 (from Rs.619 crores to Rs. 7096 crores) in Maharashtra. The new capital-intensive industries in the Bombay - Thane belt also witnessed two important phenomena which had a bearing on the textile industry. The annual average emoluments per worker in the textile industry (Rs. 7120), which had a leading role till the 1960s, was now below the average emolument of workers of all industrial manufacturing units in Maharashtra (Rs.8463) and was

roughly half of what was paid in the chemical industries (Rs.14,363).

2.248 Secondly, as opposed to the industry-wide bargaining structure evolved in the Textile industry, the new industries were overwhelmingly dominated by plant level wage bargaining structures. In these industries, employees' unions that were not affiliated to national federations or Trade Union centres, dominated and, on an average, in the 1970s and 1980s, seem to have delivered much higher benefits to the workers than those available in the Textile Industry. The new industries were also the site of the rise of the phenomenon of 'maverick and economic unionism' exemplified in the rise of R J Mehta and increasingly in the late 1970s, by Datta Samant.

2.249 It will perhaps be useful to remind ourselves that during the late 1970s, the Bombay Industrial Relations (BIR) scenario witnessed a major change in the growth of Independent Employees' unions and economic unionism, mainly in the new capital intensive industries. This was best exemplified in the rise of Dr. Datta Samant. Samant shot to fame with a prolonged strike in 1972 in Godrej industries where he was successful in ousting the Shiv Sena union and gaining substantial wage

increases. His strikes was characterised by long strikes, substantial, sometimes over-reaching economic demands, complete bypassing of legalistic struggle and methods of arbitration and adjudication of disputes, and significant use of violence against recalcitrant workers or opposing Trade Union Centres, arguing that these formations regularly sacrificed the interest of workers to those of political parties. In the changing industrial context of the 1970s and the 1980s and in the several new high profit industries, Samant's tactics worked with the emergence of a political, economic and plant level bargaining. The changing industrial relation scenario in Bombay city with the decline in credibility of what was described as the straitjacket imposed by the BIR Act, was accompanied by changes in the industrial structure of the city and the position of textile industry within it.

2.250 Whatever we have said in the earlier paragraphs should not be taken as appreciation for Dr. Samant's style and tactics. We have referred to them only to point out the nature and consequences of the long strikes. The indefinite strike that started in all the mills in Bombay on July 18, 1982 ended in tragedy. "The strike of the workers failed to achieve any of its main objectives, while it inflicted a

tremendous blow to the industry and the earnings of the workers. It is estimated that the total loss of production was of the order of Rs.986 crores. The loss in terms of wages was estimated at Rs.90.1 crores. It is estimated that between 75,000 to 1,00,000 workers were dismissed, retrenched or simply never taken back (as in the case of the *Badli* workers). The strikes seemed to have immensely strengthened the hands of the mill owners who used the opportunity to sell off unsold stocks and to extend the subcontracting arrangements with the Power loom sector. They also managed to dismiss and lay off workers without having to pay retrenchment compensations.

2.251 The strike brought to the forefront the inadequacies in the Bombay Industrial Relations Act. It also starkly exposed the limits of the purely economists unionism espoused by Datta Samant. It has been argued by several scholars that Samant might have succeeded in reaching a settlement if he had been more sensitive to the overwhelming mood for even temporary retreat after ten months of strike. Lacking in concrete alternatives, without plans for backup strategies and without a democratic organisation, Datta Samant's leadership which had succeeded in the high profit and price inelastic modern sector, proved to be a failure in the traditional

industries with structured industry - wide bargaining. "In its failure however, the Bombay Strike brought to the fore the continuing need for a more rational and democratic industrial relations system that will be free from dependence on the State and abject surrender to the market forces."

2.252 Another grave threat to the authenticity of the trade union movement (authentic trade union movement) seems to be emerging from the underworld. Reports have appeared in the National Press about the attempt of some Dons to form "Trade Unions" and attract the following of other established Trade Unions by promises to get demands accepted even where the established Trade Unions have failed to get them accepted through the normal means that Trade Unions use. There are also reports of some cases where such unions have succeeded through other means, thus causing erosion in the membership of established Unions and attracting workers to unions which are ready to use abnormal means. The situation is somewhat reminiscent of the days of Dr. Dutta Samant, except that in the current cases, the persons who are resorting to such means are not trade unionists but persons from

the underworld who are keen to extend their hold to Trade Unions or workers perhaps as an apparently innocent point of entry into an area of influence, or as a take off point for extortion and potential monetary gains. Many questions arise. The primary question perhaps is: what are the methods or abnormal methods that these new "leaders" employ, and how can the authentic Trade Unions, the management and industry as a whole be protected from the inroads and tactics of these interlopers from the underworld. The use of terror in any form will only nullify democratic rights by creating an atmosphere in which people are forced to act or not to act merely to protect their skin. It leads to a situation in which workers as well as management are placed in duress by the use of force or the threat of use of force. It can lead both the Trade Union movement and industry into a corral of duress. It has therefore, become necessary to protect the workers as well as managements from such forces.

2.253 One distinguished Trade Union Leader told us that there are Trade Union Leaders who ask for the abolition of contract labour or insist that assignments should not be given to those who engage contract labour, but

ultimately relent if the contract assignment is given to them or their 'benami' agents. This makes a mockery of the Trade Union movement and brings down the Trade Union leaders in the esteem of employees, who then begin to think and say that every Trade Union leader has his 'price'. Such actions by those who are reckoned as leaders of the Trade Union movement undermine respect for Trade Unions.

2.254 Another practice that undermines respect is that of permitting permanent workers to get their jobs done through proxy workers or letting others work in their place, and taking a cut from the wages of their proxies. Similar is the effect of so called unions that take up the grievances of workers and charge a commission on the monetary gains they may secure.

2.255 A fourth practice that compromises the Trade Union movement is – the tendency to convert Unions into closed shops.

2.256 The decade from 1980 also witnessed the growth of independent trade unions in many enterprises in the

major industrial centres of India. These unions preferred to stay away from the Central Federations of Trade Unions, and to be on their own. In many cases, they were free from the influences of political parties and were led by individual leaders who engaged in competitive militancy and promised higher gains to the workers in their unions. Notable among these is Self Employed Women's Association (SEWA). The emergence of SEWA led to the induction of pioneering methods that combined struggle and organisation, co-operation and self-reliance.

2.257 The Trade Union Movement in India has now come to be characterised by multiplicity of unions, fragmentation, politi-cisation, and a reaction that, on the one hand, shows a desire to stay away from politically oriented Central Federations of Trade Unions, and on the other, searches for methods and struggle for co-operation and joint action.

2.258 Thus, one sees an increase in the number of registered unions in the years from 1983 to 1994. But one also sees a reduction in the average membership per union and in the number of unions submitting returns. This position is reflected in the following table.

Table 2.26

**Number of Registered Unions (Workers' & Employers')
and membership of Unions submitting
returns for the year 1983 to 1992**

Year	Number of Registered Trade Unions (E)	Number of Unions submitting returns	Membership of unions submitting returns (in thousands)			Average membership per Union for unions submitting returns
			Men	Women	Total	
1	2	3	4	5	6	7
1983	38,935	6,844 (44.0)	5,011 (92.4)	406 (7.5)	5,417	792
1984	42,609	6,451 (28.8)	4,707 (91.4)	443 (8.6)	5,150	798
1985	45,067	7,815 (31.5)	5,831 (90.6)	602 (9.4)	6,433	823
1986	45,830	11,365 (39.6)	7,368 (90.0)	819 (10.0)	8,187	721
1987	49,329	11,063 (36.9)	7,211 (90.6)	748 (9.4)	7,959	719
1988	50,048	8,730 (33.5)	6,334 (89.6)	739 (10.4)	7,073	810
1989	52,210	9,758 (34.1)	8,207 (88.3)	1,088 (11.7)	9,295	953
1990	52,016	8,828 (46.4)	6,181 (88.1)	838 (11.9)	7,019	795
1991	53,535	8,418 (36.8)	5,507 (90.3)	594 (9.7)	6,100	725
1992	55,685	9,165 (26.3)	5,148 (89.6)	598 (10.4)	5,746	627
1993	55,784	6,806 (25.6)	2,636 (84.1)	498 (15.9)	3,134	460
1994	56,872	6,277 (25.3)	3,239 (79.1)	855 (20.9)	4,094	652

Source : Indian Labour Year Book, 1997.

Figures in brackets indicate percentages

2.259 We have made reference to some of the new trends that have surfaced in the Trade Union sectors. We have referred to the tendency that has been found in certain geographical area and certain industry for formation of industrial Trade Unions that do not want to be affiliated to Central Trade Union Federation for one reason or another. Some of these unions have remained independent, functioning only at the plant level. Some of these like the associations of bank employees are also functioning at the industry level. There are yet other unions that have founded into bodies relating to certain industries or employment, but have kept out of the main central Trade Union Federations. This includes National Alliance of Construction Workers, National Fish Workers Federation, National Alliance of Street Vendors etc.

2.260 We must also make specific mention of the emergence of the Trade Union SEWA group of organisation. This include organisations that have been modelled on the SEWA, Ahmedabad, that have later become branches of the SEWA set up or in some cases, remained local. The SEWA organisation in Ahmedabad came into being in 1972, and was established by leading workers of the Trade Union movement in Ahmedabad, like Ms. Elaben Bhatt. With her long

experience in Ahmedabad Textile Labour Association (ATLA), and elsewhere, Ms. Ela Bhatt built up a new type of Trade Union or working class organisation. It was a membership based organisation like Trade Union. But it combined the method of agitation and constructive organisation. It did not confine itself to the traditional method of presenting demands and resorting to industrial action in pursuit of them. On the other hand, it took up the work of organising the women workers, who were engaged in hitherto unorganised sector of employment, combining other constructive activities like marketing, the provision of micro-credit, banking, training, representing the views and interests of workers. Today, the SEWA and its affiliates have a membership of 4,19,891, and 10 offices in six states.

2.261 There is yet another development on the Trade Union scene to which we must refer. We have already referred to what appear to be signs of waning attraction to Central Trade Unions, decrease in unionisation, emergence of independent Trade Unions that are not affiliated to Central Trade Unions that are associated with political parties, and so on. One of the consequences of this situation is the increasing tendency on the part of Trade Unions, particularly the Central Trade Union organisations, to get together in ad hoc struggle committees

or united fronts to launch struggles, or to support a struggle that one of them has launched. One can also see that sometimes these struggle committees run into differences and disputes in the course of the struggle, in determining the response to emerging new situations about the terms of compromise or the duration of the struggle.

2.262 We have witnessed such joint action in the Bharat Aluminium Company (BALCO) struggle against disinvestments; the one day All India strike by all Central Trade Unions against disinvestments, privatisation and the economic policies of the Government on 25th July 2001, and the strike organised by Federation of Central Trade Unions against the Bill to open the coal sector to private industry.

2.263 Another new feature is the readiness and the determination of Central Trade Unions to escalate the objectives of struggles from industrial action regarding wages, working conditions and the like, to matters of government policy like, disinvestment, privatisation, etc. Instances of such action were witnessed in the strike on BALCO privatisation, the Rajasthan agitation by the Government servants and the strike by electricity workers in U.P., government employees in Kerala, and so on. Escalation of struggles from

plant or industry-wise acts to the realm of policy is also bound to have its consequences on the workers' struggle, and the need to avoid forces that estrange public sympathy.

2.264 We have already referred to some factors like fragmentation, politicalisation etc that are undermining the effectiveness of the trade union movement in the country. We have also referred to the damage caused to the trade union movement by methods that leaders like Datta Samant employed. We feel that we should also refer to a new phenomenon that is witnessed in some areas.

2.265 Exploiting the absence of units, belonging to the recognised Central Trade Unions, some adventurous individuals seek to acquire control over workers in the plant and enterprise by a mixture of tall promises and terrorisation. They recruit and rely on a band of supporters who are willing to resort to mafia methods to protect their leadership and grip on workers. In some cases, we have also been told that known anti-social elements enter the fray using such methods and using pockets organisation of workers as a means to extort money in the name of the workers. Such activities bring disrepute to authentic trade unions, and harm the real interests of the working class. We are sure that all

established trade unions which believe in recognised traditional methods of industrial action would want to prevent the spread and growth of such elements that will only weaken the working class and their authentic organisations.

EMPLOYERS' ORGANISATIONS

2.266 We must now make a brief reference to the growth of employers' organisations in India. Though regional trade or craft guilds, *mahajans*, *sammelans* or *mandals* were in existence in India before the advent of the British, the concept of modern Chambers of Commerce or employers' organisations was of British origin. In 1833, the East India Company withdrew from trading activities, and many British Agency Houses became pioneers in production lines like indigo, coal, silk, sugar and the like. There were also important organisations in the foreign trade of the country. In order to protect their business interests, British businessmen promoted Chambers of Commerce in Calcutta (1833), Madras (1836) and Bombay (1836). Initially, they were organised purely by British businessmen, though a few Indian businessmen were also allowed to be members. It is only after the 1880s that Indian businessmen too started organising independent business

organisations and engaging in competition with British business. Throughout the period between the setting up of the first chamber in 1833 and Indian independence in 1947, we find the division of employers' organisations or Chambers of Commerce into those composed overwhelmingly of British businessmen and those belonging to Indian businessmen. In the early part of the nineteenth century, Calcutta had the largest and most exclusive European community in Asia. British interests dominated banking, insurance, trade and industry in the city, and from the imperial capital at Calcutta they also controlled the coal fields of Bihar, Bengal, Assam and Orissa and plantations of tea, indigo and jute. Therefore, most of the trade associations like the Indian Tea Association (1885), the Indian Mining Association (1892), Calcutta Import Trade Association (1890), Jute Fabric Shippers Association (1899) were established in Calcutta. There was hardly any association established in Bombay in the 19th century. The Bombay Trade Association was formed only as late as 1902.

2.267 In order to protect Indian business interests, Chambers of Commerce and trade associations were formed by the Indian businessmen towards the end of the 19th century.

The first Chamber of Commerce, the Native Merchants' Chamber of Coconada, subsequently renamed as Godavari Chamber of Commerce was set up in 1885, the same year in which the Indian National Congress was established. In 1887, the Bengal National Chamber of Commerce was established in Calcutta. A.O. Hume, founder of the Indian National Congress helped to draft the constitution of the Chamber. Prominent Congress-men were elected as its honorary members. In 1907, the Indian Merchants' Chamber was formed in Bombay. There were many areas of conflict between British business interests and Indian businessmen. Business or employers' organisations in these two camps continued to represent and safeguard the respective interests of their members.

2.268 Two factors contributed to the development and growth of Indian chambers. Early in the twentieth century the Swadeshi Movement came to be intensified in the country, and Indian companies had a stake in the struggle. Through their chambers they participated in this national movement against the use of imported goods. As a sequel to this movement, Lord Morley sent a despatch to the then British Government in India, and refused to permit the use of state funds for matters like setting up Departments of

Industries and Public Sector Development. No promotional activity was visualised by the state. As a result of this attitude of the then British Government, Indian Chambers of Commerce aligned with the Indian National Congress and Congress leaders, and participated actively in the national movement.

2.269 In the early years of the British rule, Chambers of Commerce were given direct representation in state legislatures through the Indian Councils Act 1861, 1882, 1909 and the Government of India Act 1919 and 1935. Chambers of Commerce were given representation in the bicameral system. They had also representations in municipal councils. While British Chambers were given representation, Indian Chambers had to fight for securing representation in these bodies.

2.270 When India became free and a new Constitution was fashioned by the Constituent Assembly, such provisions for special interests were dropped.

2.271 In the 19th century British businessmen in India had formed Chambers of Commerce and when the need was felt, they formed an apex body called the Associated Chamber of Commerce and Industry in 1920.

Similarly, Chambers of Commerce of Indian businessmen formed the Federation of Indian Chambers of Commerce and Industry (FICCI) in 1927. Leading industrialists like Shri Purushottamdas Thakurdas, Lala Shriram, and G.D. Birla took the lead in organising the Federation. FICCI tried to become a body representing all types of interests associated with trade and industry. It also served as a body to help formulate the economic policies of the Indian National Congress. In 1931, Mahatma Gandhi addressed the Fourth Annual session of the Federation.

2.272 In 1941, all Indian Manufacturers Conference was organised at the initiative of Sir M. Visvesaraya and the All India Manufacturers Organisation was set up. In 1959, the Federation of Associations of Small Industries of India was formed at the initiative taken by the Ministry of Industry, Government of India.

2.273 During the 1970s, it was felt that entrepreneurs in the public sector too should have a representative organisation of their own. Therefore, a society was registered called 'New Horizons' in September 1970, and it was rechristened as the Standing Conference of Public Enterprises (SCOPE) in April 1973. It has continued to represent the business interests of public sector enterprises.

2.274 The Confederation of Indian Industry (CII) is of recent origin. Till the seventies there were two engineering associations operating at the All India level, – one the Engineering Association of India established in 1895, and two the Engineering Association of India established in 1942. In 1974, both these associations came together, merged their identities and formed an Association of Indian Engineering Industry (AIEI). Subsequently, the name of AIEI was changed to Confederation of Engineering Industry (CEI), and in 1992, the name was changed to Confederation of Indian Industry. CII now represents all types of industry interests in India.

2.275 The Employers Federation of India (1933), All India Organisation of Employers (1933) and the Indian Council of Employers are the apex bodies at the All India level to represent industry in labour management issues. Both Employers Federation of India and the All India organisation of Employers are registered under the Trade Unions Act 1926. These organisations together with SCOPE and AIMO send employers representatives to the ILO convention every year.

CHAPTER-III

INDUSTRIAL DEVELOPMENT & PROGRESS AFTER INDEPENDENCE

India has made considerable economic progress since its Independence. Most noticeable are the expansion and diversification of production both in industry and agriculture. New technologies were introduced in many industries. Industrial investment took place in a large variety of new industries. Modern management techniques were introduced. An entirely new class of entrepreneurs have come up with the support system from the Government, and a large number of new industrial centres have developed in almost all parts of the country. Over the years, the Government has built the infrastructure required by the industry and made massive investments to provide the much-needed facilities of power, communications, roads etc. A good number of institutions were promoted to help entrepreneurship development, provide finance for industry and to facilitate development of a variety of skills required by the industry as well as agriculture. The Government also followed a policy of encouraging indigenous industries and

provide them all facilities and encouragement. As a result, we have now a widely diversified base of industry and an increased domestic production of a wide range of goods and services. The index of industrial production has gone up from 7.9 in 1950-51 to 154.7 in 1999-2000. Electricity generation went up from 5.1 billion Kwh to 480.7 billion Kwh in the same period.

3.1 Particularly significant achievement has taken place in the field of agriculture. Between 1950-2000, the index of agricultural production increased more than four-fold. Between 1960 and 2000, wheat production went up from 11 to 75 million tonnes, and the production of rice increased from 35 to 89.5 million tonnes. We are now having a problem of plenty, with Government godowns overflowing with wheat stocks. This is not a mean achievement for a country that relied on imported food aid until the early 1960s. The credit for this green revolution goes to Indian scientists as well as to millions of Indian farmers, who wholeheartedly

cooperated with the Government, to make India self-sufficient in the matter of its food requirements.

3.2 This economic expansion contributed to a steady and impressive growth in India's GNP. With the exception of 4 years, India experienced a positive rate of growth. As a result, India's per capita Net National Product (NNP) in 1999-2000 was 2.75 times higher than that of 1951. The rate of growth before 1980 was 1.2% per capita. Thereafter, it grew at the rate of 2.4%, and between 1950-90, by 3.2% on average every year. Between 1993-94 and 1999-2000, it registered an average rate of growth of 4.8% per year.

3.3 A variety of promotional policies were followed by the Government to achieve this success. In the early years, Indian industry thrived within protective tariff walls. The policy was to encourage Indian industries and though foreign technical collaborations were encouraged, direct foreign investment in any corporate body was restricted to 40%. In 1991, this policy was changed completely and foreign majority investment was encouraged in a variety of industries, import restrictions were removed, customs tariff was brought down and the doors of the Indian economy were opened for foreign competition.

3.4 In this chapter, we will briefly trace the developments that took place in the field of industrial economic policy of India during these years. The year 1991 will now be regarded as a landmark in the economic history of India. Therefore, a more detailed review of the economic policies after 1991, and their effect on Indian economy has been attempted in the next chapter.

INDUSTRIAL POLICY AND INCENTIVES SINCE 1947

3.5 After India became independent in 1947, the country embarked upon an ambitious plan of industrial development and encouraged the setting up of new industries and the expansion of existing industries.

3.6 We may briefly recapitulate some of the steps that were taken to achieve these objectives.

3.7 PROTECTION TO INDIAN INDUSTRIES: India is probably one of the few countries in the world which used its import policy for the healthy development of local industries. Barring the first few years after Independence, the country was facing a shortage of foreign exchange, and because of this shortage, imports had to be restricted. Imports of consumer goods were, therefore, disallowed. A

good number of restrictions were put on the import of industrial goods, and the effort of the Government was to encourage the production of these goods indigenously. Local industries were encouraged to have foreign collaborations and to import the technical know-how needed to produce what was being imported into the country.

3.8 Levying higher tariffs restricted imports, and there was also a total or partial physical ban on the imports of such products. This gave a much-needed sheltered market for Indian goods, and many industries thrived within these protective walls. Initially, products produced by Indian industries were not of good quality. But as years went by, industries acquired experience in manufacturing and turned out quality products comparable with imported products. There was a continuous effort to improve quality.

3.9 During the Second and Third plans, the emphasis was on the development of capital goods industries. India wanted to make machines that helped to produce other machines. Therefore, greater emphasis was given to the development of machine tools, textile machinery, power equipment and so on. We were importing these mother machines, and the new effort was to

produce them in India, to achieve self-sufficiency. As a result of this policy, encouragement was given to import technical know-how and to enter into foreign collaborations to undertake manufacture of capital equipment locally. This gave further fillip to industrial development.

3.10 Protection from imports encouraged Indian industry to undertake the manufacture of a variety of products. There was a ready market for all these products. The Government also gave encouragement to industries to import parts and components that were required for indigenous production. The import policy was meant to serve two categories of importers - actual users and established importers. Actual users of imported raw materials or products were given preference over the category of established importers i.e. traders. Certain items that were scarce and not available were channelised through the State Trading Corporation, Mines & Minerals Trading Corporation and such other Government bodies. They arranged for the import of such products and distributed them to indigenous industries according to requirements. Thus, imports were strictly controlled by the import policy announced every year by the Government of India.

3.11 HIGH CUSTOMS TARIFFS: Apart from strict control over imports and the physical ban on the imports of many products, customs tariffs were raised in some cases to 200 to 300% on imported products. This gave protection to local industries. The price of local products was comparatively cheaper than those of imported goods. The Government also followed a policy of low tariffs on the import of raw materials, parts and components compared to those on finished products. This encouraged Indian industries to import parts and components, and to manufacture or assemble final products in India.

3.12 FINANCIAL INFRASTRUCTURE: To provide the financial infrastructure necessary for industry, the Government set up a number of development banks. The principal function of a development bank is to provide medium and long-term investments. They have to also play a major role in promoting the growth of enterprise. With this objective, the Government of India established the Industrial Finance Corporation of India (IFCI) (1948), Industrial Credit and Investment Corporation of India (ICICI) (1955), Industrial Development Bank of India (IDBI) (1964), Industrial Reconstruction Corporation of India (1971), Unit Trust of India (UTI) (1963), and the Life Insurance

Corporation of India (LIC) (1956). For financial assistance to small entrepreneurs, Finance Corporations were established in all states on the basis of an Act that was passed by Parliament in 1951. In addition to this, the National Small Industries Corporation was also established at the Centre and a Small Industries Development Bank of India was established in 1989.

3.13 CONTROL OF INDIAN BUSINESS: As a consequence of the restrictions on imports, those who were importing products entered into collaboration with their principals and entered the field of manufacturing. Thus, what was once a trading community, gradually transformed into a community of industrialists.

3.14 Regulations under the Foreign Exchange and Regulation Act (FERA) restricted foreign investment in a company to 40%. This ensured that much of the control in companies with foreign collaboration remained in the hands of Indians. To succeed, Indian businessmen had to learn and apply modern management and production techniques.

3.15 ENCOURAGEMENT TO SMALL INDUSTRIES: Though some of the policies of the Government resulted in inhibiting the growth of large-scale

industries, they gave encouragement to small-scale industries by providing a number of support measures for growth. Policy measures undertaken by the Central and State Governments addressed the basic requirements of the SSI like credit, marketing, technology, entrepreneurship development, and fiscal, financial and infrastructural support. These promotional measures covered:

- a) Industrial extension services through small industries service institutes and other organisations.
- b) Factory space in industrial estates through cooperative and other industrial estates, ready built shades and developed industrial plots made available through State Government agencies.
- c) Credit facilities at concessional rates of interest and credit guarantees through commercial banks and State Finance Corporations.
- d) Special financial assistance schemes at concessional rates of interest and low margins for technician entrepreneurs.
- e) Availability of indigenous scarce raw materials through special quotas and imported materials through import licenses.
- f) Provision of training facilities.
- g) Subsidised power tariffs and exemption of electricity duties.
- h) Supply of local and imported machinery on hire purchase basis.
- i) Assistance for domestic as well as export marketing.
- j) Special incentives for setting up units in backward areas.
- k) Differential central excise levies for the small-scale sector.
- l) Preference for products produced in small-scale industries and 15% price preference to them in State Government purchases.
- m) Reservation of products for exclusive manufacture in the small-scale sector.
- n) Creation of a large number of institutions both by the State Governments and the Central Government to help small enterprises.
- o) Special effort to promote new entrepreneurs by providing them training in entrepreneurship development.

3.16 While most of the institutional support services and some incentives were provided by the Central Government, the State Governments offered others in varying degrees to attract investments and to promote small industries.

3.17 INVESTMENT IN INFRA-STRUCTURE: Energy-Transport-Communications facilities are extremely essential for smooth and accelerated industrial growth. The Government made huge investments in providing such infrastructure facilities to industries. The Central Government, as well as the State Governments invested huge funds in power generation and distribution, and many new power

projects were undertaken and completed. Similarly, investments were made in road building, communications, creation of port facilities etc. Apart from this, various State Governments made developed plots of land or industrial estates with power, water, roads, and communications available to entrepreneurs who wanted to set up industries. This helped considerably in the growth of industries.

3.18 Changes in the production of primary commercial energy since 1950-51 are summarised in the following table:

Table 3.1

Production of Commercial Energy

Form of energy	Unit	1950-51	1990-91
Coal	Million tonnes	33.00	211.73
Lignite	Million tonnes	-	14.07
Crude oil	Million tonnes	0.26	33.02
Natural gas	Million cubic mets	-	17,998.00
Thermal power	Billion Kwh	3.00	186.45
Hydro power	Billion Kwh	2.52	71.54
Nuclear power	Billion Kwh	-	6.24

3.19 Oil and natural gas emerged as significant sources of energy since the eighties.

3.20 The pattern of sectoral consumption has also undergone noticeable changes over the years as can be seen from the following table:

Table 3.2
Shares Percentage in Final Energy Consumption

Sector	1953-54	1990-91
Industry	39.8	50.4
Transport	46.2	24.5
Domestic	9.9	13.8
Agriculture	1.7	9.0
Others	2.4	2.3
Total	100.0	100.0

3.21 Power shortages caused by substantial shortfalls in achieving power targets have been a recurring theme from plan to plan.

3.22 OIL AND NATURAL GAS: The Oil and Petroleum industry must be considered a gift of the planning era. The indigenous oil exploration programme gained credibility in the seventies. New sources of oil were discovered, and considerable refining capacity was created. The Oil and Natural Gas Commission was set up for oil exploration. Additional refining capacity was created through the expansion of some of the existing

plants, and the commissioning of new refineries.

3.23 TRAINING AND SKILLS DEVELOPMENT: Trained manpower is necessary for industrial growth. To cater to the growing needs of industries during the last fifty years, the Government set up a large number of industrial training institutes, all over the country to train skilled workers. It also set up Indian Institutes of Technology, Management Institutes and Engineering Colleges to train persons with higher management and technical skills.

3.24 Our youth have been quick at learning skills. We have therefore had no shortage of skilled manpower to cater to the growing requirements of industry.

3.25 **SCIENTIFIC RESEARCH** : Research in science and applied technology is very much needed in order to sustain technological development in industries. The Government of India set up 48 national laboratories to undertake applied research in chemistry, physics, electronics, botany, etc., and these research institutes developed a number of new processes which are commercially exploited by industries. Indian scientists and technologists also ushered in the Green Revolution, and the White Revolution, and developed space technologies on their own.

3.26 **BACKWARD AREA DEVELOPMENT:** Before Independence, industries were mostly located in and around port cities like Mumbai, Kolkata or Chennai. After Independence, new centres of industries were developed as a result of the infrastructural facilities that were made available by the State Governments. Baroda, Coimbatore, Bangalore, Pune, Hyderabad, Faridabad, Rajkot, and many others, grew up as new industrial cities.

3.27 Both the Central Government

and the State Governments followed a deliberate policy of encouraging industries in backward areas. The Central Government selected a few backward districts and offered 25% capital subsidy for industries set up in these areas. Various State Governments also offered similar capital incentives, exemption from sales tax levy, subsidies on power rates, cheap developed land, sales tax, loans and other facilities for the growth of industries in these areas. This considerably helped the growth of under developed or backward areas in the different states.

EMPHASIS ON PUBLIC SECTOR

3.28 Right from the beginning, the planners attached great importance to the public sector. It was expected that the sector would control the 'Commanding heights of the Indian economy.'

3.29 In the Industrial Policy Resolutions of 1948 and 1950, a very important role was assigned to the public sector. Power, telephones, communications, atomic energy, defence industries and some areas were reserved for the public sector. Certain industries like life insurance, civil aviation, banks were nationalised and were included in public sector. Thereafter, whenever there was a

shortage, the Government stepped in to bail out, as it did with the cement and paper industries. The Government took over sick industries to provide employment. That is how a large number of textile industries came into the public sector.

3.30 Upto the year 1999, there were 235 public sector undertakings and the Government had invested an amount of Rs. 273700 crores in such undertakings. In 1998-99, they made a gross profit of Rs. 397.7 crores.

EVOLUTION OF INDUSTRIAL POLICY IN INDIA

3.31 Before Independence, the policy of the British Government was against encouraging industrial development in India. No incentives were offered to Indian industries for their growth. There were many desired and undesired hurdles placed in the way of the growth of Indian industry. Whatever industrial development took place in India was in spite of the negative and hostile attitude of the British Government. Credit must be given to pioneers like Jamshedji Tata, Walchand Hirachand, Lala Sriram, G.D. Birla and others, who laid the foundations of modern industry in India.

3.32 AFTER INDEPENDENCE :

Immediately after Independence, the Government of India announced its industrial policy in 1948 and laid down the plan for future industrial growth in the country. It also declared its policy on foreign capital in 1949, and invited foreign capital for investment in the country. The Government was keen to dispel the apprehension that foreign enterprises may be taken over.

3.33 INDUSTRIAL POLICY RESOLUTION, 1948: The first Industrial Policy Resolution, announced in 1948, broadly laid down the objectives of the Government's policy in the industrial field and clarified industries and enterprises into four categories, namely:

- a) Those exclusively owned by the Government, e.g. arms and ammunition, atomic energy, railways, etc.; and in emergencies, any industry vital for national defence.
- b) Key or basic industries, e.g. coal, iron and steel, aircraft manufacture, ship building, telephone, telegraphs and communications equipment except radio receivers, mineral oils, etc. The undertakings already existing in this group were promised facilities for efficient working and 'reasonable' expansion for a period of ten

years, at the end of which, the State could exercise the option to nationalise them.

- c) The third category of 18 specified industries were to be subject to the Government's control and regulation in consultation with the then provincial (now State) Governments.
- d) The rest of the industrial field was, more or less, left open to the private sector.

3.34 INDUSTRIAL (DEVELOPMENT & REGULATION) ACT, 1951: The Industrial Policy Resolution of 1948 was followed by a Government of India (GOI) Resolution on 2nd September 1948, constituting a Central Advisory Council of Industries under the chairmanship of the Minister for Industry.

3.35 In 1951, the Industrial (Development and Regulation) Act was passed by the Parliament. The main provisions of the Act were:

- a) All existing undertakings at the commencement of the Act, except those owned by the Central Government were compulsorily required to register with the designated authority.
- b) No one except the central Government would be permitted to set up any new industrial

undertaking "except under and in accordance with a licence issued in that behalf by the Central Government."

- c) Such a licence or permission prescribed a variety of conditions, such as, location, minimum standards in respect of size and techniques to be used, which the Central Government may approve.
- d) Such licenses and clearances were also required in cases of 'substantial expansion' of an existing industrial undertaking.
- e) The industries to be brought under regulation were divided into two parts, Part I and II in the Schedule to the Act.

3.36 In regard to the industries listed in Part I of the Schedule, the Central Government could issue necessary directions in respect of quality of its products, falling production, rise in prices etc.

- a) Government could transfer industries specified in one part to another.

3.37 IMPLEMENTATION OF THE INDUSTRIAL DEVELOPMENT AND REGULATION ACT, 1951 (IDR): The IDR Act gave very wide powers to the Government. This resulted in more or less complete control by the

bureaucracy on the industrial development of the country. They had full control over:

- a) approval of any proposal on capacity, location, expansion, manufacture of new products etc;
- b) approval of foreign exchange expenditure on the import of plant and machinery;
- c) approval for the terms of foreign collaboration.

3.38 INDUSTRIAL POLICY RESOLUTION, 1956 : After 1948, India adopted a democratic constitution, guaranteed fundamental rights and also enunciated certain directives of state policy. The Parliament accepted the socialistic pattern of society as the objective of social and economic policy.

3.39 A new Industrial policy was therefore announced in 1956.

3.40 This Industrial Policy divided industries into three categories. All basic and strategic industries were to be set up in the public sector, and were called category A type of industries. In category B industries were private enterprises who could participate along with public enterprises. This sector was called the joint sector. All remaining industries falling in category C, were left to be developed by the private sector.

3.41 The Industrial Policy of 1956, for the first time, emphasised the role of small-scale industries in the development of the national economy. The statement pointed out the importance of the SSI Sector in providing employment. It also laid emphasis on the equitable distribution of national income and the effective mobilisation of resources. The industrial policy, therefore, recommended the development of ancillary industries in areas where large industries were to be set up.

3.42 MONOPOLIES COMMISSION: In April 1964, the Government of India appointed a Monopolies Inquiry Commission "to inquire into the existence and effect of concentration of economic power in private hands." The Commission was requested to look at the prevalence of monopolistic and restrictive practices in important sectors of economic activity, the factors responsible for these and the legal solutions for them. The Commission looked at concentration of economic power in the area of industry, and examined industrywise and productwise concentration. The Commission also examined the concentration ratio. This Commission drafted a law to control monopolies and recommended the setting up of a permanent Monopolies and Restrictive Trade Practices Commission. On this basis, an Act was

passed and a Monopolies Commission was appointed by the Government in 1969.

3.43 INDUSTRIAL LICENSING POLICY INQUIRY COMMITTEE: In July 1969, an Industrial Licensing Inquiry Committee was appointed to examine the shortcomings in licensing policy. The Committee felt that the licensing policy had not succeeded in preventing the practice of pre-empting capacity by large houses; it had not ensured development of industries according to announced licensing policies; it did not prevent investment in non-priority industries etc. In 1969, the Monopolies and Restrictive Trade Practices Act (MRTP) Act was passed by the Government and following the report of Industrial Licensing Policy Inquiry Committee (ILPIC), a number of new restrictions were put on the large industrial houses in the industrial licensing policy announced in February 1970.

3.44 FERA AMENDMENT, 1973: The Foreign Exchange and Regulation Act (FERA) was amended in 1973. This brought a great change in the foreign investment policy of the Government of India. Foreign equity was to be permitted only in companies in Appendix 1 industries, or in those that were engaged in exports. Foreign firms were not allowed more than 40% of

equity. Only certain industries in the area of sophisticated technology were allowed 51% foreign capital. FERA companies were subject to many restrictions, and were not allowed to participate in certain industries. They were also not allowed to expand and take up production of new products.

3.45 INDUSTRIAL POLICY STATEMENT, 1973 : The Policy Statement of 1973 drew up a list of Appendix 1 industries to be started by large business houses so that the competitive effort of small industries was not affected. The entry of Competent Small and medium entrepreneurs was encouraged in all industries including Appendix 1 industries. Large industries were permitted to start operations in rural and backward areas with a view to developing those areas and enabling the growth of small industries around. A Secretariat for Industrial Approvals (SIA) was set up in November 1973, and all industrial licenses, capital goods, import licenses, terms of foreign collaboration were brought under the SIA.

3.46 INDUSTRIAL POLICY STATEMENT, 1977: The thrust of the Industrial Policy Statement of December 1977 was on effective promotion of Cottage and Small Industries widely dispersed in rural

areas and small towns. It emphasised that "whatever can be produced by small and cottage industries must only be so produced." The focal point of development of small-scale industries was taken away from the big cities to districts. The concept of District Industries Centres was introduced for the first time. Each district would have such a district centre which would provide all the support and services required by small entrepreneurs. These included economic investigation of the districts, supply of machinery and equipment, raw material and other resources, arrangement for credit facilities, call for quality control, research and extension etc.

3.47 Within the SSI sector, a new concept of tiny sector was introduced. It was defined as an industrial unit with investment in machinery and equipment upto Rupees one lakh, and situated in towns with a population of less than 50,000 according to the 1971 census. This tiny sector was to be given special attention and extended help, by way of provision for margin money assistance.

3.48 The policy statement considerably expanded the list of reserved items for exclusive manufacture in the small-scale sector.

This concept was recommended by the Karve Committee and was introduced in 1967 with 47 products. The list of such reserved items was 504 till 1977. The new policy expanded this list to 807.

3.49 ERA OF LIBERALISATION: After 1980, an era of liberalisation started, and the trend was gradually to dilute the strict licensing system and allow more freedom to the entrepreneurs. The steps that were taken in accordance with the policy included:

- a) Re-endorsement of licenses: The capacity indicated in the licenses could be re-endorsed, provided it was 25% more than the licensed capacity (1984).
- b) Automatic re-endorsement of licensed capacities (1988).
- c) Broad banding and selective de-licensing (1985-86) extended to 25 industries.
- d) Liberalisation of 31 May 1990. This policy included:
 - 1 Exemption from licensing for all new units and those having an investment of Rs.2.5 crores in fixed assets, and an entitlement to import upto 30% of the total value of plant and machinery.
 - 1 Investment of foreign equity up to 40% was freely allowed.

- 1 Location restrictions were removed.
- 1 Investment ceiling for small industries were removed.

3.50 Though the Government policies and procedures were aimed at industrial development of the country, the enactment of the IDR Act, procedures laid down for obtaining industrial licensing and various rules made under the Act acted as a great deterrent to the growth of industries in the country. The bureaucracy acquired unprecedented powers and authority over all kinds of industrial activities and industrial entrepreneurs felt that they were placed at the mercy of these bureaucrats. Apart from the IDR Act, there were a number of other Acts which were enacted and which acted as obstacles and retarded the industrial development of the country. Despite industrial licensing, an entrepreneur had to obtain clearance from many Agencies, like:

- (i) Secretariat for Industrial Approvals (SIA)
- (ii) Department of Industrial Development
- (iii) Chief Inspector of Factories
- (iv) Pollution Control Board
- (v) Director of Town Planning
- (vi) Department of Company Affairs

- (vii) Registrar of Companies
- (viii) Exchange Control Department of RBI
- (ix) Chief Controller of Explosives
- (x) Chief Inspector of Boilers
- (xi) Commissioner, Food & Drug Administration
- (xii) Director of Mines
- (xiii) Controller of Capital Issues
- (xiv) Chief Controller of Imports and Exports etc.

3.51 Thus, when the Government of India announced the new economic policy in July 1991, Indian industries were not competitive in the world market. We propose to deal with the consequences in the next Chapter.

3.52 Our industries were suddenly required to face international competition. It is no wonder that many of these industries allowed their foreign collaborators to take over, sold their interests or preferred to close down. Those who remained in the field are trying to downsize and reduce their operations. For the existing ones, it is becoming increasingly difficult not only to face competition in the world, but also competition at home with the products of multinationals, either produced in the country or imported from abroad.

CHAPTER-IV

IMPACT OF GLOBALISATION

Our Terms of Reference

Our terms of reference require us to examine “the emerging economic environment involving rapid technology changes, requiring response in terms of change in methods, 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 market needs.”

4.2 It is, therefore, necessary for us to examine changes that have taken place in recent years in the world, changes in our economy and in our economic policies and to study their impact on the economy in general, and industry and labour in particular. We propose to undertake this exercise in this chapter.

4.3 The terms of reference of our Commission do not ask us to undertake a detailed study of the compulsions that led to globalisation, the goals of globalisation and the

advantages we hope to derive from globalisation. Nor have we been asked to formulate any conclusions on how far the nation has advanced along the path that we had embarked upon, and how far the benefits we had hoped to achieve have accrued, or to attempt to formulate a social cost benefit balance sheet of the last ten years that have elapsed after liberalisation and globalisation. We have, however, been asked to study the scenario that has emerged after globalisation and the impact that it has witnessed, and the impact that is likely to be experienced in the field of industry, the “labour market”, employment, eligibility for employment, changing demands on skills for continued employment, industrial vocations and laws relating to employment and individual vocations. We therefore, propose to concentrate our attention on the impact, and the responses that are necessary to improve the competitiveness of our industry and economic activities, to ensure a regime of harmonious industrial relations, to ensure increasing opportunities of employment, to

ensure at least a minimum level of protection and welfare for workers in all sectors of the economy – organised as well as unorganised.

4.4 To begin with, we will look closely at the changes in policy that have come with liberalisation and globalisation. We will then look at some of the effects of these policies on industry, our enterprises, our workforce and industrial relations in the country. Our recommendations will be restricted to the areas of employment, skills and training necessary for acquiring and retaining employability and employment, healthy industrial relations and laws that can promote a harmonious industrial relations machinery for the speedy and just solution of disputes. For the rest, whatever we say in our review is only meant to outline the context and the factors that contribute to the dynamic nature of the context. We shall respect our terms of reference and refrain from drawing conclusions about the social desirability of these policies, and the extent of success that we have achieved.

Concept of Globalisation

4.5 Globalisation has become a dominant feature of the world economy over the last decade, as more and more nations are becoming integrated into the global economy through trade and capital flows.

4.6 The origin of globalisation can be traced all the way back to the period of colonisation in the 16th century. In fact some authors have said that if foreign trade and capital flows signify globalisation, the world we live in now has seen more globalisation between 1870-1914¹ than we are experiencing today. During those days, capital, trade and labour were all free to move from one country to another. Many have observed that in the globalisation that we see today, only capital is free; labour or human resources are not.

4.7 Similarly, Kevin O’Rourke and Jeffrey Williamson (1997)² say the evolution of 19th century Atlantic

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¹ Hirst and Thompson 1996

² Globalisation and History: Kevin O’Rourke and Jeffrey Williamson 1997

economy was marked by accelerated trade flows, capital movements and migration. They point out that after the First World War and during the inter war period, the world witnessed a dramatic reversal of this process. The authors have described this as de-globalisation that led to an increase in trade protectionism, a break down of international capital markets, and an end to easy migration.

A Brief History

4.8 If we want to trace the origin of the current wave of economic globalisation, one has to go back to the days of the Great Depression of the thirties. In order to avoid the recurrence of similar depressions, many American industrialists pleaded with the U.S. Government to ensure domestic American economy, has sufficient access to foreign markets and raw materials. U.S. Corporate leaders, with the help of the foreign affairs department of the U.S. Government, organised an independent body called the Council on Foreign Relations. This Council, with the help of the Rockefeller Foundation, produced about 682 confidential memoranda for the Government on various aspects of

foreign economic relations. This was before the Second World War.

4.9 Immediately after the Second World War, the U.S. gave massive Marshal Aid to Europe and procured most of the orders of post-war reconstruction for U.S. corporations. In 1954, a Bilderberg Group was formed in Europe at the initiative of U.S. multinationals. This group continued its dialogue with policy makers of different western countries on all economic issues. In 1973, at the initiative of David Rockefeller, a Trilateral Commission was formed in which were represented all the leading bankers in the world, top executives of multinationals, media barons, political leaders and policy makers. Japan was also invited to join this group. All these bodies – from the Council of Foreign Relations, to the Tri-lateral Commission, have undoubtedly influenced the thinking of policy makers in the world and have succeeded in putting across ideas of globalisation, liberalisation, privatisation, and the WTO.

4.10 During the Eighties, at the initiative of the U.S. Government, the Centre For International Private Enterprise (CIPE) and the

International Centre for Economic Growth (ICEG) were promoted to propagate ideas of privatisation and globalisation across the globe. They released a large number of publications and research studies, and seminars and discussions were held in different countries to promote these ideas. Multinationals needed new markets for their products, and they also needed access to new sources of raw materials. It will not perhaps, be wrong to say that these efforts paved the way for the globalisation, we see today. The World Bank and International Monetary Fund have also helped to speed up the process. In the name of stabilisation and structural adjustment programmes, these institutions forced many countries that were facing debt crises in 1980s to create conditions for liberalisation in the developing countries. Both these institutions continue to do even today. In the early 1990s, when most South Asian countries were heavily burdened by deficit and debt, they were forced to enter into agreements with the IMF and the World Bank to open up their economies to the world trading system. This process of outward orientation and free flow of capital and trade culminated in January 1995 when the World Trade Organisation (WTO) was established.

Definition of Globalisation

4.11 Different persons have defined the term "Globalisation" differently. Alan Rugman (2000) gives considerable importance to the role played by multinationals and therefore, he defines globalisation as "the world wide production and marketing of goods and services by multinational enterprises." Anthony Giddens and John Tomlinson argue that such a definition is too narrow. They believe that globalisation is multi-dimensional, best "understood in terms of simultaneous, complex related processes in the realms of economy, politics, culture, technology and so forth (1999). Anthony Giddens, Director of the London School of Economics (1999) feels that with globalisation, social relations are no longer local, but stretch across time and space. It is often said that a global capitalist culture is being promoted by the powerful multinational enterprises. This global culture is being further speeded up by global mass media and communication technologies.

4.12 There are many more definitions of globalisation. The Human Development Report of South Asia 2001 has defined globalisation as

“the free movement of goods, services, people and information across national boundaries. It creates and, in turn, is driven by an integrated global economy, which influences both economic as well as social relations within and across countries. The opening up of the economy increases competition internationally as well as externally, leads to structural changes in the economy, alters consumer preferences, life styles and demands of citizens.”

4.13 Thus, we can see that globalisation means different things to different people, and so, we have many definitions. We are basically concerned with economic globalisation which tries to integrate different economies of the world by removing barriers to trade and allowing free foreign investment across the national boundaries, free flow of private portfolio capital and international labour migration. It is in this context that we have to examine globalisation and its impact on the Indian economy.

In Favour of Globalisation

4.14 There is a vast literature advocating globalisation. Their main lines of arguments are: globalisation

promotes economic growth and prosperity to all nations. It promotes technology, creates more quality jobs for the community, the free foreign investment supplements domestic savings and encourages more investment in the community. The FDI – receiving countries are in a better position to benefit from international integration; increase in international trade is good for economic growth.

4.15 The main principles on which the entire theory of globalisation is based are as follows:

- 1 Sustained economic growth, as measured by gross national product is the path to human progress.
- 1 Free markets, without intervention from the Government, generally result in the most efficient and socially optimal allocation of resources.
- 1 Economic globalisation, achieved by removing barriers to the free flow of goods and money anywhere in the world, spins competition, increases economic efficiency, creates jobs, lowers consumer prices, increases consumers' choice,

increases economic growth and is generally beneficial to every one.

- 1 Privatisation, which moves functions and assets from government to the private sector, improves efficiency.
- 1 The primary responsibility of the Government is to provide the infrastructure necessary to advance commerce and enforce rule of law with respect to properly rights and contracts.³

4.16 Incessant propaganda on these lines has created an atmosphere in which anyone who doubts the benefits of globalisation, is looked upon as outdated.

Critics of Globalisation

4.17 While many Indian economists feel that the process of globalisation is irreversible and inescapable, many economists, scholars and thinkers in the western world do not feel so. They are highly critical of the process of globalisation and the inequalities that

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³ David C Korten: When Corporates Rules the World (1998)

it is likely to promote between the poor and developed nations of the world. A brief review of the comments made by some of the critics of globalisation is given below.

4.18 Alan Rugman (2000) feels that there is no globalisation; that it is a trial-based production in the United States, Japan and Europe. In major industries such as automobiles, consumer electronics, chemicals and petro-chemicals, pharmaceuticals, there is a very large amount of intra-industry, indeed intra-firm, trade and investment. According to him, business is not global. Michel Chossudovsky (1997) feels that globalisation and IMF and World Bank policies have ruined many countries and have only brought about the globalisation of poverty. David C Korten (1998) holds that in the name of globalisation it is the multinationals that rule the world today. Jerry Mander and Edward Goldsmith (1996) feel that the process of globalisation must be brought to a halt as soon as possible, and reversed. They have described free trade as a great destroyer. They feel that globalisation will destroy employment and local communities, that the third world is not likely to

benefit by this process, and that family community and democracy will have the last word. In a brilliant review of the international economic relations in the 20th century, Ian Clark (1997) argues how fragmentation of communities and countries are interlinked with globalisation. In their book, "Globalisation Unmasked" (2001) James Petras and Henry Veltmeyer have described globalisation as another form of imperialism and how American multinationals are benefiting through the process of globalisation.

4.19 Nobel laureate Mr. Joseph Stiglitz has described the present globalisation in the following words, "Needy nations are subject to (1) privatisation (2) free flow of capital (3) market-based price (4) free trade before extending financial loans by the World Bank. The U.S economy is fast collapsing; the entire world economic order is heading towards total bankruptcy; the world needs a complete review of economic order in terms of continental cooperation while preserving sovereignty of state nations."

4.20 The Human Development Report on South Asia 2001, released

by UNDP is perhaps the strongest critic of globalisation. This report is entirely devoted to the effect of globalisation in South Asian countries. The report comes to the conclusion that "during the globalisation phase about half a billion people in South Asia have experienced a decline in their incomes. The benefits of globalisation have remained limited to a small minority of educated urban population. As a result, income inequalities have increased." The report also concludes that South Asia, which is the home of the largest number of poor people in the world (515 million), did not make much progress towards poverty reduction as a result of globalisation. The balance sheet of gainers and losers in the globalisation process shows the uneven burden borne by the poor within and among the nations. The report comes to the conclusion that "the number of people in poverty have increased. The poor are being marginalized. The resource allocations to the poverty alleviation programmes are declining, reducing their effectiveness." The report also comments on the growth rates of countries in South Asia and says that in most countries growth rates are declining. All these make one wonder

whether globalisation has promoted growth and brought prosperity.

4.21 Dani Rodrik of the Harvard University in his book 'Has globalisation gone too far?' (1997) has argued that import liberalisation is not really essential for growth. He also feels that WTO is anti-democratic and that the world-trading regime has to shift from a market access to a development perspective. He suggests that globalisation is an outcome, not a pre-requisite of a successful growth strategy as evidenced from the experience of East Africa and China.

4.22 Mr. Kofi Annan, Secretary General of the United Nations is one of the critics of globalisation. Recently, after the meeting of the World Economic Forum in January 2002, he appealed to the rich countries to open their markets to labour intensive products from poor countries. He pleaded that developing countries be given a fair chance to export their products. At present, in the name of green box and blue box subsidies, agricultural products of developed countries are highly subsidised and such products enter the market of developing countries and compete with them. A recent article compares

the western cow with the Third World farmer. A farmer in a developing country has a small farm of not more than 2 acres and lives under a thatched or tin roof without electricity, without water and without sanitation. Normally, he does not receive any subsidy from the Government. On the other hand, in a typical American or European cattle farm, for each cow there is an area of 25 acres, and there are well-designed, well-lit cattle sheds with fans and showers. The European union gives an annual support of around 2735 million euros for milk and milk products and 4465 million euros for beef and veal, for an estimated 300 million dairy cattle. Such highly subsidised cattle products come to developing countries and compete with local products.

4.23 The collapse of the Energy giant Enron has exposed many of the weaknesses and the socially harmful effects of the global corporate system. We do not have to go into it in detail, but it has administered a severe shock, and created apprehensions about the potential for manipulation and deceitfulness demonstrated by mechanisms that were meant to assure accountability and keep vigil on behalf of the investor and

the public, the involvement of politicians who use power and access to cover up or connive at fraudulent practices etc. They have demonstrated total lack of transparency in corporate governance; a regime of greed and incompetence, fraudulent practices including the setting-up of subsidiary or auxiliary companies to siphon off mind-boggling sums of money, wilful violation of laws, connivance or cooperation of auditors in manipulating accounts, destroying documents to cover up trails, and so on. In mentioning these, we are only quoting from the comments of Western economists, analysts and investigators of the Government and the American Congress. These developments have therefore, had their impact on the credibility of global and American financial and industrial institutions, and the President of the U.S is currently engaged in a serious and massive exercise to restore credibility to the State, and the financial and industrial system and the system of corporate governance in the United States.

4.24 There are a number of instances where the developing countries are not given equitable treatment. WTO follows a policy of

green room consultancy, whereby only rich nations come together and take decisions. Developing countries have no option but only to follow these decisions. If a product from a developing country is competitive in the market, anti-dumping duties are levied or non-tariff barriers are used and access is denied to products of developing nations in the markets of developed countries.

4.25 We see that at the meetings of the WTO, the World Economic Forum and meetings of G7 nations, demonstrations and protests are organised against the policy of globalisation by NGOs from all over the world. At Seattle, Quebec, Geneva, Doha, such demonstrations were organised, and protests from developing countries were witnessed. In some places, the demonstrations were violent. At Genoa one demonstrator was killed in police firing.

4.26 These demonstrations, with the exception of Seattle, have not affected the working of international bodies and their meetings. In some countries, there is an occasional outburst of public ire against the multinationals. French farmers

attacked McDonald's shops in France and damaged them. But these stray incidents have not affected the process of globalisation.

Background of Economic Reforms in India

4.27 In this background let us see what have been the response of India to the winds of globalisation. Though other countries opened their economies in the 80s, and China in 1978, India continued with its protective policies till 1990. It was only in July 1991 that it embarked on the new economic policy and started making efforts to integrate the Indian economy with the world economy. Thus, the year 1991 has come to be regarded as a landmark.

4.28 Let us now examine, the nature of these reforms and their impact on the Indian economy.

4.29 During 1980s, India had a fairly good economic performance. But towards the last years of the decade, and particularly in 1990-91, Indian economy entered an unprecedented liquidity crisis. This was due to the combined effect of many factors. The economy of the Soviet Union and that

of most of the East European countries collapsed towards the end of the eighties. Some of them were India's major trading partners. The Gulf war in January 1991 resulted in rising oil prices and there was a virtual stoppage of remittances from Indian workers in the Gulf. As a result of these factors, India's credit rating in international markets fell considerably. In these markets, there was an erosion of confidence in the strength of India's economy. As a result, India found it difficult to raise funds in the international markets. What was more, there was an outflow of the deposits of Non-resident Indians from Indian banks. India was on the verge of default on external payment liabilities. It had to borrow from the IMF under the standby arrangements, and also borrow from the Bank of England by mortgaging the gold reserves of the country. Emergency measures had to be taken to restrict imports. Under these circumstances, it was felt that there was no alternative but to undertake drastic economic reforms.

4.30 This was the genesis of the economic reforms that started in 1991. Details of the package of economic reforms announced in 1991,

and subsequently from time to time, are given in the Appendix to this note. In the year 2001, we completed a decade of a policy of liberalisation and now the Government is seriously considering introducing a second generation of reforms.

Salient Features of Economic Reforms

4. 31 It may be useful to recount the broad features of the economic reforms:

- a) The Government opened major sectors of the economy which were so far reserved for the public sector to the private sector, e.g. telephone, power, infrastructure, defence, oil exploration, etc.
- b) Foreign investment was invited in all these sectors. Except agriculture and plantations, all sectors are today, open for foreign investments. The ceiling on foreign equity investment in corporate bodies at 40% was removed, foreign equity investment up to 51% to 75%, and in some cases, even 100% foreign equity investment was allowed. Even
- c) All restrictions on the entry of the private sector into the field of infrastructure and strategic industries were removed. Industrial licensing was done away with. There are only 9 industries now which need licenses. There is free pricing of shares, and there are no location restrictions.
- d) There is more freedom for financial institutions. They are free to charge any rate of interest depending upon the creditworthiness of a borrower, and they are also free to fix interest rates on fixed deposits. The concept of PLR (Prime Lending Rate) has been introduced in bank borrowing.
- e) By the cuts in CRR and SLR over a period of years, more funds have been made available by the RBI to the banks. Banks can also approach capital markets for raising funds.

- f) In order to provide adequate infrastructure, private capital and foreign investments have been allowed in such areas as construction of roads, ports, airports, telephone services etc.
- g) The Government wants to reduce its investment in the public sector enterprises, and efforts are therefore, being made for disinvestments in this sector. There is a separate Ministry of Disinvestments in the Union Cabinet.
- h) Import restrictions have been reduced. In fact, from April 2001, all quantity restrictions on imports have been removed. At the same time the rates of customs tariffs have been reduced over the last few years. India signed the WTO Agreement in 1994, and has accepted the commitment to liberalise its trade regime under this agreement.
- i) Subsidies are being cut, tax rates are being reduced and the entire fiscal system is being streamlined.
- j) The office of the Controller of Capital Issues stands abolished, there is a free pricing of shares, and more powers are given to the SEBI.

Impact of Reforms

4.32 It is sometimes said that ten years are not long enough to evaluate the impact of economic reforms that involve many structural changes in the economy. But it can also be said that 10 years is 20% of the period after Independence, and are long enough to warrant a steady assessment of the impact on different sectors of the economy and the progress that we are making towards our social and economic objectives. Let us, therefore, examine a few areas, where the new economic reforms have created an impact.

Growth in the National Product

4.33 The Table below shows the growth rate of India's GNP at factor cost at constant prices.

Table 4.1
Annual Growth Rate of Gross National Product at Factor Cost
 (New Series Base 1993-94)

S. No.	Year	At 1993-94 prices
1.	1980-81	7.3
2.	1981-82	5.8
3.	1982-83	2.6
4.	1983-84	7.5
5.	1984-85	3.9
6.	1985-86	4.9
7.	1986-87	4.1
8.	1987-88	3.6
9.	1988-89	10.1
10.	1989-90	6.7
11.	1990-91	5.5
12.	1991-92	1.1
13.	1992-93	5.1
14.	1993-94	5.9
15.	1994-95	7.2
16.	1995-96	7.5
17.	1996-97	8.2
18.	1997-98	4.8
19.	1998-99	6.5
20.	1999-2000	6.1
21.	2000-2001	4.0
22.	2001-2002 (estimated)	5.4

Source: Central Statistical Organisation, Government of India.

4.34 The average rate of growth in the GNP during the eighties i.e. from 1980-81 to 1989-90 was 5.6% per annum. Compared to this, the rate of growth in GNP for the post-reform decade (excluding 1991-92 as on year of exceptional crisis) comes to 6.3%. If we do not exclude the year 1991-92, the average growth rate for the decade comes to 5.8%. Thus, one can say that the post-reform growth has been at least marginally better than the average rate of growth achieved during the pre-reform period.

4.35 The growth rate of the Indian economy considerably decelerated in 1997-98 to 4.8% from 8.2% in the previous year. This might probably have been the result of the East Asian financial crisis.

4.36 According to the quick estimates of National Income for 2000-01 provided by the Central Statistical Organisation, the overall GDP growth decelerated from 6.1% in 1999-2000 to 4% in 2000-2001. This is because of the reduction in gross value added by both agriculture and industry in 2000-01.

4.37 What is significant is that unlike in the past decades when the growth rate of the GNP fluctuated widely from 7.5% in 1983-84 to 3.9% in 1984-85, then to 4.9% in 1985-86 and again to 3.6% in 1987-88, the growth rate of the GNP in the nineties has been far steadier. But, with reduction in GDP growth rate to 4% in 2000-01, and again increase of growth rate to 5.4% in 2001-02 (as per the advance estimates by CSO), probably, we are again entering the era of wide fluctuations.

4.38 Whether this stability in the GNP growth rate was the result of economic reforms may be a debatable issue, but the fact remains that the wide fluctuations in our national income growth have been curbed in the nineties.

Sectoral performance

4.39 The sectoral shares of GDP have been presented in Table 4.2

Table 4.2**Share of GDP at Factor Cost by Economic Activity**

(At 1993-94 prices)

(in percentage)

Economic Activity	1980-81	1990-91	1991-92	1994-95	1999-2000	2000-01	2001-02
Agriculture	41.82	34.95	34.17	32.94	25.20	25.25	25.54
Industry	21.58	24.49	23.97	24.15	27.91	25.72	23.92
(Manufacturing)	-	(16)	(16)	(17)	(17)	(17)	(16.84)
Services	36.60	40.56	41.86	42.91	46.89	49.03	50.54
	100	100	100	100	100	100	100

Source: Centrl Statistical Organisation, Government of India.

4.40 The share of agriculture in GDP fell by over 15.27 percentage points from 41.82% in 1980-81 to 25.54% in 2001-2002. This, however, has been the case all through the nineties. Between 1994-95 and 2000-2001, its share in GDP fell by 7.69 percentage points. It is only in 2001-02 this share has gone up from 25.25% to 25.54%.

4.41 The share of industry in the GDP has moved up marginally. From 1980-81, the share of the industry sector has moved up by 3.41% from 21.58% to 23.92% in 2001-02.

4.42 The service sector has gained at the expense of both industry and agriculture. This sector accounted for more than 50% of our GDP in 2001-2002. The share of the service sector has increased sharply from 36.60% in 1980-81 to 50.54% in 2001-02. The share of agriculture has gone down from 41.82% in 1980-81 to 25.54% in 2001-02. The share of industry has increased only marginally from 21.58% in 1980-81 to 24.99% in 2000-01. Industry includes mines and quarrying and electricity. If we consider only manufacturing, its share

appears to be more or less constant from 16% in 1991-92 to 16.84% in 2001-02.

4.43 The services sector has, in fact, gained at the expense of both. The sector accounted for more than 50% of our GDP in 2001-02. Thus the tertiary or the service sector has overtaken the industry sector. Its share has increased from 40.56% in 1990-91 to 51.54% in 2001-02 while that of the agriculture sector has declined from 34.95% in 1990-91 to 25.54% in 2001-02 and that of industry declined from 24.49% to 23.92%.

4.44 It is also interesting to look at the detailed break-up of various contributors to the services sector.

4.45 There are 3 broad components of the services sector: (a) Trade, hotels, transport and communications (b) Financial real estate and business services and (c) Community, social and personal services. These figures of real growth rates in GDP (at factor cost) are shown in Table 4.3.

TABLE 4.3**Sectoral real growth rates in GDP (at factor cost)**

ITEM	Percentage change over the previous year									
	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000 (P)	2000-2001 (Q)	2001-2002 (A)	N F Y P *
I. Agriculture and allied	4.1	5.0	-0.9	9.6	-2.4	6.2	1.3	-0.2	5.7	2.1
II. Industry	5.2	10.2	11.6	7.1	4.3	3.7	4.9	6.3	3.3	4.5
1. Mining and Quarrying	1.4	9.3	5.9	0.5	9.8	2.8	2.0	3.3	1.4	3.9
2. Manufacturing	8.5	12.0	14.9	9.7	1.5	2.7	4.2	6.7	3.3	3.7
3. Electricity, gas and water supply	-0.8	9.4	6.8	5.4	7.9	7.0	6.1	6.2	5.2	6.5
4. Construction	0.6	5.5	6.2	2.1	10.2	6.2	8.1	6.8	2.9	6.8
III Services	7.7	7.1	10.5	7.2	9.8	8.3	9.5	4.8	6.5	7.8
5. Trade, hotels, transport and communications	7.1	10.4	13.3	7.8	7.7	7.7	7.7	5.3	6.3	6.9
6. Financial, real estate and business services	13.4	5.6	8.2	7.0	11.6	7.4	10.6	2.9	7.5	8.0
7. Community, social and personal services	3.5	3.2	7.9	6.3	11.7	10.4	11.6	6.0	6.0	9.1
IV. Total GDP	5.9	7.3	7.3	7.8	4.8	6.5	6.1	4.0	5.4	5.4

A: Advance estimates; Q: Quick estimates; P: Provisional;

*: NFYP: Ninth Five Year Plan (1997-2002) annual average growth.

Source: Central Statistical Organisation Government of India.

4.46 From the above table, it is clear that the growth in GDP, which had reached 7.8% in 1996-97, has now, in 2001-02, come down to 5.4%. Thus, there is a fall of 2.4% in the rate of growth of GDP. While growth in the period before 1996-97 was concentrated in industry (9%) and agriculture (9.6%), in the second period from 1996-97 to 2001-02, it was concentrated almost entirely in the services sector (9.1%). Here also, if we go into further details, we find that the growth in the services sector is mainly because of community, social and personal services. This sector has grown at the rate of 11.7% in 1997-98, 10.4% in 1998-99 and 11.6% in 1999-2000. The main cause of this rise in growth was 40% rise in salaries and pensions to 19 million civil servants in the Central and State Governments. According to the National Income accounting which India follows, any growth in money incomes in this sector is treated as growth of real product. As a result, during the three years, community and personal services grew by an average of 11%. This had inflated the GDP growth in 1998-99 and 1999-2000 by 0.7% and by 0.4% in 2000-01. Can it be called a real growth?

4.47 Higher growth in the services sector is regarded as an indication of a prosperous modern economy. In most of the developed economies, the contribution of the manufacturing sector to GDP is low, and the contribution of the services sector is higher. In USA, the contribution of the manufacturing sector to the GDP is 19%, in UK, it is 24%, and in France, it is 22%. In all these countries, the manufacturing base is very broad, highly sophisticated, and the MNCs headquartered in those countries operate all over the world and earn profits and bring earnings into their country. This is not the case in India.

Our Problem

4.48 Higher growth in services income may be an indication of a prosperous modern economy, but the problem is whether the growth in earnings from trade, hotels and restaurants or, for that matter, from financing, insurance, real estate and public administration would be sustained unless income from industry and agriculture grows proportionately to support their prosperity.

4.49 The fear is that if the manufacturing sector and the agricultural sector fail to grow at a reasonable rate, the service sector may not only suffer, but also drag down the GDP growth.

Manufacturing sector

4.50 The manufacturing sector is very important for economic growth because

- a. it generates jobs and promotes more employment either directly or indirectly,
- b. it promotes exports of manufactured goods by value addition,
- c. it contributes considerably to fiscal growth. Our tax revenues are heavily dependent on manufacturing as central excise and customs duties contribute substantially to the exchequer.

4.51 It has a multiplier effect on the

economic growth of any country and it is a key link in the cycle of growth, employment, fiscal sustainability and poverty alleviation.

4.52 Unfortunately, as we shall see later in this chapter, the industrial sector has been very badly affected during the last few years and the slow down and loss of production and employment in this sector has, in turn, led to lower demand for consumer goods which has resulted in a general levelling down of all productive activities. The implementation of the new economic policy has hit this sector hardest. We will look at some reasons.

Control of Inflation

4.53 Maintaining a reasonable degree of price stability while ensuring an adequate supply of credit has all along been the objective of the monetary policy of the Government of India. The concern of the Government with inflation emanates not only from the need to maintain micro-economic stability in the economy, but also from the

fact that inflation hits the poor hard since they do not have any effective inflation hedges. Consequently, maintaining low inflation is a necessary part of an effective anti-poverty strategy of the Government

4.54 Taking the wholesale price index as an indication of inflation, one must say that after the announcement of the new economic policy, the Government has been successful in controlling inflation. In 1990-91, when the new economic policy was announced, the rate of inflation was 12%. In 1991-92, it was 13.6%. In 1992-93, it was 10%. Thereafter, the prices have been more or less steady. As compared to the eighties, the prices are almost under control. All types of consumer goods, and food grains are available. Instead of shortages, in many consumer goods markets, there is a competition and in fact discounts and cuts are offered to attract customers. Prices of many essential commodities have come down like that of mustard oil, moong, onions, potatoes, jowar, wheat, atta etc.

4.55 The point-to-point inflation rate according to the Wholesale Price Index

(WPI) for the week ending January 19, 2002 was 1.3%, which was the lowest in the last two decades. The fifty-two week average inflation rate declined from 7.0% at the beginning of the year to 4.7% for the week ending January 19, 2002.

4.56 Prices for the primary products group, comprising of essential commodities for daily use, remained moderate for much of the year, and have risen by 3% by 19 January 2002. Manufactured products group registered negligible price rise, indicating subdued demand for them. Last year, the products in the energy group such as fuel, power, and lubricants etc., many of which are imported had registered sharp rise in prices. But during the current year i.e. 2001-02, they have been stable and the inflation in this group is only 3.2% as compared to 31% last year.

4.57 The inflation rate as estimated by the consumer price index for industrial workers remained below 4% till July 2001 and rose to 5.2% in December 2001. The liberalisation policy can certainly take

some credit for keeping prices under control.

4.58 The Reserve Bank of India, in its latest report on Currency and Finance (2000-01), has come to the conclusion that 5% inflation is best for growth and a fall from that level can push the economy into a recession. The question RBI has raised is - is the present recession due to low rate of inflation? Should the rate of inflation go up to enthuse more economic activities? There is no agreement on this issue amongst academicians and policy makers. Nevertheless, the fact remains that the new economic policy has contained inflation in the country.

External Sector Management

4.59 As has been said earlier, the policy of economic liberalisation was introduced because the country was on the verge of default on its external payments liability in early 1991, and it had to borrow funds from IMF and from the Bank of England by mortgaging gold. After ten years, this picture is completely changed.

It has been observed that the strength of India's external sector management has turned out to be among the most noteworthy successes of the structural reforms undertaken since 1991.

Foreign Exchange Reserves

4.60 The Government was interested in augmenting the country's foreign exchange reserves, so that such an eventuality should not occur in future. Therefore, the entire policy of foreign investment was modified: emphasis was given on exports and foreign exchange earnings. These changes have paid dividends. In 1990-91, India had foreign exchange reserves of only Rs.4388 crores, just to take care of imports for two months. Now the country has foreign exchange reserves of Rs.2, 31,807 crores or \$ 48.11 billion (2000-01) which can provide more than 8 months import cover. If we compare this with the state of other countries, we see that foreign exchange reserves provide only 5 months import cover to Malaysia and Indonesia, about 7 months to South Korea and Thailand,

and about 9 months to China and Taiwan. On 30th December 2001, these resources touched a figure of 48.11 billion dollars. By the week ending 1 March 2002, we find that the reserves jumped by as much as \$ 299 million, and they stood at \$ 50.74 billion. This is a significant achievement of the new economic policy.

External Debt Position

4.61 After the introduction of the liberalisation policy in 1991, India's external debt has reduced from 41% of GDP in 1991-92 to 21% of GDP at the end of September 2001. The ratio of debt servicing to GDP has come down from 35.3% in 1990-91 to 16.3% in 2000-01.

4.62 In the global context too, India's indebtedness position has improved over the years. In terms of absolute levels of debt, it ranked as the third largest debtor country after Mexico and Brazil in 1991. Now, it is the tenth largest debtor country. For

the first time the World Bank has classified India as a less indebted country.

4.63 As a result of rising foreign exchange reserves, in January 2002 the Government announced that it was planning to prepay between \$ 500 million to \$ 1 billion of external debt during the course of this year.

Stagnated Exports

4.64 Immediately after the introduction of economic reforms, exports went up. But during the last few years, they have stagnated, and the trade gap has been increasing. This can be seen from the following table:

Table 4.4
Export and Imports of India

(Rs. In crores)

Year	Exports (incl. Re-exports)	Imports	Trade Balance	Rate of change (%)	
				Export	Import
1990-91	32553	43198	-10645	17.7	22.3
1991-92	44041	47851	-3810	35.3	10.8
1992-93	53688	63375	-9687	21.9	32.4
1993-94	69751	73101	-3350	29.9	15.3
1994-95	82674	89971	-7297	18.5	23.1
1995-96	106353	122678	-16325	28.6	36.4
1996-97	118817	138919	-20102	11.7	13.2
1997-98	130101	154176	-24075	9.5	11.0
1998-99	139753	178332	-38580	7.4	15.7
1999-2000	159561	215236	-55675	14.2	20.7
2000-01	203571	230873	-27302	27.6	7.3
2001-02 (April-Dec.)	154445	181753	-27308	5.0	4.6

Source: Economic Survey 2001-02

4.65 During April-August 2001, exports registered a negative growth of 2.3% over the same period last year.

4.66 In 1991-92, 1993-94, 2000-01 and 2001-02, exports went up at a higher rate than the imports. But in all other years, the rate of growth of imports has been much more than exports. As a result, the trade gap has increased from Rs.3810 crores in 1991-92 to Rs.27308 crores in 2001-02. Even after 50 years, Indian export composition remains classically "colonial," with primary commodities like tea, tobacco, iron ores, etc. still making up the bulk. The recent import-export policy emphasises a five-fold increase in agricultural exports including cereals and non-food exports such as flowers, herbs, fruits, etc. We have not been able to increase exports of manufactured goods on a significant scale. If the imports continue to increase and exports are stagnant, or are not growing, very soon we may face a situation where the country would have frittered away its foreign exchange reserves, and will face a problem of foreign exchange crunch.

4.67 Indian exports have remained stagnant at around 5% of the GNP for almost a decade.

4.68 The share of newly industrialised countries like South Korea, Hong Kong, Singapore, Taiwan etc., in world exports increased spectacularly from about 2% in 1971 to 7.2% in 1998. India's share in the world exports actually shrank from almost 3% in 1938 to 2.2% in 1950 to 1.1% in 1960 to 0.7% in 1970 and now in 2002 to about 0.5%.

4.69 If exports remain stagnant, the overall economic growth of the country is likely to be affected.

Comparison with other countries

4.70 Table 4.5 shows the comparable growth of exports of many developing countries from 1979 to 1999. From this one can see that the other developing countries have achieved greater success in driving up their share in world manufacturing exports, while we have not been able to do so.

Table 4.5
Exports - US \$ (Billion)

Country	Total Exports				Mfg. Exports
	1979	1990	1999	CAGR %	89-90 %
China	15.0	62.1	195.2	14	17
Thailand	6.3	23.1	58.4	12	14
South Korea	19.1	65.0	144.7	11	9
Mexico	15.1	40.7	136.7	12	17
Malaysia	12.0	29.4	84.5	11	17
Philippines	5.7	8.1	36.7	10	20
Singapore	17.9	52.8	114.7	10	12
India	9.9	18.0	36.6	7	9
Chile	3.8	8.4	15.6	8	11
Argentina	9.2	12.4	23.3	5	17
Brazil	16.7	31.4	48.0	6	6
Indonesia	16.9	25.7	48.7	6	13
Egypt	5.4	2.6	3.6	-2	8
World	2035.0	3346.0	5442.0	5%	

Source: World Bank 2000

Composition of our Exports

4.71 We have already pointed out that primary products still dominate in the composition of our export trade. If we look into the exports of manufactured products from India, Gems and Jewellery (Gems &

jewellery undergo a process change. Rough diamonds are imported; they are cut, polished and exported. Hence they are included in this group.), textiles, ready made garments, chemicals and leather goods account for over 75% of manufacturing exports.

Table 4.6

Proportion of exports in manufactured products

Item	Percentage
Gems & Jewellery	22
Textiles	28
Ready made garments	17
Chemicals & Products	8
Leather & leather products	10
Transport equipment	15

Source: Economic Survey 2001-02

4.72 Thus, there is a concentration of our exports amongst a few industry segments despite a diversified manufacturing base in the country.

This diversified base can be seen from the composition of India's manufacturing GDP from Table 4.7

Table 4.7**Composition of India's Manufacturing GDP**

Sector	% of Mfg GDP
Metals and metal products	16
Chemicals	15
Food, beverage & tobacco	13
Textiles	12
Machinery	11
Rubber, petroleum etc.	7
Transport equipment	7
Other manufacturing	5
Non-metallic products	5
Paper & printing etc.	4
Wood, furniture etc.	3
Leather & fur products	1
Total Gross Manufacturing	100

Source: Centre for Monitoring Indian Economy

4.73 But this diversification and the broad base of Indian manufacture are not reflected in our exports. This means that only a few manufactured products enter the export market. This is one reason why our exports are not growing.

4.74 These recent results and the overall performance of our export sector during the last decade show that the new economic policy has not succeeded in promoting exports on a sustainable basis and improving our international competitiveness.

Depreciation of Rupee

4.75 After the liberalisation in 1991, the rupee is continuously depreciating in terms of value with Dollar, Pounds, Mark and Yen. This depreciation has done little to increase exports or decrease imports. This in a way reflects the precarious position of our balance of trade. The following table indicates the erosion in the value of rupee over the years.

Table 4.8

**Exchange Rate of Rupee vis-à-vis selected currencies of the World
(Rupee per unit of foreign currency)**

Year	US Dollar	Pound Sterling	Yen	D. Mark
1980-81	7.90	18.50	0.037	4.18
1985-86	12.23	16.84	0.056	4.55
1990-91	17.94	33.19	0.128	11.43
1991-92	24.47	42.51	0.185	14.62
1993-94	31.36	47.20	0.291	18.74
1995-96	33.45	52.35	0.348	23.39
1997-98	37.16	61.02	0.303	20.96
1999-2000	43.33	69.85	0.391	22.84
2000-01	45.68	67.55	0.414	21.19
2001-02 April	46.78	67.21	0.37	21.45
June	47.00	65.88	0.38	20.46
Sept.	47.64	69.69	0.40	22.16
Dec.	47.91	68.98	0.37	21.81
March 7, 2002	48.79	69.69	0.37	22.05

Source: Economic Survey 2001-02

4.76 The rupee has depreciated significantly even after its devaluation in 1991. In the last ten years, the rupee went down from Rs.18 to a dollar to Rs.47.91 now. Initially, this gave the Indian exporter the edge to compete in the world market, but now exports appear to have stagnated even though the rupee is being depreciated month after month. After the terrorist attack on America on 11th September 2001, the rupee plunged to a low level of Rs.48.43 a dollar. The RBI had to inject \$ 165-175 million to check further fall of the rupee.

Foreign Investments

4.77 Another area where important developments have taken place after the announcement of the new economic policy in 1991 is the area of foreign investments. Before 1991, India had not been able to attract foreign investments in a big way. One of the objectives of the new economic policy was to bring about a change in this situation, and attract a large volume of foreign investments. The necessity of attracting Direct Foreign Investment has also been cited as a

compelling reason for reforms in the labour laws in our country. It is, therefore, necessary to look at the result of these on the economy and Indian industry.

Condition of IMF

4.78 In 1991, when the IMF and the World Bank decided to support India to tide over the crisis, they attached a precondition. The IMF saw to it that India accepted Article VIII of the Articles of Agreement of the International Monetary Fund. The clause reads, "No member shall without the approval of the fund, impose restrictions on the making of payments and transfers for current international transactions." This implies that anyone, whether domestic importer or foreign exporter, should be able to exchange domestic money for foreign currency to settle any transactions involving the sale and purchase of goods and services from abroad. It was only after India signed this Article of the IMF, that foreign funds and investments started 'flowing' or trickling in. India had to amend the Foreign Exchange

Regulation Act, and the FERA Amendment Ordinance was issued in 1993. The rupee was made convertible on current account. The Tarapore Committee which was appointed in 1997, recommended that India should open its convertibility on capital account. Foreign equity participation was allowed even without import of technology, foreign companies were allowed to acquire any Indian company, to invest 51% in a wide range of industries, hold 74% and in certain cases, even 100% investments in certain industries, hold immovable property in India, repatriate profit without conditions and restrictions, and so on. A good number of industries were opened up for foreign investments, and this list is being expanded almost every month. Recently in Feb. 2002, foreign investments up to 49% were allowed in the banking sector, and real estate was also opened for foreign investments. More than 50 notifications have been issued so far, providing concessions, opening new areas for foreign investments and so on.

Acquisitions of Indian companies

4.79 Since the Government of India permitted 51% shareholding by foreign companies, many FERA companies increased their shareholding from 40% to 51% or 74% through preferential allotment of shares. Such companies were allowed to allot their shares at reduced rates or the face value of their shares, instead of market rates, but when Indian Industries made similar requests, they were not acceded to. By purchasing shares of such companies at a concessional rate, the foreign companies, it was estimated at that time, made a straight gain of Rs. 8000 crores. But the Government of India was keen to invite foreign investors, and this windfall gain at the cost of Indian investors was ignored. Thus Cummins India took over Kirloskar Cummins Ltd., Sharp (Japan) took over Kalyani Sharp Ltd., Sulzer Corporation took over Sulzer India Ltd., Swedish Match Co. Ltd. took over Wimco, Whirlpool took over Kelvinator Ltd., Honda Motor Co. Ltd. took over Shriram Honda Ltd., and so on. Foreign collaborators first increased their shares from 40% to 51%, and

then took over the entire management of the company.

4.80 Apart from increasing the percentage of their shareholding, some foreign companies acquired Indian companies by buying controlling interests. Thus Coca Cola bought Parle Drinks, Hindustan Lever took over Tata Oil Co. Ltd., Brooke Bond took over Kisan Products, Lafarge took over the cement plant of TISCO and Raymond and so on. In fact, most of the expansion by some foreign companies like Hindustan Lever was because of mergers and acquisitions. Over a period of years, Hindustan Lever took over Kwality Products (Ice Cream), Vashisthi Detergents, Brooke Bond and Lipton, Tata Oil Co., Stephen Chemicals, Ponds, Modern Foods and so on. It is now the biggest company in India engaged in fast-moving consumer goods, with an annual sales turnover of Rs.12000 crores and a market capitalisation of Rs. 48,197 crores.

4.81 During the last decade, a number of Indian owned companies have gone into the hands of foreign investors. To mention only a few cases, DCM Daewoo was set up in

1992 as a joint venture between the Delhi based DCM group and Daewoo of Korea. DCM had initially an equity stake of 34% and it was the single largest shareholder. With increase in business, more funds were required which DCM could not find. Daewoo purchased DCM's stake, and also increased its stake in the joint venture. Subsequently, the name of DCM was dropped, and now the company is called Daewoo Motors India. South African Breweries Ltd. (SAB), the fifth largest brewery company in the world, has acquired Mysore Breweries Ltd, Pal Distilleries Ltd., Narang Breweries Ltd., and very soon, it may become one of the largest breweries in India. Thomas Cook Co. has taken over Travel Corporation of India; SOTC was taken over by a Swiss Travel Co., and now is named as Kuoni Travels; Nestle SA has now 100% stake in Excelcia Foods, earlier owned by Dabur India. German trading major Thyssen has taken over the steel division of textile giant Raymond. Sweden's Skanska Europe AB has acquired 100% ownership of its subsidiary Kvaerner Cementation India Ltd. Caterpillar USA acquired the earth moving

equipment division of Hindustan Motors Ltd., US based Pepsi owned snack food company Frito - Lay acquired Uncle Chipps, an Indian company. This list of Indian companies acquired by foreign companies is by no means exhaustive. It is only indicative of the trend.m

4.82 The general policy of the foreign companies appeared to be to eliminate their local Indian partners as soon as they cease to contribute either financially or managerially. Indian partners were earlier on the Board, and had a say because foreign companies wanted an entry into the hitherto unknown Indian market, and the Government also restricted foreign capital participation in a company, to 40%. But once the permission to a foreign investor was given for 51% capital participation in a company, and in many cases 74% and even 100% capital participation was allowed, foreign companies no longer needed any help or participation from Indian entrepreneurs or investors. Therefore, gradually the management of the

majority of foreign collaborated companies went into the hands of foreign investors.

Trends in Mergers & Acquisitions

4.83 The data presented in Table 4.9 reveal that in recent years, there is a substantial amount of growth in Mergers & Acquisitions activities in India. The total number of Mergers & Acquisitions (M&A) deals in 1999-2000 was estimated at 765 which is 162% higher than those in the previous year. In each month of the year, the number of approvals is going up. The amount involved in Mergers & Acquisitions more than doubled in 1999-2000 as compared to the previous year.

Table 4.9**Mergers and Acquisitions in India**

Months	No. of Deals			Amount (Rs. Crore)		
	1998-99	1999-00	2000-01	1998-99	1999-00	2000-01
April	25	33	29	1477	775	4051
May	29	61	39	1585	2477	1423
June	34	48	21	485	2873	675
July	11	77	26	238	3040	868
August	17	56	32	445	1307	2246
Sept.	21	72	47	1187	5784	998
October	18	63	NA	199	1182	NA
Nov.	20	41	NA	1699	2498	NA
Dec.	20	100	NA	780	6694	NA
January	24	65	NA	651	1107	NA
February	12	73	NA	474	4469	NA
March	61	76	NA	6851	4757	NA
Total	292	765	194@	16070	36963	10261@

@: April-September NA: Not Available

Source: Centre for Monitoring Indian Economy Reserve Bank of India, occasional papers, Summer 2000

4.84 As can be seen from the table, the mergers and acquisitions have gone up in 1999-2000 than earlier years. For the year 2000-01, data for

the full year are not available. From the limited available data, it appears that mergers account for around one fourth of total Mergers and

Table 4.10

Share of Mergers in Total M&As in India

Months	1998-99			1999-2000		
	Total No. of M&As	Number of Mergers	% share of Mergers	Total of M&As	Number of Mergers	% share of Mergers
April	25	18	72.0	33	15	45.5
May	29	5	17.2	61	17	27.9
June	34	6	17.6	48	12	25.0
July	11	3	27.3	77	12	15.6
August	17	2	11.8	56	20	35.7
Sept.	21	4	19.0	72	15	20.8
October	18	2	11.1	63	14	22.2
Nov.	20	12	60.0	41	16	39.0
Dec.	20	4	20.0	100	24	24.0
January	24	13	54.2	65	11	16.9
February	12	2	16.7	73	16	21.9
March	61	9	14.8	76	21	27.6
Total:	292	80	27.4	765	193	25.2

Note: Data are provisional

Source: Centre for Monitoring India Economy: Reserve Bank of India, Occasional Papers, Summer, 2000

Acquisitions deals in India. It implies that takeovers or acquisitions are the dominant feature of Mergers & Acquisitions activity in India. It appears that foreign companies are not interested in mergers because mergers generally take place between equals while acquisitions involve buying existing firms. They are, therefore, interested in acquiring Indian companies and eliminating the Indian management. This can be seen from Table 4.10

4.85 Another method of takeover that foreign companies are employing is to convert their joint ventures in India with a local Indian partner into Wholly Owned Subsidiaries (WOS). During the last decade this trend has been very much in evidence. The Government has been giving permissions for such conversion. This enables foreign companies to continue operations without adequate transparency. This also helps foreign companies to guard information even from financial institutions. The presence of an Indian promoter or

partner makes such operations impossible, and hence he has to be kept out.

4.86 The list of companies that have been given such permissions during the last decade is very long. To illustrate, we give below permissions given in July - September 2001, in Table 4.11

Table 4.11
Companies which converted joint ventures into fully
owned subsidiaries in July-Sept. 2001

Company Name	Earlier holding (%)	Additional investment (in Rs. Crores)
Otis Elevator	68.90	109.24
CLP PowerGen India	88.00	87.36
Organon Participations	50.43	85.83
Kvaerner Cementation India	64.38	24.78
Sara Lee Corporation	51.00	20.00
ITW Signode India	51.00	11.20
Miranda Amsaw	50.00	8.15
Scotia Finance Pvt Ltd.	75.00	7.46
Smiths Group	50.00	4.70
MSAS Global Logistics	90.00	3.50
Onesh Flora Pvt Ltd.	70.00	0.09
Altair Engineering India	70.00	1.04
Itochu Corp (I&D Logistics)	74.00	1.82
True Pack	80.00	0.48
Oriflame India	85.00	2.79
Meso Metal Ware	80.00	0.12
Schenectady India	97.59	0.40
Dirk India	75.00	0.00
Icelerate Technologies	90.00	0.38
Radiant Infosystems	51.00	0.24
Gladrema India	74.00	0.22
E-Gurkha	55.00	0.85
I dex Corporation	60.00	0.00
EDR Technology Resources	74.00	0.26
Cooperation India	80.00	0.04
Emery Worldwide India	80.00	2.27
USF Asia Group	51.00	0.10
Tech Enterprises	99.91	0.04
Astral Holding	90.00	0.10
AVL Medical Instruments	39.98	0.03

Source: Business Line, October 3, 2001

4.87 Apart from Mergers & Acquisitions and conversions into subsidiaries, in many cases the MNCs floated their subsidiary companies with 100% ownership to which most of their business was transferred with a total disregard for Indian shareholders. Some companies, like Honda, have undertaken manufacture of their products in competition with their erstwhile collaborator firms.

4.88 Thus the post-reform period has seen a flurry of activities on the mergers and acquisitions front. We quote from the report of the Centre for Monitoring Indian Economy in this respect:

4.89 "MNCs are on M&A rampage. Almost all the major sectors of the economy have witnessed the entry of MNCs. Instead of setting up fresh greenfield capacities, they have preferred to either acquire existing companies or existing capacities.

4.90 An increasing number of Indian corporates unable to withstand the fiercely competitive environment, have

found an easy and lucrative way out by selling their assets to MNCs. Ten years since the reforms had set in, we see the sell out to the MNCs as the fastest and most significant "globalisation" of the Indian business houses."

4.91 Whether the phenomenon of mergers and acquisitions is likely to provide the necessary dynamism to industrial investment and growth is a moot question that only the future will answer. But in the absence of a generalised improvement of economic activity and the growing competition from cheap imported goods and goods produced locally by MNCs in India, the Indian entrepreneurship has, as a consequence, gone into a state of stupor and indecisiveness. More and more Indian entrepreneurs seem to be feeling that it is difficult to survive against the multinationals whose resources cannot be matched. This has affected Indian entrepreneurs more than anything else. Not many Indian entrepreneurs now talk of expansion, diversion, and new projects. They talk more of downsizing, and if an opportunity comes selling the companies at the

earliest and getting out of the business. It appears that the self-confidence of Indian entrepreneur has been rudely shaken.

4.92 Most Indian companies seem to be selling their interests to their foreign principals. In some cases, it seems they were forced by circumstances, and in most cases, it seems they have done so willingly. There have been only a few exceptions such as Kinetic Honda, when Mr. Arun Firodiya, its Chairman, bought 51% interest of the Honda company of Japan; the RPG group refused to sell its 51% share to EMI in the Gramophone company of India Ltd.; Bajaj Electricals Ltd., have taken over the entire equity of Black and Decker Company. Tata Tea, acquired quite a few Tea plantation concerns and through acquisitions and mergers, has become a premier tea company in the world.

4.93 But these are exceptions. In most cases, Indian companies were taken over by foreign companies and the Indian management lost all control over these companies.

4.94 Now, after a decade, we learn that Mergers & Acquisitions activities in India by global companies will come under the scrutiny of the proposed competition law.

The Takeover Code

4.95 SEBI drafted a takeover code for mergers and acquisitions. This takeover code does not seem to have protected Indian companies from "corporate raiders."

4.96 According to this takeover code, the acquirer has to make a public offer for a minimum of 20% of the capital as soon as 10% ownership has been acquired. One can see how vulnerable the large Indian companies are. They are easy targets for foreign corporations looking for takeover. The following table shows the market capitalisation of some Indian companies in the period July 15-31, 2001 average, and the 20% amount required to make a public offer by another company who wants to takeover.

Name of the Company	Market capitalisation (July 15-31 average)	Amount required to take over (Rs.Crores.)
Tata Iron & Steel Co.	3463	692
Bajaj Auto Ltd.	2431	486
TELCO	1828	365
Mahindra & Mahindra	855	171
Shipping Corporation of India	901	180
India Cements Ltd.	480	96

4.97 As a result, the effort of many Indian managements has been to increase their share of equity and try to achieve majority control of the company. Suddenly, everyone has become vulnerable.

4.98 These minimum amounts required for takeover mean nothing to a foreign investor. A large MNC can perhaps acquire most of our large Indian companies.

Funds for mergers and acquisitions make up much of FDI inflows now

4.99 What is important is that the transnational companies seem to be more interested in consolidating their stakes in existing joint ventures in

India rather than investing in fresh greenfield projects.

4.100 The Mergers & Acquisitions (M&As), not new projects accounted for 35-40% of FDI inflows in 1998-99. Today, they may account for 50% of the total FDI that is coming into the country. This trend is seen the entire world over.

4.101 The ratio of the value of the cross border M&As to World FDI flows reached over 80% in 1999. M&As are particularly significant as a mode of entry in developed countries.

Concern of Mergers & Acquisitions

4.102 This brings us to the question of mergers and acquisitions vis-à-vis green field investments. The host

countries are apprehensive about foreign companies taking over local companies.

4.103 In a number of host countries, concern is expressed in political discussions and the media that FDI entry through the takeover of domestic firms is less beneficial, if not positively harmful, for economic development than entry by setting up new facilities. At the heart of these is the concern that foreign acquisitions do not add to productive capacity but simply transfer ownership and control from domestic to foreign hands. This transfer is often accompanied by layoffs of employees or the closing of some production or functional activities (e.g. R&D capacities). It also entails servicing the new owner in foreign exchange.

4.104 If the acquirers are global oligopolists, they may well come to dominate the local market. Cross-border M&As can, moreover, be used deliberately to reduce competition in domestic markets. They can lead to strategic firms or even entire industries (including key ones like banking) falling under foreign control, threatening local entrepreneurial and technological capacity building.

4.105 Concerns over the impact of cross-border M&As on host-country development arise even when M&As go well from a corporate viewpoint. But there can also be additional concerns related to the possibility that M&As may not, in fact, go well. Half of all M&As do not live up to the performance expectations of parent firms, typically when measured in terms of shareholder value. Moreover, even in M&As that do go well, efficient implementation from an investor's point of view does not necessarily mean a favourable impact on host-country development. This applies to FDI through M&As as well as to greenfield FDI. The main reason is that the commercial objectives of TNCs and the development objectives of host economies do not necessarily coincide.

4.106 The areas of concern transcend the economic and reach into the social, political and cultural realms. In industries like media and entertainment, for example, M&As may seem to threaten national culture or identity. More broadly, the transfer of ownership of important enterprises from domestic to foreign hands may be seen as eroding national sovereignty and amounting to

recolonization. When the acquisitions involve "fire sales" - sales of companies in distress, often at low prices considered abnormally low - such concerns are intensified."

One cannot brush aside this analysis made by the UNCTAD. Nor can we ignore what the Prime Minister of Malaysia said,

"... Mergers and acquisitions are making big corporations even bigger. Now many of these corporations are financially more powerful than medium sized countries. While we welcome their collaboration with our local companies, we fear that if they are allowed into our countries unconditionally they may swallow up all our businesses"⁴. (Mahathir, 2000, p.6).

4.107 The basis of concern is that M&As represent a change of ownership from domestic to foreign hands, while greenfield FDI represents lead to an addition to the capital stock. This leads to such worries as the extent to which M&As (when

compared to greenfield FDI) bring resources to host countries that are needed for development; the de-nationalisation of domestic firms; employment reduction; loss of technological assets; crowding out of domestic firms, increased market concentration and its implications for competition.

4.108 Two of our leading financial institutions, HDFC and ICICI, have large foreign holdings. Foreign investors now hold close to 63% of the equity in Housing Development Finance Corporation (HDFC). We are told that this is likely to go up to 70%. Foreign shareholding in ICICI has already neared the 49% ceiling. This is the maximum allowable overseas holding. With the permission of the RBI, this holding can ofcourse be increased as was done in the case of HDFC. Thus, HDFC and ICICI have turned more foreign than Hindustan Lever Ltd. Last year, Citibank had approached the Government seeking permission to acquire some banks in the country. Some have asked whether if the trend persists, even the State Bank of India, financial institutions like IDBI, HDFC, ICICI could be owned and controlled by American or Japanese corporates or

.....
⁴ (Mahathir, 2000,p.6) World Investment Report 2001 UNCTAD

entrepreneurs. This fear is unfortunately proving well founded. FII stake in SBI has reached 20% and on 5 March 2002, RBI has stopped fresh buying in order to avoid foreign controlling interest in the SBI. International capital travels across the globe, scouting for and in quest of profitable avenues of investments. Sentiments and emotional links are alien, and irrelevant in their scheme of things. Many foreign investment companies have huge resources. The market capitalisation of Bombay Stock Exchange is around Rs.4, 68,000 crores (\$120 billion). Only one FII, Fidelity Investment in United States has investible resources of more than \$300 billion. We do not wish to speculate on what can happen if such resources are given uncontrolled freedom of access and operation but the fallout may be dangerous.

4.109 The current stock market situation is ideal for acquisitions. Since the share prices are at the rock bottom, FIIs can acquire many Indian companies at throwaway prices. The FIIs will have enough scope to acquire controlling interests.

4.110 These overseas investors can manipulate and also create problems

for the Indian economy. Recently, the SEBI inquiry found out that the Overseas Corporate Bodies (OCB) had flouted RBI guidelines while investing in the country's bourses. Their limit of holding was exceeded, many deals were not routed through recognised stock exchanges and they were able, as reported, to siphon off Rs. 3500 crores in collusion with the broker Ketan Parekh. SEBI has now recommended a total ban on OCB investments.

4.111 With more Indian companies listed on foreign stock exchanges, including NYSE, Nasdaq, London Stock Exchange and Luxemburg Stock Exchange, acquisition of such companies by foreign companies through ADR/GDR swap route may be on the increase. The current low valuation of listed companies also makes it an opportune time for acquisitions through share swaps.

Impact of Foreign enterprises on Indian consumer markets

4.112 In the opening years after liberalisation, it was hoped that foreign investment would come in the infrastructure sector, and bring new technologies and hi-tech industries.

These hopes have been belied. Quite a few investors came to take over existing companies. Even for achieving the takeover, little funds have been brought from abroad. Limited Companies were floated in India, and after bringing in margin money, much of the necessary funds were raised from financial institutions in India. For instance, the entire takeover operations of cement companies by the French Company Lafarge was financed by the ICICI.

4.113 Secondly, foreign investment came in consumer goods and especially in the marketing of such consumer and luxury goods. ("India is first a market, then an investment destination" was a statement that one heard very often.) In many consumer goods industries, foreign companies organised their marketing in competition with Indian manufacturers. Coca Cola, Pepsi, Peter England, McDonalds', TCL, AG Electronics, Pizza Hut, Dominos' Pizza, are a few examples. As a result, many Indian companies had to pull down their shutters or were taken over. Indian companies did not have the financial strength to undertake aggressive marketing and make extensive use of electronic media. It is

a well-known fact that Parle was sold to Coca Cola because the annual turnover of Parle was Rs. 250 crores, while the media and publicity budget alone of Coca Cola in India was something of the order of Rs. 400 crores. It was obvious that it was beyond the competence of Parle to compete.

4.114 Many areas in which foreign companies have entered are areas of low technology. For example, Coca Cola, Pepsi, Nestle, Hindustan Lever, have all entered the business of manufacture and distribution of mineral water. In fact Hindustan Lever is considering bottled water business as a possible future growth engine. Britannia is looking for buying of Indian companies in lassi, cold coffee, and fast food segments. In the process some smaller Indian companies are being eliminated. There will be no gains to the country in technology. While some Indian companies like Amul, Nirma, Nirulas' are growing in spite of the foreign competition, many are badly affected.

4.115 Thus, the new economic policy seems to result in the closure or disappearance of many Indian companies, especially those engaged

in consumer goods industry. Some may say this is survival of the fittest, and consumers now get a better product. But in the process, India seems to be losing the indigenous breed of entrepreneurs and innovators who once played an important role in developing Indian industry.

100% Foreign Equity Projects

4.116 It appears that the days of importing technology and collaborating with a foreign company are over. Since a foreign company can export its goods freely to India, manufacturing in India is probably a second consideration for such a company. Nearness to the market and volume of sales are important considerations, and on that count, if a foreign company decides to undertake manufacturing in India, the company prefers to go it alone with 100% foreign equity without joining hands with any Indian manufacturer.

4.117 According to a recent survey conducted by the CII, the extent of 100% foreign ownership was the highest in cases where the FDI amount was Rs.500 crore and above.

Delisting by MNCs

4.118 During the last few years multinational companies have started acquiring the entire equity of their Indian subsidiaries through open offers and then delisting from the stock exchanges. A company normally seeks listing for raising capital, while none of these MNCs need Indian capital. Historically low prices of shares over the last one-year or so makes buying back very attractive. MNCs want total control of their subsidiary so that they are comfortable while using their proprietary technology or while introducing new brands or incurring more R&D expenses in their Indian operations. Facilitating the delisting process are government policies which now allow wholly owned subsidiaries to operate in India as well as the SEBI guidelines which allow an open offer and an easy exit.

4.119 About 24 companies have already been delisted and according to one estimate, 90 more such cases may follow suit.

4.120 Among the major companies which have exercised the share buyback option are Cadbury (Rs. 875

crore), Philips (Rs.115 crore), Carrier Aircon (Rs.115 crore), Otis Elevator (Rs.109 crore), Industrial Oxygen (Rs.104 crore), ITW Signode (Rs.90 crore), Wartsila Diesel (Rs.71 crore), Rossel Industries (Rs.61 crore), Sandvik Asia (Rs.42 crore), Infar (Rs.42 crore).

4.121 Though we boast of nearly 10,000 listed companies on our stock exchanges, only a couple of hundred of these are traded regularly. Among them, the shares of MNCs are regarded as blue chips. With their exit, the markets will be poorer. The Indian shareholders will no longer be able to participate in the prosperity of these MNCs. We are told that many countries do not allow foreign investors to exit in this fashion.

Inflow of Foreign Investment

4.122 While the tiger economies have got over the Asian currency crisis and have moved ahead, India seems to be back to where it was in 1994. During 1994, India's share of the \$ 104.920 billion FDI flow into developing countries was 0.9% - \$ 0.973 billion. Five years later, in 1999, India's share remained at 1% - \$ 2,168 billion out of the \$ 207.619

billion FDI flowing into developing countries. From 1997, India's share is declining and has come down from 2% in 1997 to 1% in 1999.

4.123 The most quoted example of FDI windfall is China, which has now moved to a level where there is no comparison with India. From 1996 to 2000, China has been attracting FDI of \$ 40 billion every year.

4.124 The total FDI inflow into India during the entire 1990s does not match what China attracted in any one of these four years. (Some reasons have been mentioned elsewhere)

Cost of foreign capital

4.125 One must look at the cost of foreign capital to the country. One should also weigh the advantages of foreign equity versus foreign borrowings.

4.126 The outflow by way of profits and dividends on the one hand, and interest on the other, reflect the burden that they impose on the balance of payments. Equity is not designed in foreign exchange and as such profits and dividends are not

subject to exchange fluctuations. Further, some dividends are reinvested and not all of it may get remitted abroad. On the other hand, the full interest on commercial borrowings has to be remitted subject to the change in the exchange rate. It is worthwhile to undertake a study of foreign investments coming to India and draw a balance sheet of net gain or loss.

The China Scenario

4.127 Quite a few of the representatives of employers' organisations that appeared before the Commission, and some other witnesses from the same milieu extolled the progress that China is reported to have achieved in attracting foreign direct investment, in increasing the volume and variety of production, in competing successfully in the world market because of the low prices of its products, the low cost of production and the total co-operation that foreign owned enterprises or joint ventures received from the Government in China. Many of them gave the impression that the State did not come into the picture at all, that it imposed no restrictions, that its role and interest were only promotional, that it only performed the function of a

facilitator for industry, particularly entrepreneurs and management of industry; that it was therefore, easy for any entrepreneur to go to China and set up enterprises, and benefit from the conducive atmosphere. Some of them told us that China could attract such high FDI (200 billion \$ compared to 20 billion \$ of India) in the last decade because China had liberal labour laws, and not rigid labour laws as in India. They therefore, argued that India could attract FDI or improve the performance of its industries only if Indian labour laws were 'liberalised' as China had done. Some of them asserted that in China, any entrepreneur, including a foreign entrepreneur had the freedom to start or close down an enterprise; to hire or fire an employee, and the state did not come in the way. Some also told us that the Special Economic Zones were exempt from Labour laws, and these zones were exempted from the jurisdiction of the Central Labour Laws of the People's Republic of China. They therefore, argued that India too should exempt Special Economic Zones from the jurisdiction of our Labour Laws. The fact that so many representatives of employer's organisations made such statements

or demands, gave us the impression that this reflected the understanding that prevailed in the minds of many big and small entrepreneurs in the country. We therefore, felt it necessary to acquaint ourselves more fully and authentically, with the situation of state of relevant labour and Industrial Relations Laws in China. We therefore, visited China to undertake a study. We are very grateful to the Government of the Peoples Republic of China, particularly, H. E Mr. Zhang Zuoji, the Minister for Labour and Social Security and H.E. Mr. Li Qiyuan, Vice Minister for Labour and Social Security for inviting us to China to study these questions. The Ministry was kind enough to arrange our visits and give us opportunities to meet and discuss with the Hon. Vice Minister H.E. Mr. Li Qiyuan (since the Hon. Minister Zhang Zuojai was visiting India at that time), the Vice-Chairman of Finance & Economy Committee of NPC, Mr. Yao Zhenyan and Acting Director General, Department of International Cooperation, Mr. Liu Xu. A representative from the Chinese Ministry of Labour and Social Security acted as our interpreter throughout these discussions. At some of the discussions, a senior member of our Diplomatic Mission was also present.

Misconceptions about Chinese Laws

4.128 What we could do was of course affected by the shortness of the duration of our visit, and the programme that was organised by our hosts, taking into consideration the duration of our visit, the vastness of China and other factors. We could not therefore, get an opportunity to visit individual factories or enterprises in the rural areas or talk to individual workers or agricultural workers or artisans or craftsmen, or those engaged in such undertakings. We do not therefore, propose to make any observations on the conditions in these areas. We will confine our observations to what we could understand from authoritative and authentic sources about labour laws and laws that relate to industrial relations, and that too, to the extent that is necessary for our Report.

4.129 First of all, we must state categorically that we were told by all the authorities whom we met that the Central Labour Law were applicable to the whole territory of the People Republic of China, that there were no areas or zones or industries or enterprises that were exempted from

these laws – or where any relaxation was permitted in these laws.

4.130 We raised this question with the Ministry, the ACFTU, and the Chamber. and the authorities in Provinces and Special Zones we visited (Shenzhen). All of them gave us the same answer, in reply to our repeated questions. Provinces and local bodies have the right to issue Regulations but all these Regulations wherever they are promulgated have to be in conformity with the National Law. All regulations, etc. have validity only within the four corners of the National Law we were therefore told that there were no special laws or relaxations for the Special Economic Zones, or the 'foreign invested ventures' or joint ventures.

4.131 Someone can say that our national experience and observation of what happens even in regimes that believe in strict enforcement of laws tell us that laws can be circumvented through connivance or corruption or connivance induced by corruption. We can make no comment on whether there are cases of laws being circumvented in this fashion in China.

4.132 Secondly, we should scotch

the idea, if anyone is naïve enough to entertain it, that any entrepreneur can go to China and establish or close an enterprise without the knowledge or approval of the Government. It is naïve because everyone knows that there are restrictions that every sovereign state imposes on the entry of foreign nationals within its territories (it seeks to know the reasons before issuing the necessary visa) and the activities of foreign nationals within its territories.

4.133 Thirdly, there are detailed "Regulations" laid down to regulate employment plans, recruitment, the signing of labour contracts with individual employees, the signing of collective contracts with Trade Unions in the enterprise, conditions for "firing," for retrenchment, responsibility to provide basic living allowance, etc., to the laid off and retrenched etc. For instance, we can refer to the Shanghai Municipal Regulations of Labour and Personnel Management in Foreign Invested Enterprises.

4.134 Article 1 says that "This Regulation is formulated in accordance with the Labour Law of the PRC and with other relevant laws and legal regulations, and taking into account

the practical conditions and situations of Shanghai, for the purpose of strengthening labour and personnel management in foreign invested enterprises in Shanghai and promoting development of the foreign invested enterprises.”

4.135 Article 2 says that “This regulation is applied to all the foreign invested establishments in the Shanghai Municipality and their staff and workers.

4.136 Foreign invested enterprises, this regulations points out, are joint ventures using Chinese and foreign investment, Chinese and foreign Cooperative enterprises, and exclusively foreign invested enterprises.

4.137 Article 3 makes it clear that “The foreign invested enterprise must set up and institutionalise relevant regulations according to the law in order to secure labour rights for and labour responsibilities of its staff or workers.”

4.138 Article 4 provides that “the foreign invested enterprise can determines on its own organisation structure and personnel system in accordance with the need of

production and business operation. The employment plan which the foreign invested enterprise has adopted is to be filed with the relevant labour and personnel departments and to be implemented under the guidance of departments.”

4.139 Article 5 talks of methods or procedures for recruitment of staff. It says that “technicians, managing personnel and skilled workers whom the foreign invested enterprise demands may be recruited from those who are recommended by the Chinese partner or by the relevant authoritative departments in charge of the enterprise from their own sectors, or be recruited from graduating students of universities and colleges, polytechnic colleges and technical schools, or be recruited from the public within the Shanghai Municipality. The selection may be done through qualification tests by the foreign invested enterprise.

4.140 Those who are to be employed by the foreign invested enterprise shall be permanent residents of the Shanghai Municipality. Recruiting personnel from provinces other than Shanghai may be handled

according to relevant regulations by the Shanghai Municipality. And recruiting personnel from abroad or from Taiwan, Hong Kong and Macao must be handled according to relevant regulations by the State. Under no circumstance, should the foreign investor recruit students or those who are prohibited from being employed by the law.

4.141 Where the foreign invested enterprise is to employ through public staff and workers presently employed by the local enterprise, the latter should give full support to those staff and workers to permit them to transfer. In the event of a dispute, the case should be coordinated and arbitrated by the relevant labour department and personnel administration respectively.”

4.142 Article 8 talks of the age of employees. According to this article, “the staff and workers recruited by the foreign invested enterprise must be 16 years old and beyond. Those working under harmful circumstance or heavy labour conditions must be 18 years old and beyond.”

Chinese Labour Contract System

4.143 Article 11 says that A Labour contract system shall be implemented

to the employees recruited by the foreign invested enterprise. The foreign invested enterprise must conclude the labour contract with its recruited employees according to the law, and on the basis of equality, self-willingness, coordination and consistency. The labour contract must be in accordance with relevant laws and regulations of the PRC and its contents shall include:

1. Quantity and quality of the assigned work, or the working task that should be accomplished;
2. The labour contract duration;
3. Payment, insurance and other welfare;
4. Working conditions and protection;
5. Working disciplines, reward and punishment, terms of dismissal and resignation;
6. The circumstance under which the labour contract be terminated;
7. Liabilities for those who break the labour contract;
8. Other terms both parties think it necessary to put in the contract.

4.144 The labour contract shall be written in the Chinese language, and it may also be in foreign languages. But when the contents of the Chinese version are not consistent with that of the foreign version, the former shall be regarded as the criterion.

4.145 The labour contract, when concluded, is a legal document and binding upon both parties in strict compliance with it. If either party demands a revision of the contract, it must secure the consent of the other party through consultation prior to the revision. When the contract expires, it may be renewed on the basis of mutual agreement.

4.146 The standard text of the labour contract shall be filed with the relevant labour department, personnel administration and Shanghai Confederation of Trade Unions, while these departments may supervise and examine the implementation of the contract.

4.147 The trade union in the foreign invested enterprise may represent staff and workers in the negotiation with the enterprise on terms of payments, working time, off-days and holidays, insurance and welfare,

working protection, etc., and conclude the collective contract according to the laws. Prior to establishment of the trade union, it is representatives chosen by staff and workers.

4.148 Article 13 & 14 & 18 lay down conditions under which an employee can be terminated. According to Article 13, "the foreign invested enterprise may dissolve the labour contract and fire its employees upon one of the following circumstances:

1. When the employee is proved unqualified during the probation period;
2. When the employee, due to sickness or non-working related injury, is unable either to continue the work or to take other posts reassigned by the enterprise after a designated medical care period;
3. When the employee is in serious violation of labour disciplines or of relevant regulations of the enterprise;
4. When the employee seriously neglects his/her duty or is engaged in malpractice for self-ends, thus causing huge losses of the enterprise's interests;

5. When the employee is incompetent for doing the job and after training or change of the post, is yet incompetent for doing it;
6. When the particular circumstances under which the labour contract is concluded undergoes great changes so that the labour contract can no longer be implemented, and the concerned parties cannot reach an agreement to change the contents of the labour contract;
7. When there are other particular terms defined in the labour contract."

4.149 Article 14 says that "the labour contract is automatically dissolved upon one of the following circumstances:

1. When the employee is charged with a criminal suit, enforced to labour reform or sentenced to prison;
2. When the foreign invested enterprise is dissolved or terminated."

4.150 Article 18 says that "the Chinese employee, when dismissed by the foreign invested enterprise

according to Items 2, 5, 6, 7, of Article 13, or automatically dissolve the labour contract according to Items 2 of Article 14, or resign according to Items 2, 3, of Article 16, shall get economic compensation from the enterprise in the light of the employee's service length in the enterprise. Those whose service length is less than one year shall get economic compensation equivalent to their half a month's actual salary; those whose service length is more than one year shall get economic compensation equivalent to their one month's actual salary for each working year, but the maximum shall not exceed twelve months' actual salary.

4.151 If the Chinese employee as defined in the above two clauses of this article is directly resettled by the Chinese partner or the authoritative sector in charge of the enterprise, the economic and medical compensations shall not be given to the employee, but directly transferred from the foreign invested enterprise to the employing unit that accepts the employee."

4.152 Article 15 talks of codes under which the Labour contract cannot be dissolved. "The foreign invested

enterprise shall neither terminate nor dissolve the labour contract nor dismiss its employees upon one of the following circumstances:

1. When the employee suffers from sickness or non-working related injury but is yet in the designated medical care period, except those as defined in the Items 1, 3, 4, of Article 13 of these Regulations;
2. When the employee suffers from occupational disease or work related injury and is in medical care and recuperation period;
3. When the female employee is in pregnancy, maternity and breast feeding period, but excluding those as defined in the Items 1, 3, 4, of Article 13 of this Regulation;
4. When the labour contract has not expired and the circumstance under which to dismiss the employee does not conform to Article 13 of this Regulation.

Conditions imposed on Foreign enterprises

4.153 Due to work related injury or occupational diseases, the employees

of the foreign invested enterprise, after the medical care period, are identified by the Labour Assessment Commission as losing working capacity to different extent. The termination and dissolution of their labour contract must be implemented according to the following terms:

1. The foreign invested enterprise must not terminate or dissolve the labour contract of those who have completely lost working capacity;
2. The foreign invested enterprise must not terminate or dissolve the labour contract of those who have greatly lost working capacity, but the foreign invested enterprise may terminate the labour contract upon an agreement with the employee;
3. The foreign invested enterprise must not dissolve the labour contract of those who have partially lost working capacity.

The foreign invested enterprise must implement the relevant regulations by the State and the Shanghai Municipality to make economic compensation for those employees whose labour contract is terminated

according to the Items 2, 3, of the second clause of Article 15 of this Regulation.”

4.154 Other Articles talk of compensation on retrenchment or lay off, medical allowances, residential facilities, payment of wages, insurance, welfare and the like. There are provisions that make it obligatory to pay overtime wages for extra working hours. Article 17 says that “any party that asks to dissolve the labour contract must seek the opinion of the trade union of the enterprise and inform the other party in the written form thirty days prior to the dissolution. But in the case the dissolution of the labour contract proceeds according to Items 1, 3, 4 of Article 13, and Items 1, 2, 3, of Article 16 of this Regulations, the procedure of prior information to the other party may be considered unnecessary.

4.155 Any party that violates the labour contract shall bear the responsibilities of violation of the contract and of economic compensation.”

Resolution of Labour Disputes

4.156 According to Article 37, “Labour disputes between the foreign invested enterprise and its employees

may be settled through consultations between the concerned parties; should the consultation fail, the concerned parties may apply to the labour dispute mediation committee of the enterprise for mediation; should mediation fail, the concerned parties may apply to the labour dispute arbitration committee for arbitration; either party that is not satisfied with the adjudication of arbitration may bring the case to the people’s court of the district or county where the enterprise is located within 15 days upon the reception of the adjudication.”

4.157 It must be added here that according to the National Labour Law, the Chairman of the Mediation Committee in an enterprise is a representative of the Trade Union. The Arbitrator is a representative official of the Government.

4.158 We were informed that in general, 10% of the disputes fail to get resolved at the levels of the Mediation Committee and Arbitration, and go to the People’s Court.

4.159 The Regulations also lay down that they shall be implemented under the supervision of the Shanghai Labor Bureau or Shanghai Personnel Bureau.

4.160 From these Regulations, it can be seen that enterprises of any kind have to fulfill certain stipulated conditions before firing or laying off or retrenching. The compensation for lay off generally, is one months' wage per year of service. Besides this, a general system of compensation and support facilities are, we were told, available to those who are laid off: right to continue to occupy the residential quarters of the enterprises for 2-3 years; a basic living allowance and medical facilities.

4.161 The period of 2-3 years is treated as a transitional period during which efforts are made to find alternative employment for the laid off, in the same enterprise in different jobs or elsewhere. Thus, the laid off are usually sent to Rehabilitation Centre. At these Centres, they are also given re-training in new skills, vocational training, counselling and guidance. There are 4000 Employment Centres and 10,000 Job Training Centres in China to retrain these workers in other skills.

4.162 The enterprise that lays off, or retrenches, bears the responsibility to pay the Basic living allowance, medical allowance etc. during the period (2-3 years) that the laid off spends at the Rehabilitation Centre.

4.163 It is thus, clear that the law does not contemplate or permit "hire and fire." There is no instant and one-sided termination of responsibility to a worker who has been engaged on a written contract.

4.164 In fact, we were told that the number of industrial disputes had increased by leaps and bounds in the last few years. One of the reasons given was the emergence of many kinds of enterprises other than State Owned Enterprises (SOEs), and the situations of lay off etc. that had developed after the decision to give up the planned state economy and transform the economy into a Socialist Market economy. New kinds of industrial or labour relations had come into being. Appropriate laws and processes and systems for dispute settlement and social security are being evolved. New Laws too may be enacted by the NPC.

Unemployment in China

4.165 With the transition to the Socialist Market economy, the concept of jobs have changed. In the system of planning, the State had the responsibility to generate and provide

jobs, to fix wages, to pay wages and other allowances, to arrange for medical assistance and social security. Now, with the transition to the Socialist Market economy, it is the function of enterprises to generate jobs. Jobs will be on the basis of "Contracts." So, they will be for specified periods. These contracts can be terminated during specific periods of duration only for grave offences or proved inefficiency or failure to fulfill objectives under the contract, and such terminations will be open to review, on complaint, by bodies specified in law. The basic changes that come about where jobs are strictly contractual, and the lay-off and retrenchments have resulted in increase in disputes. All the authorities we talked to were aware of the social effects of increasing unemployment. The new system was responsible vastly in increasing unemployment. Now, there are 6.5 million workers who have been laid off. The unemployed are paid a basic living allowance - which varies from province to province, but is roughly 300-450 yuans per month in urban areas, and 95 or thereabout in rural areas. The provisions of unemployed or Basic Living Allowance in rural areas are still available only in pilot areas. We were

told that the Government, the TUs and all authorities are deeply concerned about increasing social unrest and its likely effects.

4.166 In answer to our questions, we were told that the Trade Union Law in China makes no mention of strikes. It neither mentions them as a legal instrument in the hands of the workers, nor prohibits them. The law makes no mention either way. The other methods available to the workers have already been referred to: mutual talks, approach to the Mediation Centre (Every enterprise is to have a statutory mediation centre, of which a representative of the Trade Union in the enterprise is the Chairman): Arbitration (a representative official of the Government is the Arbitrator): and finally, the Peoples' Court.

4.167 We were told that there is only one Trade Union in China, the ACFTU. When we referred to the freedom to Trade Unions and the multiplicity of Trade Unions in India, we were told that the ACFTU is the "peoples choice", and came into being as a part of the struggle of the working class.

4.168 Globalisation, and the consequent downsizing of its enterprises have also affected Chinese economy. The official statistics shows that atleast 6.5 million workers have been laid off in their state owned enterprises, and these workers are dependent on some sort of unemployment allowance. In addition, there are about 50 million to 150 million agricultural workers who are either unemployed or under-employed. These agricultural workers cannot migrate to urban areas because of the strict work permit system.

4.169 As can be seen from the statistics, the official unemployment rate is expected to be 4% this year, and is to increase to 4.5% next year. In addition, some 8 million new workers are added on to the job market each year. Thus, the burden of creating additional jobs and also providing a wider social security net for those without jobs becomes increasingly important for China, especially in the context of economic and social stability.

4.170 **Various Social Security Schemes:**

1) Old Age Pension Scheme: It covers 100 million workers and

also 32 million retired workers. The individual worker contributes 5-7% of wages and the employer contributes 20% of wages to the insurance scheme. The Government does not contribute.

2) Medical Insurance: the contribution rate is 2% from employees and 6% from employers.

3) Workers Injury Scheme: This is the liability of employers.

4) Maternity Benefits: This is also the liability of the employer. But the benefits are provided only for the first child since China is following a policy of one child norm per couple.

5) Unemployment Insurance: This scheme was started in 1980s. The Employer pays 2% while the employee pays 1% of the wages. The Government does not contribute but tries to make good the deficit. Unemployment benefit is lower than the minimum wages, but higher than the poverty line.

4.171 Now, we come to the suggestion that India should have labour laws of the kind that China

has. Perhaps those who advised us to recommend labour laws similar to what China has, may have to undergo a second thoughts after seeing the provisions in the Chinese laws that we have quoted because the kind of freedom that they thought the entrepreneur had in China is not found in the laws as they exist.

4.172 There is a second reason that makes it difficult for us to recommend that we adopt the laws that have been promulgated in the People's Republic of China.

The basis of our State is different. The nature of our state is different. The perception of freedom and fundamental rights that we have in India, in our Constitution and our society, is different from what prevails in China. In the exercise of fundamental rights, we have many political parties; we have many Trade Unions and Central Trade Unions; we have our Judiciary which is modelled on different principles; we have our own Public Interest Litigation and judicial reviews; we have our commitment to the independence of the three organs of the state – the Legislature, the Executive and the Judiciary. Our Fourth Estate is different from the Fourth Estate in China. We

can go on citing specifics and characteristics that are unique for each sovereign state. In the circumstances, though we have the highest respect for the People and the Government of China and the tremendous advance China is making on many fronts, we do not feel that the laws in China can be adopted by our system. We can, and should improve our system. We can learn from other countries like China. But we cannot import patterns to solve the problems that have to be solved in the light of our heritage, our perceptions and our environment. The relation that exists in China between the State and the Government, the Government and the Party, and the Party and the Trade Union does not exist in India, and cannot be created in India within the Constitution that we have. The possibilities and potential that arise from that relationship cannot therefore, be replicated in India.

4.173 It is clear that the transition to a socialist market economy is not proving an easy process in China. What with the closing down or transformation of SOEs, and the practices of lay off and employment patterns adopted by foreign invested

enterprises, joint ventures and other private enterprises, unemployment has increased. It looks as though it is likely to increase further. The highest dignitaries of the Republic have themselves warned that unemployment is likely to increase appreciably in the next decade or so. The premier, Mr. Zhu Rongji, speaking at the Parliament session of the National People's Congress warned "over the next five years, eighty million people will lose their jobs, half of them in the cities and half in the countryside." The word 'alarming' is not used, but the consciousness of the colossal nature of the problem and the potential for "social unrest" (as it is referred to) is very much accepted. The need of sound, fool-proof and universal social security is also accepted, and it is realized that there are problems of resources and organisation in setting up such a system and making it operational, making the benefits available to those who are out of employment and devoid of other means of income except the basic living allowance where it is available.

4.174 A large number of workers in the urban industrial sector have been laid off in recent years as a result of the restructuring of State Owned

Enterprises. While some of them have been provided with alternate jobs, official statistics show that at least 6.5 million laid off workers are dependent on some sort of unemployment allowance or basic living allowance. In addition, there are estimates that 50 million to 150 million agricultural workers are either unemployed or underemployed. These workers cannot easily leave the rural areas and migrate to urban areas because of the household registration system, the strict work permit system and the legal need to obtain travel permits. Without work and wages, they will have to depend on some kind of social security or unemployment allowance. Though a figure of 90 to 95 Yuan is mentioned as the basic living allowance in rural areas, we have understood that such a system has only been introduced as a pilot project in certain areas, and is not operational all through China.

Problems akin to India

4.175 With the entry into the WTO, and the increase in competition that it is likely to bring, there is increasing realization of the likelihood of even higher increase in unemployment and the crucial need for a foolproof and comprehensive social security system that covers rural and urban areas.

4.176 The official rate of current unemployment is 4%, and the official estimate is that this may go up to 4.5% in the coming year.

4.177 Reports that appear in the Beijing English newspaper 'China Daily' show how the problems that workers and the government experience in China are similar to the problems that we face in India in many respects. A report filed by Wu Yan in the China Daily of August 30, 2001 said: "Top priorities have been given to the protection of workers' rights, as the nation's top legislative body began revising its Trade Union Law this week."

4.178 "The function of trade unions to represent workers and safeguard their rights should be brought into full play", said Zhang Chunsheng, deputy director of the Legislative Affairs Commission under the National People's Congress (NPC) Standing Committee.

4.179 "Lawmakers attending the ongoing 23rd Session of the Ninth NPC Standing Committee yesterday made a preliminary reading of a draft amendment to the Trade Union Law, submitted by Zhang's Commission on Monday.

4.180 "Conflicts between employers and employees have become increasingly complicated and prominent these days, with the country's major transitions in economy, the strategic reform of State owned enterprises and the burgeoning development of non-public sectors.

4.181 The trade unions are, therefore, facing more formidable tasks in protecting the rights of workers.

4.182 Some places have seen a rampant violation of the Labour Law by preventing workers from joining trade unions, illegally hiring workers without signing contracts, forcing workers to work extra hours and skimping on salaries.

4.183 Some enterprises have refused to buy their workers' insurances for unemployment, industrial accidents and endowments. Some have failed to offer working protection facilities to their workers, according to federation sources.

4.184 The latest testimony to such infraction is the case of frisking 56 women workers at a factory in Shenzhen last month, which ignited widespread outrage.

4.185 The draft amendment has highlighted the role trade unions should play in protecting workers.

4.186 Zhang said "trade unions also need to expand, so they can represent and protect more workers."

4.187 The Chinese trade union system is composed of the All-China Federation of Trade Unions, 31 provincial-level trade unions, 16 industrial trade unions and more than 900,000 grass root trade unions.

4.188 A total of 103 million workers belonged to the trade union by the end of last year, federation figures indicate.

4.189 However, they are facing a tough challenge in expansion, particularly as over 100 million workers are outside trade unions.

4.190 The draft amendments make it mandatory for enterprises and other organisations with 25 employees to set up a trade union of their own, or Cooperate with another company to establish one."

4.191 Similarly, a report filed by Jim Baichung in the China Daily of 24

August 2001 says, "The Ministry of Labour and Social Security is working to rectify labour market operation to provide better protection to job-seekers".

4.192 "Since 1999, more than 2,000 intermediary employment agencies have been closed by local labour and social security authorities across the country because of illegal practices that have impaired job-seekers' interest.

4.193 "Another 7,000 have been ordered to make changes, according to Xin Changxing, Director of the Training and Employment, Department of the ministry in 1999".

4.194 "According to the ministry, the demand for labour in the second quarter of 2001 rose sharply compared with that in the first quarter".

4.195 "This summer, a total of 1.53 million labourers were needed in 62 major cities, while in spring only 856,000 were needed".

4.196 "This was mainly caused by seasonal changes. Normally, the

demand for labour varies greatly from season to season”.

4.197 “Statistics also indicate that the tertiary, or service, sector offers the greatest number of job openings”.

4.198 “Of the 1.53 million labourers that were needed, up to 73% were for the service sector, 25% for secondary industry – the industrial sector, and only 2% were for primary industry – the agricultural sector”.

4.199 “Private and joint stock enterprises needed most labourers. The first accounted for 28.9% of the total demand, and joint-stock enterprises, 25.8%”.

4.200 “Statistics also indicate that 47% of the job-seekers were unemployed people, 11% already had jobs, 9% were laid off workers, and 1% were retired workers.”

4.201 We do not want to multiply such quotations. But we think that the report filed by Mr. Jiang Zhuqing in the China Daily of 14 January 2002 also throws much light on the problems of workers as highlighted by Mr. Wei Jianxing, President of the All

China Federation of Trade Unions at the fourth session of the 13th Executive Committee of the Federation, Mr. Wei who is also a member of the Standing Committee of the Politburo of the Central Committee of the Communist Party of China, said “the union should enlarge employment opportunity and supervise the implementation of policies and measures adopted by the CPC Central Committee on social security.”

4.202 Firstly, the unions should co-operate with government departments to help the layoffs find new jobs or receive unemployment insurance. This year, development of the nation’s social security system at township level will be speeded up; thus, trade unions at all levels have vowed to bring the minimum living allowance to all impoverished workers.

4.203 The unions must shore up efforts taken by local governments to develop labour sources for tertiary industries and help non-state and small and medium-sized enterprises attract more employees.

4.204 On the other hand, the unions should also supervise economic

compensation by enterprises and help them deal with debt issues, including the payment of delayed wages and medical fees owed to their workers.

4.205 Trade unions at all levels should work hard to enlarge their membership rolls to 130 millions workers this year, up from the 120 million union members at present," according to Wei.

4.206 Another issue is the frequent occurrence of serious accidents in some workplaces, which causes great loss of life and property. The President emphasized that the federation will accelerate the drafting of three regulations on labour protection to help improve the effectiveness of the health and safety supervision system.

4.207 In addition, supervision and guarantee mechanisms should be established to effectively balance management-management relations, help resolve management disputes and curb the incidence of serious accidents.

4.208 Thus, it can be said that the leaders of the Trade Unions have themselves identified the main problems that they are encountering as:

- 1) Conflicts have increased and become increasingly complicated because of "the strategic reform of state owned enterprises and the burgeoning development of non-public sectors."
- 2) "Rampant violation of the Labour Law by preventing workers from joining Trade Unions"
- 3) Illegally hiring workers without signing contracts,
- 4) Forcing workers to work extreme hours
- 5) "Skimping on salaries"
- 6) Non-payment of wages on dates stipulated by law
- 7) Refusal by some enterprises to buy their workers insurances for unemployment, industrial accidents and endowments
- 8) Failure by enterprises to offer working protection facilities
- 9) Frisking of women workers at factories

- 10) Inadequate immunization
- 11) It is obvious that such transgressions or failures to enforce the laws may be more in non-state owned enterprises i.e. enterprises – foreign owned, joint, etc. in the “private sector.”

4.209 All these have been excerpted from the report of discussions at the 23rd Session of the Ninth NPC Standing Committee, as reported in the Beijing China Daily of 30 of August 2001. They have been listed, not to provide a gist for denigration or cynicism, but to explore similarity in problems and learn from solutions or correctives tried in China. Our country has also had the experience of a “Mixed Economy” which in fact is a situation in which Public Sector enterprises (equivalent of SOEs in China) and private sector enterprises co-exist.

4.210 However, while reiterating that it is not true to say that the employer in China is completely free to set up and close enterprises or to hire and fire at will, and also that it will be erroneous to think that ‘flexible’ labour laws are the main reason for China’s progress, we would also like to place on record the arguments and observations that have been put

forward to explain why China has made spectacular progress in globalisation and the post-globalisation scenario, as compared to the tardy progress that India has made. We feel it will be useful to list the reasons and causes that were brought to our attention. We state them without going into pros and cons. We are only recording them for reflection and assesment.

- a) China followed a policy of market economy since 1978. India introduced the new economic policy only in July 1991.
- b) China did not follow the standard policy prescriptions laid down by the World Bank and IMF for developing economies blindly. Before launching market economy, it sent a good number of delegations to western countries and countries in South East Asia, studied their economic policies and adopted policies which were estimated to be most suitable to China. As some authors have put it, China said “yes” to learning from others but “No” to Bretton Woods institutions.

- c) China followed a policy of competition rather than ownership for higher productivity. China did not hurry up in privatising its public sector enterprises. The large public sector companies were split according to product lines and competition was encouraged amongst them.
- d) China did not give too much importance to balanced regional development. In view of the limited resources, it developed the southern and eastern coastal regions and provided excellent infrastructures of international standards. It did not spread its limited resources over a vast area.
- e) Thus, China gave lot of importance to providing excellent infrastructure in Shanghai, Shenzhen and Guangdong provinces and attracted foreign enterprises there. Now, after the success of this development, it is planning to develop other interior areas.
- f) Overseas Chinese have played a very important role in attracting foreign investments. Initially, only exporting units were encouraged to be set up in EPZ areas. Even now, about 40% of Chinese exports are from foreign enterprises located in these areas. Some of the foreign enterprises are not allowed to sell their products inside the country. As a result, there is no competition of their products with those of local companies. Since foreign companies are exporting, these exports result in trade surpluses and the surpluses are invested in U.S. securities. This is how China has built huge foreign reserves of over \$ 180 billion. On the contrary, in a recent study on exports and multinational corporations in India, the World Trade Centre, Mumbai has shown that MNCs do not significantly contribute for the exports efforts of India. This also partially accounts for the stagnation of our exports.
- g) China followed a proper sequence of reforms. Most countries which liberalised so far adopted trade liberalisation before allowing local industries to mature and before setting up anti-dumping measures. They

liberalised the financial sector before establishing regulatory frame-works, and restructured the industry sector before establishing a safety net. In all such cases, the results have been disastrous. But China, instead of initiating reforms with foreign trade and exchange rate liberalisation, started with agriculture, which employed a large majority of workers and had potential for expansion. In the first seven years of reforms, China laid emphasis on agriculture. Collectivisation of agriculture was replaced with privatisation and it resulted in nearly 7% annual growth. Then, China introduced export orientation for Township and Village enterprises. This helped to generate demand for the products of rural industries. Then, special economic zones were opened which offered foreign investors excellent infrastructure, special fiscal and financial incentives and flexible labour relations governed by an innovative contract system. India has followed a policy of trade liberalisation and opening most of its industries to foreign investments. As a result local industries are facing competition

from foreign companies, and they are being eliminated from the market.

- h) Most of the reforms were not introduced abruptly. A new policy was first tried in a small region, and after gaining experience of the policy and the difficulties encountered, it was introduced with modifications in a wider area. This has enabled China to gain experience and a smooth transition from traditional to a modern industrial society.
- i) The administration in China is somewhat decentralised. Local municipal corporations can also take decisions regarding foreign investment up to a limit. The laws are simple. In China, the entire land belongs to the Government, and as a result giving land use rights to a company is a simple and quick affair. Foreign investors appreciate all these factors. In India, an entrepreneur is completely exhausted by following various rules, regulations, obtaining permissions, following procedures and so on, which sometimes take any number of years.

j) China allowed its companies to grow. Chinese companies are much bigger in size than Indian companies. China has allowed them to grow so that they can equitably face global competition. In the Fortune 500 list, India has only one company i.e. Indian Oil Corporation. Now, after the merger, probably Reliance Industries may have found a place. As against this, China has in this Fortune 500 List, 11 companies like Sinopec, State Power, China National Petroleum, China Telecommunications, Bank of China, Sinochem, China Mobile Communications, China Construction Bank, COFCO, Agricultural Bank of China and Jardine Matheson. Most of them are in the public sector. In a recent report, Merrill Lynch points out that China's largest mobile telephone company, China Mobile, is valued at a massive \$ 60 billion. In contrast, for the BPL-Birla-Tata-AT&T combine valuation has been pegged at \$ 2.5 billion, Bharati is valued at \$ 3.5 billion, while Hutchison-Essar has been valued at \$ 2.2 billion. India's estimated

subscriber base of over 5.2 million, pales into insignificance with the Chinese subscriber base of 130 million. Size does matter in international competition and, because of their size, Chinese companies can effectively compete globally. In India, because of our different ideas on monopolies, industrial licensing, etc., Indian companies were never allowed to grow in the licence permit regime and even the largest companies in India are pygmies as compared to global players. As a result, they find it difficult to compete.

4.211 The reasons given above - are not exhaustive. But it give an idea on the areas in which the Chinese have scored over India. It is not merely the flexible labour laws, but because of all these factors that foreign investment is attracted to China and China has been able to achieve phenomenal progress.

4.212 We are aware that there are difficulties in dealing with statistics that emanate from China. There are some scholars and analysts who are sceptical, and who cite the statistics

that emanated from China about the giant leaps in the production of steel from backyard furnaces and the like. Some of them put the current unemployment rate at 8.5% as against the official figures of 3.6% or 4.5%, the growth rate as 3% as against the official figure of 7.3% and so on. We have no means of verifying either set of figures.

4.213 There are also reports that the unrest that leaders of Trade Unions, party leaders and leaders of the Government feared, is already visible in protest action on the streets and in factories in the North East.

4.214 We have no special insight into the conditions in these areas. But our conversation with the leaders whom we met left us with the impression that they were aware of these possibilities. In fact all of them said so.

Poor Performance of Manufacturing Sector

4.215 During the first few years of economic reform, there was a general growth in all sectors of the economy. But since 1996-97, industrial growth has slowed down, and that has

affected almost all sectors of industries. During the last two years and especially in 2001-02, the growth rate has been very badly affected. For instance in December 2001, the industry sector registered a growth rate of only 1.6% compared to 3.6% in the corresponding month of last year. In October 2001, industrial growth fell to 1.9% compared to 6.8% growth registered in the same month during the last year. If we compare the aggregate growth rates of index of industrial production for the first nine months of 2001-2002, it works out to 2.3% compared to 5.8% in the same period in 2000-01.

4.216 The sector-wise growth rates for the last seven years from 1994-95 to 2001-02 have been presented in Table 4.12. From this, one will find that the growth rates during April-December 2001-02 have been lower for all categories of industrial goods i.e. basic goods, capital goods, intermediate goods and consumer goods compared to the earlier year. In fact, the growth in capital goods production has been negative i.e. - 4.8% in April-December 2001-02.

TABLE 4.12

**Growth rates of industrial production by use-based classification
(Base: 1993-94 = 100)**

(%)

Sector	Weight	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-2001	April - Dec.	
									2000-2001	2001-2002
Basic Goods	35.5	9.6	10.8	3.0	6.9	1.6	5.5	3.9	5.1	2.2
Capital Goods	9.3	9.2	5.3	11.5	5.8	12.6	6.9	1.8	3.0	-4.8
Intermediate Goods	26.5	5.3	19.4	8.1	8.0	6.1	8.8	4.7	4.8	2.0
Consumer Good of which	28.7	12.1	12.8	6.2	5.5	2.2	5.7	8.0	8.2	5.0
(Consumer Durables)	(5.4)	(16.2)	(25.8)	(4.6)	(7.8)	(5.6)	(14.1)	(14.5)	(17.8)	(12.5)
(Consumer Non-Durables)	(23.3)	(11.2)	(9.8)	(6.6)	(4.8)	(1.2)	(3.2)	(5.8)	(5.3)	(2.3)
IIP (Index of Industrial Production)	100.0	9.1	13.0	6.1	6.7	4.1	6.7	5.0	5.8	2.3

Source: Economic Survey, Government of India 2001-02.

4.217 There are some factors that cause concern. While there are some signs of recovery in the intermediate and consumer durable goods industry, the performance of the capital goods sector has been disappointing. This is all the more significant since machinery imports registered a negative rate of growth of 11.22% during the year. This means no new investment is taking place and therefore there is no demand for capital goods either imported or produced indigenously.

4.218 Secondly, non-oil imports have registered an extremely low rate of growth of just 1.36% during 1999-2000. This points to stagnation of imports necessary to service domestic industrial production.

4.219 The index of infrastructure industries has reported only 3.4% growth in November 2001 compared to a growth of 7.4% during November 2000. This comprises of six industries e.g. crude petrol cum petroleum products, coal, cement, electricity, and finished steel. These are basic industries which affect growth of all other industries.

4.220 There is a sign of the slackening of demand in many industries such as automobiles, textiles, cement, consumer durables, etc. which is also affecting the growth in industrial production.

4.221 All these have a multiplier effect probably resulting in a general industrial recession.

4.222 If we look to the annual rate of growth of industrial production, except 1995-96 when we reached a double-digit growth, it appears that during the last five years, the rate is going down. From 14.1% in 1995-96 it has now reached 5% in 2000-01 and is around 2.3% in April-December 2001-02 (See Table 4.13).

Table 4.13**Annual Rate of Growth of Manufacturing**

(Per cent).

Year	Index of Industrial Production (manufacturing)	Gross Value Added of NAS Manufacturing at Constant Prices
1990-91	9	6.1
1991-92	-0.8	-3.7
1992-93	2.2	4.2
1993-94	6.1	8.4
1994-95	9.1	10.7
1995-96	14.1	14.9
1996-97	7.3	7.9
1997-98	6.7	4.0
1998-99	4.4	3.6
1999-2000	6.7	-
2000-01	5.0	-
2001-02 (April-Dec.)	2.3	-

4.223 The following table gives value added growth in the registered

manufacturing sector from 1951-52 to 1998-99:

Table 4.14
Annual Rate of Growth of the Registered Manufacturing Sector

Year	Gross Value Added of Registered Manufacturing Sector at Constant Prices (%)	Year	Gross Value Added of Registered Manufacturing Sector at Constant Prices (%)
1952-53	0.5	1976-77	12.5
1953-54	4.4	1977-78	6.7
1954-55	11.1	1978-79	10.9
1955-56	12.3	1979-80	-2.1
1956-57	11.1	1980-81	-1.6
1957-58	4.7	1981-82	7.7
1958-59	2.9	1982-83	9.6
1959-60	10.1	1983-84	14.7
1960-61	12.4	1984-85	8.4
1961-62	9.1	1985-86	2.3
1962-63	9.7	1986-87	5.8
1963-64	11.3	1987-88	7.1
1964-65	8.3	1988-89	10.6
1965-66	3.3	1989-90	13.9
1966-67	0.1	1990-91	5.0
1967-68	-3.3	1991-92	-2.3
1968-69	6.8	1992-93	3.1
1969-70	17.4	1993-94	11.5
1970-71	2.4	1994-95	13.2
1971-72	1.8	1995-96	15.5
1972-73	3.2	1996-97	8.1
1973-74	4.9	1997-98	3.4
1974-75	1	1998-99	3.9
1975-76	1		

Source: CSO, National Accounts Statistics (various issues)

4.224 From this table, it is obvious that the value added growth after 1991 has not been substantially better than that achieved during the first 15 years of Indian planning. During the Second and Third Five Year Plans, effort was made for the development of basic and heavy industries. The table also shows that the growth record during the reforms period (1991-2000) has not been significantly different from that seen in the

eighties. Table 4.15 gives compound annual rate of growth of manufacturing for the earlier decades i.e. 1950-51 to 1965-66, and thereafter. It can be found that the rate of growth of manufacturing was much better during the earlier decades than that during the decade after 1991. However, one should bear in mind that the choice of terminal years often affects the growth picture.

Table 4.15
Compound Annual Rate of Growth of Manufacturing

Year	CARG of Gross Value Added of Registered Manufacturing Sector At Constant Prices (%)
1950-51 to 1965-66	7.03
1955-56 to 1965-66	7.47
1980-81 to 1990-91	7.66
1990-91 to 1998-99	5.91

Source: CSO, National Accounts Statistics (various issues)

4.225 If we analyse sectoral growth, we find that during nineties, more than half of the growth has been accounted for by consumer goods. The contribution of consumer durables alone is 16.09%. The basic

intermediate goods have accounted for only 16.34% and capital goods for 11.81%. This change over the years can be seen from the following table:

Table 4.16
Sectoral shares of Growth of the Registered
Manufacturing Sector (percentages)

Group	1960-61 to 1965-66	1980-81 to 1988-89	1990-91 to 1997-98
Capital Goods	25.63	13.28	11.81
Intermediate Goods	43.00	23.87	35.65
(a) Basic	29.93	18.89	16.34
(b) Others	13.06	4.98	19.31
Consumer Goods	31.38	62.84	52.54
(a) Durable	4.77	15.62	16.09
(b) Non-durable	26.60	47.22	36.45
Total	100.00	100.00	100.00

Source: CSO, National Accounts Statistics (various issues)

Performance of individual industries

4.226 If we look at the various individual sectors of industry, we do not get an encouraging picture. The textile industry is in great difficulties. The total number of mills closed was 123 in 1992-93, and this number has increased to 349 in 1999-2000. There were 421 cases of textile mills registered with the Bureau of Industrial and Financial Reconstruction (BIFR) as sick units. Not only textile

mills in the organised sector, but also small power looms as well as handlooms have been affected. We have read reports about many small weavers in handloom industry committing to suicide.

4.227 Indian textile firms lack economies of scale. While the average investment in machines by each unit in India is a mere \$ 27,690, the figure is \$ 2 million in China and an even higher at \$ 2.5 million in Hong Kong.

Not surprisingly, while Indian firms have an average of 119 machines each, the figure is distressingly low compared to China's 605 and Hong Kong's 698. What is worse is that Indian firms have a higher proportion of manual machines and their power machines are less sophisticated than the ones in countries like China, Taiwan, South Korea and Hong Kong. India's wage costs are also 50% higher at 60 cents than the rates in China. Therefore, it is no wonder that we are not competitive in international markets and once the textile quota system is withdrawn by WTO in 2005, Indian textile industry is likely to lose its international markets.

4.228 The iron and steel industry is affected because of global trends. The Asian crisis, collapse of the USSR, and financial problems of Japan have transformed importers of steel into exporters. There is a glut in the global steel market. This along with 30% imposition of anti-dumping duties by the United States and the European Union in a war against each other is likely to affect our exports to Europe and U.S. So far, India as a developing country has not received any special treatment. This, coupled with recession in Indian engineering

industry, has affected, and is likely to affect production of iron and steel in India very adversely. Moreover, because of import liberalisation, Indian industry has to face global competition in terms of product range, quality and price. As a result, there is a cut back in production and reduction in employment in the iron and steel industry in India.

4.229 The plantation industry is perhaps the worst affected industry. Prices of rubber, tea, coffee, etc., have come down drastically during recent years and production in the plantation industry is no longer economic. It is estimated that the total losses of tea industry in South India were of the order of Rs.350 core in 1999-2000. Because of our commitments to the WTO, large imports of rubber, coconuts, tea and coffee from Malaysia, Indonesia, Sri Lanka, Kenya, and Vietnam etc. are coming to India. The Indian industry is not in a position to compete with them. Workers in plantation industry are deeply concerned with this trend of globalisation and increased mechanisation in the industry to reduce the costs.

4.230 In the chemicals industry, large-scale imports of petrochemicals, dyestuffs, intermediates and speciality chemicals are being made at a cheaper price from China. China has invested in building huge capacities in petrochemicals, pharmaceuticals, and agrochemicals, and is emerging as the largest producer of synthetic fibres. Import of cheap chemicals from China are hurting Indian industries and many small industries had to close down as a result. Our exports of chemicals are also affected, as cheap Chinese chemicals of equivalent quality are available in international markets.

4.231 Indian mining industry is also affected because of globalisation. Indian coal is of poor quality. Low ash coking coal for making steel is not available in the country, and therefore the steel industry is importing coal. The coal produced in the country is used by thermal plants. But for many coastal states like Gujarat, Tamil Nadu, Karnataka, Kerala, the cost of transportation of this coal is very high. Therefore some of those States are importing coal from Australia and other countries. It is cheaper for them to do so. Moreover, the cost of production of coal is very high in India. As regards other mineral

products, there is now no demand for mica because cheaper substitutes are available. Because of reduction in tariff and other factors, imported copper is much cheaper than indigenously produced copper. Therefore, Hindustan Copper Ltd. which owns the copper mines, is incurring heavy losses. Over manning of operations is also adding significantly to the losses.

4.232 The list of industries affected by globalisation is much longer. Because of duty free product imports, industrial units like Bharat Heavy Electricals are affected, as their products are costlier compared to imported ones. The machine tool industry in India is affected because of cheap imports and imports of second hand machine tools. The Indian toy industry is affected because of import of cheap Chinese toys. In fact, cheap Chinese imports have affected a wide range of industries like electrical accessories, bulbs, batteries, locks, lamps and fixtures, silk yarn and so on. These goods have entered Indian markets in a big way. The Indian anti-dumping authority has been investigating into such cheap imports and they levy anti-dumping duties in order to protect Indian

industries. But this process is very lengthy. By the time one investigates, completes the procedures and levies anti-dumping duties much of the damage is already done and it becomes extremely difficult to recover thereafter. The only industries, which are prospering, now are the Information Technology, Telecommunications and entertainment industry. The other potential sunrise sector industries are pharmaceuticals and biotechnology industries.

4.233 Small-scale industries are more vulnerable to the new trends of globalisation. Because a parent unit does not have enough orders, ancillary units do not get adequate orders for parts and components. They have also to face the perennial problem of delayed payments. Earlier, SSI units were manufacturing import substitute items. But those days are over. Now one can import from any country and the imported goods are much cheaper and probably better in quality. As a result, SSI units have lost much of their markets for such products. Because of free imports, SSI reservation has ceased to have meaning and as a result they have lost all protection from the competition of

large units. Now they have to compete in the market with imported products as well as products from large units in India. As a result of all these factors, a large number of small enterprises all over India are facing serious problems. Their very survival seems to be at stake.

Need for public sector reforms

4.234 One of the characteristics of the new economic policy of liberalisation is that the policy has concentrated on the private sector and particularly in attracting foreign investment and trade liberalisation. The reform process has practically bypassed the public sector enterprises. In July 1991, when the new economic policy was announced, there were about 240 central public sector enterprises working in India, capital employed in them was Rs. 1,17,991 crore, their annual turnover was Rs. 1,33,906 crore, they had about 21.70 lakh employees, they had made a profit (before interest, depreciation and tax) of Rs. 22,224 crore. The Net profit earned by all public enterprises after providing for depreciation, interest, and tax was Rs. 2,356 crores in that year. These public enterprises were operating in

such diverse fields as production of steel, minerals and metals, coal and lignite, power, petroleum, fertiliser, chemicals and pharmaceuticals, heavy engineering, transportation equipment, textiles, and agro-based industries. A large number of public sector enterprises were also engaged in providing a number of trading, marketing, transportation, consultancy and tourist services, etc. The total investment in all public sector enterprises added up to more than 50% of the total corporate investment in the country. Quite a few of them were operating in strategic sectors and this sector was once described as the commanding heights of the economy. They provided a strong industrial base for Indian industrial development.

4.235 But the new policy of economic liberalisation neither specified any role to the public sector nor did it say anything about restructuring this sector so as to be made more useful and efficient. The Government appears to be more concerned with privatisation of public enterprises and a policy of disinvestments. The disinvestment process has been linked to financial targets, and the government itself often talks of its relation to closing the

budgetary gap. In many other countries like the U.K. that pioneered a programme of privatisation the objectives were to promote efficiency in public enterprises, disperse ownership widely, provide equity to the employees and benefit the consumer. The Government of India did not put forward any proposal to public undertakings free them from bureaucratic control, and professionalise them to improve performance and profitability. No role was assigned to them in the economic restructuring of the country.

4.236 This is somewhat surprising when one observes that during the previous turbulent decade, the nineties, the central public enterprises generated Rs. 1,19,000 crores through internal accruals alone. They also mobilised Rs.1,21,000 crores from the market during the same period. These together gave an aggregate of Rs. 2,40,000 crores which was more than double the total government investment at the end of 1999-2000, both in equity and by way of loans, aggregating Rs.96, 000 crores. There is hardly any evidence to show that the Government thinks that a reformed public sector can play an effective role in economic recovery.

Globalisation of financial markets

4.237 The Indian stock market is one of the oldest and is operating since 1875. But the stock exchange operations were largely outside the global integration process until 1980s. In 1988, the Securities and Exchange Board of India (SEBI) was set up and the reform process got momentum only when the external payment crisis occurred in 1991 followed by the securities scam of 1992.

4.238 The global integration of the financial markets was brought when

- a) Portfolio investments were permitted for foreign institutional investors and for overseas corporate bodies. Non-resident Indians were already permitted to invest.

Table 4.17 gives the details of the FII portfolio investments so far. A total amount of Rs.49, 881.7 crores has been invested by FIIs in Indian companies.

Table 4.17

Annual Trend in FII Portfolio investment

(Rs. Crore)

Year	Purchase	Sale	Net investment	Cumulative Net invest.
1992-93	17.4	4.0	13.4	13.4
1993-94	5592.5	466.3	5126.2	5139.6
1994-95	7631.0	2834.8	4796.3	9935.9
1995-96	9693.5	2751.6	6942.0	16877.9
1996-97	15553.9	6979.4	8574.5	25452.4
1997-98	18694.7	12737.2	5957.4	31409.8
1998-99	16115.0	17699.4	-1584.4	29825.4
1999-00	56855.5	46733.5	10121.9	39947.3
2000-01	74050.6	64116.3	9934.4	49881.7

Source: SEBI Annual Report various issues

b) Indian corporates were allowed to go global with the issue of GDR/ADR/FCCB from Nov. 1993. Prior permission from the Government of India was necessary. The First Indian GDR listing was of Reliance Industries with \$ 150 million. Then came VSNL with \$ 527 million, MTNL with \$ 418 million and Ashok Leyland with \$ 137.7 million. Since 1993, 60 Indian companies have raised \$ 6.2 billion in these markets.

c) In 1997, a Committee on Capital Accounts Convertibility was appointed under the chairmanship of Mr. S.S. Tarapore. Though the Committee recommended for full convertibility, the Government did not think it would be proper to do so and a decision is still pending.

d) A few Indian companies were allowed to list on foreign stock exchanges such as the New York Stock Exchange, NASDAQ etc. Satyam Infoway (SIFY) became

the first Indian company to be listed on the NASDAQ. This was followed by many other companies.

Table 4.18 gives quantum and number of euro issues by Indian corporates. These funds can be raised at very low interest rates. But one has to provide for exchange rate fluctuations and the liability becomes uncertain. Even then a large number of leading Indian companies have raised resources in Euro markets at low interest rates. One must say that because of globalisation a new avenue of raising funds is now open for Indian companies.

Table 4.18
Quantum and Number of Euro Issues by Indian Corporates

(Rs. Crore)

Month	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
April	279.98 (1)	4.49 (1)	612.50 (2)	1,842.94 (1)	1200.65	-	- (2)
May	221.48 (2)	-	52.50*	385.00 (2)	-	7.28 (1)	649.35 (2)
June	625.54 (3)	277.20 (1)	125.60 (2)	-	-	-	-
July	1,113.64 (4)	-	402.50 (1)	-	63.10 (1)	-	774.86 (2)
August	936.42 (5)	-	700.00 (1)	-	-	-	348.08 (1)
Sept.	-	-	455.00 (2)	40.18 (1)	-	1,373.28 (1)	52.40 (1)
Oct.	529.79 (2)	-	945.39 (2)	-	-	375.2 4(1)	80.03 (1)
Nov.	958.82 (6)	-	1,425.99 (2)	-	-	-	-
Dec.	1,636.72 (7)	-	150.25 (2)	1,614.04 (2)	-	130.47 (1)	-
Jan.	2.35* (1)	105.00 (1)	112.04 (1)	127.30 (1)	-	-	13.46 (1)
Feb.	6.30* (1)	-	-	-	-	948.84 (1)	462.84 (1)
March	432.19 (1)	910.00 (2)	612.50 (1)	-	1084.68 (2)	652.10 (1)	615.40 (2)
Total@	6,743.23 (31)	1,296.69 (5)	5,594.27 (16)	4,009.46 (7)	1,147.78 (3)	3,487.21 (6)	4197.07 (13)

Notes: - None; * represents warrants exercised by the investor attached to earlier issue of GDR.

@ It stood at Rs.702.32 crore and Rs. 7,897.82 crore with number of issues at two and 27 in 1992-93 and 1993-94 respectively.

Figures in brackets indicate number of issues.

Source: Handbook of Statistics on Indian Economy, Reserve Bank of India, 2000.

- e) Now, Indian companies are also allowed to invest abroad up to a limit of \$ 25 million in SAARC countries and up to US \$ 100 million or 10 times of their exports in other countries. Thus, takeover and merger of companies from other countries is also allowed.
- f) Along with these changes on the external front, changes were also introduced in terms of technology and market practices. New institutions such as National Stock Exchange (1994), National Securities Clearing Corporation (1996), National Securities Depository (1996) were established.

4.239 With this huge investment and the decision of FIIs on daily basis to sell or buy equities, they wield considerable influence on the market behaviour of stock exchanges. The Government has recently announced a decision to allow FIIs to buy 100% equities in Indian companies. This is

likely to affect the ownership of many Indian companies.

4.240 Apart from raising funds in the international markets, their entry and participation in Euro market has introduced a qualitative change in the Indian stock exchange as well. The technology of stock exchange operations has changed as also the market practices with the introduction of on-line operations. Some consequences of global participation can be seen in the use of new technologies, on line operations and quick settlements.

Farm Sector

4.241 The Government policy during the 1990s was aimed at attracting foreign investment of all varieties, not only by removing a range of restrictions on inward capital flows of both long term and short term nature, but also through a number of fiscal and interest rate concessions. But in this process, and in the wave of globalisation and the pressures from

international bodies like the IMF, World Bank, WTO etc., it seems that some of the vital sectors of the economy did not receive adequate attention. Take, for instance, agriculture and small-scale industries which provide largest employment and also contribute substantially to the growth of the GDP.

Reduction in Allocation

4.242 During the decade after economic liberalisation, most of the state governments in their budget have reduced the share of investment and allocation to the rural sector. The share of agriculture and allied activities in the aggregate budgetary expenditure of 12 major Indian states has declined by 0.5% point from an already low 5.5% to 5%. The share of rural development and irrigation and flood control in the aggregate expenditure of the states, during the period from 1995 to 2000 declined from 3.9% and 7.3% to 3.7% and 6.00% respectively. In the case of some states like Maharashtra, the

share of agriculture in its total budgetary expenditure has declined from 8.8% in 1996-97 to 6.6% in 1999-2000. Barring a few exceptions like that of Punjab, Andhra Pradesh, Haryana and Uttar Pradesh, this decline is seen in all other States.

4.243 This can be seen from the Table 4.19.

TABLE 4.19
PERCENTAGE OF ALLOCATION BY DIFFERENT STATES IN
THEIR BUDGETS ON AGRICULTURE, IRRIGATION AND
RURAL DEVELOPMENT

	Expenditure on Agriculture		Expenditure on Rural Development		Expenditure on Irrigation and flood control	
	1996-1997	2000-2001	1996-1997	2000-2001	1996-1997	2000-2001
Andhra Pradesh	3.5	2.9	4.5	6.4	9.6	9.1
Bihar	4.0	3.0	7.0	8.1	5.7	6.9
Gujarat	4.3	4.1	2.9	3.4	15.7	13.6
Haryana	3.6	4.1	0.7	0.7	6.2	9.0
Karnataka	7.1	6.3	3.0	3.6	11.9	10.1
Kerala	7.7	6.8	3.5	7.8	3.8	2.7
Madhya Pradesh	7.8	7.6	6.8	4.1	5.1	4.1
Maharashtra	8.8	6.6	4.9	1.6	11.0	5.9
Punjab	-3.8	3.5	0.3	1.0	4.4	5.0
Tamil Nadu	7.7	5.4	2.6	2.6	1.8	2.9
Uttar Pradesh	4.1	4.7	4.5	5.1	8.4	4.3
West Bengal	4.1	4.3	5.5	3.3	3.8	3.8

Source: Ministry of Food and Agriculture, Government of India.

4.244 Since insufficient investment is made in agriculture and rural areas, agricultural production has been affected adversely. Table 4.20 gives details of rise in agricultural production from 1996-97 to 2000-01. Except rice and sugar there is a fall in annual production figures for wheat, pulses, oil seeds, coarse cereals, jute, cotton etc. The share of agriculture in the GDP has also come down 26.6%

in 1998-99 to 24% in 2000-01. GDP growth rate of agriculture has come down from 7.1% in 1998-99 to 0.2% in 2000-01. The average growth rate of agricultural GDP was 3.2% from 1994-95 to 1999-2000. Thus, agriculture which is still the mainstay of the Indian economy and which provides employment to almost 60% of our population does not appear to have got the thrust it deserves.

TABLE 4.20
AGRICULTURAL PRODUCTION

(In Million Tonnes)

	1996-97	1997-1998	1998-1999	1999-2000	2000-2001
Rice	81.7	82.5	86.1	89.5	86.3
Wheat	69.4	66.3	71.3	75.6	68.5
Course Cereals	34.1	30.4	31.3	30.5	30.2
Pulses	14.3	13.0	14.9	13.4	11.1
Total Food grains	199.4	192.3	203.6	208.9	196.1
Oilseeds	24.4	21.3	24.8	20.9	18.2
Cotton	14.2	10.9	12.3	11.6	9.4
Sugar	277.6	279.5	288.7	299.2	300.3
Jute	11.1	11.0	9.8	10.5	10.4

Source: Economic Survey, Government of India 2001-02.

4.245 This also indicates clear erosion in the spending capacity of rural areas, due to a modest 0.7 and 0.2% rise in agricultural incomes during the last two years i.e. 1999-2000 and 2000-01. This is accompanied by higher growth of rural population at 1.9% annually in the same period.

4.246 Agriculture and allied activities still contribute about 25% of GDP and an increase of even 5% in its output would make an incremental contribution of 1.3% to real GDP. This means that during the last two years, because of the fall in production in agriculture, the country has lost almost around Rs. 50,000 crores. This is bound to have one impact on generating rural demand for industrial products.

4.247 Fortunately after near stagnation in 1999-2000 and negative growth of 0.2% in 2000-01, the agriculture sector is likely to attain a growth rate of nearly 6% in 2001-02. This is projected in the Economic Survey 2001-02 and the survey gives credit to good monsoons for this growth rate.

Low Capital Formation

4.248 Another area of concern is the declining level of capital formation in Indian agriculture. The rate of gross capital formation in agriculture in relation to GDP originating in agriculture has declined to 7.4% in 1999-2000 from 8.9% in 1980-81. The share of capital formation in agriculture and allied activities in gross capital formation (GCF) in the country has also declined substantially from 20.4% in 1951-52 to 6.2% in 1995-96, before recovering to 8.0% in 1999-2000. The inadequacy of new capital formation has slowed down the pace and pattern of technological change in agriculture with adverse effect on productivity.

4.249 Investment in agriculture as percentage of GDP has come down from 1.6% in 1993-94 to 1.4% in 1999-2000. During the same period, investment in agriculture as percentage of current expenditure has come down from 3.4% in 1993-94 to 1.4% in 1999-2000.

4.250 The details of all these are elucidated Table 4.21

TABLE 4.21
GROSS CAPITAL FORMATION IN AGRICULTURE
(AT 1993-94 PRICES)

(Rs. Crore)

Year	Total	Public	Private	Per cent share		Investment in agriculture as	
				Public	Private	Percent of GDP	Percent current Exp.
1993-94	13523	4467	9056	33.0	67.0	1.6	3.4
1994-95	14969	4947	10022	33.0	67.0	1.6	3.3
1995-96	15690	4848	10842	30.9	69.1	1.6	2.8
1996-97	16176	4668	11508	28.9	71.1	1.5	2.3
1997-98	15953	3979	11974	24.9	75.1	1.4	1.7
1998-99	14895	3869	11026	26.0	74.0	1.4	1.4
1999-2000	16582	4112	12470	24.8	75.2	1.5	1.4
2000-01*	16545	4007	12538	24.2	75.8	1.3	

* Quick Estimates

(Source: Economic Survey 2000-2001)

Increasing Food Stocks

4.251 At the end of the first quarter of 2000-01, the total foodgrain stocks including coarse grains were 61.96 million tonnes. Procurement prices offered to farmers by the Government are higher than what could be obtained in the open market, the issue prices of PDS ration shops for non-subsidised categories are sometimes higher than the open market prices of foodgrains and therefore PDS sales are falling. On top

of it, considering the fall in agricultural production, there is diminished purchasing power with the rural population particularly below the poverty line (BPL) segment. Food Corporation of India, which arranges for food procurement and also maintains stocks, is thus in a great dilemma.

4.252 The slow growth in agriculture and this paradox of plenty is shown in Table 4.22.

TABLE 4.22:
PROCUREMENT, OFF-TAKE AND STOCKS OF FOODGRAINS
(Million tonnes)

Fiscal Year	Procurement			Off-take			Stocks*		
	Rice	Wheat	Total @	Rice	Wheat	Total @	Rice	Wheat	Total @
1	2	3	4	5	6	7	8	9	10
1995-96	9.91	12.33	22.24	11.63	12.72	24.35	13.06	7.76	20.82
1996-97	11.86	8.16	20.03	12.31	13.32	25.63	13.17	3.24	16.41
1997-98	14.52	9.30	23.82	11.20	7.76	18.96	13.05	5.08	18.12
1998-99	11.56	12.65	24.22	11.83	8.90	20.73	12.16	9.66	21.82
1999-00	17.28	14.14	31.43	12.42	10.63	23.05	15.72	13.19	28.91
2000-01	20.10	16.35	36.46	10.22	7.73	17.95	23.19	21.50	44.98
First Quarter (April-June)									
2000-01	1.90	16.15	18.06	2.57	1.38	3.95	14.49	27.76	42.25
2001-02\$	2.68	20.47	23.15	2.34	2.72	5.07	22.75	38.92	61.96

* Stocks are as at end-March.

@ Includes coarse grains.

\$ Procurement as on June 29, 2001.

Source: Reserve Bank of India Annual Report 2000-2001.

4.253 It will be interesting to note from the table taht:

1. While foodgrain production is stagnating, procurement operations are increasing.
2. While food procurement is rising, PDS sales are falling.
3. Supply demand mismatch is leading to build up of huge food stocks.
4. At current levels of annual PDS sales, food stocks can as well last for the next four years.

4.254 There is another aspect to this question. It is not that there is no demand for grain under PDS. But rural poor do not have enough purchasing power to buy foodgrains.

4.255 Therefore, starvation deaths occur, and at the same time the Government does not know what to do with the bulging food stocks. The Government has initiated schemes such as food for work. But they are not effectively implemented because of lack of resources at the state level, problems in coordination etc.

4.256 These large food stocks are posing a great problem for the

Government as well as the FCI. 33% of world wheat stocks and 25% in rice are now with India. Till March 2001, Rs.39, 991 crores were locked up in incremental food credit, and there has already been an increase of Rs.14, 300 crores over the year. Secondly, the rising food subsidy amounted to Rs.12, 125 crores in 2000-01 and for 2001-02 the estimated food subsidy is Rs.13, 670 crores. The buffer carrying costs are also increasing. It is a big burden on the Budget.

Small industries sector ignored

4.257 As has been stated earlier, in the new economic policy announced in July 1991, a good number of changes were introduced in policies relating to industrial licensing, foreign investment, import of foreign technology, public sector, MRTP Act and the like. Some policy decisions were announced along with this policy, and in certain cases, several consequential decisions were taken subsequently, and notifications issued by Department of Industrial Development, Ministry of Finance, Reserve Bank of India, Company Law Board, MRTP, etc.

4.258 The procedure of registering with only an MOU was also started almost immediately. The industrial licensing system was scrapped, the office of the Controller of capital issues was abolished, the Monopolies Act was withdrawn, the investment limit on foreign companies was raised, banks were given more freedom, interest rates were freed, SLR and CRR were reduced and so on. Even sub-sequently, a number of Committees were appointed and their recommendations were accepted and implemented.

4.259 Small entrepreneurs had hope that the Government would come out with specific measures of a package of assistance to SSI units immediately. But after almost a decade, and despite various promises given by the Government on the floor of the Parliament, and elsewhere, no concrete steps seem to have been taken to implement these assurances.

4.260 In this policy, the Central Government had promised that it would introduce a limited partnership Act, encourage equity participation by large scale units, simplify rules and procedures, introduce special packages for tiny industries, make

special efforts to upgrade technology, provide financial support and so on. All that has come is a piece of legislation on delayed payments. Nothing else has been implemented. This Delayed Payments Act also came into force because of the criticism and tremendous pressure brought on the then Prime Minister by the members of the Small Scale Industries Board to do something for this sector. Serious limitations and inadequacies have been pointed out in this Act by many experts. As a result of these shortcomings the Act has not helped the SSI sector.

4.261 It was only on 30 August, 2000, after almost ten years, that the Prime Minister announced a comprehensive package for small-scale industries and the tiny sector. The intention of this package was to support this sector in areas of policy, taxation, credit, infrastructure, technology marketing etc.

Abid Hussain Committee and Dereservation

4.262 A Committee under the chairmanship of Dr. Abid Hussain was appointed to report on policies relating to the SSI sector.

4.263 The Government promptly implemented some recommendations of this Committee. These were related to the upward revision of the SSI definition and dereservation of industries for the SSI sector. Since then, even after five years, the other important and positive recommendations of the Committee, which would have helped the SSI sector to hold its own, and even progress, have not been implemented.

4.264 While recommending the dereservation of products from the SSI sector, the Abid Hussain Committee had recommended that the Government should provide annual resources of the order of Rs.500 crores over the next five years, thereby totalling Rs. 2500 crores. The Committee had recommended that the Government and industry should set up a joint mechanism that would help the SSI units whose products have been dereserved, to make a smooth transition. They had also recommended that for a period of 5 years, fiscal concessions should be given to such units.

4.265 But without providing the support system that was reco-

mmended, the Central Government, has been dereserving products that had been reserved for the SSI sector. This year (2002), the Finance Minister has announced dereservation of another 15 products.

Delays in taking decisions

4.266 After the recommendations of the Abid Hussain Committee, in February 1997, the definition of the SSI units was changed to raise capital investment in plant and machinery to Rs. 3 crores. But no notification has been issued for a long time.

4.267 Similarly in April 1998, the Prime Minister announced a revision in the definition of SSI units from investment in plant and machinery of Rs.3 crores to Rs. 1 crore. But it took two years for the notification to be issued.

4.268 We were told that these delays in taking decisions, have created a feeling that the Government does not give adequate importance to the SSI sector.

Finance for small scale industries

4.269 Adequate finance is one of the problems of the SSI sector. This sector accounts for nearly 40% of the gross turnover of the manufacturing sector, 45% of manufacturing exports, and 35% of total exports. It has demanded at least a share of 30% of the total credit. But its share in the total credit never rose to more than 14% to 15%. Quite a few Committees were appointed to discuss this subject such as Nayak Committee, S. L. Kapur Committee, and Khan Committee etc. But we were told that the provision of credit for this sector has not improved.

SSI Sector and the WTO Regime

4.270 With the entry into the WTO, it is doubtful whether there will be any encouragement to ancillary industries. As per the Trade Related Investment Measures (TRIMS) agreement, WTO prohibits conditions of performance requirements that are imposed on foreign enterprises. One cannot now impose conditions of indigenisation of parts and components and local content requirements. Some German, American and Japanese automobile manufacturers had gone to the WTO dispute settling authority against the

Indian Automobile Policy which lays down progressive indigenisation of parts and components. The case was decided against India, and now India cannot impose any such conditions. This is a bad portent for ancillary and indigenous industries and technology development. We were told that there is an apprehension that this may close an important area of development for the SSI sector.

4.271 As regards the SSI units, which are producing independent products of their own, they are in deep difficulties because of the large-scale imports from other countries. All quantitative restrictions on imports have now been removed and one can import any product from anywhere in the world. Indian markets are flooded with cheap Chinese goods and small-scale units are finding it extremely difficult to compete with them. Everywhere the Commission went, the witnesses who appeared before us almost unanimously complained about the adverse effects of this situation. Some also told us that Indian establishments would be able to hold their own after initial setbacks.

4.272 On 30 August, 2000, the Prime Minister announced a

comprehensive policy package giving fiscal, credit, infrastructural and technological support to small and tiny industries. In June 2001, the S.P. Gupta Committee which was appointed by the Planning Commission submitted a report on the development of small-scale enterprises. This report contains many valuable recommendations. We were told that implementation of these recommendations could help healthy growth of small enterprises in India.

4.273 A large number of small units are being closed. The industrial areas and centres in different parts of the country which once, were very prosperous, and boasted of new generations of entrepreneurs are no longer in a position to sustain SSIs. In all the states and cities we visited, our Commission was told about the closure or sickness of tens of thousands of small scale industries and the consequent loss of employment for many lakhs of workers, and the miseries to which their families had been reduced.

Trends in employment and unemployment

4.274 The subject of employment is dealt with in greater detail elsewhere in this report. Therefore, we do not

consider it necessary to analyse once again the trends in employment, unemployment rates, industrial distribution of total workforce etc. We may refer to the trends in brief:

- a) Overall employment is estimated to have grown at around 1.01% per annum in 1990s compared to 1.55% per annum in 1980s. There is deceleration in rate of growth in employment in all sectors particularly more so in organised sector.
- b) The number of unemployed in 1997 (38 million job seekers) was more than the number employed in organised sector (31 million were employed).
- c) About 7% to 8% of the workforce which is in the organised sector is protected while the remaining 92% to 93% is unprotected, unorganised and vulnerable.
- d) There is a trend in growth of casual labour in the total workforce during all these years. From 27.2% in 1977-78, it has gone up to 33.2% in 1999-2000. The proportion of salaried

workers is the same at 13.9% in 1977-78 and 1999-2000. The proportion of self employed has come down from 58.9% in 1977-78 to 52.9% in 1999-2000. But the number of casual workers has gone up substantially from 27.2% to 33.2%. Thus, casualisation of workers has been an inevitable result of the new economic trends.

- (e) Employment is not growing in the organised sector.
- (f) 44% of the labour force in 1999-2000 was illiterate and 33% had schooling up to secondary education and above. Only 5% of the workforce had necessary vocational skills.
- (g) It is not enough to create employment opportunities. The quality of jobs is equally important. Regular wage employment is preferred to casual employment. There is also a strong preference for employment opportunities in the organised sector and particularly in the Government sector. This is particularly so for the educated unemployed.

4.275 As mentioned earlier, these are only indicative trends.

Downsizing of companies

4.276 Because of global competition most of the companies want to reduce costs and be competitive. The first casualty is the number of workers employed, and since 1992 many Indian companies have resorted to downsizing by introducing Voluntary Retirement Schemes (VRS). VRSs are spreading very fast, and has affected many enterprises in different sectors. ACC, ANZ Grindlays Banks Ltd., Asia Brown Boveri, Ashok Leyland, Air India, Avery India, Bajaj Auto Ltd., Bates Clarion, Bharat Heavy Electricals, Bharat Heavy Vessels, Blue Star, Nicholas Piramel, Crompton Greaves, Dharamji Morarji Chemical Co Ltd., Colour Chem, Glaxo (I) Ltd., Godrej Soaps Ltd., Goodlass Nerolac, Reliance Industries, Hindustan Machine Tools, Hindustan Organic, Hoechst, Indian Airlines, Indian Rayon, Kores (India) Ltd., Larsen & Tubro Ltd., Mukand Iron and Steel Ltd., Premier Auto Electric, Phillips, Telco, SKF (Pune), TISCO, Voltas, Escorts, Daewoo (I) Ltd., ITDC are some of the companies which have introduced voluntary retirement

schemes and have reduced the number of workers. Nationalised banks have introduced VRS for their staff, and so far about 99,000 workers have taken advantage of such schemes. A large number of Hotels in the ITDC, Taj, Oberoi, and Welcome Group have downsized by introducing VRS for their workers. Indian Railways are also thinking of reducing their number of workers by 30,000 per year. This is by no means an exhaustive list. But it gives a glimpse of the grave situation that is developing. When we add to this the workers who have lost jobs as a result of the closure of lakhs of SSI units we get a very grim picture of the employment situation.

4.277 The size of the organised sector in our economy is relatively small and the scope for expansion is extremely limited. In 1999, the organised sector employment was only 28.11 million or about 7% of the total employment of over 397 million in the economy. This employment grew at the rate of 1.20% per annum in 1983-84 and it has come down to 0.98% in 1994-2000⁶.

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⁶ Source: Report of the task force on employment opportunities p. 2.24

Report of Working Group of Planning Commission

4.278 The Planning Commission, appointed a Task Force on Employment Opportunities. Shri Montek Singh Ahluwalia, then member of the Planning Commission was the chairman of the Task Force. We list some of the main recommendations made by the Task Force.

- Accelerating the rate of growth of GDP, with particular emphasis on sectors likely to ensure the spread of income to the low-income segments of the labour force.
- Pursuing appropriate sectoral policies in individual sectors which are particularly important for employment generation. These sector level policies must be broadly consistent with the overall objective of accelerating GDP growth.
- Implementing focussed special programmes for creating additional employment and enhancing income generation from existing activities aimed at helping vulnerable groups that

may not be sufficiently benefitted by the more general growth promoting policies.

- Pursuing suitable policies for education and skill development which would upgrade the quality of the labour force and make it capable of supporting a growth process which generates high quality jobs.
- Ensuring that the policy and legal environment governing the labour market encourages labour absorption, especially in the organised sector.

4.279 The report of the Task Force has evoked considerable criticism, particularly from the officials of the Khadi & Village Industries Board, the Swadeshi Jagran Manch and others. The Government itself is committed to create one crore new jobs every year and according to them the recommendations of the task force will not be able to achieve the target. Our Commission has dealt with these recommendations in some other sections.

Economic Reforms and impact on Labour

4.280 A review of industrial relations in the pre-reform decade (1981-90) reveals that as against 402.1 million mandays lost during the decade (1981-90) i.e. in the pre-reform period, the number of mandays lost declined to 210 million during 1991 to 2000 - i.e. the post-reform period. This may give one the feeling that this is an index of improvement of industrial relations. But if we break these figures down, we find that more mandays have been lost in lockouts than in strikes. A total number of 129 million mandays were lost in lockouts, and 80.2 million were lost due to strikes during this period. Conditions of employment have been uncertain, and many workers do not seem to be willing to go on strike or resort to action that may put their jobs in jeopardy. But employers seem to have acquired more confidence and are resorting to lockouts more often. The agreements that are arrived at too are more often in favour of the management. This reflects a changed situation.

4.281 A large number of workers have lost their jobs as a result of VRS,

retrenchment and closures both in the organised and the unorganised sector. The exact number is not available. According to our information, no data on this subject has been compiled by any State Government.

4.282 Wherever we went to collect evidence, we were told, particularly by those running small - scale industries, and by leaders of workers' organisations, that many thousands of workers had lost their jobs in the last decade. Everywhere we asked for information on specific numbers of closures and loss of jobs. We also asked the representatives of the State Governments for specific information on closures and jobs losses. But we have not been able to collect information on exact, or even approximate numbers. We are surprised that the state Governments, Trade Unions and managements of industrial enterprises are not able to give us definite information.

4.283 We learn that about 8 lakh workers have been ushered out of jobs through VRS and retirement schemes.

4.284 Here, we must also refer to the large number of complaints that

we have received on VR Schemes. We have been told that in many cases, it is a travesty to describe these schemes as voluntary. We are not asserting that all 'voluntary' retirement schemes have suffered from elements of duress. We realize that in many cases, acceptance of VRS has been bonafide, and by free choice. But we have also been told of elements of indirect compulsion, pressure tactics, innovative forms of mental harassment, compelling employees to resign by seeking to terminate them, and in some cases, physical torture and threats of violence against themselves or dependents. Responsible officers or workers associations particularly in the Banking industry, have deposed before us about such practices followed by employers particularly in foreign banks.

Industrial Relations Scenario

4.285 We will make a few other general observations on matters that have made before us about the industrial relations scenario.

1. It is increasingly noticed that trade unions do not normally give a call for strike because they are afraid that a strike may

- lead to the closure of the unit.
2. Service sector workers feel they have become outsiders and are becoming increasingly disinterested in trade union activities.
 3. There is a trend to resolve major disputes through negotiations at bipartite level. The nature of disputes or demands is changing. Instead of demanding higher wages, allowances or facilities, trade unions now demand job security and some are even willing to accept wage cuts or wage freezes in return for job protection. Disputes relating to non-payment of wages or separation benefits are on the rise.
 4. The attitude of the Government, especially of the Central Government, towards workers and employers seems to have undergone a change. Now, permissions for closure or retrenchment are more easily granted.
 5. The Conciliation Machinery is more eager to consider problems of employers and today consider issues like increase in productivity, cost reduction, financial difficulties of the employer, competition, market fluctuations, etc. etc. They are also not too serious in implementing the awards of labour courts awarded long back after protracted litigation against employers wherein reinstatement or regularisation of workers was required.
 6. Recovery proceedings against employers who could not pay heavy dues of workers are not being pursued seriously by the industrial relations machinery, if the financial position of the employer is very bad.
 7. The labour adjudication machinery is more willing to entertain the concerns of industry.

Collective bargaining

4.286 Globalisation is affecting collective bargaining. Earlier in the public sector, the emphasis was on greater parity across sectors and reducing the gap between the lowest and the highest paid employees. Now the gap is widening. Over 100 out of

about 240 public sector companies have not had pay revision since 1992. There is also a trend towards decentralisation of collective bargaining in key sectors, which tends to reduce the power of unions, but makes pay more aligned to enterprise performance. Extension of the period of collective agreements in central public sector has resulted in workers of Navaratna companies getting double the raise they were getting when the duration of the agreement was for a period of 4 to 5 years. The average cost of a worker to the company per month in a Navaratna company at Rs. 29,000 is equivalent to the annual salary of a temporary worker with similar skills working in the same company and in the same location. Over the years, the gap between workers of the same skill level has been widening.

4.287 Incidence of industrial conflict seems to be on the decline. Most long drawn strikes in the private sector do not seem to have borne results from the workers' point of view. Even resistance to privatisation from trade unions is not deterring the government any longer. Where the privatisation process is stalled it

appears more the result of bad experiences with earlier privatisations on a smaller scale (electricity, road and air transport, for instance), inability to get the tenants vacated from the premises (in the case of Great Eastern Hotel) or resistance from within the government itself. Detailed statistics regarding numbers of strikes, lockouts, workers involved and man days lost, have already been given in Chapter II and therefore, we do not want to repeat them here.

Financial Regulation and Supervision

4.288 The Reserve Bank of India is entrusted with the supervision of the banking system. It also regulates select financial institutions and Non-Banking Finance Companies (NBFCs). The Security Exchange Board of India (SEBI) exercises control over the stock exchanges. The Ministry of Finance also exercises its control over many term lending institutions.

4.289 Since 1991, a number of reforms have been introduced in the financial sector and a good number of structural and organisational changes have taken place in the financial system.

4.290 But in spite of all the new regulations, scams take place at frequent intervals. They expose the inadequacy of the present institutional and regulatory systems.

Scams

4.291 In 1992, Harshad Mehta was instrumental for a securities scam under the very nose of the Reserve Bank of India. The Standard Chartered and ANZ Grindlays Bank lost huge amounts of money and the Bank of Karad, a private sector bank went into liquidation. In 1996, a large number of public limited companies that had raised crores of rupees from the capital markets just vanished. Neither the companies nor their promoters were traceable. In 1997, CRB Capital, a NBFC promoted by Dr. C.R. Bhansali raised huge amounts from the public and was not able to pay back to the investors. Small investors lost their hard earned money. C.R.B. Capital which was even granted a provisional banking license defrauded millions of investors of their investments in mutual funds and public deposits. It left the State Bank of India shaken. The pay order scam of Ketan Parekh came to light in 2001. He had operated through the little known Madhavpura

Mercantile Cooperative Bank, and as a consequence of the gross misuse of bank funds, the Bank had to be liquidated. For over two years Ketan Parekh was given a free hand to manipulate share prices and take them to unrealistic levels. Despite a pro-market Budget, the BSE Index went into a nosedive, ostensibly engineered by a bear cartel. As a result, there was an erosion of almost Rs. 1.5 lakh crores in market capitalisation and a loss of 700 points in the Bombay Stock Exchange (BSE) sensex in eight days. The upheaval made a mockery of the BSE's avowed Mission 2001, a Technology Savvy, Investor friendly, Global Exchange and the like. The plantation companies that mushroomed in the first half of 1990s duped investors of almost Rs. 8,000 crores and vanished. They promised investors incredible returns of over 1000% in seven years and launched massive newspaper and TV advertisement campaigns. Surprisingly, all of them got away without any punishment, leaving one to wonder about the efficacy of the regulatory system or the will behind it. The culprits have not been tracked down and brought to book. The law or the law enforcement machinery or both

have failed to secure expeditious and exemplary justice. The small share holder or trusting investor has been dumped and defrauded of his meagre savings – in some cases, the savings of a lifetime on which the old or the widowed depended for their daily meals.

4.292 The events that have happened in the past one year, are even more disturbing.

Bankrupt Banks

4.293 Quite a few banks in the Cooperative sector in Ahmedabad, Hyderabad, and Pune have gone into liquidation. An administrator was appointed in one Cooperative Bank in Pune, (which was the third largest Cooperative Bank in the country.) There was a run on 6 Cooperative Banks in Anand and Nadiad in Gujarat. Boards of two Cooperative Banks in Gujarat were superseded by the State Government. The Chairman of a Cooperative Bank in Hyderabad committed suicide because of frauds in his Bank. There was a report that the RBI was providing an amount of Rs. 8,000/- crores to help the Cooperative banks in distress. All

does not seem to be well with Cooperative Banks.

4.294 There are quite a few public sector banks which are sick or on the verge of sickness. The Indian Bank, UCO and United Bank of India are officially recognised as weak banks. Three more have been identified as seriously impaired banks : The Allahabad, Dena and Punjab & Sind Banks. Each of these have high gross NPA ratios, impaired asset books, excess staffing, low computerization, high intermediation costs and spreads that will not be acceptable to any low risk borrower. Each of these banks may have to be recapitalised.

4.295 The Government injected a massive Rs. 20,446 crores towards recapitalisation of public sector banks till the end of March 1999 to help them fulfill the new capital adequacy norms. The Government has decided not to provide any further funds for this purpose. The question that arises in many minds is if banks themselves go bankrupt, who can help them?

4.296 The Industrial Finance Corporation of India (IFCI) has gone under, and Government has agreed to lend Rs. 1000 crores for a bail out.

Because of large NPAs and client industries not repaying in time the IFCI has gone in red.

4.297 News about the Industrial Development Bank of India (IDBI) is even more disturbing. It has declared that it is in trouble, and has asked the Central Government for Rs. 1000 crores as assistance. Given the bigger size of its balance sheet and its massive exposure in sectors such as steel and textiles, its Non-Performing Assets (NPAs) may be much larger than those of Industrial Finance Corporation of India (IFCI), and it will probably require more funds for recapitalisation. It has asked the RBI to extend Rs. 1440 crores in loan payable in 50 years.

4.298 Most of the state financial corporations are also in trouble, and have large NPAs. The Government or the Reserve Bank will have to formulate plans to bail them out.

UTI muddle

4.299 The Unit Trust of India is the largest and oldest asset management company in India. On 28 February 2001, the funds under UTI management were of the magnitude of

Rs. 64,250 crores. All other mutual funds together, manage a total fund corpus of under Rs. 38,000 crores. This throws light on the size of operation of the UTI. Let us look at the present status of the UTI: the gross NPAs of the UTI amount to Rs. 5693.34 crores; it invested in ICE stocks, it sold holdings in blue chip companies, it invested in over 1000 unlisted companies. It has been alleged that its Chairman was pliable and allowed political interference to influence investment decisions etc. Its ex-Chairman was in jail and the CBI is conducting investigations against him. The Tarapore Committee has found gross irregularities in the functioning of the Unit Trust of India. The Government of India has had to come to the rescue of UTI to bail it out, and the effect that all this has had on the credibility of the UTI and other financial institutions is anybody's guess.

Problems with ICICI

4.300 During the last five years, the asset quality of the ICICI has turned extremely suspect. It is said that many of the non-performing assets of ICICI will have to be written off. The 20 subsidiaries of the ICICI

collectively earned about 3.9% return in the year 2001. Many were running into losses. Large non-performing assets are one problem and huge contingent liabilities are another problem. Now, to cover up the financial mess, it is being proposed that Industrial Credit & Investment Corporation of India (ICICI) should merge with ICICI Bank and convert itself into a universal bank.

4.301 Thus, all the major term lending financial institutions and banks are in deep trouble. During the last year, Net Asset Values of most mutual funds have gone down considerably because of the collapse of equity markets. Thus, small investors seems to have lost faith in all these institutions and they do not seem to know where to put their hard earned money.

4.302 If such scams occur frequently, and if leading financial institutions like the UTI, IFCI, IDBI and ICICI land themselves in situations from which they have to be bailed out, it raises serious questions about the effectiveness of the regulatory system which we are operating.

India Joins the WTO

4.303 On April 15, 1994, the Uruguay Round, the eighth in a series of trade negotiations, came to a close, and the agreement on the World Trade Organisation was signed. On 1 January 1995, the WTO (World Trade Organisation) came into existence. India was a signatory to the Agreement, and as a result we became a member of the WTO from its inception.

4.304 The WTO has been set up to ensure a freer trade regime in the world, and there are certain obligations cast on India as a member of the WTO.

4.305 According to the WTO, one cannot impose quantitative restrictions on goods imported from abroad. We were maintaining such restrictions on the import of about 2700 agricultural, textile and industrial products. Some countries approached the dispute settling body of the WTO complaining against India, and as a result we have had to remove all quantitative restrictions on imports from April 1, 2001. The rate of tariff has also been reduced. As a result, Indian industries are facing

problems of indiscriminate imports of all types of goods and have to compete with these products in Indian markets. It is now cheaper to import parts and components required than to manufacture them in the country. As we have stated elsewhere, cheap Chinese goods of all types are in the Indian market and are effectively competing with Indian products. Even bottles of rose milk imported from China and sold in Delhi were produced before our Commission. Though it is said that non-oil imports have not come in a big way, in some industries like chemicals, plantation, household goods, toys, etc. products have been imported in a big way and are out-ricing Indian products. More and more of such goods are likely to come into India and if Indian manufacturers are not able to compete with them on price and quality, they will have to pull their shutters down. This is a real threat to Indian industry, and therefore to employment. Already a large number of industries are badly affected as a result of such free and unrestricted imports. A mention about them has already been made earlier in this Chapter.

4.306 Many countries are dumping their goods in Indian markets at a

cheap price. The Government of India can impose anti-dumping duties on them to prevent unhealthy competition. Because this is a process involving a complicated procedure, such action often comes after a long time by which time the domestic industries are significantly dislocated. There is urgent need to revamp the set-up responsible for this purpose, including augmentation of manpower and capabilities to enable prompt action for the benefit of domestic industries.

4.307 As we have stated elsewhere, the Indian plantation industry is in great difficulty as a result of import of coffee from Vietnam, tea from Kenya and Sri Lanka, rubber from Malaysia, coconuts from Indonesia and so on. Several organisations of plantation employers in Kerala, Karnataka and Tamil Nadu told us that they were on the verge of closure because the prices of imported tea, coffee, etc. are much below the cost of production in Indian plantations.

4.308 In the new regime, we have to encourage foreign investment and give them treatment on par with local investors. A large number of multi-nationals have entered the field of low

technology, high volume products such as mineral water, ice cream, processed foods etc., and this will close an area of opportunity to small entrepreneurs. Small units will not be able to compete with them and their aggressive advertising and modern marketing methods.

4.309 We have already pointed out that as a result of the Agreement on WTO, the Government will not be able to put any conditions on foreign investors regarding indigenisation of their products, criteria of local contents, ancillarisation, dividend balancing, export performance etc.

4.310 A large number of small enterprises have developed during the past decades as manufacturers of import substitution items. Now the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement will not allow us to copy the designs of products. Moreover, since imports are freely available, one may not be interested in manufacturing such products inside the country. Thus, one avenue for SSI units will be permanently closed.

Mobility of Labour

4.311 The migration of workers across international boundaries is one of the most striking aspects of the globalisation of the world economy, with a major impact on well over 100 countries. It is currently estimated that at least 130 million people live outside their countries of origin. This large-scale migration from one country to another, either permanently or for short durations, is essentially the manifestation of the urge to search for better incomes and better working conditions. Political factors have also influenced people to leave their ancestral homes and seek refuge in other countries.

4.312 Increased internationalisation of production, trade and finance is expected to exert additional pressure in the countries of origin and destinations for larger flow of skilled or unskilled labour in the immediate decades to come. In addition, the revival of economic growth in most of the Middle-East states – the centre stage for contract labour migration in the last two decades – seems to have wide-ranging implications on future international migration flows, particularly for labour exporting countries in South and South East Asia.

4.313 In such a context, it is imperative that attempts are made, especially in a leading labour exporting country like India, to examine the implications of the contemporary migration flows so as to evolve a more purposeful migration policy framework aimed at the maximisation of benefits from migration in the wider context of economic development.

4.314 Since Independence, two distinct types of labour migration have been taking place from India. The first is characterised by a movement of persons with technical skills and professional expertise to industrialised countries like the United States, Britain and Canada, which began to proliferate in the early 1950s. The second type of migration is the flow of labour to the oil exporting countries of the Middle East, which acquired substantial dimensions after the dramatic oil price increases of 1973-74 and 1979. The nature of this recent wave of migration is strikingly different, as an overwhelming proportion of these migrants are in the category of unskilled workers and semi-skilled workers skilled in manual or clerical occupations.

Migration to the Industrialised Countries

4.315 At the outset, it is important to highlight the basic characteristics of the labour flows from India to the industrialised countries in the period since Independence:

- Such outflows are made up almost entirely of permanent migration in so far as the proportion of emigrants, who return to India, after a definite period, is almost negligible.
- A large proportion of these migrants are persons with professional expertise, technical qualifications or other skills.
- For an overwhelming proportion of these migrants, the destinations have been the United States, Canada, and the United Kingdom, and in recent times some countries in Europe.

4.316 Available evidence indicates that the United States is the major recipient of Indian migrants. In terms of numbers, nearly 30,000 Indians on an average have been migrating to the United States during 1986-1995 (Table 4.23) every year. The significance of these flows becomes more evident

when we examine India's share in total immigration to the United States during 1951-1996. It shows that Indian immigration in the United States which constituted less than 1% of total immigration from all countries during 1950s and 1960s, registered a

rapid increase during the 1970s, reaching a peak of 3.8%. It slowed down in the 1980s till 1991, but went on the upswing again in 1992 at 3.8% and further touching almost 5% in 1996.

Table 4.23

India's Share in Total Immigration to the US: 1951-1996

Immigration	1951-60	1961-70	1971-80	1981-90	1991	1992	1993	1994	1995	1996
From India	2,120	31,214	172,080	261,841	45,064	36,755	40,121	34,921	34,748	44,859
From all countries	2,515,000	3,322,000	4,493,000	7,338,000	1,827,167	973,977	904,292	804,416	720,461	915,900
India's Share (%)	(0.1)	(0.9)	(3.8)	(3.6)	(2.5)	(3.8)	(4.4)	(4.3)	(4.8)	(4.9)

Source: Khadria, 1999

4.317 The presence of a substantial and growing number of educated Indian nationals in the West, mainly the U.S. makes "brain drain" an issue of significance for public policy.

Migration to the Middle East

4.318 The oil price increases of 1973-74 and 1979 saw an enormous growth in the demand for foreign labour in the oil exporting states of the Gulf. The scale of labour

movements into the Gulf was intimately linked to the escalation in oil revenues and the unprecedented rate of investment in domestic industry and infrastructure in the oil states. The indigenous labour force was totally inadequate in these countries. They, therefore, had to turn to labour from elsewhere to meet the demands of the accelerated economic growth. This sudden spurt in the demand for labour was met by

drawing labour from labour surplus economies like India. The period between 1974 and 1982 witnessed a large outflow of Indian labour to the Middle East labour markets.

4.319 The oil glut in the early 1980s resulted in a reduction of development expenditure in most Middle East States. This had an adverse impact on the demand for labour, and slowed down the flow of migrant labour into the region. Besides, most of the construction activities, which were taken up in the Middle East in the 1970s, and which employed large numbers of migrant workers had been completed by the 1980s resulting in large-scale displacement of the guest workers. This labour market situation forced the migrant labour to lapse back to their native countries in large numbers. Viewing this trend, apprehensions were expressed in many quarters as to whether Indian labour migration to the Middle East would be sustained in a significant manner in the next couple of decades. These apprehensions were further aggravated by the events of the Gulf crisis of 1990 which forced nearly 1,60,000 Indians to return home from the war-zones in distressed conditions.

4.320 Contrary to such threats of declining out-migration, available evidence indicates that labour migration from India to the Middle East has picked up substantial momentum since the initial set-back in the early years of the last present decade. The revival of economic growth in most Middle East states and the large - scale reconstruction of war-torn areas seem to have considerably boosted the migrant labour requirements in the Middle East again. The trends in the annual labour outflow from India to the Middle East in the 90s are depicted in the following Table: 4.25.

4.321 It is also important to note that there has been a clear shift in the pattern of labour demand in the Middle East – a shift away from several categories of unskilled and semi-skilled labour towards service, operations, and maintenance workers requiring higher skills – thus, generating new opportunities for labour exporting countries.

4.322 Apart from providing a 'safety valve' for the massive unemployment problems at home, migration to the Middle East would continue to be an

important source of foreign exchange for a country like India, which faces severe balance of payments problems, at least for a couple of decades more.

4.323 The number of Indian workers who have migrated for employment is shown in the following table:

Table 4.24
Emigration for Employment over the years

(In Lakhs)

S. No.	Year	No. of workers
1	1987	1.25
2	1988	1.70
3	1989	1.26
4	1990	1.44
5	1991	2.02
6	1992	4.17
7	1993	4.38
8	1994	4.25
9	1995	4.15
10	1996	4.14
11	1997	4.16
12	1998	3.55
13	1999	1.99
14	2000	2.43

Source: Ministry of Labour, Government of India Annual Report 2000-01

4.324 These workers have mainly gone to countries in the Middle East. The following table gives the

distribution of the labour outflow to these countries over a period of years.

Table 4.25**THE DISTRIBUTION OF ANNUAL LABOUR OUTFLOWS FROM
INDIA BY DESTINATION 1991 – 2000**

COUNTRY	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
BAHRAIN	8630	16458	15622	13806	11235	16647	17944	16997	14905	15909
KUWAIT	7044	19782	26981	24324	14439	14580	13170	22462	19149	31082
OMAN	22333	40900	29056	25142	22338	30113	29994	20774	16101	25155
S.ARBABIA	30928	265180	269639	265875	256782	214068	214420	105239	27160	59722
U.A.E	15446	60493	77066	75762	79674	112644	110945	134740	79269	55099
SINGAPORE	—	—	—	—	-	—	—	21298	19468	18399
MALAYSIA	—	—	—	—	-	—	—	—	62	4615
LIBYA	—	—	—	—	-	—	—	—	1129	1198
OTHERS	7121	13971	19974	20476	28866	26162	29951	33654	22309	32003
TOTAL	197889	416784	438338	425385	415334	414214	416424	355164	199552	243182

Source: Ministry of Labour, Government of India, Annual Report 2000– 01

4.325 As we have pointed out earlier, the employment of Indian workers helps to earn foreign exchange and leads to augmentation

of the foreign exchange reserves of the country. The following table shows such remittances into India from 1981-82 to 1999-2000.

Table 4.26

PRIVATE TRANSFERS (RECEIPT)

S. No.	YEAR	REMITTANCES IN	
		US \$ MILLION	RS. CRORE
1	1981-82	2333	2082.8
2	1982-83	2525	2431.0
3	1983-84	2568	2648.3
4	1984-85	2509	2981.9
5	1985-86	2219	2715.5
6	1986-87	2339	2990.6
7	1987-88	2724	3532.7
8	1988-89	2670	3865.4
9	1989-90	2295	3823.9
10	1990-91	2069	3711.0
11	1991-92	3587	9418.9
12	1992-93	2651	8124.0
13	1993-94	5265	16513.0
14	1994-95	6200	25416.0
15	1995-96	8506	
16	1996-97	12367	
17	1997-98	11830	
18	1998-99	10341	
19	1999-2000	12290	

source: Ministry of Labour, Government of India Annual Report 2000-01

Industrial Sickness

4.326 The closure of industrial units and bankruptcy are a normal feature in the developed economies all over the world. The incidence of closures tends to be high in economies characterised by fierce competition and in industries with a high degree of obsolescence. Developed economies with their well-established social security systems, easily take care of workers displaced by such closures. So even when labour is displaced, the social safety net ensures that basic needs are taken care of. Developing economies, with their limited investible 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 and, depending upon the number of persons involved, this situation may lead to serious social consequences. Industrial sickness and its resultant consequences have, therefore, to be handled carefully to see that its adverse impacts fall least on workers and on society. With globalisation, the incidence of sickness, bankruptcies and closure of industrial units appears to be on the increase.

4.327 As of March 1999, industrial sickness was widespread, afflicting 3,09,013 units in almost all industry groups spread all over the states and the union territories in India. This excluded 1.26 lakh non-existent and non-traceable SSI units with an outstanding bank credit of Rs. 240 crore (GOI 1996-97). These 3.09 lakh sick units might have been employing about 70-80 lakh persons (Mehta 1992). The losses of 117 out of 240 central government undertakings, most of them terminally sick, are estimated to be Rs. 5,287 crore in 1993-94, employing 7-8 lakh persons. Forty-nine public sector units under the Department of Heavy Industry, Government of India, employing 2.03 lakh persons incurred an aggregate loss of Rs. 1,111.59 crore during 1994-95 compared to an aggregate of Rs. 239.6 crore in 1990-91. Out of these 49 public sector enterprises 34 are loss making. Two hundred twenty-eight public sector enterprises of the Government of India, employing 20.5 lakh persons included 57 chronically sick units, which were registered with the Board of Industrial and Financial Reconstruction (BIFR). The losses of the departmental commercial undertakings of the 25 States and 7 Union Territories were Rs. 1,780 crore

in 1995-96. In addition, the losses of the state electricity boards and states' road transport corporations were over Rs. 5,000 crore. About 875 state level public enterprises incurred losses of Rs. 863 crore in 1991-92 (Sankar et al 1994). According to the report of the Comptroller and Auditor General, there are around 500 enterprises owned and operated by the State Governments, which have a cumulative loss of over Rs. 2,000 crore, against a paid up capital of Rs. 2,300 crore (Bajaj Committee of 1992).

4.328 The aggregate scene of industrial sickness in public and private sector in India amounts to a magnitude of around 3 lakh units, a very large number of them terminally sick, with a total loss of about Rs.31,000 crore and employing about 7-8 million people. Thus, industrial sickness in India is of massive proportions, and is eating into the vitals of the economy.

4.329 The major issue that emerges is how the industrial units, which are sick or closed or under liquidation, need to be dealt with in India, particularly the displaced workers and locked assets of these units. This issue assumes added importance because of the likely increase in the

number of such units due to globalisation. The resources of the country are limited, and therefore, these resources cannot be written off. They need to be recycled for productive activities, without delay.

Trends in Wages and Productivity.

4.330 There is evidence to indicate that both real wages and productivity of labour have registered an increase during the 90s. This growth is visible in all segments of the workforce, even among casual workers.

4.331 According to the estimates made by Sundaram⁵ based on the 50th and 55th rounds of NSSO, the average daily earnings of adult casual labourers in the rural areas increased by 3.59% p.a. for males and 3.19% for females between 1993-94 and 1999-2000. The average real wage earnings per day received by adult casual wage labourers in urban areas increased by 2.94% for males, and 3.91% for females during the same period.

4.332 Along with the growth of real wages, there appears to have been an

.....
⁵ Sundaram, K. (2001), 'Employment and Poverty in India in the 1990's. Further Results from NSS 55th Round Employment-Unemployment Survey 1999-2000', Economic and Political Weekly, August 11.

overall growth in the productivity of workers. According to Sundaram's estimates, labour productivity increased, in all the sectors and the aggregate level, at the rate of 6% p.a. In agriculture and allied sectors, it increased a little over by 3.3% p.a. in real terms. In manufacturing, trade, hotels and restaurants and community, social and personal services the average labour productivity measured by gross value added per worker increased at an annual compound rate of 6.1, 2.8 and 10.1% respectively. In the construction and transport, storage communication sectors the gross value added per worker virtually stagnated.

4.333 In spite of this impressive increase in labour productivity in 90s, India's labour productivity is lowest amongst 47 countries covered by the World Competitive Year Book 2000.

Poverty in India

4.334 The consumer expenditure data of the 55th round on a 30 day recall basis yields a poverty ratio of 29.09% in rural areas, 23.62% in urban areas and 26.10% for the country as a whole in 1999-2000. The corresponding percentages from the 7

days recall period are 24.02% in the rural areas, 21.59% in urban areas and 23.33% for the country as a whole. The poverty estimates for the years 1973-74, 1977-78, 1983, 1987-88, 1993-94 and 1999-2000 indicate a definite decline in poverty ratios. The estimate of poverty of 1999-2000 is not strictly comparable with the earlier estimates of poverty, on account of difference in methodology for collecting data, but the decline of more than 10% points in the poverty ratio gives some reason to believe that the general living standard of the workers has improved with the rest of the population.

4.335 The Market Information Survey Of Households (MISH) of the National Council of Applied Economic Research (NCAER) further corroborates these trends. An independent estimate of poverty, made by Deepak Lal, Rakesh Mohan and Natarajan on the basis of MISH, indicates a more rapid reduction in poverty ratio compared to the official estimates made by the Planning Commission.

4.336 According to these estimates, the poverty ratio at the all India level declined from 38.86% in 1987-88 to 16.52% in 1997-98. It is claimed that

the estimates of decline in poverty ratio made on the basis of MISH are more compatible with available data on growth of consumption of consumer durables such as TV, tape recorder, electric fans, bi-cycle, two-wheeler as well as non-durable items, such as textiles, edible oils, footwear, etc.

4.337 The Economic Survey 2001-02 claims that poverty reached an all time low of 26% in 1999-2000. According to the latest estimates in the Economic Survey, the number of poor people in the country stands at 260 million.

Growth in Inequality

4.338 In spite of these macro improvements, at a more disaggregate level, there is an uneven impact of growth on different sections of the population reflecting income inequalities.

4.339 The employment elasticity of output has declined over time, which reflects the capital-intensive nature of the growth process. This decline is more pronounced in the secondary and tertiary sectors. According to the study made by Nagarajan,⁶ the rural (nominal) per capita income as a

proportion of the urban per capita income has also declined. A similar comparison of the nominal per capita income in the organised and unorganised sectors shows that the per capita net domestic product (NDP) in the unorganised sector as a proportion of NDP in the organised sector has also gone down (National Accounts Statistics, 1999, Statement 76.1, 1993-94, 1994-95, 1995-96 and 1996-97, Page 166-168). The income distribution across states shows that the inequality measured by the coefficient of variation in per capita state domestic product has nearly doubled since 1970-71. The disparity in per capita income between the top three and bottom states has also widened sharply since mid 80s. The distribution of value added between wages and profits in the private corporate sector also shows growing disparities in distribution between workers and entrepreneurs. Hence, there is some evidence from these studies to show that growth has favoured urban India, the organised sector, the richer states and property

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⁶ National Accounts Statistics, 1999, Statement S-5, Net Domestic Product in Rural and Urban Areas, 1970-71, 1980-81 and 1993-94, Page 184-185

owners as against rural India, the unorganised sector, the poorer states and the wage earners. The period of growth during 80s and 90s has also been the period of growing inequalities. Domestic investments are concentrated largely in the developed states of the country, mainly Maharashtra, Gujarat, Punjab and Haryana, compared to poor states like Bihar, Orissa, Madhya Pradesh and U.P. A similar trend is also seen in the concentration of Foreign Direct Investment (FDI).

Capital Market

4.340 During the last three years, the capital market is static. Very few new issues have come to the market. The following table shows the total number of new issues of equity, debentures, preference shares, right shares which were floated in the market and the total funds raised from the capital market. It appears that in 1994-95 a maximum amount of Rs.26, 369.68 crores were raised from the market through a total number of 1648 issues. Thereafter, since 1997-98 very few new issues or right issues came into the market. From a peak of 1663 new and right issues in the year

in 1995-96, the total number of such issues has now come down to a meagre 142. In 1998-99, only 42 issues were launched. The total amount raised from the market in 1994-95 was Rs.26, 369 crores, and in the year 2001-02, only Rs.142 crores were raised from the market. 1991-92 was the worst year of the economic crisis. Even in that year, there were 514 issues, and an amount of Rs.6193 crores was raised from the market. Even this amount has not been raised during the last three years. In 1997-98, only around Rs.3000 crores were raised, and thereafter, the average amount raised per year has been around Rs.5000 crores.

4.341 The Capital market is an important indicator of the economy. The present state of the market only indicates the uncertainty and loss of confidence of the entrepreneurs about the future prospects of Indian economy. As has been said earlier, very few entrepreneurs are thinking of new projects, diversification and expansion, and this is amply reflected in the present status of the market. It is difficult to be optimistic about the situation.

Table 30**New Capital Issues raised by companies in private sector**

Year	Amount in Rs. Crores	Total No. of public issues
1990-91	5335.88	536
1991-92	6193.07	514
1992-93	19803.49	1040
1993-94	19330.37	1075
1994-95	26369.68	1648
1995-96	16002.51	1663
1996-97	10409.60	838
1997-98	3137.74	102
1998-99	5013.00	48
1999-00	5153.34	79
2000-01	4923.97	142

Source: Handbook of Statistics on Indian Economy – RBI - 2001

No improvement in Administration

4.342 Though a number of changes have taken place in the Indian economy, bureaucratic procedures and systems seem to retain their role. Very often, we hear about simplifying of procedures, doing away with unwanted laws and having a single window clearance. Many changes have taken place in the industrial sector.

But other sectors are untouched. A number of efforts have been made, but without any success. Still, even after a decade of economic reforms, the Government's control over of our economic life has not weakened.

International Labour Standards

4.343 During the course of the evidence tendered before us, we were sometimes told of the "Social clauses"

or clauses on labour standards which were being used by developed countries to prohibit or restrict the import of goods manufactured in India to other developed countries. We were informed that practices like the employment of child labour, not abiding by environment standards etc. were identified as departure from the labour standards that developing countries were expected to maintain. However, no one told us that the failure to pay an adequately high minimum wage, provide for a minimum social welfare and social security, adequate housing, medical aid, drinking water etc. were also regarded as failure to abide by prescribed labour standards. We did not ask anyone to explain why the developed countries regarded some "Labour Standards" as essential and some others as unessential, and whether it had anything to do with the advantages that could be derived from the use of cheap labour in the developing countries. A number of complaints are often made about multinationals engaging workers in countries like Indonesia, Mexico, Ghana etc. and paying very low wages without any restrictions on working hours, and without basic facilities at places of work.

India's readiness to face competition

4.344 India was the second largest economic power, next only to China, in the entire Asia-Pacific region, at the time of its independence. The position continued till the end of the 1970s. Thereafter, first Japan, and then the other tigers in the region – be it in East or South-East Asia – have overtaken India. During the past two decades China has made such impressive strides that the gap between the two countries in terms of global competitiveness has widened to an extent that it will not be easy for India to overtake China. The policies of self-reliance became insular at a time when other countries in the region availed the opportunity of adjustment pressures in the Organisation of Economic Corporation & Development (OECD) countries consequent upon oil price shocks, and opened up their economies. The ascendancy of the Asian NICs, which was characterized as Asian economic miracle corresponded with the period of the meltdown of the Indian economy.

4.345 India's share in both foreign direct investment and foreign trade

are well below one per cent of the world's total. In this sense, India is a marginal player in the globalisation process. But India is reputed to have a middle class whose size is equal to that of the whole of Europe. Foreign debt accounts for over a quarter of our gross domestic product (GDP) and a major portion of our import being petroleum and petro products, is non-discretionary. Thus, the world needs access to India's vast and growing market and India needs the world not only because of huge debt and petroleum imports, but also to meet its need for investment and access to advanced technologies.

4.346 As the Asian Development Bank (1998) remarked, South Asian countries, including India, continue to fare badly in terms of productivity and competitiveness because of the underdevelopment of infrastructure. The arguments for liberalisation and privatisation should be seen in this context. The Government can probably release its energies from routine commercial activities and focus more on education, health, transport and telecommunications, and other key concerns of the infrastructure.

4.347 Even so, in terms of Purchasing Power Parity (PPP), Indian economy with US \$2.23 trillion in national income is the fourth largest in the world in 1999 (*Economic Times*, 30 April 2001), next only to the USA, Japan and China. The size of the Chinese economy is nearly twice that of India and that of the USA sixteen times bigger in terms of PPP per person.

Global Recession

4.348 The events of September 11, 2001 and its aftermath have resulted in a sharp deterioration in confidence across the globe, which has contributed to a downward revision in the IMF's projection of world growth to 2.4% from 3.5% a few months ago. Growth in both the advanced and developing countries is expected to slow down sharply in 2002 – projections have been revised downward by 1.3% and 0.9%, respectively since the October 2001.

4.349 The \$ 10 trillion US economy has been an important determinant in the growth of other economies throughout the past decade. The Japanese economy – the second largest economy in the world – is also

a major factor influencing the world economy. Both these economies are in difficulties.

4.350 The airline industry, which is a major industry in the U.S with almost 24000 flights operating daily, has been very badly affected because of the enormous fall in passenger traffic.

4.351 This has affected a whole chain of other industries like the airline meal and catering industry, tourism, hotel and hospitality industry, and many other related industries. US airlines laid off 70,000 workers within 24 hours. British Airways has followed with a cut of many thousand jobs. They have already asked 36,000 non-management staff to accept pay cuts. Major air carriers have scaled back their schedules by 20-30% and International Air Transport Agency (IATA) estimates the number of job losses in the global airline industry at about 2 lakhs. Boeing has plans to lay off 30,000 workers as a result of unexpected slowdown in orders. Jet engine maker Rolls Royce Plc. has announced that change in production plans were inevitable. Lufthansa is likely to follow the US and European peers who have slashed jobs and have revised their plans.

4.352 Sabena and Swissair have filed for bankruptcy, with immediate retrenchment or retirement of thousands of workers. Quite a few airlines have asked for financial support and loans from the Governments of their countries.

U.S Economy

4.353 The US airlines industry has asked for a federal aid package. US Congress has agreed to give a \$ 15 billion bail out which could include \$ 2.5 billion as immediate grants and \$ 12.5 billion in loans and credits. The other affected businesses may also ask for similar aid packages. It appears that even titans in industry are realising that the State or Governments have a role to play in the survival and viability of industry and the protection of employment.

4.354 Even before September 11, there had been a slow down in the US economy. The US economy suffered from increasing unemployment, lower consumer spending, lower quarterly corporate earnings and lack of will for long term investments to create additional capacities and infrastructure.

4.355 The latest trends indicate that the US has ended the year 2001 with a whimper, with capacity utilisation and industrial production reaching the lowest for two decades, in December

2001. The following Table depicts the trends in the key economic indicators of the US:

Table 4.31

US Economy – Latest Trends

Indicators	% Change Latest
GDP	-1.1
Industrial Production	-5.8
Unemployment Rate (%)	5.8
Consumer Prices	1.6
Producer Prices	-1.8
3-Month Interest Rate (%)	1.6
Trade Balance (\$Billion.)	-4.39
Budget Balance (% of GDP)	0.6

Source: Economist, 19-25 January 2002.

Other Industrial Economies

4.356 The following Table captures the latest trends in select industrial

economies in terms of key macro-economic parameters.

Table 4.32
Economic Performance (% Change, Latest)

Country	GDP	Industrial Production	Unemployment Rate (%)	Consumer Prices
Britain	1.7	(-) 4.8	5.1	0.7
Canada	(-) 0.8	(-) 6.0	8.0	0.7
France	1.9	(-) 0.9	9.0	1.4
Germany	(-) 0.6	(-) 4.8	9.5	1.7
Italy	0.6	0.9	9.3	2.4
Japan	(-) 2.2	(-) 13.1	5.5	(-) 1.0

Source: Economist, 19-25 January 2002.

4.357 The industrial production of major industrial countries like Britain, Canada, France, Germany and Japan has gone down. Unemployment is increasing.

4.358 Japan is already staggering under a long financial crisis that has lasted more than a decade. There are no signs of recovery, its stock markets are depressed, and production and exports are not growing. If the economy shrinks further in 2002, there can be serious problems to the Japanese banking industry. There is no shortage of indications on the horizon.

4.359 French business confidence has hit a five year low. Polls show that British economic optimism has slipped to its weakest since 1980.

4.360 As a result of these events, the growth of G7 countries is expected to slide down from 3.2% last year. This would be the lowest growth rate since 1992-93.

Asian Economies

4.361 The trends in key economic parameters in select Asian economies indicate a very mixed picture, with

output (GDP) levels rising in China and India, and output as well as prices falling in – Malaysia, Singapore and

Taiwan. The following Table gives more details:

Table 4.33
Trends in Select Asian Economies

Annual Percentages Change on Year Earlier			
Country	GDP	Ind. Production	Cons. Prices
China	+7.0	+8.7	-0.3
India	+5.3	+0.9	+4.9
Indonesia	+3.5	+3.2	+12.6
Malaysia	-1.3	-4.4	+1.2
Singapore	-7.0	-13.6	-0.2
S. Korea	+1.8	+4.9	+3.2
Taiwan	-4.2	-6.8	-1.7
Thailand	+1.5	+0.1	+0.8

Source: Economist, 19-25 January 2002

4.362 It is evident from the Table that whereas China’s industrial production-growth has been forging ahead, India’s growth - rate of manufacturing is stagnating. Curiously, China is experiencing deflation, with falling consumer prices. In India too, with decelerating inflation, the Reserve Bank of India has been talking about the likely adverse effect of low inflation on the economic growth.⁷

Effects on India

4.363 The IMF, in its World Economic Outlook has said that India, Russia and China are reasonably insulated from world turmoil as they are relying more on their huge domestic demand.

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⁷ Report on Currency & Finance 2001-02 – RBI.

4.364 India is predominantly a domestic economy and its export dependency is 9% of GDP. But its exposure to the US is as much as 20% in terms of goods exported and 60% in software exports. Likewise, India's exposure to European Union countries is fairly high at 25% and 20% respectively in terms of goods and software exports. Global slowdown and particularly slowdown in the United States and European countries is bound to affect India.

Consequences of the new policy

4.365 As a result of the new economic policy, inflation is under control; we have been able to accumulate enough foreign exchange reserves, Indian companies have access to global financial markets, India's external debt position has improved. Some industries like Information Technology (IT) have made impressive progress, taking advantage of global economic integration; foreign investment is coming to India both in portfolio investment as well as in industrial projects, Indian consumers who can afford to pay, have increased access to all types and a large variety of international brands of goods in the market.

4.366 At the same time globalisation has also had negative impacts on a variety of sectors of the Indian economy.

- a) Except the IT, telecommunications and entertainment industry, all other traditional industries in India are facing problems. There is no demand for their products and they have had to face tough competition from imported products or products manufactured by MNCs in India.
- b) As a result, a large number of such industries are downsizing and some have closed. This has resulted in VRS, retrenchment and closure of many units. A very large number of workers have lost their jobs.
- c) Because of global competition and increasing number of Mergers and Acquisitions (M&A), Indian entrepreneurs have lost controlling interest in their enterprises and because of the general recessionary trends, no one seems to be planning new projects, diversions and expansion. There seems to be

- some degree of pessimism about future prospects of the Indian economy.
- d) While internal demand is affected, exports too have been affected. They seem to have stagnated during the last few years. Thus imports are growing, without simultaneous increase in exports.
 - e) There is a general slow down of industrial activities, and Indian manufacturers have not performed well. The capital goods industry has been affected very badly and has registered a negative growth.
 - f) There is a general feeling that India does not enjoy any competitive advantage in manufacturing.
 - g) Small-scale industries are the worst affected. A large number of them are closed. No new investments are taking place in a big way in this sector.
 - h) The Capital market is almost dead during the last three years and very few new issues have been launched.
 - i) Service industry is the only industry that is progressing, and manufacturing and agriculture have taken back seats.
 - j) Though India has received foreign investments, the amount is too low as compared to the funds received by China. This is in spite of opening many economic activities for foreign investors. Much of these funds have come for portfolio investment and M&A activities. Proportionately very small amounts have reached India for greenfield or brownfield investment.
 - k) A greater number of MNCs are delisting from stock exchanges, and converting into private companies.
 - l) The new economic policy has neglected the farm and small-scale sectors with adverse consequences on the employment situation.
 - m) Employment is not growing and as a result unemployment is increasing in the country.

- n) Participation in and the benefits of globalisation have so far been limited to a small segment of the educated and skilled population and some private sector entrepreneurs. However, the poverty level seems to have come down though income disparities have widened.
- o) Even among the educated middle class, a very small section of persons engaged in IT, telecommunication and entertainment industry are well placed while all others in the traditional industry are working under considerably uncertain circumstances.
- p) Thus, jobs are being created only in very narrow fields such as information, communication, and in certain informal sectors using low technology. Other areas of economic activities, like traditional manufacturing, agricultural and non-farm activities are not experiencing any increase in jobs. Globalisation led growth cannot be described as a job led growth.
- q) Markets are now free, more goods are available, and prices are stable. But the poor are hurt because there is no opportunity for them to earn more income, and therefore they have no means to benefit from the availability of goods.
- r) The burden of structural adjustments has fallen mostly on the poor. Whenever either central or state Governments balance their budgets, social expenditures are the first victims. Primary education, primary health care and food subsidies to the poor are the worst hit.

Appendix

A Note on the Decade of Economic Reforms

The year of 1991 is a landmark in the economic history of India. So far, Indian economy was insulated by protective policies and a complicated system of licenses and permits. This was given up and a policy of economic liberalisation was introduced. Lot of basic changes were introduced in all policies pertaining to industries, capital markets, foreign investment, imports, exports, banking and finance etc.

What were the basic changes?

I. **Industrial Policy:**

Abolition of Industrial Licensing except 15 industries

Dilution of MRTP Act – only unfair practices

Opening of several basic and core sector industries to private sector (only 8 in public sector)

ONGC open for foreign investment

No investment limit for foreign companies

Automatic Approval foreign colla-boration and technical agreement

II. **Capital Markets Reforms**

Controller of Capital issues abolished More powers given to SEBI

Free pricing of shares was allowed

National Stock Exchange and OTCEI was established

III. **Foreign Investment Policy**

FERA Amendment Ordinance 1993 – Act was amended

FERA companies can acquire any Indian company except those engaged in agriculture and plantation

They can raise deposits and borrow funds in India

Only trade in Gold and Silver will be regulated under FERA

Foreign companies can hold immovable property in India

IV. Policy regarding NRIs

100% equity in priority industries

Investment in real estate housing permitted

Can import 5 Kg – now 10 Kg of Gold every 6 months

No income and wealth tax on NRI deposits

V. Foreign Investment Policy

Automatic clearance of foreign equity

Participation up to 51% in a wide range of industries

Now a list of industries where foreign companies can invest up to 74%

Foreign equity participation allowed with or without technology

A special empowered Board was constituted to clear large investment proposals

24% foreign equity participation in SSI units allowed

Foreign investment up to 51% in trading companies engaged in export

Foreign pension fund companies allowed to invest in Indian companies

Automatic approval of foreign technology agreement in high priority industries

No permission required for hiring of foreign technicians

No restriction on repatriation of dividends

VI. Import – Export Policy

Import Licensing Abolished except a few products:

OGL list widened

Tariff reduction from 300% to 110% to 80% - 50 to 60% – Now only 25% to 30% - under WTO regime it will be around 10 to 20%

Some Capital Goods and project imports are allowed even without paying any duty.

15% duty on components required for exportable products

Convertibility of rupee on current account

Export profit exempted from taxation

VII. **Taxation policy**

Simplification of tax policy was announced

Maximum tax was brought down from 40% to 30%

Corporate tax was also brought down

Reduction of tariff rates of customs as well as excise

VIII. **Financial sector reforms**

SLR was reduced from 38.5% to 25%

CR was reduced from 25% to 10% and then to 8%

Complete freedom given for charging interest rates to Banks

Banks could charge interest rates

“depending upon the perception of credit worthiness of customers”

Banks in private sector were permitted with different norms

Indusind

HDFC

Industrial Development Bank

ICICI Bank got licence as a private sector bank

Banks were given freedom to charge interest rates on deposits

Concept of Prime Lending rates was introduced

All this package can be called a policy of economic liberalisation

A decade of reforms – Policy of Economic Liberalisation continued

CONTINUATION OF REFORMS

This policy of economic liberalisation continued and during the subsequent years, from 1991 to 2001, a good number of policy reforms were introduced. The following are some of the important ones.

I. Services and Industry

- 1992-93 PSUs allowed to access capital markets, ONGC corporatised
- 1993-94 Car and white goods manufacturing delicensed
Large-scale ready-made garments opened for foreign equity
13 minerals, formerly reserved for public sector were opened for private investments
- 1994-95 All bulk drugs delicensed
Automatic 51 % foreign equity allowed in bulk drugs
- 1995-96 Daewoo car manu-facturing allowed in India
- 1996-97 Licensed industries list comes down to only 14. Investment ceiling for SSI raised from Rs.75 lakhs to Rs. 3 crores
FIPB revamped
- 1997-98 Licensed industries brought down to 9
Disinvestment Commi-ssion recommends sell of 50 PSUs
- 1998-99 Coal, lignite, sugar, mineral oils delicensed
Hyundai launches Santro in India in October 1998
Corporates allowed to buy back up to 25 % of their total network
- 1999-00 IT Bill introduced in Parliament
Tax provisions for housing liberalised
- 2000-2001 Banks were allowed to enter insurance sector
IRDA finalises entry norms for private insurers
Maruti to be privatised
- 2001-02
- Interest rates on small savings reduced
 - Government equity disinvested in select public sector undertakings like VSNL, IBP, CMC, HTI, PPI, BALCO and certain ITDC Hotels

- VRS introduced for Government employees in the surplus pool
- Full decontrol of sugar announced during 2002-03 (conditional on commencement of futures trading)
- Items covered under the Essential Commodities Act reduced from 29 to 17
- Licensing requirements and restrictions on storage and movement of wheat, rice, sugar, edible oil seeds and edible oils removed
- New Pharmaceuticals Policy announced reducing the span of price control rigours on several bulk drugs and formulations
- Fourteen items dereserved from the list of items reserved for exclusive manufacture by the small scale sector
- Bill for abolition of the Sick Industrial Companies (Special Provision) Act introduced in Parliament
- Bill for setting up of a National Companies Law Tribunal by amending Companies Act introduced in Parliament
- The Union Budget (2001-02) proposed amendments in the Industrial Disputes Act and Contract Labour Act for removing the existing structural rigidities in the labour market.

Infrastructure

- 1992-93 Oil exploration and refining opened up to foreign investment
Lubricants taken out of administered price mechanism
Plan for equity in BOT road projects finalised
Value-added telecom services such as cellular, paging and radio trunking opened up for private players
- 1993-94 5 year tax holiday for power projects and manufacturing units in backward areas
- 1994-95 Private players allowed in telecom services
Telecom licence auction takes place
National Highways Act is amended to provide for road tolls

- Enron signs power purchase agreement with Government of Maharashtra
- Private sector was allowed in civil aviation. Thereafter, Jet Airways, Sahara, Damania, East West entered.
- 1995-96 Telecom Regulatory Authority set up
First set of cellular licenses issued
- 1996-97 Guidelines for BOT highways project announced
Private sector allowed into BOT operations
- 1997-98 IDFC established to fund infrastructure projects
Holding COS allowed to raise \$ 50m as ECBs for infrastructure projects
Central and State Electricity Regulatory Commissions were established by an ordinance.
Aviation policy allowed 100% NRI holdings and 40% foreign equity
- 1998-99 Indian Electricity Act, 1910 and Electricity Supply Act were amended to allow private sector in transmission
Urban Land Ceiling Act was repealed
Private sector allowed for operating terminals at existing ports
- 1999-2000 About 350 companies were registered as internet service providers
Maharashtra Govern-ment refuses to pay Enron dues. Dispute sets in.
Australian Port Company Peninsular and Oriental starts operating private berths at J.N. Ports Bids invited for terminals at Kochi, Kandla
- 2000-01 Indian Airlines, Air India listed as privatisation candidates
- 2001-02
- Initial period for availing of ten-year tax-holidays for infrastructure projects rationalized and extended to 15 to 20 years
 - The five-year tax holiday and 30 % deduction of profits for the next five years for telecommunications extended to internet service providers and broadband networks

- Electricity Bill 2001 and Communications Convergence Bill 2001 introduced in Parliament.
- Accelerated Power Development Programme started for incentivising power sector reforms in states
- Budgetary allocation enhanced for the Pradhan Mantri Gram Sadak Yojana (PMGSY) for speeding up connectivity of rural roads, PMGY scheme extended to cover rural electrification
- Special Railways Safety Fund created which is to be funded by surcharge on passenger fares and budgetary support
- National Highway Development Project launched

II. External Sector

Following are the important changes that have occurred during the last ten years:

- | | |
|---------|---|
| 1992-93 | <p>Import curbs lifted</p> <p>Import licensing of capital goods, raw materials, intermediates and components diluted</p> <p>Customs duties cut</p> <p>Peak tariffs cut to 110 %</p> |
| 1993-94 | <p>Baggage rules relaxed</p> <p>Dual exchange rates relaxed</p> |
| 1994-95 | <p>Two categories of NRI deposit scheme, FCNRA and FCONR terminated</p> |
| 1996-97 | <p>FIPB issues first guidelines for approving FDI not under the automatic approval list</p> <p>48 industries become eligible for 51 % foreign equity under automatic approval</p> |
| 1997-98 | <p>NRIs allowed to invest 100 % in priority sector</p> <p>ECB guidelines released</p> |

The Tarapore Com-mittee recommended India should open up its convertibility on capital account

- 1998-99 340 items moved from licensed to OGL category
- QR on 2300 imports from SAARC removed from August 1998
- India – Sri Lanka trade agreement was signed – zero tariffs on most of the items by 2007
- 100 % automatic FDI for power generation, T&D roads, bridges, and ports allowed
- 1999-2000 FEMA 1999 enacted, replacing FERA
- QR removed on 1300 items
- FDI in most sector allowed under RBI's automatic system only a small negative list
- 2000-01 India loses trade disputes with US, agrees to remove QRs on the remaining 1,429 items by April 01. In April 00 QRs on 714 items are removed and in April 01 QRs on remaining items removed.
- 2001-02
- Quantitative Restrictions (QRs) on BOP grounds removed by dismantling restrictions on the remaining 715 items
 - Partial back loading of the withdrawal of tax benefits offered to exporters under Section 80-HHC of the Income Tax Act.
 - Agri-Economic Zones set up for promoting agricultural exports on the basis of specific products and geographical areas.
 - Market Access Initiative (MAI) scheme introduced to boost exports
 - Interest rates on export credit rationalized by indicating interest rates on exports credits as PLR linked ceiling rates
 - Special financial package introduced for large value exports (annual exports of over Rs.100 crore) of selected products
 - Duty drawback rates for more than 300 export products and value caps abolished under DEPB on about 400 export items from October 2001

- Medium term export strategy formulated to achieve a quantum jump in the next five years

Banking & Finance

- 1992-93 Narsimhan Committee on Bank Reforms submits report
 SLR, CRR cut to reduce state pre-emption of loanable funds
 Number of lending rates reduced from 6 to 4
 Capital adequacy norms laid down
- 1993-94 SBI Act was amended to allow the bank to access the capital market
 Debt Recovery Tribunals set up
 Prudential norms laying down
 Maximum NPAs laid out
 Malhotra Committee report recommends private sector entry into the insurance sector
- 1994-95 Banks free to determine PLRs
 No minimum lending rate for loans above Rs. 2 lakhs
 Ad-hoc treasury bills limited by agreement between RBI and Government
- 1995-96 IDBI Act amended. IDBI raises Rs.1200 crore through its initial public offering.
- 1996-97 CRR cut from 13% to 10%
 Government allowed to set up private local area banks
- 1997-98 RBI Act amended after CRB scam
 RBI gets powers to regulate NBFCs
 Fixed interest regime relaxed
- 1998-99 NBFC regulations tightened
 Insurance Regulation and Development Bill introduced in Parliament
- 1999-2000 IRDA Act passed in Parliament, allows private equity in insurance; foreign equity capped to 26%

- Insurance Regulation Development Authority to be set up
Times Bank merged with HDFC Bank
- 2000-01 Amendments to Banking Act to allow Banks to enter insurance field
Government decides to keep its stake to 33 % in nationalised banks.
Nationalised banks announce VRS for their staff.
IRDA issues licenses to 11 licenses to private insurers.
RBI announces cut in bank rate and CRR to combat slow down
Bank of Madura merged with ICICI Bank.
Global Trust Bank merged with UTI Bank
Film financing was allowed to IDBI by amending the Act
- 2001-02 ■ Foreign Investment was permitted in Banks up to 49%

Capital Market

- 1991-92 SEBI was given more powers
Harshad Mehta boom reigns
- 1992-93 SEBI announces guide-lines on equity market disclosure
FIIs allowed to hold up to 24 % of local companies
- 1993-94 Controller of Capital Issues abolished, issue pricing to be market determined
SEBI empowered as market regulator
OTCEI set up
Indian firms allowed to access European markets via Euro equities
Private Mutual Funds allowed
- 1994-95 SEBI Regulations 1994
India's take over code passed

- 1995-96 IPO norms tightened to boost quality of Issues
Public Sector Banks allowed to access capital markets
Stock Exchanges asked to set up clearing houses
- 1997-98 Entry barriers for unlisted companies lowered
Disclosure norms made more stringent
- 1998-99 Infrastructure com-pa-nies get easier public issue norms
- 1999-2000 Securities Laws Amend-ment Bill 1999 passed in Parliament incorporating derivatives and units of investment schemes as securities
Rediff and Satyam came out with ADR issues
- 2000-01 Internet Trading permitted
Dot.com boom bursts
Hostile bids start taking place
Old economy stocks regain their charm
- 2001-02
- Clearing Corporation of India Ltd. (CCIL) set up. The Negotiated Dealing System (NDS) is being introduced
 - Floating rate Government bonds reintroduced
 - Badla banned and rolling settlement introduced
 - FDI up to 49% from all sources permitted in the private banking sector
 - 100% FDI permitted for B to B e-commerce, courier services, oil refining, hotel and tourism sector, drugs and pharma-ceuticals, Mass Rapid Transport System including associated commercial development of real estate
 - Non - Banking Financial Companies (NBFCs) permitted to hold foreign equity up to 100% in holding companies

- Foreign investors permitted to set up 100% operating subsidiaries without the condition of disinvesting a minimum of 25% equity to Indian entities
- Joint venture NBFCs having 75% or less than 75% foreign investment permitted to set up subsidiaries for undertaking other NBFC activities
- Dividend balancing conditions withdrawn from 22 consumer items
- Offshore Venture Capital Funds/Companies allowed to invest in domestic venture capital undertakings
- FDI up to 100% permitted with prior approval of the Government for development of integrated township
- The defence industry opened up to 100 % private sector participation by Indian companies with FDI permitted up to 26 %, both subject to licensing
- International Financial Institutions like ADB, IFC, CDC, DEG, etc. allowed to invest in domestic companies through the automatic route, subject to SEBI/RBI guidelines and sector specific caps on FDI
- Corporatisation of stock exchange proposal involving segregation of ownership, management and trading membership from each other
- Trading in index options, options on individual securities and stock future introduced
- Aggregate limit for FII portfolio investment enhanced to 49% and subsequently up to sector ceiling

FISCAL Reforms

During all these years the Central Government has tried to keep fiscal deficit in check, tax rates have been reduced, excise duties have been simplified, gifts are exempted from gift tax, five year tax holiday has been announced in respect of many industries and so on. The Chelliah Committee was appointed to introduce fiscal reforms and many of its recommendations were accepted and implemented by the Government

The following fiscal reforms were introduced in the year 2001-02:

- Various economy measures introduced including down-sizing some of the departments
- Excise duty structure was rationalised to a single rate of 16% CENVAT (Central Value Added Tax) in 2000-01. The Budget for 2001-02 replaced earlier three special rates of 8%, 16% and 24% by a single rate of 16%
- Ther Peak level of customs duty reduced from 38.5% to 35% with abolition of surcharge on customs duty. Customs duty reduced on specified textile machines, information technology, telecommunications and entertainment industry
- Goods imported by 100% EOUs and units in FTZs and SEZs exempted from anti-dumping and safeguard duties
- All surcharges abolished on personal and corporate income tax rates except the Gujarat earthquake surcharge of 2% leviable on all non-corporate and corporate assesses except foreign companies
- Weighted deduction of 150% of expenditure on in-house R&D extended to biotechnology
- Five-year Tax holiday and 30% deduction of profits for the next five years extended to enterprises engaged in integrated handling, trans-portion and storage of foodgrains
- Incentive Fund created for incentivising fiscal reforms in states.

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CHAPTER - V

APPROACH TO REVIEW OF LAWS

Whether one is sanguine about the results of globalisation or suspicious and apprehensive, one has to accept the fact that we have travelled quite some distance along the road to full-scale globalisation. The current socio-economic scene is no longer what it was when we started on the journey. Old parameters set by old perceptions and possibilities, have ceased to exist and inhibit. Developments in technology have created a new era. It is technology that has made globalisation possible and, perhaps, inevitable. It is technology that has radiated visions of possibilities, generated new hopes and given rise to new dangers and temptations. Its impact can already be seen in many fields of human activity. Many institutions that we have got accustomed to, feel the impact of the revelations of technology, and are compelled to pass through the crucible that will test their relevance, effectiveness and social tenability. Such situations call for considerable

resilience in the human mind. Old and ossified mindsets may prove a handicap in responding to, or in dealing with the new situations and factors that have emerged. One cannot be allergic to radical reflection, and the radical revision of confrontationist attitudes and mindsets. Old catechisms may have to be given up.

5.2 No economic activity is an end in itself. Industry is not an end in itself. It is a social activity, an activity undertaken by members of society, or constituent groups of society, to meet the needs of society. As far as one can see, it will not cease to be a social activity. What makes industry possible, are the paradigms of interdependence within which society functions and progresses. There can be no industry, if there is no consumer. There can be no consumer if there is no producer. There can be no market without producers and consumers. There can be no production for the market without tools or machinery, without capital,

without labour, without managerial skills that bring all these together to produce goods or services that are in demand. There can be no effective demand without purchasing power, and there can be no purchasing power unless there is income, and there can be no income without inherited property or earning from labour/employment, or interest on deployed capital. It is thus clear that all economic activity is the result of interdependent interests, and co-operation among the various factors that together constitute the cycle of economic activity. Compulsions that flow from interdependence can be ignored or violated only at the cost of success in one's efforts or at the cost of one's goals. Globalisation has not altered this fundamental; it has only underlined its importance for communities that choose to enter the arena of competition.

5.3 For many years, many countries in the world, including India, pleaded for the creation of a New Economic Order which would be more equitable and fair to the developing countries of the world, and the poverty stricken and the deprived in the world. But we have failed in our efforts, at least temporarily. Instead,

we have been confronted with a new order, which is governed by the philosophy of competition. There are no intergovernmental organisations or international courts of justice to protect the interests of the developing countries. In fact, in spite of democratic facades, the powerful among the developed nations manage to dragoon the developing nations at international fora for economic negotiations. It is clear that each sovereign state still has the responsibility to protect the interests of the people it represents. In a regime of competition, this means that every nation has to acquire and retain sufficient competitiveness to be able to survive and prosper in world markets. It has, therefore, become a national necessity to acquire competitiveness. Neither the interests of the poor and unemployed, nor the interests of the affluent can be served without competitiveness. This competitiveness cannot be acquired without harmonious relations or at least peaceful relations in industry. Peaceful industrial relations are, therefore, an imperative for the survival and progress of everyone – whether he or she is a worker or entrepreneur, whether he or she is an employer or employee. Without it,

the economy will lag behind, targets will not be attained, and there will be general disruption of structures and plans. It has, therefore, become a social and national duty to create peaceful relations among the social partners, who together constitute the backbone of industry, or agriculture, or the provision of services. The first requisite for the employers and employees today, therefore, is to develop a mindset that looks upon each other as partners, to develop a work culture that new technology and the context of globalisation demand.

5.4 In this context, we must refer to a view that has been forcefully canvassed before us. We have been told at many places, that what stands in the way of the economic and industrial progress of the country, what is a disincentive for investment, and what acts as a repellent to foreign investment in our country, are our labour laws; that there can be no increase in employment without increased investment, and since what stands in the way of increase in investment is labour that demands the continuance of present labour laws, it is labour that stands in the way of increase in employment opportunities, or to put it positively, stands in the

way of the liquidation of unemployment. This argument is put forward with a degree of conviction by some, and a degree of ingenuity by others. It has many aspects, and we cannot, or need not go into all of them here. But there are some considerations that must be stated while examining the weight of this contention.

5.5 Firstly, it is an overstatement to say that labour, or labour laws are the only cause of our unsatisfactory economic development, or our inability to attract foreign investment in the same way as some other countries, or to the extent of our requirements. There are other factors that affect the efficiency of industry like managerial skills, managerial integrity and honesty, efficient and reliable infrastructure like transport, electricity etc, access to requisite and timely flows of credit, access to materials, constantly improving and competitive technology, Government policies, etc. It is difficult to contend that all these are present in impeccable measure, and it is only labour laws or labour that is dragging the economy down. No one can say that our infrastructure – power, transport, communication, technology

etc – is as adequate, efficient and reliable as it has to be for industrial efficiency or global competition. No one can wish away the distressing picture of the increasing man-days lost in lock outs or the malfeasance involved in the mind boggling scams involving thousands of crores of Rupees or the impunity with which such malfeasance is perpetuated, connived at or condoned. The non performing assets of Banks have reached an astounding figure of Rs. 80,000 crores. The taxes due from industries to the Government have reached a figure of Rs. 1,52,600 crores. All these neither add to the credibility of industry nor reflect its efficiency as we have pointed out in the preceding chapter. Secondly, if there are many causes, and one deals only with one, and ignores all others, with a uni-focal approach, one cannot overcome the disease or hope for cure. Thirdly, sometimes, looking for causes outside makes one blind to causes that act from within. All these reasons make it necessary for us to place labour laws in perspective, as a part of what we have to look at, and not the whole, ignoring other inter connected matters.

5.6 This does not mean that we do not believe in the need for important changes both in laws and in attitudes.

5.7 Most of the witnesses who tendered evidence before the Commission, talked of the imperative need to evolve a new work culture in our country. It is obvious that the work culture that obtains in any industrial undertaking, in fact, in any place of work, depends on all those who participate in the processes of work that go on in the undertaking. It is based on the attitudes of individuals as well as on the conditions in which these individuals work. Thus, the creation and maintenance of a conducive work culture depends on:

- (a) the individual worker, and his attitude to work;
- (b) the conditions that relate to work;
- (c) the management and its attitude to workers; and
- (d) the norms that a society sets before itself, its commitment to excellence and conscientiousness, and its sense of fair play and justice to its constituents.

5.8 Let us have a closer look at each of these. The individual has to look upon work not merely as a means of access to personal income, but also as a commitment to society at large, and the undertaking or activity of which he is a part. In this sense, his status as a wage earner or employee depends on the existence and, in the long run, the development of the undertaking. If the activities of the undertaking are rendered uneconomic, and it is therefore, compelled to close down, the worker has to move to another undertaking, or to seek a job elsewhere. It has, therefore, to be conceded that the worker has a stake in the viability and growth of the undertaking, and an attendant responsibility as well as right. Wages cannot be looked upon merely as means to provide personal incomes, but have also to be looked upon as incomes that are earned through hard work. It has to be admitted that there is an element of 'quid pro quo' in wages that are earned from employment. The quid pro quo involves not merely monetary payment but also a balance of responsibilities and rights. This should not be taken to mean that industrial

or economic activities, or for that matter, any undertaking involving the collective efforts of many partners or participants can be effectively undertaken without demarcating and respecting exclusive or relatively exclusive areas of responsibility. There will be division of labour, and there will be division or demarcation of primary responsibilities. But the infrastructure on which such a demarcation is made, will have to ensure an essential command structure, as well as respect for and responsiveness to each other's rights and responsibilities. These rights will have to include the right to equitable remuneration and equitable sharing of the profits that are generated by collective effort.

5.9 In our perception, the individual worker's attitude to work has to include (i) pride in maximising his own productivity to repay his debt to society (ii) pride in his commitment to excellence, as reflected in the quality of his work. It follows that he or she has to be concerned with the full utilization of his hours of work in doing the share of work that he had accepted to do when he sought and accepted to work as an employee.

5.10 In the evidence tendered before the Commission, many witnesses pointed out that many workers in private and public undertakings, as well as in the offices of the Government do not put in the stipulated eight or seven hours of work in the office. They spend many hours in "chit-chatting", discussing public affairs or private affairs in clusters, exchanging pleasantries over, or going in search of cups of tea or looking at the TV screen when matches are on. A calculation made by a highly respected Trade Union (TU) leader puts the number of hours "actually" spent on official work only at 4 or 5 a day. This is not only true of Government or administrative offices, but true of factory workers as well.

5.11 There are 27 million workers in the organised sector, and at the rate of 4 hours, if one goes by the calculation of the Trade Union leader to whom we have referred, the country is losing 108 million man hours daily. The degrees of under-utilization or mis-utilisation of office time or work time may vary. But the prevailing situation in our country is one that should cause deep concern and distress. We must be concerned at

the moral culpability of "short charging" or working less and accepting the full payment. The loss in time and output caused by the underutilization of resources, particularly because social time lost cannot be regained by any society, and the atmosphere that we create in our places of work by converting them into talk shops with the resultant fall in efficiency even during working hours, further compounds loss of output.

5.12 That it is within our power to remedy this situation, is clear from the exceptions that we have in our country, as well as the reputation that our men and women have earned in other countries as exemplary and extremely efficient and innovative workers. Our reputation shows that our workers are capable of creating and maintaining the highest levels of work culture. The question 'Why is it that we do not create and maintain such high standards of work culture in our own country' is a matter for concern and reflection. The Commission feels that each of the partners involved in individual or social undertakings, should seriously reflect on how he/she can contribute to the transformation of our work culture.

5.13 One of the arguments that is often put forward to explain or explain away the current state of work culture, is that there is a prevailing sense of injustice and absence of fairplay that acts as a disincentive to maintain higher standards of work culture. We have already referred to the need to ensure a sense of equitability in remunerations, rights and responsibilities. We may have more to say on this when we consider the basics of a national policy on wages and profits.

5.14 At this point, we must make a few observations on the contribution that managements can make to improve our work culture. We cannot overlook the fact that industrial relations relate to the relations between management and the workforce employed in the undertaking. The workers are human beings. So, are the managers. Industrial relations, therefore, cannot ignore the basics of human relations. In the ultimate analysis, therefore, industrial relations are a branch of human relations. The management needs workers, and workers need the management, i.e. the entrepreneur. Both need each other. Industry needs both. Human beings like to be treated

as human beings, and not like cogs in a machine or pawns in the pursuit of profits. Human beings expect to be treated with respect, as persons with individuality. The early days of industrialisation, described as the 'days of regimentation', when workers, who had lost ownership of the means of production had to starve or seek employment in factories, or mines or "sweat shops," are over. Since then, technology has developed tremendously. The skills required from employees have changed, the level of the cultural development of the average employee has changed. No longer is there need to "regiment" and supervise workers under one roof. The vulnerability of workers, in the absence of the strength of unionization has decreased appreciably. Unions have received social recognition, and have become powerful guardians of the interests of the working class. Democratisation of politics has brought about a sea change in the force and direction of public opinion. Laws have intervened to provide protection: a greater degree of co-operation, anticipatory action, precision and promptness is expected from the workers who are engaged in different but inter-related stages of

rapid or simultaneous processes necessitated by technological changes and sophistication in machines, tools, processes and the nature of materials. It is imperative then, that old perceptions and mindsets about the workforce have therefore to change, and new methods have to be identified and pursued to elicit co-operation and respect. Old forms of organisation, may also need scrutiny and reform. So too, old forms of interaction, and means of dispute resolution.

5.15 In the ultimate analysis, the level of work culture in any undertaking will depend on the level of awareness or realization of identity, or commonality of interest, or, at the least, the sense of belonging, and the sense of interdependence. That, perhaps, is the rationale behind the ancient injunction, **“Parasparam Bhavayantah Sreyah Param Avapsyatham.”** It is only concern for each other that can enable one to reach the heights of well being.

5.16 The systemic arrangements that will help us to maintain a high level of work-culture, essential to increase our competitiveness in the current phase of globalisation

includes: fair wages, equitable profit sharing, effective organs of participatory management at all levels and opportunities to interact without chips on the shoulder. A high degree of responsibility towards each other lies on the leaders of both the management as well as the workers. This awareness has to be reflected in the common responsibility to maximize the achievements of the society to which both belong.

5.17 Many of the witnesses, who appeared before our Commission, made two other observations about the existing state of our work culture. They pointed out that there was a discernible difference between the level of application, consciousness, efficiency and innovativeness seen in the Indian workers working outside the country in countries like the U.K., Germany, the USA and even the countries in the Middle East, and in the average Indian worker working in his own country. Many expressed the belief that if Indian workers worked with the same efficiency and zeal in India, our economy would acquire a high level of competitiveness, and progress, and our reputation for excellence and resilience would be comparable to that of developed nations.

5.18 The other aspect, to which many witnesses drew our attention, was the difference in the application and efficiency of workers who were on probation, whose status was temporary, and the attitude to work that one could see in those who had been confirmed as permanent employees. No one denied this vehemently, and no one offered a full explanation for the difference. The only explanation that was put forward was that temporary workers felt insecure, and feared loss of employment, and that this fear made them work hard to establish themselves. Some went on to contend that an element of fear was essential for efficiency. We do not want to enter into an argument on whether this contention is right or wrong, but we feel that if this is true, it cannot be a desirable state of affairs. In fact, we believe that this train of thought goes against the tenets of freedom and the requirements of democratic organization. This explanation is somewhat unpalatable to our sense of self-respect. It may, therefore, be difficult to accept the explanation, but it must be accepted that one needs to investigate the cause of the difference, and to find measures to correct the situation.

5.19 Over manned organisations are also a cause of poor work culture. When the number of hands recruited exceeds the optimum requirement for efficiency, it lowers normal levels of work efficiency and the work hours per employee. Workers then have time to fritter away. One has only to visit a Government office to see this situation.

5.20 The work environment also plays a role in promoting good work culture. A vibrant and dynamic work environment will result in greater output than what comes out from a relatively dull, and overcrowded work place.

5.21 Japan is often described as the country with the best work culture. It is said that the Japanese worker does not need someone to supervise his work. Rather, if a supervisor is appointed, he/she often takes it as an insult. He/she does not like to take holidays. Recently, when the economy was in recession, Japanese markets were over flooded and there were few buyers, the Government introduced a five-day week, and, workers were encouraged to take holidays. The Government carried on propaganda about the benefits of

taking holidays and spending time with families. But, it is said that workers resisted, not knowing what to do with the extra holidays.

5.22 Another important suggestion that many witnesses made - in fact some argued with considerable force and vehemence - related to what may be described as our addiction to holidays. It was pointed out that we had as many as 30 holidays in the year

5.23 The Government sector comprises of state and central Government offices, postal and telecom departments, railways, banks and financial institutions, and other public sector undertakings. Colleges, schools and other educational institutions also generally follow the Government policy on public holidays. This has its chain effects on the work culture of the country. Hence, the Government's policy on public holidays needs to be carefully reviewed.

5.24 A comparison of India's list of holidays with that of some other countries, reveals that we have the maximum number of holidays. Countries like Brazil, United Kingdom, Sweden, Italy and Holland have only

eight holidays in the year. France, Philippines, Australia and Australia have 10, Finland has 11, Belgium, New Zealand, United States and Switzerland have 12. By contrast, in India, the Central Government employees have 17 holidays in the year. Some State Governments have more than 30 holidays in the year. Besides these 17 gazetted holidays, government employees are also entitled to restricted holidays, casual leave, privilege leave, sick leave and so on. A study reveals that three out of every seven days are holidays for an average Government servant. The Government staff in India has the shortest working hours in the year comprising of about 1600 hours as compared with the 1700-1800 put in by a worker in Europe and United States. All commercial and industrial activities are closely connected with various departments of the Government and if the Government offices are closed, many economic activities in the country also come to a standstill.

5.25 The State Government holidays are also holidays declared under the Negotiable Instruments Act. Therefore, Commercial Banks are closed and no financial transactions

take place during those days. India is probably the only country where two three holidays are followed by a weekend, and the entire industrial and commercial services, and financial operations in the country come to a standstill for almost an entire week. This creates difficulties for everyone, and the country itself, loses considerably.

5.26 It is estimated that each day of Bank closure costs around Rs.150 crores to the economy. Therefore, it may be wise to delink holidays in the banking system from Government holidays, and ensure that banks are closed only for a minimum number of holidays.

5.27 It is not as if the subject of holidays has not been discussed earlier. Many Committees and Commissions have studied it, and have made suggestions. The latest among them was the Fifth Pay Commission, which recommended, inter alia, that Government offices should work six days a week and Gazetted holidays should be reduced from 17 to only 3 National holidays, with the employees having the option to choose a fixed number of holidays from a panel of holidays.

5.28 Prior to that, both the Customer Service Committee appointed by the Reserve Bank of India in 1991 and the Administrative Reforms Committee in 1971 had suggested reduction in holidays. However, it appears that not much action has been taken on these suggestions. While the pay hike recommendations of the Commission were accepted, the recommendations on holidays were ignored.

5.29 We have dealt with the question of introducing flexibility in hours of work in the Chapter on 'Review of Laws'.

We recommend that:

- a) The Central Government and all State Governments should have a uniform policy on holidays.
- b) Only 3 national holidays be gazetted – viz. Independence Day, Republic Day and Gandhi Jayanti Day (October 2).
- c) Two more days may be added to be determined by each state according to its own tradition. Apart from these each person must be allowed to avail of 10 restricted holidays in the year,

which he or she may be free to choose on the basis of custom, religious observances and so forth.

- d) Government holidays should be delinked from holidays under the Negotiable Instruments Act.
- e) In case of the option of a five-day week, if a holiday occurs during the week, Saturday should be a working day.
- f) The movement of quality circles, which encourages workers to improve quality and productivity in each enterprise, should be encouraged. It has already paid good dividends. This will enable workers to take interest in the work they perform and contribute to the improvement in the overall work culture in the organisation.

5.31 We have referred to the new situation that has arisen with globalisation. This demands provisions to enable activities to be carried on continuously, across the limitations of time zones, so that we do not fail to take full advantage of common market operations in a market that has become global and common.

5.32 Time frames and working hours too, have to meet these demands. We do not want workers to suffer from the changes that are required. We do not want them to lose opportunities to retain or acquire employment, or increase their incomes. Nor do we want industry to lose opportunities or economic advantages. We have, therefore, recommended elsewhere that the attitude to hours of work should not be rigid. The total number of hours per day should not be more than nine, and hours of work per week should not be more than 48. But within these limits there may be flexibility, and compensation for overtime.

5.33 There are some entrepreneurs who believe that no economic progress can be made without the right "to hire and fire" workers at will. Some say China allows this right to the entrepreneur. We have already pointed out elsewhere that Chinese laws in the statute book do not substantiate this claim. When one asks for the right to hire and fire at will, it means the will of the entrepreneur, exercised without hindrance, on the basis of what he considers legitimate or warranted. The question that arises is whether

this 'right' is to be exercised, closing all avenues for a third party review or a judicial review. It is easy to take the view that the person against whom the action is taken should not have a veto. But is he to have a right of appeal against animus or prejudice or caprice? If there is to be a right to appeal, it has to be to a judicial or quasi-judicial authority. We cannot ignore the fact that even if the labour court does not have jurisdiction, and the existing laws are amended to provide for the right to hire and fire, the Constitutional rights of the citizen to seek justice according to the principles of natural justice cannot be taken away. So, the worker, who is terminated, can knock at the doors of the judiciary. Secondly, all rights, including fundamental rights have to be exercised within the parameters of social interest. That is the reason why the Constitution itself provides for redress through judicial scrutiny and redress when a citizen feels that the state or another citizen infringes his fundamental rights, including the right to natural justice.

5.34 Most, if not all, of those who demand the right to hire and fire also want to bring about a fundamental change in the nature or perception of

employment. They want all employment to be on the basis of contracts for stipulated periods. Without going into the need or merits of the contract system, it must be admitted that this introduces a basic or fundamental change in the current system in vogue in most kinds of employments. In the current system, those who are appointed against "permanent jobs" are appointed on the assumption that they will be in service or employment as long as the provision for the job exists or the person who is employed reaches the prescribed retirement age, or is removed for offences or transgression of which he had been warned. We have been accustomed to distinguish jobs as permanent and ad hoc or non-permanent. While we understand that non-permanent jobs or temporary assignments can be on contract for specified periods, with the possibility of extensions, we are accustomed to look upon employment against permanent jobs as permanent service. Any attempt, therefore, to change the basis of tenure in all jobs (permanent as well as non-permanent) to contractual, and for stipulated periods, no doubt involves a basic change in attitudes and notions. This affects not merely

entrepreneurs, but also the vast number of citizens who are in employment and who are seeking employment. If transforming the basis of all employment is a social necessity because it has become an economic necessity for industrial or commercial enterprises, then, it is equally necessary to create social acceptability for the change, and the social institutions that can take care of the consequences. So, two preconditions are to be focused upon: (1) social acceptance, and (2) socially acceptable arrangements for the period of transition during which one base is substituted by another base. The transition can be socially bearable, only if it does not lead to large-scale uncertainty, deprivation, loss of incomes and penury for those who lose employment, and are forced to transit the wilderness, in search of new jobs. While creating such situations in which only a few among the entrepreneurs will benefit, the explosive possibilities inherent in the situation and the threat to law and order, and therefore, to the smooth functioning of industry, should not be lost sight of by those who advocate such a rupture in the employment structure as well as those who have to pilot society and the volatile masses of

citizens through the period of transition.

5.35 In short, a fundamental change of this kind has to be preceded by (i) the evolution of a socially accepted consensus on the new perception of jobs (ii) the evolution of a system of constant upgradation of employability through training in a wide spectrum of multiple skills; (iii) the setting up of a system of social security that includes unemployment insurance and provisions for medical facilities; and (iv) the institution of a mandatory system of two contracts that each employer signs with the employees (somewhat as in the Chinese system) – one, an individual contract with each worker, and two, a collective contract with the workers' union in the undertaking.

5.36 Therefore, there are weighty considerations that should temper the demand for an immediate switchover to the contract system and to unrestricted rights of 'hire and fire.'

5.37 This does not mean that the present system can go on without any changes in attitudes on the part of

both the employer and employees. We have referred to some of them elsewhere in other paragraphs.

5.38 It is not necessary to adduce many arguments or cite the examples of many other countries to show the relationship between a transformation of all employment (including government jobs) into contractual employment and universal access to adequate social security, including unemployment insurance that enables a worker to transit through the period when he or she is moving from one kind of job or unemployment to another kind of job. He or she has to survive; his or her family including children have to survive. The state has to enable them to survive. If it fails, one cannot ignore the possibility of social upheavals that may throw all economic activity out of gear and pose challenges to the very system that needs to be preserved. Most of the developed countries where the majority of jobs are contracts have elaborate and effective systems of social security, partly contributory and partly state subsidized, or underwritten by the State. China which we may cite as an example, too has stringent laws on a social security system that takes care of the worker's

income and requirements at least for two or three years of transition or unemployment. Elsewhere in our report, we have referred to laws in China that stipulate that a retrenched worker will be able to continue to reside in the residential accommodation provided by his retrenching employer for two to three years, receive a retrenchment compensation, a basic living allowance, limited access to medical facilities and facilities for retraining. In India, we do not have such legal provisions or practices. We wonder whether those who argue for the unfettered right to fire or retrench workers will accept the post-retrenchment responsibilities that Chinese law provides for, and consider whether they have the mind or resources to accept such responsibilities. But we are convinced that social justice as well as the benefit of the economic returns that accrue from a moderately assured, if not contented workforce, demand the establishment of a socially acceptable link between transition to a contract based employment system and the establishment of a viable social security system to which the entire vulnerable workforce has access. In fact, we recall that the first Finance

Minister who ushered India into the era of globalisation, Dr. Manmohan Singh talked of the need for supporting social security systems or safety nets, and the need to ensure that globalisation had a human face. Talking about economic reforms, he told our Commission "the economic reforms still had a large unfinished agenda. The physical infrastructure sector urgently needs reforms, both in the management and tariff structures, which would enable us to raise more resources for the development of the infrastructure. This in turn would enable both the private and public sector to expand operations. Then, there is the social infrastructure. There is a tremendous backlog in education and health. We must ensure that development is not promoted on the backs of the poorest people. We must put in place adequate social safety nets to ensure that too much burden is not imposed on the weakest sections as we go along. And finally, we should create an environment which encourages sustainable growth and poverty eradication".

5.39 We support the view that those who take the country along the road to globalisation have the responsibility to enable the country to cope with the

consequences and effects of globalisation. They cannot abdicate responsibility.

5.40 In this context we feel that we cannot overlook three significant developments that have followed the trauma and the aftermath of September 11, 2001 (1) the impact of the events of September 11; (2) President Bush's State of the Union message and; (3) the crash of Enron.

1. The shattering impact on the Airlines systems, and all allied or related industries and avenues of employment that followed the traumatic events of September 11.

This caused some internationally established Airlines like the Sabena Airlines to declare bankruptcy, and others to cut services, lay off and retrench employees on a mass scale. Moreover, some airlines were forced to seek financial assistance from governments to tide over the crisis and to salvage enterprises on a long-term basis. This prompted well-known analysts and economists of the West, who had believed in exorcising the state from the

realm of economic affairs, to plead for a second look at the 'centrality' of the state, not merely in ensuring security from external aggression, but also in ensuring economic security. This should alert policy makers to the role of the State.

2. The state of the Union address that the President of the United States of America, George Bush delivered on the 29 January, 2002 :

There are quite a few in the world who look upon the United States as a model to emulate. They believe that the key to economic development lies in replicating the industrial and economic system that prevails in the United States. They also believe that the collapse of the Soviet system has finally exposed the untenability and utter failure of Socialism, and established the superiority and inevitability of the Capitalist model and Capitalist economic doctrines. We have not been asked to examine the validity of these claims. But some recent events have come as a shock

to the smug claims of infallibility. The mindset that was rooted in faith in the invincibility of the nation and the power and resilience of private initiative and industry to take over the role of the State in economic matters have been shaken. September 11 and the crash of Enron have altered the scenario in many ways. The hope of driving the state into the wilderness has had to be given up. As Fareed Zakaria, Editor of the International Edition of the *Newsweek* has said, the "centrality" of the state in ensuring security – security against forces of disintegration and terrorism, and social security – has had to be acknowledged again. The role of the State in protecting people from the forays of disruptive forces from outside has been underlined. The role of the state in providing a regime of law and order necessary for industry and economic activities has been emphasised. The fact that such activities of hostile and disruptive forces can throw the economy totally out of gear has been underlined. September 11

has had unforeseen but colossal impact on air transport companies with worldwide reputations for stability and profitability. The chain reactions on

- (a) demand
- (b) public perceptions and preferences
- (c) profit
- (d) related industries and
- (e) the need to break even or to seek profit by retrenching labour and downsizing are all there for everyone to see.

Corporate giants have had to turn to Governments and the Public Exchequer to salvage their reputations, or to save them from bankruptcy or closure affecting production, viability, profit, demand and employment. We have referred to some of these colossuses in earlier paragraphs.

Retrenchment, downsizing and voluntary retirement schemes have affected employment, and increased unemployment in almost all the developed countries.

Human beings and families, reduced to a life without incomes, affected by these cuts, are not mere statistical entities. Unless backed by adequate compensation and security systems, starvation and suffering can become causes of acute and explosive social unrest, which may affect not merely politicians and political systems, but also economic undertakings and economic systems.

The danger of such social and national hazards is reflected in the State of the Union address that President Bush delivered to the American Congress on the 29th of January, 2002. He declared that the priorities of the American Budget and state spending for many years would have to be the war on terrorism that might be prolonged, the need to assure internal security, and the need to ensure social security.

It may be useful to quote what the President said on social security.

"Americans who have lost their jobs need our help, and I support extending unemployment benefits and direct assistance for health care coverage. Yet, American workers want for more than unemployment checks – they want a steady paycheck. When America works, America prospers, **so my economic security plan can be summed up in one word: jobs**" (emphasis ours)

..."Good jobs must be the aim of welfare reform. As we consider these important reforms, we must always remember the goal is to reduce depending on government and offer every American the dignity of a job".

..."Americans know economic security can vanish in an instant without health security. I ask Congress to join me this year to enact a patients' Bill of Rights – to give uninsured workers credits to help buy health-coverage – to approve, an historic increase in the spending, for veteran's health –

and to give seniors a sound and modern Medicare system that includes coverage for prescription drugs."

"A good job should lead to security in retirement. I ask Congress to enact new safeguards for 401K and pension plans. Employees who have worked hard and served all their lives should not have to risk losing everything if their company fails Retirement security also depends upon keeping the commitments of social security, and we will. We must make social security financially stable and allow personal retirement accounts for younger workers who choose them."

We need not point out that these are as necessary in our country as in America. In fact our country has many more millions who are entitled to means of livelihood, and are yet unemployed and unprotected by insurance or assistance. Those who look to America as a model should therefore, see the need for polices oriented to the

creation of jobs and the provision of basic social security.

3. The crash of the Energy giant Enron has exposed many of the weaknesses and the socially harmful effects of the Corporate system. We do not have to go into it in detail, but it has administered a severe shock, and created apprehensions about the potential for manipulation and deceitfulness demonstrated by mechanisms that were meant to assure accountability and keep vigil on behalf of the investor and the public, the involvement of politicians who use power and access to cover up or connive at fraudulent practices etc. We should learn from experience, not only our experience, but the experience of others who have gone before, and not be more sanguine than the insiders. These developments have therefore, had their impact on the credibility of financial and industrial institutions, and the President of the United States is currently engaged in a serious and massive exercise to restore credibility to the State and the

financial and industrial system, and the system of Corporate governance in the United States. The new mindset that the new context calls for must be reflected in all attitudes and activities in industrial relations or employer employee relationships. We also believe that the employer and the employee should consider themselves as Trustees of the welfare of the totality of society and the environment. But we do not believe that such an attitude will take root all at once, or pre-empt and resolve all disputes. There will still be differences and disputes. But the attempt that is consistent with the spirit of the new context, and of interdependence, is to settle disputes through bilateral discussions and negotiations. All efforts must therefore be made to promote bilateralism based on mutual interests and universally accepted fundamental rights and norms. The legal system should therefore promote bilateralism. Both parties must take up the responsibilities that devolve on

them in bilateralist attempts to protect each other's interests and of society of which both are parts. Where differences persist in spite of genuine bilateral attempts, the law must enable contending views to be settled through mediation and arbitration, including compulsory arbitration where the disputes may lead to disruption of social life affecting public health, sanitation, drinking water supply, medical facilities and transport, and cause suffering to large sections of people who are unrelated to the disputes.

While workers have the right to strike, and employers have the right to lock out, the rights must be exercised after exploring and exhausting all other means including the means of mutual consultation and negotiations. If negotiations fail, means must be available for adjudication or voluntary arbitration. Processes of adjudication must be quick, expeditious and inexpensive. They should not

involve delays that cripple the worker who has limited staying power, or no staying power at all. Workers should be encouraged to organize themselves with the awareness that struggles on the basis of extraneous issues may divide and weaken them.

5.41 We have already talked of transparency and the need for a new work culture. We have also talked of the paramount need for access to an effective system of social security that will be based on contributions as far as possible, and underwritten by the state or local bodies or workers' co-operatives or associations where necessary and possible. We believe that such an order will maximize industrial cooperation and national competitiveness and, at the same time, ensure protection, security and welfare to workers. It is in the light of this belief that we proceed to review the industrial relations laws, social security system and the need for upgradation of skills and training.

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CHAPTER-VI

REVIEW OF LAWS

Before embarking on a detailed review of the labour legislation in our Statute Book it is necessary to keep in view certain important parameters. In earlier chapters and paragraphs we have referred to the articles of the Constitution of India that provide the parameters of our review. Yet, they bear repetition as a preface to the ensuing paragraphs. Article 19 guarantees 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 these freedoms. We also have Article 23 prohibiting traffic in human beings 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 Directive Principles of State Policy in Part IV of the Constitution. These principles are not enforceable by any court but are nevertheless fundamental in the

governance of the country, and it is 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 Commission. It is also relevant to remind ourselves that we now have moves to redefine 'right to work' which figures in the Directive Principles (Article 41) and invest it with the status and sanctity of a fundamental right.

6.2 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 Member States 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.

6.3 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 Bretton 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 the 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.”

6.4 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 under-performing in this respect.

6.5 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 also taking on board each other’s goals. Just as the ILO has to integrate the need for sound macro economic policies into its understanding, so the

Bretton 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.

6.6 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.”

6.7 Apart from these, it is also necessary to take note of the fact that the Government of India ratified Convention 122 on Employment and Social Policy in 1998. This convention was adopted by the International Labour Conference in 1964. It is relevant both to point out that the Convention was ratified after the Government of India embarked on the new economic policy and to reproduce

in full the text of Article 1 of the 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."

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

6. 9 From what we have cited about the commitments of the Government of India in the preceding paragraphs it can be deduced that the following rights of workers have been recognised as inalienable and must, therefore, 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 guaranteed wages
- (g) Right to redress at of grievances
- (h) Right to organise and form trade unions and right to collective bargaining, and
- (i) Right to participation in management.

6.10 One cannot overlook the fact that rights are also related to duties.

6.11 If our understanding is correct, what exactly should 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 the organised sector and unorganised sector

becomes significant. 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 the unorganised sector. It is relevant, to point out that in the Trade Unions (Amendment) Act, 2001, (Act 31 of 2001) the explanation in clause 8 of the Bill states that for purposes of the section, 'unorganised sector' means any sector which the appropriate government may, by notification in the official gazette, specify. Even so, should we delimit the organised sector in terms of the number of persons employed in the establishment in that sector, or in terms of the capital invested in the establishment, or in terms of the level of technology that obtains in that establishment, or on the basis of any other criteria like turnover, wage cost as a proportion of total cost, etc.? Also, would 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 satisfactory criterion, considering that laws like the Minimum Wages Act, the Equal

Remuneration Act, the 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 the organised sector as consisting of establishments which have a minimum employment limit (A more detailed analysis of the characteristics of the unorganised sector and employees covered in it can be seen in the ensuing Chapter on the Unorganised Sector).

6.12 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 accepted the need for this kind of universal applicability. But the Commission agrees with the study group that this 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.

6.13 What then should this limit be? A study of the employment limits prescribed currently in various labour laws shows that the pattern is not 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. The study group that we had appointed has not been unanimous in defining a threshold. Some members held the view that establishments having 20 or more employees (ie., both workers and others) should be included in the 'organised' sector. Some others preferred the employment limit to be 50, there were also members who considered even 20 a little too high and wanted the limit to be fixed at 10.

6.14 Many Small-Scale Industries Associations have told us that the limit must be 50 and more. The argument that has been used 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 responsibilities 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 necessary for coping with many laws. They thus fall easy prey to 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 are easily understood by the managements and are easy to implement, then the entrepreneurs will be encouraged to expand their current small establishments by taking more hands and still keeping 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 the generator of skills. These are fairly weighty reasons. The study group has recommended that the establishments employing 50 or more persons (not merely workers) must be governed by the general law while the smaller establishments should have a self-contained set of provisions that will be applicable to them. The group was however, unanimous that every worker, irrespective of the employment size of the establishment, must be assured minimum social security and protection.

6.15 We feel that by raising the cut-off limit to 50 employees, a large majority of establishments and a very high percentage of workers will be kept outside the ambit of the main law. However, the study group was of the view that the smaller establishments and their workers would also benefit from the simple and adequate provisions which were being proposed to protect the interest of the workers satisfactorily under a separate law for such establishments.

6.16 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 and safety which must be applicable to all workers, irrespective of the employment size of that establishment, or the nature of its activity.

6.17 The Commission has given considerable thought to the number of employees that should be fixed as the threshold point for the organised sector. It does not want any decision on this question to lead to a situation in which workers who are already enjoying the protection of laws forfeit

their protection or benefits of provisions for safety and security. Nor does it want to add to the problems of small entrepreneurs with unbearable financial burdens that affect the viability of their enterprises or compel them to work under irksome conditions that make complicated demands on them. Balancing both these factors, the Commission feels that a limit of 19 workers should be accepted as the socially defensible mean.

6.18 If Labour Laws are essentially meant to protect the interests of the weaker party, and to provide a machinery for healthy industrial relations, the question 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, the 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 has recommended that no

salary limit be prescribed for coverage of workers under the labour laws, and that the demarcation should be functional rather than based on remuneration. The Study Group was aware that there has been a history of wage limits being prescribed in laws like EPF Act, ESI Act, Payment of Bonus Act etc.; but even so the Study Group recommended that the criterion for coverage should be functional rather than based on wage.

6.19 The Commission carefully considered the view of the study group. It also took into account the evidence it received at various centre not only from employers but other interest groups like consumers etc. to the effect that some of the relatively better paid off categories of employees who are presently deemed as workmen often misuse the protective umbrella of such Acts like the Industrial Disputes Act which are available to them in total disregard of the interest of the employer, and those of the organisation to which they belong, the consumer and the community as a whole. Illustrations frequently cited in this regard were those of Airlines Pilots, and the like who receive remunerations that are

much higher than what an average managerial person receives, and are clothed with authority that in some matters is much higher than that enjoyed by ordinary managerial personnel, and yet are treated as workmen. The Commission has, in a succeeding paragraph, made recommendations regarding the desirability of a separate legal provision that will offer reasonable protection to employees who do not come within the purview of the term 'workmen' and are generally categorized as working in managerial or administrative or supervisory capacities or in sales promotion work and also such categories of employees as are outside the purview of the present laws as a consequence of judicial pronouncements like teachers, artistic personnel, etc. The logic behind such recommendations has been explained in the relevant paragraphs. As has been pointed out earlier the relatively better off section of present day employees categorised as workmen like Airlines Pilots, etc. do not merely carry out instructions from superior authority but are also required and empowered to take various kinds of on the spot decisions in various situations and particularly in exigencies. Their functions,

therefore, cannot merely be categorized as those of ordinary workmen; in fact, they belong to the executive realm, and there is, therefore, a case for excluding such people from the provisions of the law designed for ordinary workmen. The Commission is also of the view that such categories of employees are quite capable of negotiating terms of employment on their own and do not need protection beyond a limited extent by legal means. It, therefore, recommends that Government may lay down a list of such highly paid jobs which are presently deemed as workmen category as being outside the purview of the laws relating to workmen and included in the proposed law for the protection of non workmen. Another alternative is that the Government fix a cutoff limit of remuneration which is substantially high enough, in the present context, such as Rs. 25,000/- p.m. beyond which employees will not be treated as ordinary "workmen". In case the Government deems it appropriate to lay down a wage or salary criterion as a cutoff provision, it may also have the enabling powers to review it from time to time under delegated legislation. In making such a recommendation the Commission has also kept in mind the

underlying premise that the Supreme Court laid down in its judgment on the validity of reservations for the "creamy layer" in the categories otherwise qualifying for reservation.

6.20 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 establish the need 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 of the workforce or they should be considered to be part of the management. It is, in this context, necessary to note that the Industrial Disputes Act distinguishes between employees doing work of an administrative or managerial nature and those doing work merely of a supervisory nature, for whom alone a salary limit is fixed. The Commission is of the view that it would be logical to keep all the supervisory personnel, irrespective of their wage/salary, outside the rank of worker and keep

them out of the purview of the labour laws meant for workers. As has been recommended in the previous paragraph, all such supervisory category of employees should be clubbed along with the category of persons who discharge managerial and administrative functions. The Commission would also recommend that such a modified definition of worker could be adopted in all the labour laws. We expect managements to take care of the interests of supervisory staff as they will now be part of the managerial fraternity.

6.21 The Commission agrees with the study group and the large volume of opinion that the existing set of labour laws should be broadly grouped into four or five groups of laws pertaining to (i) industrial relations, (ii) wages, (iii) social security, (iv) safety and (v) welfare and working conditions and so on. The Commission is of the view 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 employees including administrative, managerial, supervisory and others

excluded from the category of workmen and others not treated as workmen or excluded from the category of workmen as has been proposed in the paragraph preceding the previous one. 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 separate parts in respect of establishments employing less than 20 persons.

6.22 The Commission also considered the question whether, apart from laws for the protection of workers, there should be a separate legislation for giving protection to managerial employees as well. It wants to point out that in 1978 the Government had introduced a Bill on the subject in the Parliament. It can also be seen that some kind of protection is available to such employees in the Shops and Establishments Acts of certain States where 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 question was divided in the Study Group. So is the case in the Commission. It was pointed out that incorporating such a provision, 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 such employees do not have any legal remedy against unfair removal from service, excepting by way of a legal suit which, experience would show, is not a very satisfactory method of redressal, particularly when it is clear that the best that such a person can expect from a civil court is compensation after a very long drawn out procedure. Keeping all these issues in view, the Commission agrees with the Study Group that it is necessary to provide a minimum level of protection to such employees too, against unfair dismissals or removals. This has to be through adjudication by labour court or Labour Relations Commission or arbitration.

6.23 As we have stated earlier, while embarking on our task of rationalisation of existing labour laws, one of the important aspects that we have had to bear in mind is that in the field of labour, we have not only central laws, i.e., laws enacted by Parliament, but also laws enacted by State legislatures which 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 Commission 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.

6.24 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 the Mines Act, 1952 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 that 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 judgment dated 30.08.2001 of the Supreme Court of India in the 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. The

Commission 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, lighthouses, Food Corporation of India, Central Warehousing Corporation, banks (other than Cooperative banks), insurance, financial institutions, mines, stock exchanges, shipping, mints, security printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Cantonment Boards, Central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR, NCERT and in respect of industrial disputes between the contractor and the Contract Labour engaged in these enterprises/ establishments. In respect of all others, the concerned State Government/Union Territory administrations should be the appropriate government. In case of dispute, the matter will be determined by the

National Labour Relations Commission that we want to be set up.

6.25 We had earlier indicated that in our attempt to rationalise labour laws, we could, with advantage, group the existing labour laws into well-recognised functional groups. While the ultimate object must be to incorporate all such provisions in a comprehensive code, as has 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 should be included in each functional group will be indicated by us, as we deal with each of these groups.

Employment Relations

6.26 We begin with what are perhaps the most important laws relating to industrial relations. The basic central laws relating to the subject are currently the Industrial Disputes Act 1947, the Trade Unions Act 1926 and the Industrial

Employment (Standing Orders) Act, 1946. Mention must also be made of the Sales Promotion Employees (Conditions of Service) Act 1976 and other specific Acts governing industrial relations in particular trades or employments. There are state level legislations too on the subject, the more 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 be judiciously consolidated into a single law called the Labour Management Relations Law or the Law on Labour Management 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 others. All of them will be governed by the same law as will be applicable to the entire corpus of workers; we have already stated elsewhere that we cannot ask for consolidation of laws and separate laws for separate employments at the same time; however, we would carve

out a section of these workers who are employed in establishments with an employment size of 19 and below, for a different kind of dispensation. In view of our approach, we recommend the repeal of the Sales Promotion Employees (Conditions of Service) Act, 1976 and other specific Acts governing industrial relations in particular trades or employments and also specific laws governing wage fixation in particular trades or employments, in the light of what we recommend later in respect of the law on wages. The general law on industrial relations and wages will apply to them.

6.27 There is a strong volume of opinion that holds that all industrial establishments, irrespective of their size or nature of operations, should be under the same law, and that there is no need to exempt any establishment from the uniform law. There are some members of the Commission who hold the same view. We have, therefore, given much thought and full weight to this view. But there are a number of factors that we have to balance while coming to a conclusion, and making a recommendation. Everywhere we

went to hear evidence, we were told about the plight and importance of small-scale industries. We were told, and statistics were cited in support, that (i) small-scale industries provide more employment (18.5 million) than large-scale industries: (ii) their contribution to the GDP is around 7% against 10% of the large-scale manufacturing sector (iii) their share in export earnings is of considerable importance to the economy; (iv) large-scale closure of these units would lead to a frightening increase in unemployment, and consequent increase in misery and possible starvation for many lakhs of workers and their families, as was seen in Delhi when lakhs of small-scale units had to be closed down as a result of the Supreme Court's ruling about pollution; (v) the financial, and administrative burden imposed on them by subjecting them to the same laws as those that may be necessary in the case of big industries cripple their economic viability; (vi) the vulnerability caused by their small size, distance from the gaze of publicity and lack of clout exposed them to harassment and extortions by inspectors; (vii) these genuine difficulties have to be taken into account and provided for if small-

scale industries are to play their role in the economy and employment generation, and (viii) this can be done only by bringing them under a separate law that takes into account the size of the operation, investment, etc. of these enterprises.

6.28 The Commission finds that these are very weighty and real considerations. We would, therefore, recommend the enactment of a special law for small-scale units. Two important questions remain: one, what is the cut-off point for employment in this law, in other words, what is the size of the units that will be entitled to be considered small, and therefore, eligible to be in the regime of this law. After considering all aspects of the question, and the suggestions that were discussed in the Study Group and the Commission itself, we came to the conclusion that the reasonable threshold limit will be 19 workers. Any establishment with workers above that number cannot be regarded as small. We are, therefore, recommending the threshold limit of 19 workers. The composite law suggested by us for small enterprises has provisions for registration of establishments, and

provisions pertaining to securing safety, health and welfare of the workers, hours of work, leave, payment of wages, payment of bonus, compensation in case of lay off, retrenchment and closure, resolution of individual and collective disputes of workers, etc. The law suggested by us also has provisions pertaining to social security. We are of the view that a composite law will not only protect the interests of the workers in these enterprises but will make it easier for the small enterprises to comply with the same.

6.29 The second question relates to the protection and welfare of these workers employed in small-scale industries (SSI). They too are entitled to protection and welfare. The size of the enterprise or establishment cannot be a reason to leave workers unprotected, and without even elementary social security, especially when we are recommending measures to ensure protection and welfare to workers in the unorganised sector, where some workers are self-employed or are working in units with less than 5 workers. We have, therefore, ensured that the law we propose assures protection and

welfare to workers in the SSI. It is not only the management of establishments in the SSI that need protection and viability, but also the workers working in them.

6.30 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 a workers' complement of 19 and below (and this is again stated in detail in para 6.106 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 demands, particularly from the small-scale industry sector, as well as shops and commercial establishments and similar sized institutions like hospitals, educational establishments, charitable organisations and the like, for not being burdened with the 'arduous' provisions of laws like the Industrial Disputes Act 1947 and Industrial Employment (Standing Orders) Act 1946 which in their view are designed only for large sized industrial and commercial establishments.

6.31 We now begin by indicating certain broad approaches we are adopting in drafting the Law on Labour Management Relations for establishments with a workers' complement of 20 and more.

6.32 Firstly, the Commission would prefer the gender neutral expression 'worker' instead of the currently used word 'workman' that we find in the Industrial Disputes Act and some other Acts.

6.33 Secondly, the law will apply uniformly to all such establishments, irrespective of the nature of activities carried on in these establishments; 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, if the worker complement of all the branches adds up to 20 or more, this law will apply, even though individual units like a dispensary or a primary school may have less than 20 workmen.

6.34 Thirdly, we hold 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 described as 'collective bargaining' or negotiations. We recognise that today 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 negotiations encouraged. Such a step will also, in its wake, reduce, if not altogether avoid, state intervention in employer-worker relations. Where, however, agreements and understanding between the two parties is not possible, there, recourse to the assistance of a third party should as far as possible be through arbitration or where adjudication is the preferred mode, through labour courts and labour relations commissions of the type we propose later in this regard, and not Governmental intervention. The Commission also considers that the present distinction in law, on the extent of the binding nature of

settlements entered into bilaterally and those entered in conciliation must go, and a settlement entered into with a recognised negotiating agent must be binding on all workers.

6.35 Fourthly, we consider that provisions must be made in the law for determining negotiating agents, particularly on behalf of workers; it is equally necessary to recognise that collective bargaining or negotiations 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.

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

6.37 Sixthly, having considered the view that rigidities in labour laws are what is standing in the way of acquiring competitiveness and attracting foreign investment, and

the equally forcefully articulated view that labour costs are only a comparative small percentage of overall costs and the reasons for the present situation have to be sought in other areas as well, areas like infrastructural facilities, management skills and the like (we have referred to these factors in more detail elsewhere); the Commission is of the view that changes in labour laws are only one of the issues involved, and that these have to be visualised and effected in a broader perspective of infrastructural facilities, social security, and Government policies. We, therefore, suggest that these changes be accompanied by a well defined social security packet that will benefit all workers, be they in the 'organised' or 'unorganised' sector and should also cover those in the administrative, managerial and other categories which have been excluded from the purview of the term worker. In evolving such a social security system, it is necessary to provide for both protective and promotional measures, the latter being particularly relevant for the workers in the unorganised sector.

6.38 One of the most important steps that one needs to take in

rationalising and simplifying the existing 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. By making the law applicable to establishments employing 20 or more workers, irrespective of the nature of the activity in which the establishment is engaged, we have avoided the need to define 'industry' (The Commission did in this context examine whether domestic service should be included in the coverage under labour laws. After examining all aspects of the question, it has come to the conclusion that they are better covered under the proposed type of umbrella legislation, particularly in regard to wages, hours of work, working conditions, safety and social security.)

6.39 Positively, we will 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 and also excluding those specifically notified or otherwise held as not coming within the purview of the term. Likewise, we define establishment as a place or places where some activity is carried on with the help and cooperation of workers.

6.40 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 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 and dearness allowance and no other; all other payments including other allowances as well as overtime payment together with wages as defined above will be 'remuneration'.

6.41 The Commission also discussed the question whether any distinction should 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, "Go slow" and "work to rule" are forms of action which must be regarded as misconduct. Standing Orders and Provisions relating to unfair labour practices already include them and provide for action both in the case of "go slow" and "work to rule".

6.42 Item number 5 of part II of the Fifth Schedule of the I.D. Act prescribes that "to stage, encourage or instigate such forms of coercive actions such as wilful go slow, squatting on the premises after working hours or gherao of any of the member of the managerial or the other staff" shall be an unfair labour practice which is prohibited and also made punishable under the Industrial Disputes Act. Similarly, the Model Standing Orders framed under the Industrial Employment (Standing Orders) Central Rules made for the coal mines prescribes that "malingering or slowing down the work" shall be misconduct. We feel that both these provisions may be added as forms of misconduct in the Model Standing Orders formulated for establishments other than coalmines as well; and they may attract appropriate penalties.

6.43 The Commission also carefully considered the recommendation of the Study Group that the term 'retrenchment' should 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 judgment, proliferated to cover virtually every kind of termination of employment. The Commission agrees with the Study Group that this 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 Commission, inconsistent with any position other than that retrenchment can be only in respect of surplus workers or in case of redundancy.

6.44 With due deference to the opinion of the Study Group, the Commission will urge a deeper consideration of the arguments that have been advanced, and the apprehensions that have been expressed. On a matter that affects

more than one section of the society. One is the basic right of the workers to strike. Another is the spectrum of society (spectrum of groups in society) that will be affected by such a strike. Let us begin by saying that we believe that workers have a fundamental right to strike. Having said that, we will have to examine the many forms that a strike can take, the many motivations that can prompt action in the course of the strike, and the consequences that they will have on different sections on which the effects of their actions fall.

6.45 To begin with, a strike is the assertion of the fundamental right of the worker to withdraw co-operation from what he perceives as injustice being done to him. This is achieved by stoppage of work. Secondly, the employer feels the impact when he sees that the strike has led to a stoppage of production, and this has adversely affected his economic interests. Thirdly, the worker feels that continued stoppage of production and continued adverse effect on the economic interests of the employer will compel him to reconsider his attitude, and seek a compromise with the striking workers, so that

production may resume. Fourthly, obstinacy or what is seen as obstinacy by one or other of the parties may lead to feelings of indignation and the desire to seek revenge on the other. Fifthly, this may lead to lock-out, the use of hired goondas or blacklegs, agents provocateurs etc. on the part of the management, or anti-social forces, and gherao or destruction of machinery or other acts of violence on the part of the workers. There are many who profit by driving the dispute into the realm of law and order, and using the strong arm of the State to convert industrial disputes into matters for the police or the law and order enforcement machinery. This is not to the advantage of the workers, and perhaps to that of the industry as well.

6.46 There are some industries or services in which where the effects of industrial action, or confrontation, cannot, by the very nature of the activity remain confined to the employers and employees in the service or industry. They impinge on or spread into the lives of the vast majority of people in society who are not involved, who are neither employers nor employees, who are not

the confronting parties. One has only to look at what happens when doctors or nurses or hospital employees, or people engaged in transport services, generation and transmission of electricity, water supply and sanitation in urban areas go on strike. They create situations which threaten the lives and normal and essential needs and activities of the vast majority that are not involved in any way; people who are in no way responsible for what those involved are fighting for; and act against society which has a right to protect itself, and for that purpose, intervenes to prevent forms of conflict that inflict vicarious and undeserved suffering or hardship on those who are not guilty. One's liberty has to be seen in the light of the equal right that everyone else has to demand and enjoy liberty. Social intervention thus becomes justified and necessary to protect the interests of all concerned.

6.47 The first National Commission, and earlier the Royal Commission, also referred to this dilemma that is created by strikes in certain 'essential' industries and services. The earlier National Commission has outlined the pros and cons of social intervention,

and the forms that such intervention can take. We do not want to reiterate these here. But we have referred elsewhere (in earlier paragraphs) to the increasing need to deal with this situation and the increasing indignation and resistance that one sees in the counter-reaction of the majority that is subjected to vicarious suffering. We have also drawn attention elsewhere to the need for workers' unions to ensure that they do not lose public sympathy.

6.48 We, therefore, recommend that in the case of socially essential services like water supply, medical services, sanitation, electricity and transport, when there is a dispute between employers and employees in an enterprise, and when the dispute is not settled through mutual negotiations, there may be a strike ballot as in other enterprises, and if the strike ballot shows that 51% of workers are in favour of a strike, it should be taken that the strike has taken place, and the dispute must forthwith be referred to compulsory arbitration (by arbitrators from the panel of the Labour Relations Commission (LRC), or arbitrators agreed to by both sides either at the

time of previous settlements or chosen afresh by mutual consent, if there is no panel of arbitrators provided for in previous agreements). Both parties to the dispute will be bound by the award of the arbitrators. This will secure redress of grievances and at the same time protect the ordinary citizen from the consequences, sometimes fatal consequences - of the disruption of essential services.

6.49 Some argue that such an arrangement is tantamount to taking away the right to strike. We do not accept this contention, because we are providing for a strike ballot, and recognition of majority support to the proposal for strike as the equivalent of a successful strike. A strike is meant to project the demands of the workers as also their determination to resort to direct action or stoppage of work. Another element can be to materially affect the profits of the management, and to show that the management's profits depend on the workers - at least, the workers as well. In the case of essential services, it becomes impossible to non-cooperate with the management without hurting the vast majority of people as well. It is only

this element therefore that is tempered through compulsory arbitration. Time limits can be prescribed to ensure that compulsory arbitration is also speedy and time-bound arbitration, and as in the case of other processes of dispute settlement, application of these awards too, may have retrospective effect to protect the interests of the workers. We should also draw attention here to the fact that we are recommending in subsequent paragraphs the withdrawal of the Essential Services Maintenance Acts.

6.50 As already indicated, we consider it desirable that the law of employment relations is so structured as to enable 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 are 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 does exist. The Commission 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 ignores the most important aspect of the whole question, namely, the recognition of the bargaining or negotiating agent. The Act, namely, Trade Unions (Amendment) Act, 2001 (Act No.31 of 2001) does make provisions that 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 Act had also provided for a ceiling on the total number of trade unions of which an 'outsider' can be a member of executive bodies. Amendments made in Section 4 recently appear to disentitle workers in the unorganised sector from getting their trade unions registered. To overcome this difficulty, a specific provision may be made to enable workers in the unorganised sector to form trade unions, and get them registered even where an employer-

employee relationship does not exist or is difficult to establish; and the proviso stipulating 10% of membership for registration of trade unions will not apply in their case. One hopes that if the new system of law were to progressively diminish the role of the state in employment relations matters, the number of outsiders will also progressively diminish.

6.51 A wider and deeper look at the Trade Unions Act 1926, than what has been attempted in Act No.31 of 2001 mentioned above, will demand a closer look at a large number of important issues. In the course of evidence, a question was raised whether the right to registration as Trade Unions should be confined to organisations of workers only or employer's organisations should also enjoy this right as provided in the existing provisions. After considering various issues involved we have come to the conclusion that the present system of eligibility for registration may continue. 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 Commission also took note of the low level of unionisation as also the fact that all the benefits which accrue to workers as a result of collective bargaining do not distinguish between those who are members of Trade Unions and those who are not. Since all workers in the establishment receive the benefits that come from settlements, we feel that it is desirable to introduce in law a provision according to which :-

"A worker who is not a member of any Trade Union will have to pay an amount equal to the subscription rate of the negotiating agent or the highest rate of subscription of a union out of the negotiating college. The amounts collected on this account may be credited to a statutory welfare fund. Wherever there is no statutory workers' welfare fund these will be credited to a welfare fund set up by the employer for the welfare of the workers of the establishment with the approval of the appropriate Government under clause (ff) of sub section (2) of section 7 of Payment of Wages Act, 1936".

6.52 Flowing from the above, the Commission 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.

6.53 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 as well.

6.54 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 be subject to the same discipline as a primary trade union. The same dispensation will apply to employers' organisations and employees' organisations.

6.55 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.

6.56 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 to set up a separate political fund may be appropriately included in the proposed integrated law. We would recommend that such provisions be allowed to continue.

However, care must be taken to ensure that the general funds of trade unions are not used for political purposes.

6.57 We now come to the crucial question of recognition of bargaining agent or negotiating agent.

6.58 In view of the crucial importance of this question, we would like to make a few observations and, perhaps, an appeal, before we make our recommendation.

6.59 Firstly, we strongly believe in the role that bilateral interaction, dialogue and negotiations can play in promoting harmonious industrial relations. In a sense, bilateralism is the recognition of the stake that workers and the management have in the viability and success of the undertaking. In fact their stakes are higher than those of anyone else. It is, therefore, necessary that both recognise and respect each other's stakes. We have already said elsewhere that the awareness of mutual dependence can create an active realisation of the commonality

of stakes. But the efforts to create and maintain this awareness must be sincere and earnest and not merely cynical lip service. Secondly, as far as the workers are concerned, success in bilateral negotiations will depend on the strength of the union that speaks and acts on behalf of the workers - the more fully the organisation represents the workers the more effective will it be in bargaining or negotiating on behalf of the workers. As the saying goes, unity is strength or strength lies in unity, and fragmentation will fritter away the potential strength of the workers. Our Trade Union movement today is fragmented, on many basis, - but perhaps most of all on political loyalties or considerations. Whatever the basis, the effect of fragmentation is the same, and that is to undermine the unity of the working class and weaken it. Everyone talks of the value of unity, the imperative need of unity today, but in practice, hardly anyone seems to be willing to give up separate identities. This perpetuation of fragmentation is weakening the workers. Friends of the working class, therefore, have to be careful not to recommend any process or system

that aggravates or strengthens the tendency for fragmentation. Fragmentation not only weakens the working class but also lets the adversary derive advantages from the divisions on the other side. Closing of ranks, therefore, is the need of the working class, but for various reasons it seems that the incentives for consolidation are still weak. One of the ways to strengthen the incentives can lie in the field of registration and recognition, where the criteria for eligibility can be upgraded or at least proportionately upgraded. We are also aware that any such criteria should not militate against the fundamental rights of association. We, therefore, looked for methods of upgrading the criteria.

6.60 Every one admits that the existing multiplicity of unions weakens the Trade Union movement; but everyone becomes wary when specific steps are suggested to reduce multiplicity.

6.61 One novel suggestion that came from a distinguished trade union leader was that the minimum support required for registration itself should be raised to 51% of the workers and verification of support should be on the basis of check off. This would

eliminate the need to prescribe a separate process for the recognition of a negotiating agent. The registered union will automatically be the sole negotiating agent. Strikes by unregistered unions should be treated as illegal and should attract the penalties of an illegal strike. It was also pointed out that there were many countries in the world including industrially advanced countries where there is no provision for registration.

6.62 A second suggestion was that either of the two kinds of bodies may be registered, - one on the basis of the present law with a prescribed minimum support of 10%, and another kind which may be put on a panel of unions that would be considered for recognition as negotiating agent. The minimum support to be empanelled may be prescribed as 25% of workers in an establishment. If this suggestion is approved there can be at most three unions, or in an unlikely case four unions, not more, that fulfil the legal criteria for recognition.

6.63 This would result in a reduction in the number of unions contending to be the negotiating

agent. From among those in the panel anyone who has 66% may be recognised as the single negotiating agent. If no one has 66%, one alternative is to have a run off between the two unions at the top of the table, in which all workers in the undertaking may participate, and whichever secures 66% may be accepted as a single negotiating agent.

6.64 The third suggestion was that wherever no union secures 66%, there should be a negotiating agency or negotiating college which has proportionate representation for the unions in the panel.

6.65 The Commission feels that all these proposals need to be discussed further with the trade unions, and perhaps managements, and they should be persuaded to accept any method that reduces or eliminates multiplicity, which is another description of a state of fragmentation.

6.66 If either of these is not acceptable, we fall back on the

suggestion that the negotiating agent should be selected for recognition on the basis of the check off system, with 66% entitling the union to be accepted as the single negotiating agent, and if no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation on the college.

6.67 The question of the method that should be used to identify the bargaining agent has been the subject of discussion and debate for many decades now. The first National Commission on Labour examined this question and listed the arguments in favour and against the two systems that have been proposed, the check off system, and the secret ballot. Many committees like the Ramanujam Committee, the Sanat Mehta Committee, the Shanti Patel Committee and the Industrial Relations Bill of 1978 have made recommendations on this question. We have carefully studied all the arguments that have been advanced on either side (and the qualifications that have been proposed for the negotiating agent). We do not want to recount all the arguments.

6.68 To put the arguments briefly, those who support the secret ballot urge; (1) that the system of secret ballot is what is used to elect a representative to the legislature or Parliament; (2) that it is a system that assures a democratic choice; (3) that the secrecy prescribed in it provides protection to the worker, from harassment by the management or other unions; and (4) that there is no better method to verify support. Those who support the check off system argue: (i) that the check off or authorization to deduct union subscriptions from wages clearly shows the respective strength of unions; (ii) that unlike the secret ballot which only shows the preference at the moment, the check off system shows the continued support for the unions over a long enough period of time; (iii) that since the negotiating agent has to represent workers over a period of time till the next negotiations fall, due membership of the union is a far better and more reliable index than a secret ballot (which is more like a referendum); (iv) that the check off system promotes unionisation; (v) that the check off system does not involve any special expenditure for verification, whereas

the administrative cost of a secret ballot, especially when it has to be held in a multi-unit undertaking goes to crores of rupees and the deployment of a formidable number of polling officers; (vi) that this raises the question of the source from which the money to defray the expenditure on the secret ballot should come, whether it should be from the management or workers or the Government. The management is reluctant, and some times, unable to find such a large sum of money; the Trade Union does not have the resources, and the Government too is unwilling to find the money from the exchequer; (vii) that the campaign for a secret ballot disturbs the atmosphere, generates intense feelings of rivalry and acrimony and sometimes violent interludes in establishments which adversely affect and disrupt the tenor and volume of work done etc.; and (viii) that it takes many days for the aftermath of the campaign to settle down.

6.69 The Commission carefully considered the advantages and disadvantages of the relevant options. In dealing with this issue, we had to keep in view our belief that

collective negotiations require a strong trade union movement which, in its turn, demands an increasing degree of unionisation. Any formula which militates against increasing unionisation should, therefore, ab initio be avoided. Secret ballot as a method of identifying the negotiating agent raises the following questions: - should the electorate for choosing the negotiating agent be the entire corpus of workers in the establishment/industry/region or should it be limited only to members of registered trade unions? If it is to be the latter, then in a situation where the total unionised strength is less than 50% of the work force, and this is the average scenario in our country, then a minority will be negotiating for the entire establishment/industry/region; on the other hand, if the entire workforce were to participate, then it is argued this may weaken the urge or inducement for non-unionised workers to become members of one or other of the trade unions.

6.70 Also, secret ballot even on a restricted basis is logistically and financially a difficult process in industries like railways, banks, post offices, coalmines and other

undertakings operating in a number of states. It has been shown that the expenses run into crores of rupees. For instance, we are informed that in the case of the Food Corporation of India (F.C.I.) the identification of the negotiating agent through secret ballot amongst 50,500 employees undertaken during 2002 involved an expenditure of more than 50 lakh rupees, and the deployment of 3,000 returning officers and polling staff.

6.71 A check off system has the advantage of ascertaining the relative strengths of trade unions based on continuing loyalty reflected by the regular payment of union subscription, even if such subscriptions are deducted from the wages as permitted under the Payment of Wages Act, 1936. Also, the 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. Given the low level of unionisation in India, neither the check off system nor the secret ballot confined to members of registered unions is likely to throw up a negotiating agent which commands

the support of the majority of workers, excepting in industries and establishments where the degree of unionisation is very high. The argument advanced against the check off system is that it exposes the loyalty of the worker, and this may make him vulnerable to victimisation by the management or persecution by members of other unions. We feel that this argument does not have much force today, when conscientisation and legal rights have more or less done away with the fear that workers had in the early days of trade unionism in the country. Today, it is commonly accepted – even by employers that workers have the freedom to join Trade Unions of their choice. There may be exceptional cases of victimisation and vendetta. But they are exceptions, and not the vogue.

6.72 We have given consideration to all these arguments and come to the conclusion that the check off system should be the general pattern, and wherever there is legitimate apprehension that the system may not achieve the purpose of verification or may create the possibility of victimisation, it should be open to unions to petition the

Labour Relations Commission to determine the method that should be adopted in a particular instance.

6.73 It is needless to stress that for the above proposals to be implemented, the check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions; 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/her subscription from his/her wages and pass it on to his/her trade union.

6.74 Though the check off system will be preferred in the case of establishments employing less than 300 persons too, the mode of identifying the negotiating agent in these establishments may be determined by the LRCs. Any union in such smaller enterprises may approach the LRCs for conducting a secret ballot instead of employing the check off system, and the LRC will decide the issue after consulting the other Trade Unions operating in the

establishment. We are recommending a slightly different dispensation for units employing less than 300 as we feel that it is in such units that the possibility of victimisation has to be provided against.

6.75 The Commission also considered the question of the powers of the single negotiating agent or the negotiating college at the establishment level and at the industry or region levels. It may so happen that at the level of individual establishments, there may be trade unions which have much greater following than is the case at the industry or regional negotiating level where a single federation/centre different from the establishment level union or a composite negotiating college may hold sway. The Commission has taken note of the practice of industry level negotiations on interest issues, which obtain in several industries and would like the practice to continue. However, it would also like that as far as possible, negotiations and decision making on wages, allowances, general conditions including total number of hours of work, leave, holidays, social security, safety and health, productivity

negotiations, manpower adjustments, change in shifts etc. should be concluded at the establishment level so as to maximize the efficient functioning of the individual establishments based on the situations that obtain in such establishments.

6.76 We would also recommend that recognition once granted, should be valid for a period of four years, to be co-terminus with the period of settlement. No claim by any other trade union/federation/centre for recognition should be entertained till at least 4 years have elapsed from the date of earlier recognition. The individual workers' authorisation for check off should also be co-terminus with the tenure of recognition of the negotiating agent or college.

6.77 All establishments employing 20 or more 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 against sexual harassment, age of retirement and so on. The Commission agrees with the opinion of the Study Group that there is no need to delimit the issues on which standing orders can or need be framed. However, the Commission does not find it possible to agree with the recommendation of the Study Group that the need for certification of the standing orders by a prescribed authority may be dispensed with. This is because the Commission has brought down the threshold for framing of standing orders from 50 to 20 workers and this would mean that the number of establishments which need to have standing orders will increase. As long as the two 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 certifying authority having jurisdiction, to which either of the parties may apply. The decision of the certifying authority would however be

challengeable before labour courts by an appeal by either party. Any amendment to the Standing Orders can be asked for by either party and agreed to by both parties or referred to the certifying authority or the Labour Court for determination. However, no demand for amendment can be made until at least a year has elapsed. The appropriate Government may prescribe a separate Model Standing Order for units employing less than 50 workers. We append a draft of Model Standing Orders for such small establishments. The employer will have to append a copy of Model Standing Orders or the Standing Orders, mutually agreed upon with the workers, to the appointment letter of every employee.

6.78 The Commission has also taken note of the evidence tendered at various venues to the effect that the present Model Standing Orders only speak of punishment of four days' suspension and removal/dismissal, and there are no intermediate grades of penalties. The Commission does not consider this to be a satisfactory arrangement. The appropriate Government may also frame model standing orders, including the classification of acts of misconduct 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.

6.79 Any worker who, pending completion of domestic enquiry, is placed under suspension, by orders in writing giving reasons for his/her suspension and the charges framed against him, should be entitled to 50% 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/she shall be entitled to subsistence allowance calculated at 75% 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 worker's default or intransigence, the employer will be free to conduct the enquiry ex-parte and complete the disciplinary proceedings based on such ex-parte

enquiry and further, there would be no increase in subsistence allowance beyond 50% for the period exceeding 90 days in such cases.

6.80 Every establishment to which the general law of employment relations applies i.e. those with 20 or more workers, shall establish a Grievance Redressal 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. One member of the committee may be designated as Chairman and another as Vice Chairman and a system may be established to see that one of the two is from the management, and the other from among employees' representatives. The Grievance Redressal 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 timeframe. 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.

6.81 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.”

6.82 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 to meet 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 and upgradation of technology, all economic activities become subject to market pressures, compelling employers to do different levels of adjustments, including the size of the 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 term ‘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 the 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 on the number of persons he/she 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 negotiating 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 item 11 of the Fourth Schedule for the purpose of increase in the workforce, as is the position now under Section 9A. We would recommend accordingly. Further the Commission is of the view that notice of change, issued by an employer as per provisions of Section 9A, should not operate as a stay under Section 33 though such a decision of the management will be justiciable under Section 33 A. Section 33 may be amended accordingly.

6.83 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 entail. In fact, there is continuous need for this kind of training, and only by equipping themselves with the new skills that technological changes demand can workers adapt themselves successfully, if for nothing else, at least for retaining their jobs. We are told that there is sometimes reluctance among workers to undergo such training. This is unfortunate, and we expect the trade unions to use their influence and good offices to encourage the workers to utilise such opportunities, which ultimately are 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 the employer's time, may be included as an act of misconduct under the standing orders if such refusal is without valid reasons.

6.84 Chapter V B of the Industrial Disputes Act 1947 (ID Act) has of late attracted heavy criticism. It has been argued by the employers that this provision in the law which was enacted during the Emergency must go, as most other manifestations of

the Emergency have gone. It has also been contended that the law originally applied to establishments with 300 and more workers which later was brought down to 100 or more workers through an amendment in 1982. The announcement of the Union Finance Minister in his Budget Speech of 2001 that the ID Act will be amended to see that only establishments with 1000 or more workers would be covered by chapter V B, has given further fillip to the demand to scrap V B.

6.85 We are well aware that this is a question that has aroused intense feelings and apprehensions, and touched off a running public debate. We will therefore approach this question from the point of view of society as a whole, not merely of one section or the other, but of the interests of the totality of society, of which sectoral interests are integral parts. If one goes by the declared or ostensible interests, managements feel that they cannot achieve or maintain competitiveness if they are to treat the number of workers employed in their undertakings as fixed. They argue that there are two reasons that compel them to look upon the strength of the workforce in their undertakings as variable: one, the consequences of

the induction of new technology that often reduces the number of workers necessary for processes; and two, the economic costs that are at least partial determinants of global competitiveness. They also argue that upgradation of technology is imperative for competitiveness in quality and cost. Trade Unions feel that the total elimination of the existing law that requires the Government's permission for retrenchment or downsizing will lead to sudden and indiscriminate laying off or retrenchment of workers, resulting in sudden loss of jobs and incomes, uncertainty and possible starvation for themselves and their families. No society can be impervious to the consequences (moral, economic and social consequences) of pushing people into poverty and starvation. Both these are important considerations, and it is their importance that has confronted us with a dilemma. The answer lies in finding a fine balance, because industrial efficiency is essential for social progress and the protection and generation of employment also imperative for social justice and social progress. Industry must be helped to protect its viability and competitive efficiency, and workers must be

helped to protect employment and incomes. The best course would have been to seek solutions through bilateral consultations and agreement. (Those who want the state to step aside or fade out of the picture should not be reluctant to accept bilateralism). But leaving matters of this nature solely to bilateralism at this juncture may lead to wide-spread industrial unrest, strikes and lay offs and closures of industrial establishments. This will neither help industry to acquire competitiveness nor help workers to protect their incomes, nor help the society as a whole to move towards economic growth. The situation may have been materially different and easier, if we had a viable and adequate system of social security including unemployment allowances and transitional facilities. But we do not have these, and we cannot set them up in a day.

6.86 The alternative then is to pay adequate compensation, offer outsourced jobs to retrenched workers or their cooperatives, if any enterprise decides to close down give workers or Trade Unions a chance to take up the management of the enterprise before the decision to

close is given effect to: underwrite facilities for medical treatment, education of children, etc. and provide for a third party or judicial review of the decision, without affecting the right of the management to decide what economic efficiency demands.

6.87 One of the members of the Commission strongly argued that Chapter V-B should apply to all industrial undertakings employing 20 or more workers; that consequently the need to secure prior permission should be deemed necessary for all establishments employing 20 or more workers. The Commission gave due consideration to this argument. It shares the anxiety to protect workers from the effects of arbitrary closures. But the Commission felt that the effect of the new circumstances on industry cannot be ignored or wished away. In the new circumstances of global competition, it may not be possible for some enterprises to continue and meet the economic consequences of competition. In such cases, one cannot compel non-viable undertakings to continue to bear the financial burden that has to be borne to keep the concern going. There is

no justice or benefit in compelling a loss-making undertaking to bear burdens that it cannot carry, to sink further. They should, therefore, have the option to close down. It would be good if there can be a prior scrutiny of the grounds on which the closure is sought, and the reasons for the loss of viability. It is precisely for this reason that the provision for prior permission was incorporated in the Law. But experience has shown that governments do not want to give quick decisions, even though they know that delay in taking decisions only adds to the burdens that such enterprises are forced to carry. Applications to permit closure are kept pending for months and years. Industries are kept waiting. Losses and liabilities are allowed to mount. Stalemates continue. Sometimes managements try to create alibis by manoeuvring disruption in the supply of electricity, or seek some such subterfuges to close the enterprise and disappear from the scene without paying compensation, dues, etc. to workers. Such situations lead not only to de facto closure, but also the loss of compensation and dues. In these circumstances the Commission came to the conclusion that the best, and more honest and equitable course will

be to allow closure, provide for adequate compensation to workers, and in the event of an appeal, leave it to the Labour Relations Commission to find ways of redressal :- through arbitration or adjudication. Such an enquiry can also assess whether any exercise in retrenchment during the immediate past, say 18 months or two years was undertaken by the enterprise to scale down to the threshold limit of 300 to exercise the option for closure without obtaining permission.

6.88 The Commission has carefully considered the views of the Study Group and all the evidence and other inputs received in this regard. It agrees with the recommendation of the Study Group that prior permission is not necessary in respect of lay off and retrenchment in an establishment of any employment size. Workers will, however, be entitled to two month's notice or notice pay in lieu of notice, in case of retrenchment. We also feel that the rate of retrenchment compensation should be higher for retrenchment in a running organisation than in an organisation which is being closed. Again, we are of the view that the scale of compensation may vary for

sick units and profit making units even in cases of retrenchment. It would however, recommend that in the case of establishments employing 300 or more workers where lay off exceeds a period of one month, such establishments should be required to obtain post facto approval of the appropriate Government. Closure of establishments, either because of sickness or for other reasons 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 2001 Budget speech had indicated the cut off limit in chapter V B at 1000 workers. It has been reported that the Union Cabinet has also accorded its approval to this proposition in principle. The Commission recognises that such a limit would leave out most employees; and feels that this limit is too high, and would, therefore, recommend restoration of the original limit of 300. The Commission is also inclined to agree with the recommendation of the Study Group that provisions in regard to chapter V B must be made applicable not only to factories, mines and

plantations, as is now the case, but to all establishments. We, therefore, recommend that the provisions of Chapter VB pertaining to permission for closure should be made applicable to all establishments to protect the interests of workers in establishments which are not covered at present by this provision if they are employing 300 or more workers. It is, however, not able to agree with the recommendation of the Study Group that the provision of Chapter V A should apply to all establishments. It would rather recommend that this chapter applies to all establishments with 20 or more workers as it is inclined to recommend a separate set of legal provisions covering all aspects of lay off, retrenchment and closure for all kinds of establishments with less than 20 workers. Necessary changes in chapter VA in regard to retrenchment and closure will have to be made accordingly. 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. Having regard to the national debate on this issue and the principles outlined above, the Commission would like to recommend the compensation per completed year of service at the rate of 30 days on account of closure in case of sick industry which has continuously run into losses for the last 3 financial years or has filed an application for bankruptcy or winding up, and other non-profit making bodies like charitable institutions etc. and at the rate of 45 days for retrenchment by such sick industry or body where retrenchment is done with a view to becoming viable. It would also recommend higher retrenchment compensation at the rate of 60 days of wages and similarly a higher rate of compensation for closure at the rate of 45 days wages for every completed year of service for profit making organisations. For establishments employing less than 100 workers half of the compensation mentioned above in terms of number of days wages may be prescribed. However, these establishments will also be required

to give similar notice as prescribed for bigger establishments before retrenching the workers or closing down. We are suggesting a higher rate of compensation to be payable by industries which are running in profit or are not so sick as to necessitate their being wound up, since such industries have the capacity to pay reasonably good compensation, as can be seen from VRS packages.

6.89 We understand that the Employees Provident Fund Organisation is proposing to bring about a scheme by which employees would be provided some benefit if they are rendered unemployed. The Scheme is called " Employees Multi-benefit Insurance Scheme". It would be applicable to all provident fund members. Its aim is to provide benefit to employees during the period of non-voluntary unemployment which may be on account of permanent closure of the establishment and retrenchment of the worker. We feel that such a scheme would provide some sort of a safety net to the workers in times of crisis. The Government may consider the matter favourably.

6.90 It can thus be seen that we are recommending the restoration

of the original threshold limit for prior permission: increased rates of compensation; consultation with the representatives of the workers without giving workers a right to veto; judicial review by the LRC in case of dispute; and (legal provisions or review by the appropriate Governments) that make it obligatory for employers to purchase insurance cover for employees.

6.91 Arising out of the above, we recommend that while the lay off compensation could be 50% of the wages as at present, in the case of retrenchment, Chapter VA of the law may be amended to provide for sixty days notice for both retrenchment and closure or pay in lieu thereof. The provision for permission to close down an establishment employing 300 or more workmen should be made a part of Chapter VA, and Chapter VB should be repealed. In case of closure of such establishment which is employing 300 or more workers, the employer will make an application for permission to the appropriate Government 90 days before the intended closure and also serve a copy of the same on the recognised negotiating agent. If permission is not granted by the appropriate

Government within 60 days of receipt of application, the permission will be deemed to have been granted.

6.92 We have, at several places so far, referred to arbitration or adjudication for determining disputes between management and labour. We feel arbitration is the better of the two, for the reason that the procedures will be simple, the proceedings will not be tardy and the decision will be 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 four years), there is a clause providing for arbitration by a named arbitrator or panel of arbitrators of all disputes arising out of interpretation and implementation of the settlement and any other disputes. The law may even lay down 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.

6.93 Arising out of the above, we would like to suggest that a panel of arbitrators is maintained and updated by the LRC concerned, which would contain names of all those who are willing and have had experience and familiarity with labour management relations; the panel may consist of labour lawyers, trade union functionaries, employers, managers, officials of the 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 workers, and these could include procedures for selecting an agreed person from the panel, the cost of arbitration and so on.

6.94 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 inbuilt arbitration will result in the bulk of the disputes between parties being settled expeditiously. 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, lok adalats and Labour Relations Commissions as the integrated adjudicatory system in labour matters. The Labour Courts and Industrial Tribunals will stand merged. This system will not only deal with matters arising out of employment relations but also trade disputes in matters such as wages, social security, safety and health, welfare and working conditions and so on. While labour courts will consist of a single presiding officer, the Labour Relations Commission at the State, Central and National level will be preferably bodies that have as presiding officers, a sitting or retired judge of the High Court or a person who is eligible for appointment as a judge of the High Court. Both at the state and central level, the Labour Relations Commission will consist of representatives of employers, workers, economists, leading figures from the trade union movement,

labour or public administration, management, etc. as members, besides members from the All India Labour Judicial Service. The composition of the National Labour Relations Commission may also be on similar lines with the presiding officer being a sitting or retired judge of the Supreme Court or a person who is eligible for appointment of a judge of the Supreme Court. Until such a service is constituted, the qualification for appointment to labour courts and Labour Relations Commissions will have to be prescribed, and we are inclined to recommend the adoption of what the First National Commission, the Industrial Relations Bill 1978 and the Indian Labour Code (Draft) 1994 have suggested in respect of the qualifications and powers/functions of labour courts and Labour Relations Commissions. However, we are of the opinion that the machinery for conciliation which the First Commission wanted to be included as a part of the LRC, needs to be kept separate and vested in the executive, namely, the appropriate Government concerned. We are also of the opinion that inspectors should not be appointed as Conciliation Officers as that may undermine their efficiency as Conciliation Officers.

The Conciliation Officer should, however, be clothed with sufficient authority to enforce attendance at the proceedings of conciliation. The conciliation officers will carry out such directions as may be given by the Labour Relation Commissions in addition to performing their duties as prescribed under the law. We particularly commend some of the features contained in the Indian Labour Code (Draft) 1994 namely, setting up Labour Relations Commission at the State, Central and National level, the National level Commission hearing appeals against the decisions of the State and Central Commissions, which in their turn would hear appeals against orders of labour courts; clothing the National Labour Relations Commission with the power of the Supreme Court of India as envisaged in Article 32(3) of the Constitution of India and so on.

6.95 Instead of waiting for the publication of the awards in the official gazette, awards of the competent court including the labour courts and the Labour Relations Commissions should be deemed to have come into effect unless an appeal is preferred within the prescribed period. The Labour Courts

shall be empowered to enforce their own awards as well as the awards of Labour Relations Commissions. They should also be empowered to grant interim relief in cases of extreme hardship. During the course of evidence, the Commission had come across the widely held view that Government often delays the publication of the awards for long periods. The dispensation that we have suggested would obviate such shortcomings and ensure full autonomy to the judicial process. We also consider it desirable to make officials of labour departments at the Centre and the State who are of and above the rank of Deputy Labour Commissioners/Regional Labour Commissioners with ten years experience in the labour department and a degree in law, eligible for being appointed as presiding officers of labour courts. The Central and State Labour Commissions should be declared as set up under article 323-B of the Constitution. This will do away with recourse to High Courts as is currently the practice. Empowering the National Commission with the powers of the Supreme Court of India will also similarly discourage parties from approaching the Supreme Court either under Article 32 or Article 136. Such a

self-contained labour adjudication system will ensure that the adjudicatory process including appellate processes will be speeded up and will also have a greater degree of consistency.

6.96 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 be determined by recourse to the grievance redressal committee, conciliation and arbitration/adjudication by the labour court. These disputes need not be elevated to the rank of 'industrial disputes' which would then take the form of collective disputes. In this view, section 2A of the Industrial Disputes Act 1947 may be amended to enable such disputes to be treated as individual disputes and defined accordingly in the law. Individual disputes may be taken up by the affected workers themselves or by TUs and the collective disputes by the negotiating agent or an authorised representative of the negotiating college for resolution. Both Individual and Collective disputes not settled bilaterally may be taken up in

conciliation, arbitration or adjudication. In our scheme of things a union which does not have at least 10% membership amongst the employees in an establishment should have no locus standi in that establishment. A union which has at least 10% members amongst the employees in a unit should only have the right to represent individual workers in various fora such as conciliation, arbitration or adjudication and a provision in this regard may be made in Section 36 of the Industrial Disputes Act. The appropriate Government may also approach the Labour Relations Commission on any individual or collective dispute in any establishment. Since our emphasis throughout is on expeditious disposal of cases, all disputes, claims or complaints under the law on labour relations should be raised within one year of the occurrence of the cause of action. In this context we considered whether section 11A of the ID Act 1947 should 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, sabotage, theft and/or assault, and if the labour

court comes to the conclusion that the grave charges have been proved, then the court will not have the power to order reinstatement of the delinquent worker.

6.97 As an alternate and perhaps speedier system for resolution of industrial disputes, the State Government of Punjab has been experimenting with the system of Labour Lok Adalats, and it is claimed to have been a great success. During the Commission's visit to Chandigarh, the representatives of the state Government of Punjab, namely, the Labour Secretary and the Presiding Officer of the Industrial Tribunal spoke commending the role that Lok Adalats are playing. We were told that more than 11,400 pending labour cases, which constituted two third of the total pending cases had been disposed off in three rounds of Lok Adalats, and that this had resulted in the payment of Rs. 8.55 crores to the workers. We feel that this is an experiment worth pursuing by other State Governments and the 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 don't's can be thought of which may be binding on the Labour Lok Adalat. Can such Adalats be Tripartite bodies or is it better that they are manned by functionaries of the labour judiciary? May be, a panel of advocates or persons well versed in labour laws and labour administration may be maintained, and one or two such persons may be deputed to hearings of Labour Lok Adalats to ensure 'fair-play'. We are not in a position to recommend the actual procedures that would be most suitable. This has to be found out from the experience that a few more states may acquire. However, the system of Lok Adalats on labour matters appears promising, and should be pursued.

6.98 We also recommend that a system of legal aid to workers and trade unions from public funds be worked out, to ensure that workers and their organisations are not unduly handicapped as a result of their inability to hire legal counsels on their behalf. In this context, we also recommend that trade unions must be helped financially by public funds in meeting the cost of arbitration.

6.99 While on the subject of disputes

and adjudication, we also recommend that the jurisdiction of civil courts be banned in respect of all matters for which provision is contained in the relevant labour laws. The existing powers regarding consent of the other party for the appearance of legal practitioner should remain. In the case of conciliation and Lok Adalats, appearance of the legal practitioners should not be permitted. We would also recommend levy of a token court fee in respect of all matters coming up before labour courts and labour relations commissions. The State Governments may also decide the differential rates for court fees for the unorganised sector. The procedure followed in the labour courts, arbitration, etc. need not mandatorily be the procedure followed by the civil courts.

6.100 It has been brought to the notice of the Commission 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, had the support of the

government, opposition parties, the Confederation of British Industry and the Trade Union Congress. The Commission would suggest that in India too, Government may examine the feasibility of enacting a law of that kind.

6.101 While discussing the need for retaining a separate category of establishments to be declared as 'public utility services', or essential services we had indicated that there would have to be a strike ballot before a call for strike is given in all cases or industries. Elaborating this we recommend that a strike could be called only by the recognised negotiating agent and that too only after it had conducted a strike ballot amongst all the workers, of whom at least 51% 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 except in cases of actual or grave apprehension of physical threat to the management or to the establishment. 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/lock-out. The general provisions like giving of notice of not less than 14 days, not declaring a strike or lock-out over a dispute which is in conciliation or adjudication and so on will be incorporated in the law. In this context we also recommend that an illegal strike or illegal lock-out should attract similar penalties. A worker who goes on an illegal strike should lose three days wages for every day of illegal strike, and the management must pay the worker wages equivalent to three days wages per day of the duration of an illegal lock-out. The union which leads an illegal strike must be derecognised and debarred from applying for registration or recognition for a period of two or three years.

6.102 Another area which the existing laws do not cover but which in the opinion of the Commission 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 the 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 generated a lot of debate. We would recommend that a Bill be introduced early, incorporating the provisions of the earlier Bill with such changes as proposed during the debate on the Bill and the ideas unanimously accepted by the Tripartite Committee on Workers Participation in Management & Equity that submitted its report in 1979. It may be initially applicable to all establishments employing 300 or more persons. For the smaller establishments, a non-statutory scheme may be provided. Since we have recommended that supervisors as a category be clubbed with administrative and managerial personnel, the demarcation is clear between workers and management. Furthermore, 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.

6.103 There are a large number of small issues for which provision can be found in the existing laws. The Commission 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.

6.104 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 and efficient labour management cooperation, giving workers a place of dignity and responsibility in the establishment and at the same time providing 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 the paramount consideration of protecting and promoting the health and the growth of the establishments concerned. We would therefore urge that these recommendations are taken up as a whole, and not in a piecemeal manner that may destroy the context of inter-relation, and the holistic approach.

6.105 We would also refer to the view that in the enforcement of labour laws, there is discrimination

between the private sector and public sector, the latter allegedly being handled leniently. 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. The Commission feels that no such discrimination should be permitted either by law or in practice, as the purpose of labour laws will be defeated by such discrimination.

6.106 In para 9 above, we indicated our intention to have a separate dispensation for establishments having an employment size of 19 or less workers. 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. Moreover, we 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 or service providing units or hospitals or educational institutions or charitable institutions or shops and establishments or cooperatives or consultancy out-fits or 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 19 or below. The provisions in respect of such establishments can be in the form of a separate law named Small Enterprises (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 Appendix-II to this chapter. As may be seen from the same, 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 provision for social

security, with contributions from the employer and from the worker as also a compulsory annual bonus at $8\frac{1}{3}\%$ of the wages (a month's wage) are also features of the law that we have proposed. These provisions will ensure that the interests of the workers are fully protected, even while lessening burdens on the management and providing them with vigilance in exercising managerial functions.

Contract Labour

6.107 We are devoting a separate section in our chapter 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 judgment of the Supreme Court in the case of the Steel Authority of India (delivered on 30.08.2001) overruling the three-judge judgment in the Air India Statutory Corporations Case. We do not want to enter into a critique either of the Air India Judgment or the SAIL Judgment. We are also not making any comments on the decision in the SAIL judgment 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.

6.108 We note that, in essence, the SAIL judgment has overruled the Air India judgment, thus leading to the position that on the abolition of contract labour by the appropriate Government under section 10 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 employees, though the judgment 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 stood abolished.

6.109 The Commission has carefully considered the evidence tendered before it at various centres by both employers and employees and the specific recommendations of the Study Group that the decision to abolish contract labour should not be an executive one based on the recommendations of Contract Labour Advisory Board concerned but must be a judicial one. It is unable to agree

with the recommendation of the Study Group that the judicial body vested with the responsibility for making recommendation on abolition should also be empowered to order absorption by the principal employer of such numbers of contract labour as considered just and reasonable. This would amount to a virtual reversal of the Supreme Court judgment in the SAIL case and restoring the judgment of the Air India Statutory Corporation case on the issue of absorption. The Commission is conscious of the fact that in the fast changing economic scenario and changes in technology and management, which are entailed in meeting current challenges, there cannot be a fixed number of posts in any organization for all time to come. Organizations must have the flexibility to adjust the number of their workforce based on economic efficiency. The industry representatives have at various centres deposed before us that their energies are frittered away in taking care of the functions which are not core to their business and therefore, it makes them less competitive in the global market. It is essential to focus on core competencies if an enterprise wants to remain competitive. We

understand that the Maharashtra Government have moved to have such a distinction between the core and non-core functions. We would, therefore, recommend that contract labour shall not be engaged for core production/services activities. However, for sporadic seasonal demand, the employer may engage temporary labour for core production/service activity. We are aware that off-loading perennial non-core services like canteen, watch & ward, cleaning, etc. to other employing agencies has to take care of three aspects – (1) there have to be provisions that ensure that perennial core services are not transferred to other agencies or establishments; (2) where such services are being performed by employees on the pay rolls of the enterprises, no transfer to other agencies should be done without consulting, bargaining (negotiating) agents; and (3) where the transfer of such services do not involve any employee who is currently in service, the management will be free to entrust the service to outside agencies. The contract labour will, however, be remunerated at the rate of a regular worker engaged in the same organisation doing work of a comparable nature or if such worker

does not exist in the organisation, at the lowest salary of a worker in a comparable grade, i.e. unskilled, semi-skilled or skilled. The Commission would further recommend that to ensure that this recommendation is not misused in any manner by the employer, the onus and responsibility of proof to show and ensure that the employer is paying such contract worker the wages of a regular employee doing comparable work or in its absence that of the lowest skilled regular employee, would be on the principal employer. The principal employer will also ensure that the prescribed social security and other benefits are extended to the contract worker. There is a reason that compels us to make this recommendation. At many of the centres we visited, we were told during evidence, that there were cases of contractors making deductions from the wages of contract workers as their contribution towards social security, and then absconding without depositing either the contribution realised from the workers or their own contributions into the accounts of the concerned social security system. It is obvious that contractors should not be allowed to perpetrate this double fraud at the cost of the poor contract workers. It

is to guard against such eventualities that we are recommending, that the principal employers should be held responsible for the benefits payable to contract labour, as the principal employers are the ultimate beneficiaries from the work given on contract.

6.110 While on the subject of contract labour the Commission would recommend that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than 2 years unless he is employed on a contract for a specified period.

Law on Wages

6.111 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 to 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.

Directive Principles of State Policy in the Constitution have specifically referred to 'living wages' in Article 43. Article 43 is reproduced below: -

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

6.112 The ILO has also declared, 'the goal is not just creation of jobs but creation of jobs of acceptable quality', and in the Indian context, the level of wages is an index of the acceptability or otherwise of the quality of the job. That is why the Commission 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 reco-

mmendations made in 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 set the wheels of trade and industry moving, by putting in the hands of the worker the money that will enable him to purchase his/her 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. However, before fixing the minimum wage the appropriate Government should keep in mind the capacity of the industry to pay as well as the basic needs of the workers. The attempt to find such a balance has to be based on a national policy on wages, income and prices about which we are making more observations in later paragraphs.

6.113 The Commission looked at the problem of bonus and the endless disputes regarding calculation of

bonus, more particularly the prior charges. The Commission 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 by small amounts periodically from his wages for this purpose. In view of this, the Commission recommends that every employer must pay each worker his one month's wage, as bonus before an appropriate festival, be it Diwali or Puja or Onam or Ramzan or Christmas. Any demand for bonus in excess of this upto a maximum of 20% of the wages will be subject to negotiation, as at present. We also recommend that the present system of two wage ceilings for reckoning entitlement and for calculation of bonus should be suitably enhanced to Rs. 7,500/- and Rs. 3,500/- for entitlement and calculation respectively.

6.114 The Commission also considers it necessary that a competent expert body be appointed to examine the question of a national minimum wage that the Central Government may notify. This minimum must be revised

from time to time. It should, in addition, have a component of dearness allowance to be declared six monthly linked to the consumer price index and the minimum wage may be revised once in five years. 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 rates of wages, which shall not be, in any event, less than the national minimum wage when announced; 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 wage. The Commission 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, since it feels that all workers in all employments should have the benefit of a minimum wage.

Piece Rate Wages

6.115 In quite a few of the employments that are covered under the Minimum Wages Act 1948,

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. The existing provisions of lay off deal with a similar situation in industry where the employer is unable to provide work to the workers for part of the day or for full day. We agree with the recommendation of the Study Group that where wages are fixed purely on piece rate basis the employer should pay at least 75% of the notified time rated wage to the piece rated worker if the employer is not able to provide him with work.

6.116 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 wage for a single worker. We, therefore, recommend that fixation of piece rate wages must be so done as to enable a diligent worker to earn after 8 hours work what would be the time rated daily rate.

6.117 In some earlier paragraphs, we have already stated our view that every worker engaged in any employment should receive the minimum wage prescribed for that employment. Every one who works for eight hours is entitled to this minimum wage. We have been asked whether those who are employed in the relief works organized directly by the Government – or by NGOs on behalf of the Government – should also be paid the minimum wage. We will of course like them to receive the minimum wage. But we have to point out that those who are employed in relief works in areas struck by calamities are in a category of their own. Due to reasons beyond their control, they have lost their employment or means of livelihood. The State wants to ensure that they are not reduced to starvation, and so organises works in return for which they offer food or some monetary compensation. The alternative is to provide free doles to all those who are affected by the calamity. The arguments against doles are well known. Even the recipient generally prefers to receive a remuneration rather than a dole. There is therefore, a case to distinguish between regular wage employment or food or

remuneration in return for some token work for which opportunities are created. Where the nature of the work cannot be described as token, where it is a full day's work on a project that builds durable common assets, there is a case to insist that the remuneration must be equivalent to the minimum wage (for the employment). We will, therefore, recommend that this distinction may be borne in mind in determining whether the law on minimum wages should be deemed applicable to the situation. (If there is a dispute in this regard, it can be raised before the National Labour Relations Commission, and the Commission's decision will be regarded as final – binding on both parties to the dispute). This will ensure that workers in calamity stricken areas are protected from exploitative wages, and yet receive at least half a bread to fend off starvation.

6.118 By way of simplification, we have attempted a draft law on wages, which is Appendix-III to this chapter. 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 Commission does not consider any need for statutory wage boards. There is no reason why relatively better organised sets of workers should not use the method of collective negotiations to get their wages fixed from time to time. Also, the Commission is not sure that successive Wage Boards have really solved the problem. In fact, the Commission 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.

Law Relating To Working Conditions and Welfare

6.119 Issues relating to working conditions and welfare account for a big part 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 Act 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 laws providing for a levy of cess on the activity at a prescribed rate, and the constitution of welfare funds out of which welfare activities for the benefits of 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, welfare is provided only to workers at the work place, excepting for crèches which are meant for the children of workers (An exception to this will be the Plantations Labour Act 1951 where welfare of the extended type is statutorily provided for). Examples of the genre of welfare fund laws in the central sphere include Beedi Workers Welfare Fund Act 1976, Mica Mines Labour Welfare Fund Act 1946, Iron Ore Mines, Manganese 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 laws 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.

6.120 The list of laws seems to be growing. 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 both at the work place and outside, welfare too, both at the workplace and outside. It may be that 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 that is 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.

6.121 We would recommend consolidation of all laws of the kind described in para 6.119 above and the

enactment of a general law relating to hours of work leave and working conditions, at the work place. For ensuring safety at the work place and in different activities, one omnibus law may be enacted, providing for different rules and regulations on safety applicable to different activities. (We have appended a draft indicative law on hours of work and other working conditions after this chapter and an omnibus draft indicative law on safety in the chapter Labour Administration). Similarly, there should be a consolidated law governing the welfare provisions in various laws at the work place or it can be combined with the laws on wages whereas those relating to provisions on welfare outside the workplace should be merged with the law on social security. The question then arises what should such a consolidated law contain? It should apply to all establishments where 20 or more workers are employed, irrespective of the nature of activity carried on, be it manufacturing or mining or transport or services or any other.

a) It should provide for certain basic rights of the workers; indicate a minimum age (say 14 years) below which no person

can be employed; should have a provision for letters of appointment along with a copy of Standing Orders of the establishment (in the local language); and issue of a photo identity card giving details of the name of the worker, name of establishment, designation, and so on. The appointment letter and the card should clearly mention the wages and the entitlements of leave, social security and other benefits along with the term of appointment and condition of separation, etc.

b) The law must provide for specifying the maximum number of working hours in a day/week, payment of overtime at double the rates of wages. However, the limitation on employing workers on over time by way of monthly and quarterly ceiling needs to be relaxed, and we recommend that the present ceilings be increased to double to enable greater flexibility to the employers in meeting the challenges of the market without being required to seek approvals etc. The Commission

however is not in a position to agree with the general recommendation of the Study Group to bring uniformity in the daily and weekly hours of work of industrial establishments and workers in other kinds of employments, manual or otherwise, in view of the fact that the work ethic currently obtaining in both the sectors needs substantial improvement. During the evidence received at various centres by the Commission we were told of the need to provide flexibility in the daily hours of work in the context of global competition and technological changes. Sub section (2) of Section 64 of the Factories Act contains a provision that the State Government can give exemptions in certain circumstances by prescribing the conditions of exemptions from the provisions of daily and weekly hours of work, rest intervals, weekly holidays and spread over in the rules. We recommend that the list of such contingencies may be suitably expanded in consultation with the representatives of the

industry to include more occupations, processes and contingencies for which exemptions can be provided including the conditions of such exemptions. However we also recommend that the workers right to wages for overtime work at the prescribed rate of overtime wages if they are asked to work beyond 9 hours a day and 48 hours a week should be ensured.

- c) 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.
- d) On the question of night work for women, the Commission 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.

- e) At the same time, the Commission is not in favour of any exemptions being granted in respect of establishments in export promotion zones or special economic zones.
- f) The Commission feels that the appropriate Government may be empowered to grant exemptions from different provisions of law in case of emergent situations that may arise in the workload of an establishment or in cases of extreme hardship. However, there should be guidelines in the respective laws for granting such exemptions.
- g) Each establishment having an employment size (including all the shifts) over a specified limit must provide for a canteen.
- h) 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.
- i) The help of municipal and other local bodies and NGOs may be taken for the creation of these amenities, common to a market or small industrial areas.
- j) As regards Crèches, the Commission is convinced of the need for 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. Childcare 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. Moreover, the provision of crèches frees 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 Commission recommends that every establishment employing 20 or more workers must run a crèche, properly manned and equipped either singly or in association with other employers and/or local bodies. In the case of smaller establishments, it must be possible for them to jointly provide crèche facilities, again, where necessary with the help of local bodies.

k) 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, the other holidays should be declared in consultation with the unions or elected representatives of the workers, and there should be a limit on the total number of holidays that can be declared in a year. All these holidays should be 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 necessity to declare polling days as holidays. Only half a day's holiday may be permitted on such a day to those who have to go to cast their votes, the timings of which should be decided by mutual

consultation amongst employers and workers. A clear national policy is called for in respect of such matters.

6.122 What we have said above is nothing new, except perhaps what we have said about crèches; these are found in the various laws that exist today, 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.

6.123 When we come to welfare outside the workplace, the position is not so simple. As already pointed out, the Welfare Fund Acts enacted by 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 the larger establishments provide far more benefits than what these funds provide. As against this, there are general labour welfare funds set up by statutes 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, are essentially utilised for recreational and educational purposes, including some craft training to wives and wards of workers. There is a 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, head load workers and so on, and the funds are made up of contributions 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 activities, including a modicum of social security, 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 the activity concerned, with the result that while some funds are affluent, others are not, 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. The Commission has considered the pros and cons of all matters pertaining to social security, and made its recommendations in the chapter on social security and also in the chapter on unorganised workers. We would only say at this point that the present laws on welfare outside the workplace should be integrated as far as possible with the laws on social security.

Laws Relating to Social Security

6.124 The Commission has also considered the recent 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, we are not sure whether the deletion of words 'and who is employed otherwise than 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 would urge the Government to reconsider the matter as the Commission feels that amendment has in fact extended the Act to the domestic sector. The Commission recommends that the domestic sector be kept out of the purview of the Act.

6.125 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. The schedule can be widened. 'Many employers' organisations have drawn our attention to item No. (ii) of the schedule and have suggested that there is no reason why persons working in clerical capacity should be excluded from the provisions of Workmen's Compensation Act as they are frequently required to go on the shop floor for performing their functions and are equally exposed to risks.

6.126 Also in the context of Workmen's' Compensation 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 Workmen's' Compensation Act 1923.

Laws Relating to Miscellaneous Matters

6.127 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 offer brief comments.

6.128 To begin with, we take the Apprentices Act 1961. We want to take the opportunity to point out that the small enterprises are presently deprived of the opportunities of having apprentices, since the law lays down a minimum strength of tradesmen of different categories in an establishment for allowing apprentices on a proportionate basis. There is need to provide flexibility so that even if the strength of different categories of tradesmen in a small enterprise does not match up to what is required to keep apprentices, if the combined strength is such as to allow keeping an apprentice of a particular category as per the proportion laid out, the small enterprises should be allowed to engage such apprentices. The Commission has separately dealt with matters relating to improving the necessary infrastructure for making the workforce more skilled and for coping with the challenges that come with increasing globalisation. Our suggestions in this regard can be found in the chapter on Skill Development.

6.129 The Commission carefully considered the recommendation of the Study Group to provide statutory shape to bodies such as the Indian Labour Conference, Standing Labour Committee, State Labour Advisory Boards, Industrial Committees, and so on. We propose to deal with the matter in detail in the chapter on Labour Administration.

6.130 We come back to our earlier task of looking at such central laws, as have not so far been 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. 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 workmen (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 books on Labour Laws, and we are not making any comments on them either.

6.131 However, there are a large number of laws which indisputably are labour laws which we have not dealt with so far. We deal below with the remaining laws briefly:

- (i) Bonded Labour System (Abolition) Act, 1976. In a manner, 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. The Commission regards the implementation of this law by the Ministry of Labour as appropriate, as it emanates from Article 23 of the Constitution and deals with working people.
- (ii) The Commission has dealt with the Child Labour (Prohibition and Regulation) Act 1986 in the chapter on Women and Child Labour, and has suggested a new law on the subject to

substitute its provisions to the benefit of children which would also aid the abolition of child labour.

- (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 shocked 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 the Convention of the Rights of the Child 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

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 too. We would recommend that the 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 as well, at least in respect of some of the larger minor ports and also the newly established private sector 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. The act also, 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 20 or more workers. 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 also applies to such other states which adopt 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 &

so on, has been effective. The Human Rights Report of 1999 has adduced evidence that should shock, and cause concern and shame. We refer to it in detail in the succeeding chapter devoted to the unorganised sector. We strongly urge that the law be made universally applicable without further delay with deterrent penalties for infringement.

(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. The Commission however, recommends that the important provisions of the Equal Remuneration Act other than on wages i.e. Prohibition of discrimination against female workers in matters of recruitment, training, transfers and promotions should be incorporated either in the employer-employee relations law or in the law on Working Conditions.

(viii) Inter-State Migrant Workmen

(Regulation of Employment and Conditions of Service) Act 1979.

This is a well-intentioned piece of legislation but implementation has not been easy because of the involvement of both the State Governments—the state of origin of the worker and the State in which he works. The matter is further compounded by the fact that very often the workers do not happen to have been recruited by contractors and come to work at the destination state on the basis of information gathered from their relatives, friends, etc. During its visits to States particularly like Orissa, Bihar, Chattisgarh which have a history of sending large numbers of unskilled workers to other states the Commission came across the view expressed both by workers' organisations and the State Governments, that the Act should apply whether or not the workers have been recruited by contractors. The Commission has seriously considered the matter, and although we are fully sympathetic to the position that workers from other states

who may not have been recruited by contractors, should not be subject to exploitation or discrimination; we feel that the Government may not be in a position to legislate separately for such workers or provide the benefits of the present Act by extending coverage to them in view of the Constitutional provisions enabling a citizen to seek employment anywhere in the country (Article 19). It will not be proper to provide legal protection over and above what is available to workers born or resident in the host State to those who have come from outside. However, these observations should not be construed to mean that we do not endorse the need to deal with the problems of migrant workers. Adequate provisions will be made in the general law that we are recommending. We would also recommend that to keep proper records and access to information, employers in the host state be required to inform the state Government as well as the Government of the state to which the worker belongs whenever they engage any

worker hailing from another state to work in the unskilled category. As for conferring more powers to the originating state than what the Act presently provides so as to prevent exploitation and non discrimination vis. a vis. the workers belonging to the state where the establishment is located, the Commission would only observe that the matter involves Centre- State relations, and should, therefore, be taken up by the Labour Ministry in the appropriate forum.

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

This is an enactment intended to provide exemption to employers in 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 this law provides for exemption from filing returns and maintaining registers as prescribed are the following: - 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 have proposed a separate simple law (see para 6.106 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 asked for, essentially for statistical purposes and in some cases for information on compliance with safety regulations. But considering the delays, the gaps and unevenness of data, these returns in the aggregate do not serve 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. Some States have already simplified the forms that are to be submitted, and are experimenting with one

simple form. There is no reason why this should not be prescribed and given effect to.

6.132 Though there is merit in what has been stated by the Study Group in Para 90 of its Report regarding constituting tripartite boards based on the Mathadi Boards in Maharashtra. As per the evidence received by the Commission with regard to the Mathadi Workers in Maharashtra and Headload workers in Kerala, the system seems to have lent itself to certain abuses such as the closed shop system of working where new entrants are not allowed, and proxy work is allowed, whereby those who are actually enrolled with these boards engage others to work in their places by paying a part of the remuneration received. The closed shop system also creates problems for the employers who hire workers but are not able to get the work done as per their requirements. Perhaps better results can come from the system if due steps are taken to prevent the closed shop system and work by proxy.

6.133 The Study Group examined a suggestion to provide an 'infancy clause' 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 labour laws. The State may consider assisting new enterprises in other ways. Some of us, however, do consider that there is need for such assistance from the Government, for a variety of reasons, including the need to induct new entrepreneurs who otherwise may feel nervous about venturing out.

6.134 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' functions. The question, what are 'sovereign' functions, may be the subject of contentious debate. We do not propose to enter 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, 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 include 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 protection of their 'right to form associations and unions' as enshrined in Article 19 of the Constitution of India. We recommend accordingly.

6.135 We have given considerable thought to the question of the workers who are engaged in the khadi industries, spinners and weavers and also to crafts persons engaged in programmes and projects co-ordinated by the KVIC. We are fully aware of their special position, and we have the utmost sympathy for them. This is particularly so because of the traditional and unique position of khadi and the fact that spinning and weaving and handicrafts are today providing employment, and therefore, livelihood to many lakhs of women and men in the rural areas where this category of people have hardly any other means of livelihood. These are days when people are being retrenched from jobs, and are not able to find alternative jobs. The protection of avenues of employment is, therefore, an imperative need. We are, therefore, very keen that our recommendations should not result in anyone losing even the half bread that he or she is able to earn today. Even so, we are equally keen that anyone who does an eight hour job gets a minimum wage. We have made strong recommendations about minimum wages and said that all jobs and any regional or state legislation on minimum wage should not go

below the national minimum that Government may prescribe. So, we cannot recommend exemption from the national minimum. However, we also do not want to recommend anything that may lead to instant loss of means of livelihood for large numbers of persons. We, therefore, recommend that the KVIC reviews its remuneration system to reach the level of the prospective or prescribed national minimum as soon as possible, within five years at the latest; that the KVIC ensures that its activities are confined to facilitation and sale-purchase, and as far as possible organised on the basis of cooperatives; that its system of remuneration does not lend itself to the description of wages and employment; that it adjusts its piece rates for hours of work to reach the relation that is being prescribed with time rates; that the workers whom it serves or organises have access to a security system that is equivalent to what is available to workers in small scale industries with 19 or less workers or that prescribed for workers in the unorganised sector.

6.136 We have not, in the earlier parts of our Report, made any recommendations on the penal part of

Labour laws. We recommend that any violation of a law or rules thereunder be treated as 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 a violation of basic human rights should attract 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 unions by workers in the establishment, recourse to bonded labour and others i.e. all those where basic human rights are infringed.

6.137 On the other hand, there are 'technical' offences, such as non maintenance of registers, non furnishing of returns 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 also recommend that at least 75% 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, but will invite double the penalty in addition to imposition of fine for each day of continuance of offence or infringement.

6.138 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.

6.139 We also consider it necessary to look into the problems or delays in labour courts/industrial tribunals. Very recently, the High Court of Ranchi delivered severe strictures on the Chief Minister of Jharkhand for the state of Labour Courts and Tribunals in the State. The Chief Justice said " it would withdraw judges from Courts (Labour Courts) as they were drawing

salaries without work because there was no infrastructure for discharging their duties". These observations were made by the Chief Justice while hearing a Public Interest Litigation (PIL) from Ranchi Labour Lawyers Association against the Government's failure to even provide premises for Labour Courts. Given the number of cases pending in labour courts/ industrial tribunals, it becomes necessary to devise methods by which cases get disposed of with reasonable dispatch. The suggestion in the earlier paragraph to compensate the worker for loss of wages and expenditure incurred by him, in respect of the second and subsequent hearings will hopefully expedite matters. Further, a provision may be made in the laws that all cases must be disposed off in a span of three hearings, and where this is not possible, the labour court should in its award give reasons for taking more hearings. In the scheme of adjudication the hierarchy, namely, labour courts and Labour Relations Commissions, that we have proposed, the Labour Relations Commissions may also be entrusted with the responsibility to assess the work of the labour courts, particularly in the matter of expeditious disposal of cases. With the constitution of an All

India Labour Judicial Service that we are recommending in the succeeding paragraphs, we hope that we will have a dedicated and competent set of men and women as presiding officers of labour courts who will be able to discharge their responsibilities efficiently and expeditiously.

6.140 We have looked at the provisions in several labour laws regarding the sanction of prosecution and taking cognisance of offences. Generally it is the inspector alone who can file a prosecution, and only a magistrate of First class who can take cognisance 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 cognisance can be taken of a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation. Section 16 (1) of the Child Labour (Prohibition and Regulation) Act 1986 enables any person, police officer or inspector to file a complaint of the commission of an offence under the Act. Section 54 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, provides for cognisance 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.

6.141 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 an office bearer of a trade union of which the aggrieved person is a member or in a recognised welfare institution or organisation. Where a vexatious malicious or flippant complaint has been made, the complainant may be visited with a stringent fine.

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

6.143 We have so far dealt with issues with reference to only Central laws. Excepting 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. There is, no doubt that such an examination would have enhanced the value of our Report. 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, our recommendations can validly apply to situations in all the States. Further, where a State considers it necessary to legislate for an issue or problem which it considers unique and peculiar to its area, 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 the recommendations that we have incorporated in our report.

6.144 We think it is proper and necessary that we devote here some attention to the subject of labour administration (we have devoted a separate chapter which deals with the

subject in detail). 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 the guide, philosopher and friend of both workers, and their organisations, and employers and their organisations, rather than be a policeman, finding faults and prosecuting parties. It becomes necessary therefore not to judge the performance of a functionary in the labour administration merely on the basis of the number of inspections carried out, number of defects noticed, number of prosecutions launched, 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 in-service training, refresher training and so on. We emphasise the need for such institutions to develop research capabilities too, 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 though not endowed with the kind of autonomy that we would like them to have 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 want the V.V. Giri National Labour Institute

and other institutions to assist state governments in this effort. We hope that the V.V. Giri National Labour Institute will take the lead in this regard, and along with other institutions, help the State Governments in their efforts to transform the calibre of labour administrators.

6.145 While on the subject, we would also recommend that the law may provide for bipartite committees or tripartite committees to be set up in areas of industrial and/or commercial activities to function as watchdogs to ensure the implementation of labour laws by the establishments and to bring to the notice of the administration any cases of violation. Such committees may be set up even at the level of local bodies including Panchayats. 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.

6.146 One of the issues that merit

consideration in the administration of labour laws is whether there must be compulsory registration of all establishments. While such registration is feasible, and is provided for in respect of factories, plantations, motor transport undertakings and so on, the task becomes stupendous when we come down to shops and establishments and all the establishments covered under the Minimum Wages Act. The Commission has carefully examined this, and is of the view that while it is tempting to recommend that all the establishments including even those where the number of employees is one should be registered, it is expedient to make registration compulsory initially only for all establishments employing ten or more workers, and to progressively reduce the employment limit to five in due course. Provision could also be made for the renewal of registration once every five years. A nominal fee may be charged for registration and for renewal. We recommend accordingly.

6.147 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/negotiating agents. We have also suggested that all matters in the labour field needing adjudication, be it a labour-management dispute (except collective disputes) 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 the like, will have to be determined by the labour courts at the lowest level, with appeals to the Labour Relations Commissions. Collective disputes between the negotiating agent and employer, if not resolved bilaterally or in conciliation should be dealt with by appropriate Labour Relation Commission if the parties do not agree for arbitration. 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.

6.148 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. It must be recognized that the bulk of the labour administration in the States and union territories relates to implementation and enforcement of labour laws which are centrally enacted. Though there may be some State level amendments to some of these laws, the main provisions of these laws are common to all States and union territories. We are of the view that if all the posts of the labour department of and above the rank of Dy. Labour Commissioners/Regional Labour Commissioners at States and Centres are included in the service and also senior level appointments such as Executive Heads of Welfare Funds, Social security administration and so on, there will be an adequate number of posts justifying such a service. Moreover, those who are in

charge of Labour administration need some specific skills and attitudes, and aptitudes to which we have made reference. Some of these have to be identified and developed. Considering all this we recommend the setting up of such an All India Service.

6.149 Lastly, we refer to the paramount need for generating employment, employment of the 'decent work' type. Labour laws have often 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 lead to such an accusation. Even so, we would urge that the feasibility of generating further employment through all practical means including systems of tax incentives be examined.

6.150 In spite of the paucity of the time at our disposal, we have attempted to make a draft of what a comprehensive Law on Labour Management Relations, as visualised in this Chapter would look like. It is obvious that for various reasons, including the absence of technically competent legal experts, we have not put the draft in the shape and terminological precision that a piece

of legislation should have for introduction in the Parliament. Since the draft could be made ready only towards the very end of our work, it could not be vetted in a sitting of all the Members. It should, therefore, be taken as our indicative draft, not one on which the Commission has arrived

at a word-by-word agreement. Even so, it has been drafted incorporating the recommendations in the Chapter, more to provide an approximate picture of the system that is visualised than to propose a cut and dried piece of legislation.

APPENDIX - I

MODEL STANDING ORDERS

(For establishments employing 20 or more but less than 50 workers)

1. Classification of Workers

(1) Workers shall be classified as: -

- (i) Permanent: - A worker who has been engaged on a permanent basis or who has satisfactorily completed his probation period.

Provided that if no appointment letter is issued or where the worker has been appointed on probation no letter of confirmation is issued at the end of the probation period, the worker shall be deemed to be a permanent worker.

- (ii) Probationer: - A worker who has been employed to fill a permanent vacancy but is on trial.

Provided that period of probation shall be one year which may be extended by three months at a time so, however, that the total period of probation shall in no case exceed eighteen months.

Provided further that if the employer fails to issue the letter of confirmation after the maximum period mentioned in the first proviso the worker shall be deemed to have been confirmed.

- (iii) Temporary: - A worker who is engaged for a fixed term for work which is temporary or for temporary increase in normal work.

- (iv) Apprentice: - A person appointed under the provisions of the Apprentices Act, 1961.

- (v) Trainee: - A person appointed for the purpose of being trained provided that such worker shall be paid at the same rate as a temporary worker.
 - (vi) Badli : - A person who is appointed to work in the place of a regular or temporary worker who is on leave of absence.
- (2) Every worker shall be issued token number or identity card containing his name, his father's name, address, name of the establishment where he is employed, his designation, and classification such as permanent, probationer and so on.

2. **Appointment Letter**

- (1) Every worker shall be issued appointment letter containing the following details:
- (i) Name of the Worker
 - (ii) Father's name
 - (iii) Residential Address – Local & Permanent
 - (iv) Designation
 - (v) Date of appointment
 - (vi) Classification
 - (vii) Terms of Appointment
 - (viii) Nominee for Social Security purposes
- (2) The letter of appointment shall be issued by a person duly authorised in this behalf by the employer.

3. **WORKING HOURS**

- (1) The working hours of the establishment shall be _____ to _____ (here give details of the timings of the establishment and also of the worker) and any change in this regard shall be communicated to the worker 24 hours in advance.

- (2) All workers shall be at work at the time fixed and notified. Workers attending late would be liable for deductions of wages.
- (3) For the work, beyond normal working hours overtime wages shall be paid to the workers as prescribed in the Law on Hours of Work, Leave & Other Working Conditions at the Workplace at double the rate of his normal wages, on a hourly basis.

4. Shift Working

Workers may be required to work in shifts, provided that no worker shall be required to work continuously for more than fifteen days in the night shift.

5. LEAVE

- (1) Every worker who has worked for 240 days or more shall be allowed during the subsequent calendar year one days earned leave with wages for every 20 days work in case of all establishments above ground and one days earned with wages for 15 days work in case of a worker working in a mine where the work is carried on below ground, provided that the employer may allow leave on a pro rata basis to the workers even before the completion of one year.
- (2) A worker who desires to go on leave shall apply to the employer or any other officer of the establishment specified by the employer who shall issue orders on the application within a week of its submission or two days prior to commencement of leave applied for and where the leave application is made three days before its commencement, the order shall be given on the same day and if the leave is refused or postponed, the fact of such refusal or postponement shall be recorded in writing in the register to be maintained for the purpose and the worker shall be supplied with a copy of the entry made in the leave register. If the worker desires an extension thereof he shall apply to the employer or to the specified officer who shall send a written reply either granting or refusing extension of leave to the worker at his address maintained in the record or given in the original application for leave.

- (3) If the worker remains absent for more than 10 days beyond the period of leave originally granted or subsequently extended he shall lose the lien on service unless he explains to the satisfaction of the employer his inability to return before the expiry of his leave.

6. Casual Leave and Sick Leave

- (1) Every worker shall be allowed 8 days casual & sick leave in a year.
- (2) Casual leave shall not be granted for more than three days at a time except in case of sickness. The casual and sick leave is intended to meet special circumstances which cannot be foreseen. Ordinarily previous permission of the employer or the Head of the Department or Section shall be obtained before availing such leave and where the same is not possible the Head of the Deptt. shall be informed as soon as is practicable.

7. Festival Holidays

Every establishment shall observe 8 holidays in a year, out of which 3 would be National Holidays, i.e. Republic Day, Independence Day & Gandhi Jayanti and the remaining holidays shall be declared every year and notified to the workers by displaying the same on the notice board.

8. Attendance

All workers shall be at the workplace specified for them and shall not leave the place of work without permission during working hours or without sufficient reasons and any unauthorised absence shall be treated as absence liable to deductions being made from the wages pro-rata to the period of absence.

9. Stoppage of Work

The employer may in the event of breakdown of machinery, stoppage of power supply, raw material or for any other reason stop the working of the establishment and in the event of such stoppage the workers shall be notified by notice put up on the notice board. The workers shall be required ordinarily to remain within the establishment after commencement of stoppage for not more than 2 hours unless the employer has declared the lay off. In the event of lay off or if they are not required after remaining 2 hours in the establishment they shall be paid the lay off compensation. In case the lay off continues for more than 45 days the employer may retrench the workers as per law on the subject.

10. Termination of Service

- (1) For termination of employment of a permanent worker a one month's notice shall be required to be given either by the employer or the worker or either party may make payment of wages for one month in lieu of the notice period.
- (2) No notice shall be required by either side for termination of employment of a temporary, probationer or a badli worker unless the termination is on account of misconduct.
- (3) Where an employment of any worker is terminated or he or she quits, the wages earned by him or her and the other dues shall be paid before expiry of 48 hours of termination or as the case may be quitting of employment.

11. Discipline, Misconducts and Disciplinary Action

- (1) All workers shall perform the duties entrusted to them by the management from time to time.
- (2) All workers shall maintain discipline in the establishment and with respect to the work of the establishment.

- (3) The following is an illustration of acts or omissions which shall be treated as misconduct: -
- (a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
 - (b) Theft, fraud or dishonesty in connection with the employer's business or property.
 - (c) Wilfull damage to or loss of employer's goods or property or to the work in progress.
 - (d) Taking or giving bribes or any illegal gratification.
 - (e) Habitual absence without leave or absence without leave for more than 10 days.
 - (f) Habitual late attendance.
 - (g) Habitual breach of any law applicable to the establishment.
 - (h) Riotous or disorderly or violence behaviour during working hours at the establishment or any act subversive of discipline.
 - (i) Habitual negligence or gross neglect of work.
 - (j) Resorting to 'go-slow' or 'work to rule'.
 - (k) Striking work or inciting others to strike work in contravention of the provision of any law, or rule having the force of law.
 - (l) Conviction in any Court of Law for any criminal offence involving moral turpitude.
 - (m) Drunkenness, fighting or riotous, disorderly or indecent behaviour while on duty at the place of work.
 - (n) Failure or refusal to wear or use any protective equipment given by the employers.

- (o) Failure to comply with norms relating to safety or working in a manner which is likely to cause an accident.
 - (p) Causing sexual harassment to female workers.
 - (q) Sleeping on duty.
 - (r) Malingering or slowing down the work.
 - (s) Leaving work without permission or sufficient reason.
 - (t) Threatening or abusing or assaulting any superior or co-worker.
 - (u) Preaching of or instigating others to resort to violence.
 - (v) Going on illegal strike either singly or with others.
 - (w) Disclosing to any unauthorised person of any confidential information in regard to the working or process of the establishment which may come into the possession of the worker in the course of his work.
 - (x) Refusal to accept any order or notice or any communication in writing.
- (4) No order of punishment under the Standing Orders shall be made unless the worker concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental inquiry shall be instituted before dealing with the charges or awarding any punishment.
- (5) Where a disciplinary proceeding against a worker is contemplated and where the presence of such worker is likely to, in the opinion of the employer, create indiscipline or jeopardise the investigation into alleged misconduct, the employer may suspend the worker pending enquiry.

Provided that during the pendency of suspension, the worker shall be paid subsistence allowance at the rate of 50% of the wages for the first three

months and 75% wages thereafter and if after enquiry, the charges levelled are not proved, the worker will be entitled to full wages.

Provided further that if the delay in completion of proceedings and enquiry into misconduct is attributable to the worker the subsistence allowance shall not exceed 50% of his wages.

- (6) Where a worker is found guilty of misconduct after an enquiry, the employer may warn the worker or impose the punishment of suspension without wages for a period of not exceeding 15 days or stoppage of increments or demotion or termination or dismissal from service depending on the gravity of the misconduct.

Provided that no such punishment shall be imposed without giving an opportunity to the worker to explain his position except if he or she is only warned.

- (7) If a worker is arrested on charge of offence relating to moral turpitude, the employer may suspend the worker without pay till such time the worker is honourably acquitted and where the worker is held guilty and sentenced, the employer may terminate the services of such a worker.

12. Payment of Wages

- (1) The employer shall specify a wage period and the date on which wages shall be paid, provided that no wage period shall exceed one month.
- (2) Wages to monthly paid workers shall be paid by the seventh day of the succeeding month and in other cases as per provisions of Wages Act.

13. Transfer

Every worker shall be liable for transfer from one department to another and from one unit to another provided such units are under the same management.

14. Retirement

A worker will be liable to retirement on attaining the age of superannuation, i.e. 58 years.

Provided that a worker may be retired earlier on medical grounds.

15. Certificates on Termination of Service

Every permanent worker shall be entitled to a service certificate at the time of his dismissal, discharge, resignation or on termination of employer - employee relationship for any other reason or retirement from service.

16. Providing a Copy of Standing Orders to the Workers

A copy of these Standing Orders shall be given to every worker along with the appointment letters.

APPENDIX - II

THE SMALL ENTERPRISES (EMPLOYMENT RELATIONS) ACT 2002

An Act to regulate the employment in small enterprises.

WHEREAS it is expedient to consolidate and amend the laws relating to regulation of employment in small enterprises and for certain other purposes hereinafter specified, it is hereby enacted as follows:

CHAPTER I

Preliminary

1. Short Title, Extent, Commencement and Operation

- (1) The Act may be called The Small Enterprises (Employment Relations) Act 2002.
- (2) It extends to whole of India
- (3) It shall come into force on — or from the date notified by the Central Government in this behalf.
- (4) It shall apply to all establishments or enterprises in which not more than 19 workers are employed.

Provided that nothing in this Act shall apply to an establishment of a Government.

2. **Definitions:** In this Act unless there is anything repugnant in the subject or context

- (1) Appropriate Government in respect of an establishment under this Act shall mean the Government of the State in which the establishment is situated

- (2) **Charitable institution:** A Charitable institution means an institution which is established for the purpose of charity to any living being or formed for not any profit motive or formed for the welfare of living beings or for preservation of environment or of heritage or for religious purposes.
- (3) **Child:** Child means a person who has not completed his 14th year of age
- (4) **Day:** Day means a period of 24 hours beginning at mid night.
- (5) **Worker:** Worker means a person who is wholly or principally employed directly for wages or reward in connection with the work of any small enterprise or establishment to which this Act applies but does not include a supervisor or manager.
- (6) **Employer:** Employer means an owner or who has the ultimate control over the affairs of the small enterprise or establishment.
- (7) **Establishment:** An establishment or enterprise means manufacturing (except of hazardous nature), or mining (except underground mining) activity, plantation, construction, service, transport or other enterprises and include hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, shops and establishments, charitable, research, training and educational institutions, consultancy and solicitors or lawyer organisations and other professions such as C.As., Architects, etc.
- (8) **Factory:** A factory means a place where any manufacturing process is carried on and wherein not more than 19 workers are employed.
- (9) **Hotel:** Hotel means any premises in which business is carried on for the supply of dwelling accommodation and meals on payment of a sum of money by a traveller or any member of the public or a class of the public and includes a club.
- (10) **Inspector:** Inspector means a person appointed as inspector by the Government for securing the compliance of this Act, and the Chief Inspector and the Dy. Chief Inspector mean the Chief Inspector and the Dy. Chief Inspector of small enterprises appointed under this Act.

- (11) **Restaurant:** Restaurant means any premises in which is carried on wholly or principally the business of the supply of meals or refreshment to the public or a class of the public for consumption on the premises.
- (12) **Shop:** Shop means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or commercial establishment.
- (13) **Weekly Off:** Weekly Off means a day on which a worker shall be given a holiday under the provisions of this Act.
- (14) **Wage:** Wage means the basic wage, dearness allowance, city compensatory allowance or house rent allowance or overtime wages or wages for leave period or bonus.
- (15) **Young Person:** Young person means a person who has not completed his eighteenth year of age.
- (16) The terms used in this Act but not defined shall have the same meaning as assigned in the relevant laws.

Chapter II

Registration of Small Enterprises

3. Procedure for Registration.

- (1) Within 30 days of commencement of this Act, every employer shall furnish an affidavit on a non-judicial stamp paper of Rs. 10/- to the Chief Inspector or Dy. Chief Inspector of the State appointed for the area or district where the small enterprise is located along with the information in Form 'A' appended to this Act and the fee for registration of his establishment.

- (2) The affidavit shall contain the name and address of the employer, the name and address of small enterprise and such other information as may be prescribed and an undertaking that information furnished by him in the Form is correct to his knowledge and belief and nothing material has been concealed.
- (3) A fee as may be prescribed shall be payable by an employer along with affidavit filed by him for seeking registration.
- (4) If an employer seeking registration under this Act has furnished the information and fee as required in Sections (1) to (3) above, the Chief Inspector shall forthwith issue the certification of registration and make an entry in this behalf in a register maintained for the registration of small enterprises and If at any time any change occurs subsequently in the information submitted by an employer along with the affidavit, the same shall be intimated by the employer within 30 days of occurrence of such change by a written communication by the Chief Inspector.
- (5) A registration granted under Section (4) shall be valid for five years and the registration may be renewed by following the procedure provided in Section (1) to (3) by making an application within 30 days before the expiry of registration and if an employer fails to make an application before 30 days of expiry of the registration his registration may be renewed provided he pays double the fee for registration prescribed in Sub Section (3).

Chapter III

Conditions for Employment of Certain Persons

4. **Prohibition of Employment of Children:** No child below the age of 14 years shall be permitted to work in any establishment and a young person who has completed 14 years but not completed 18 years of age may be employed after he has been declared fit by a qualified medical practitioner. In mining establishments any person who has not completed 18th years of his age shall not be employed.
5. **Non-Discrimination against female workers**
The female workers shall not be discriminated against in matters of recruitment, training, transfers or promotions.

Chapter IV – Conditions of Work

6. Health –

- (1) Every employer shall ensure to keep the enterprise clean and free from harmful material including gases, dust and fumes. He shall ensure that there is no overcrowding and there is proper light and ventilation at the place of work and shall provide facilities such as toilets, drinking water and for washing either individually or collectively.
- (2) He shall ensure disposal of wastes and effluents properly and in case he is not able to arrange the disposal of wastes and effluents by himself he shall with the cooperation of other enterprises in the same area take effective steps for disposal of wastes and effluents.
- (3) The State Government may provide facilities for toilets common for a cluster of shops or establishments by seeking cooperation of local bodies.

7. Safety

- (1) Every employer of the enterprise where manufacturing, construction or mining activity is carried on shall ensure the following safety measures at the work place
 - (a). Every employer shall ensure that all moving parts of the machines are properly secured, fenced and guarded.
 - (b). Every employer shall ensure that Lubrication or adjusting operation or mounting or shipping of belts and other hazardous work near or on the machinery in motion is not allowed except by a specially trained male worker and proper care of the safety of the operator is taken.
 - (c). Safety measures in respect of the hoists, lifts, chains, ropes and tackles shall be taken wherever the same are used and it shall be ensured that they are of good mechanical construction and safe for working at the rated capacity.

- (d). Young persons are not allowed to work on dangerous machines or engaged in actual mining of the minerals.
 - (e). The equipment using/operating at more than atmospheric pressure shall be ensured to be safe for working.
 - (f). Wherever there is danger of injury or irritation taking place to the eyes of the operator/worker proper protective equipment shall be provided to prevent the eye injury.
 - (g). In mining activity the working is done by making benches of not more than 6 metres height from the superjacent ground.
 - (h). In case of construction work proper scaffolding is provided where the construction of building is being done at the height of 6 ft. or above and in roofing no substandard material shall be used.
- (2) Every Employer of the enterprise shall ensure that
- (a) Necessary fire-fighting equipment and arrangements for the safe exit of the persons employed in the event of the fire is provided.
 - (b) First aid facilities within the enterprises and the medical care in case of accidents requiring immediate medical attention is provided.
 - (c) Where in any enterprise an accident occurs resulting in death or bodily injury to any person which prevents the concerned person from working for a period of 48 hours or more, the same shall be reported by sending a notice to the Deputy Chief Inspector in form 'E' with a copy to the Commissioner for Workmen's Compensation.

8. **Application of Factories Act and Other Laws:**

The Factories Act and other relevant laws shall apply to small enterprises wherever storage and handling of hazardous acids, chemicals, gases or explosives material is involved.

9. **Welfare**

- (1) The employer shall provide shelters/rest rooms/lunchrooms for the workers if employing 10 or more workers.
- (2) In case of a cluster of establishments the employer may in cooperation and combination with other employers in the area take steps to provide measures for the welfare of the workers such as latrine and urinals, canteen, crèche for the children below the age of 6 years of the women workers and a local dispensary or hospital for the immediate medical care of the workers.

10. **Hours of Work**

- (1) No adult worker shall be required to work for more than 48 hours in a week and 9 hours in a day and no worker shall be asked to work continuously for more than 5 hours unless he has been given a break of not less than half an hour provided that limit of working hours or of weekly rest may be relaxed in case of urgent repairs.
- (2) The total number of hours of work including the rest interval shall not exceed 10½ and in case a worker is entrusted with intermittent nature of work, urgent repairs and for shops the spread over shall not exceed 12 hours.
- (3) Women workers shall not be asked to work normally between 9 pm and 6 am and during these hours women workers can be asked to work only if not less than five women are working during this period at the workplace and the employer takes proper steps for the security of the women workers and provides a transport from the place of work to their residences.
- (4) The total number of hours of work including overtime shall not exceed 60 hours in a week.

11. Annual Leave & Holidays

- (1) Every worker shall be allowed a weekly holiday with wage for the whole day as may be fixed by the employer in respect of the worker and any change in the weekly holiday shall be notified to the worker at least a day in advance provided that State Government may fix different days as weekly holidays for different establishments or areas.
- (2) Every worker shall be entitled to eight days casual and sick leave with wages every year. A worker who has joined after 1st January shall be entitled to casual leave pro-rata.
- (3) Every worker who has worked for at least 240 days in a calendar year shall be entitled to 15 days earned leave in the following calendar year and a worker who has put in less than 240 days work in the previous calendar year shall be entitled to earned leave proportionate to his attendance.
- (4) A worker shall be permitted to accumulate leave upto 45 days in addition to the leave entitlement of the current year earned on the basis of the work done by him in the previous year and he shall be entitled to encashment of entire accumulated earned leave including leave earned during the current year pro rata in case his services are terminated or he quits the service.
- (5) A worker shall be entitled to three holidays in a calendar year, namely, Independence Day, Republic Day and Gandhi Jayanti.

Chapter V

Wages, Bonus and Social Security

12. Wages

- (1) The State Govt. may fix the minimum rates of wages in respect of the enterprises covered under this Act. The Minimum Wages may be fixed area wise if required and the minimum wages shall be revised once in

five years. However, the State Govt. may declare DA twice a year on the minimum wages. All the minimum wages shall be fixed or revised after consulting the committee or an advisory board set up in this behalf for the purpose and any contract or agreement whereby a worker agrees to work for less than minimum wages shall be void ab initio.

- (2) A female worker shall be paid same wages as are paid to a male worker if the work performed by the female worker is same or similar as that performed by the male worker.
- (3) Nothing shall prevent the employer from paying better wages than the minimum fixed by the State Government by mutual agreement with the workers.

13. Payment of Wages and Deductions from Wages

- (1) Every employer, manager or occupier shall be responsible for payment of wages to all person employed by him before the expiry of the 7th day after the completion of the wage period.
- (2) No wage period shall exceed one month.
- (3) All the wages shall be paid in current currency and coin and it may be paid by cheque drawn in favour of the worker or by transfer to his account in the bank.
- (4) All wages shall be paid on a working day during the working hours and every employer shall issue a wage slip to every worker containing the wage period, name, token number, designation, number of days worked or units produced, gross wages payable, deductions and net wages payable at least 24 hours in advance.
- (5) The wages of a person whose employment has been terminated shall be paid before the expiry of the second working day after the day on which his employment is terminated.

- (6) Where a worker has worked for more than 48 hours in a week or 9 hours in a day the employer shall pay extra wages at the rate one and half times of the ordinary wages and where the total hours worked by a worker exceeds 9 hours in a day and 56 hours in any week the wages for the hours of work put in by the worker above 56 hours he or she shall be paid at the rate of twice his ordinary wages.
- (7) The employer shall keep a record of all wages paid by him to his workers including the signature/thumb impressions obtained by him while making the payment of wages. Such records shall be maintained for a period of three years.
- (8) Deductions may be made from the wages or bonus payable to workers on account of the following: -
 - (a) For absence from duty in proportion to the period of absence (in terms of hours or days).
 - (b) For causing loss or damage to the property of the employer specifically entrusted to him and in such a case the employer shall issue a prior notice to the worker and give him an opportunity to be heard.
 - (c) For recovering the instalments of loans or advances given by the employer to the worker.
 - (d) On account of subscription of the worker towards social security under this Act or subscription to any welfare fund constituted by the state govt.
 - (e) On account of Income Tax or any other tax payable by the worker to the extent the employer is responsible to recover the same from the worker from his wages under the relevant tax law.
 - (f) The cost of any amenity such as electricity or water supplied at the residence of the worker by the employer or the rental of accommodation provided by the employer.

- (g) The subscription or recovery of loans/advances of any cooperative credit and thrift society or cooperative store or any other cooperative for which the worker has authorised the employer.
 - (h) Any donation to Prime Minister Relief Fund or any other relief fund if so authorised by the worker.
 - (i) Any subscription made by the worker to a union if so authorised by the worker.
- (9) The employer shall ensure that the recoveries/deductions from wages of workers are so arranged that a worker receives at least 50% wages in cash after such recoveries or deductions.

14. **Bonus**

- (1) Every worker who has put in at least 90 days work in a calendar year shall be entitled to annual minimum bonus at the rate of 8.33% of wages earned by him during the previous year.
- (2) The bonus will be disbursed to the workers within three months from the close of the accounting year of the enterprise and where the workers desire that the same may be paid to them at the time of mutually agreed festival the employer shall pay the bonus at the time of the festival.
- (3) An enterprise which has not been established with a view to make profits and which is in the nature of charitable or religious institution, educational training and research institutions, a construction establishment shall be exempt from payment of bonus.
- (4) Any new establishment will be exempt for first three years from payment of bonus.
- (5) A worker who has put in 90 days or more but has not worked for all the days worked by the establishment in the previous calendar year shall be paid bonus proportionately to the wages earned by him during the calendar year.

- (6) The salary limit for eligibility or for calculation of bonus as prescribed in the general law shall apply to small enterprises.

15. Recovery of unpaid wages, illegal deductions etc.

- (1) Where a worker (including a worker who has been retrenched, removed/ dismissed or who has resigned) has not been paid wages on the due date, or has been paid less wages than that are payable as per this Act or has not been paid over time wages, leave wages, bonus, retrenchment compensation or any other dues by his employer he may himself or a union of which he is a member or an inspector appointed under this Act may file a claim before the prescribed authority within a period of one year from the date such unpaid dues became payable or came to be detected and the application shall contain the name of the employer and his address, the name and address of the enterprise, the name and address of the manager if any, the nature of dues which are unpaid or have been paid less, the period to which such dues pertain, or illegal deductions if made from the wages and wage period to which the illegal deduction pertain.
- (2) The authority shall immediately proceed to hear the claim by calling the employer or the manager of the enterprise and the complainant and pass an order rejecting or upholding the claim. Any person aggrieved by the order of the authority may file on appeal before the Labour Court.
- (3) Where an authority upholds the claim either wholly or in part it shall require the employer to make payment to worker and furnish proof of making the payment or require the employer to deposit the amount by cheque or demand draft of the amount ordered drawn in favour of the worker with the authority.
- (4) If the employer fails to make payment as prescribed in Sub-Section (3) the authority shall issue a certificate to the collector of the district who shall recover the same and send it to the authority for payment to the concerned worker.

- (5) The State Government shall designate one of the official of the Labour Department not below the rank of an Asstt. Labour Commissioner to be authority to hear the claim cases under this Section.

16. **Social Security**

- (1) Every worker shall be entitled to following social security benefits
- (a) Medical Care for self and dependents
 - (b) Compensation in respect of employment injury as prescribed under the Workmen's Compensation Act or according to law on social security applicable to the worker.
 - (c) Provident Fund equal to 8% of wages of employers and 8% of wages as his own contribution plus interest and/or a pension at the prescribed rate.
 - (d) In case of a female worker the maternity benefit i.e. 12 weeks leave with wages upto two surviving children.
 - (e) Gratuity at the rate of 15 days of wages for every completed year of service provided the worker has put in uninterrupted service for at least five years provided further that the condition of completion of five years shall not be necessary for receiving gratuity in case of death or permanent total disablement of the worker.
 - (f) Any other benefit such as unemployment insurance or pension, as may be introduced under the social security law by the government.
- (2) The social security benefits mentioned at sub section (1) above will be provided out of the fund consisting of contributions from the employer @ 16% of wages paid by him to the workers, contributions by workers @ 12 % of the wages and contributions equal to 2% of the wages by the State Government.

- (3) The implementation of social security programme will be on the lines of the recommendations made by the National Commission on Labour on social security.
- (4) Till such time the new social security system is set up the present system will continue.

Explanation 1- for the purpose of this section the dependents include the spouse, dependant children below 18 years of age, dependant parents or parents-in-laws, unmarried daughter and invalid children.

Explanation 2 – Wages for the purpose of this section means the basic wages and dearness allowance but does not include any house rent allowance, C.C.A. or leave encashment money received from the employers w/o actually availing the leave or any travelling allowance or bonus or overtime wages.

Chapter VI

Lay Off, Removal from Service and Settlement of Disputes & Closure

17. **Lay Off:** An employer may lay off his workers for the reasons of shortage of power, coal, raw material, accumulation of stocks, break down of machinery, natural calamity or for lack of orders. He shall pay to his workers lay off compensation at the rate of 50% of wages for the period of lay off and unless mutually agreed a worker shall be entitled to lay off compensation if he presents himself daily at the appointed time at the gate of the enterprise/establishment. If the lay off continues for more than 45 days , it shall be lawful for the employer to retrench the workers.

18. Separations/Removals from Service

- (1) An employer may dispense with the services of a worker who has been in his employment for five years or more by giving one months notice or wages in lieu of the same and by paying separation compensation calculated @ 20 days wages for each completed year of service and a

worker who has not completed five years of service shall be entitled to one-month notice or notice pay in lieu and separation compensation of 15 days wages for each completed year of service.

- (2) The employer may dismiss or remove the worker from service without giving any notice or paying any compensation on account of proven misconduct which may include absence from duty without notice or without sufficient reasons for more than ten days, for going on or abetting a strike which is illegal prima-facie or for grave violent behaviour at the workplace or for causing wilful damage or loss to the property of the employer or for misappropriation or theft.
- (3) A worker who is retrenched as per provisions of sub-section (1) or is dismissed by the employer or resigns from service by the employer shall be paid his wages and other dues if any and retrenchment compensation within 48 hours of such retrenchment removal/dismissal or resignation.
- (4) If a dispute arises between the worker and the employer on account of any condition of service excluding wages but including removal or dismissal from service the same shall be resolved as under: -
 - (a) The aggrieved worker will first approach his immediate superior who in consultation with the head of the establishment will try to resolve the grievance and give a suitable reply to the worker within 15 days.
 - (b) If the worker is not satisfied with the reply received from the immediate superior he shall make an application within 10 days to the head of the establishment for personal hearing and on receipt of such application the head of the establishment will give a personal hearing to the worker and also give his decision, after personal hearing within 10 days of making of application by the worker.
 - (c) In case the worker is not satisfied with the decision of the head of the establishment he may approach the conciliation officer of the

appropriate Government within 45 days who shall hold conciliation proceedings in the matter to resolve the grievance of the worker and make efforts to resolve the same within three months.

- (d) If the conciliations fail the dispute shall be referred to a mutually agreed arbitrator and where there is no agreement regarding the appointment of an arbitrator, the appropriate Government shall appoint the arbitrator who shall give his award within a period of four months.
- (5) An aggrieved worker may be represented in any conciliation or arbitration proceedings by a trade union registered under the general law, provided such a union has at least 30% membership amongst the workers of the establishment where such aggrieved workman is or was employed.

19. **Closure**

Where an employer intends to close down his establishment he shall serve one month's notice to the workers before the intended date of closure or pay wages in lieu thereof and he shall also have to pay compensation @ 15 days wages for every completed year of service to his workers.

20. **Collective Disputes**

- (1) Any collective dispute between the workers and an employer or employers arising out of employment, non-employment, terms of employment or conditions of labour of the workers may be settled between the workers and the employer by negotiations between the employer and the trade union if there is a union in existence in the establishment failing which the employer or union may take the help of conciliation officer of the state government for resolution of their collective dispute.
- (2) If the collective dispute is not resolved bilaterally or in conciliation the same shall be required by the employer and the workers to be referred to a mutually agreed arbitrator.
- (3) The bilateral settlement will be valid for a period of four years or for a period mutually agreed upon by the parties.

- (4) Where the dispute has been referred to an arbitrator the arbitrator shall give his award within six months from the date of reference. If there is no mutual agreement regarding appointment of the arbitrator the same shall be appointed by the Appropriate Government.
- (5) In any collective dispute in a small enterprise the workers may be represented in conciliation or arbitration proceedings by a union which has at least 40% membership amongst workers of the establishment to which such dispute pertains.

Chapter VII

Miscellaneous

21. Registers/Records

- (1) Every employer shall maintain a register of workers, in form 'B', a register of leave in form 'C' and a register of muster roll cum wages in form 'D' which will also show the attendance put in by the workers during the wage period, the total wage earned and the deductions made from the wages of the workers.
- (2) The employer shall exhibit at a prominent place in his establishment in the language understood by the majority of his workers, the notice/ notices containing information on registration number and date of registration of the establishment, the hours of work and the weekly off, the list of holidays, the wage period, the wages and allowances payable to workers and the date of payment and the name and address of the employer and the manager and name and address of inspector under the Act.
- (3) Every employer shall submit a return to the authority with whom the enterprise is registered within 30 days after the close of the calendar year. The return shall contain the following information:
 - (a) Name of the establishment and its complete address

- (b) Name and address of the employer
 - (c) Name and address of the manager (if employed)
 - (d) The nature of business, occupation, trade or industry
 - (e) The date of commencement of the business, occupation, industry or trade
 - (f) Average number of persons employed including the break up of male, female and young persons (above 14 years but below 18 years of age).
 - (g) The number of man-days actually worked during the calendar year
 - (h) The number of persons taken on rolls as new recruits during the year
 - (i) Number of persons whose services were dispensed with during the year
 - (j) The number of accidents that have taken place during the year (fatal and non fatal)
 - (k) The total wages paid to the workers during the year
 - (l) Information on the strike or lockout if it has taken place or was declared during the year under report and the period of strike or lockout, the nature of loss of production and loss of wages to the workers.
 - (m) Any other information as may be prescribed.
- (4) The employer shall issue an identity card to every worker employed by him containing such details as may be prescribed.

22. **Self Inspection/Inspection**

- (1) Every employer, within 30 days after the end of the calendar year shall certify confirming in form 'F' that all requirements of safety, health, welfare and payment of wages have been complied with by him and the certificate will be sent by the employer to the Dy. Chief Inspector with a copy to the Inspector of the area by registered post and where the employer fails to send the self certificate the Deputy Chief Inspector shall direct the Inspector concerned to carry out the inspection of the enterprise and the inspector shall after carrying out the inspection furnish a report of the violations committed by the employer to the Chief Inspector who shall issue a show cause notice to the employer to rectify the same specifying the period for carrying out rectification.
- (2) Any complaint about violation of this law received from the workers shall be taken note of by the Deputy Chief Inspector himself whereupon he shall direct an Inspector to look into the complaint and furnish a report to him and in case the Deputy Chief Inspector finds that the employer has violated any provisions of the law he shall call upon the employer by a written communication to rectify the same within the specified period.
- (3) In case the employer fails to rectify the same in spite of the show cause notice of the Deputy Chief Inspector as provided in sub section (1) or sub section (2) in writing the Deputy Chief Inspector will take up the matter with the trade or business organisation of which the employer is a member. In case it is still not rectified within 30 days, the Deputy Chief Inspector shall be free to take steps to prosecute the employer and where the employer is not a member of any trade or business organisation the Deputy Chief Inspector may take steps to prosecute the employer if the employer has not rectified the violations in spite of issue of show cause notice.
- (4) The State Government shall appoint the Chief Inspector, Joint Chief Inspector, Deputy Chief Inspectors and Inspectors of Small Enterprises area-wise or district-wise as deemed appropriate and may distribute the work jurisdiction amongst them.

(5) The officials mentioned in sub sec (4) shall be deemed to be public servants within the meaning of sec 21 of IPC (Act XLV of 1860).

23. **Non Application of Certain Laws**

(1) Subject to the provisions contained in sub sec (4) of Sec 1 and Sec 8 of this Act where this Act applies to an establishment nothing in the following laws shall apply to that establishment.

- i) The Factories Act, 1948 (except those covered by Sec.8)
- ii) The Industrial Disputes Act, 1947
- iii) The Industrial Employment (SO) Act, 1946
- iv) The Minimum Wages Act, 1948
- v) The Payment of Wages Act, 1936
- vi) The Payment of Bonus Act, 1965
- vii) The EPF& Misc. Provisions Act 1952
- viii) The Employees State Insurance Act
- ix) The Maternity Benefit Act
- x) The Workmens' Compensation Act
- xi) The Equal Remuneration Act, 1976
- xii) The Contract Labour (R&A) Act, 1972
- xiii) The Interstate Migrant Workmen (RE&CS) Act 1979
- xiv) The Shop & Establishment Act
- xv) The Mines Act 1951 (except the mines where work is being carried on below ground)

(2) If the Shops & Establishment Act of a State confers better benefits than provided under this Act, the State may make amendments in this Act.

24. Penalties

- (1) Fines may be imposed by Chief Inspector or the Joint Chief Inspector as specified below:
 - (a) Any person who violates any provisions of this Act as mentioned in Part I of the Form F shall be punishable with a fine which shall not be less than Rs. 1000/- but which may extend to Rs. 2,500/-.
 - (b) For any second or subsequent offence of the same nature and where an employer is held guilty of furnishing false information as contained in Part-I of Form 'F' a fine may be imposed which shall not be less than Rs. 2,000/- but which may extend to Rs. 5,000/-.
 - (c) Where a violation as mentioned in Part I of Form F has not been rectified by an employer in spite of the notice issued by the Deputy Chief Inspector or Inspector for rectification of any violation, a fine of Rs.100/- per day for each violation may be imposed for the period till the violation is rectified.
- (2) Before imposing fine the Chief Inspector or as the case may be the Joint Chief Inspector shall give an opportunity to the person or the employer concerned to show cause why the fine as proposed should not be imposed on him.
- (3) Without prejudice to any other provision contained in this Act, the Chief Inspector or the Joint Chief Inspector shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while exercising any powers under this section, in respect of the following matters, namely: -
 - (a) summoning and enforcing the attendance of witnesses;
 - (b) requiring the discovery and production of any document;
 - (c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

- (4) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this Act or any such law to any other or higher penalty or punishment than is provided for such offence by this section.

25. **Trial of Certain Offences**

- (1) Whosoever wilfully obstructs the Chief Inspector, the Jt. Chief Inspector, the Dy. Chief Inspector or the Inspector in the exercise of any power under this Act or in carrying out the purposes of this Act including by prevention of any worker from appearing before the above mentioned authorities shall be punishable with a fine which shall not be less than Rs. 5000/- but which may extend to Rs. 10,000/- or with imprisonment for one month or both.
- (2) Whosoever furnishes false information as given in Part II of Form 'F' shall be punishable with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 20,000/- or with imprisonment which may extend to one year or both.

26. **Cognizance of offences and competence of courts**

- (1) No court shall take cognizance of any offence under this Act unless it is filed by a Deputy Chief Inspector or an Inspector appointed under this Act.
- (2) No court lower than that of a Metropolitan Magistrate or a First Class Magistrate shall try any offence as prescribed under Section 25 of this Act.

27. The State Government may grant exemption to any establishment from any provision of this Act in any case of emergency occurring in an establishment or in case of hardship.

28. **Rules under Act**

State Government may make rules in respect of any provision of the Act for securing the implementation of this Act.

29. **Protection to Official Persons Acting Under This Act**

No suit, prosecution or other legal proceedings shall lie against any public servant or any other person in the service of a Government acting under the direction of any such public servant for anything done in good faith or intended to be done in pursuance of the provisions of this Act, rule or order made thereunder.

30. **Power to Remove Difficulties**

The Central Government shall have powers to remove difficulties if any that arise in the implementation upto a period of 3 years.

FORM 'A'

Format for Furnishing Information While Applying for Registration

1. Name of the establishment, if any :
2. Postal address and situation of the establishment :
3. Whether the establishment falls under Public Sector or Private Sector :
4. Situation of office, store-room, godown, warehouse, or Workplace, if any, attached to shop but situated in premises different from those of the shop or the enterprise :
5. Name of the employer :
6. Residential address of the employer :
7. Name of the Manager, if any and his residential address :
8. category of the establishment, i.e. whether a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or any other :
9. Nature of business :
10. Date of commencement of business :
11. Names of members of employer's family employed in the establishment –

	Adults	Young persons	Total
Male	_____	_____	_____
Female	_____	_____	_____
Total	_____	_____	_____

12. Names of other persons occupying position of management or workers engaged in confidential capacity. (Indicate sex and age in case of young persons)

13. Total number of workers (Including part-time workers)

	Adults	Young persons	Total
Male	_____	_____	_____
Female	_____	_____	_____
Total	_____	_____	_____

14. The trade or business association of the area of which the employer is a member :

Note: Any change if it occurs in the above mentioned particulars it shall be the duty of the employer of the establishment to inform the Dy. Chief Inspector by a registered post within 30 days of occurrence of such change.

Dated:

(Signature of employer)

Form 'B'

Register of Persons Employed

Name of the establishment & Address	
Location of Work	
Name & Address of Employer	
1. Name, Father/Husband's name & address of the worker (Permanent & Temporary)	
2. Designation/Category	
3. Date of Birth	
4. Age	
4-A If the employed person is below 18 years, whether a certificate of fitness is maintained	
5. Date of Joining	
6. Sex: Male or Female	
7. Nationality	
8. Date of termination of Employment with reason	
9. Specimen signatures/thumb impression	
10. Remarks	

Form C

Leave Register

1. Name of the worker and his token number
2. Date of entry into the service
3. Calendar year of service for which leave is earned
4. The balance leave brought forward at the beginning of the calendar year as at 3 above
5. Number of days earned leave availed during the calendar year as at 3 above
6. Number of days work performed during the calendar year as at 3 above
7. Number of days leave earned during the calendar year as at 3 above
8. Total number of days leave to credit of the worker at the beginning of the current calendar year (4-5+6)
9. Number of days earned leave availed during the current year
10. Any other kind of leave availed during the current year (e.g. casual leave, maternity leave, etc.)

Form 'D'
Muster Roll-Cum-Wage Register

Name of establishment & address: _____

Location of work: _____

Name and address of Employer: _____

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Sl No.	Name & father's/ husband's name/ category of worker	Attendance 1:2:3: 30:31	PF No.	ESI No.	Wage rate/ scale of pay or piece rate/wages per unit	Other allowances e.g. (a) D.A. (b) HRA (c) Night allowances	O.T. Worked No. of Hours in the month	Amount of OT Wages	Amount of advance & purpose of advance	Total/ gross earnings	Deductions e.g. (a) PF (b) Advance (c) ESI (d) other amount	Net amount payable (13-12)	Signature/ receipt of wages/allowances for column no. 14	Remarks
						(a) (b) (c)					(a) (b) (c) (d)			

Form 'E'

Report of the Accident by the Employer

1. Name & Address of the occupier/employer
2. The Registration Number of the Occupier/employer
3. Name & Address of the premises of the establishment/enterprise
4. Nature of work/business/activity carried on in the enterprise/establishment
5. Name(s) of the injured person/persons & their token/insurance number, their sex, age and designation
6. Addresses of the Injured person(s)
7. Date and hour of the accident
8. The time at which he/they had started work on the day of accident
9. Cause of Accident including the nature of work being done by the injured person/persons at the time of accident
10. In case the accident occurred while travelling in the transport
 - (b) whether the injured person(s) was/were travelling as passenger(s) to and from his/her/their residence to place of work
 - (c) whether the injured person(s) was/were travelling with the expressed or implied permission of the occupier/employer
 - (d) whether the transport vehicle was provided by the occupier/employer or it was a public transport vehicle
11. Names and addresses of the witnesses
12. Nature and extent of injury
 - a) Whether fatal
 - b) location of injury i.e. the part of the body injured
 - c) in case of non fatal accident whether the worker(s) has/have returned to work
 - d) if not the approximate period the worker(s) is/are likely to take for returning to work
13. The clinic or dispensary or the hospital where the treatment of the injured worker(s) was arranged
14. Whether the expenses for the treatment were borne by the employer or not.

FORM 'F'

As prescribed under Small Enterprises (Employment Relations) Act.

Form for Self-Certification by an Employer.

Name of Enterprise _____

Address of the Enterprise _____

PART I

I certify that the status of compliance of Labour Laws in my enterprise mentioned above during the year _____ is as under:

1. (i) Number of persons employed as on 1.1._____ was _____.
- (ii) Number of persons terminated/left employment during the year _____
- (iii) Number of persons who joined the employment during the year _____
2. That I have complied with the provisions of this Act pertaining to payment of wages and bonus. The wages were paid as per law and no deductions that are not authorised under the law have been made from the wages thereof of the workers.
3. That no child below the age of 14 years has been employed in the enterprise and women workers have not been discriminated against in any manner.
4. That I have provided health and welfare measures as prescribed under the Act.
5. That I have observed the provisions of the Act as pertaining to the hours of work, leave, and holidays.
6. That I have complied with the provisions of the Act pertaining to the Social Security.
7. That _____ workers were removed or retrenched during the year and I have cleared their dues including the prescribed compensation.
8. That I have maintained the registers/records prescribed under the Act, displayed the required notices and sent the Annual Return to the prescribed authority.

PART II

I Certify that:

- (i) No hazardous substances like acids, chemicals, gasses and explosives are used, handled or stored in my establishment; and
- (ii) I complied with all the provisions pertaining to safety as prescribed under the Act.

Signature of the Employer
And his office seal

Dated:

APPENDIX - III

DRAFT LAW ON WAGES

Chapter I

Preliminary

Whereas it is expedient to consolidate all legal provisions relating to wages of workers, it is hereby enacted as follows: -

1. **Extent, application and commencement**

- (i) This may be called the Wages Act.
- (ii) It extends to the whole of India
- (iii) It applies to all establishments wherever there are 20 or more workers irrespective of the nature of activity that is carried on in the establishment.

2. **Definitions**

In this Act, unless the context indicates otherwise:

- a. Appropriate government: (Same as in laws on Labour Management Relations Act.)
- b. Bonus
- c. Employer: (Same as in Law on Labour Management Relations Act)
- d. Worker: (Same as in Law on Labour Management Relations Act)
- e. Wage: Wages means basic wage and dearness allowance
- f. National Floor Level Minimum Wage
- g. Central or State Minimum Wage
- h. Remuneration: means wages, all other allowances and the value in terms of money of the facilities or benefits given by the employer at concessional rates or free of cost.

3. **Prohibition of Discrimination Against Female Workers**

- (1) There shall be no discrimination between male and female workers in the matter of wages; and the principle of equal pay for equal work shall be applicable to all workers under the same employer, in respect of work of same or similar nature.
- (2) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotions vis-à-vis the male workers.
- (3) Where there is any dispute as to whether work is of same or similar nature or where female workers has been discriminated against in any manner the matter shall be decided by the appropriate government who may designate a person to decide the question.

Chapter II

Minimum Wages

4. **Payment of Minimum Wages**

No employer shall be allowed to pay any worker a wage which is below the minimum wage notified by the State Government/Union Territory.

5. **National floor level minimum wage**

There shall be a National Floor Level Minimum Wage which the Central Government shall determine and notify; the National Floor Level Minimum Wage shall be revised by the Central Government from time to time and in no case less frequently than once in two years if no dearness allowance is declared, linked to All India Consumer Price Index Number and if dearness allowance linked to AICPI is declared at least once in six months it shall be revised once in 5 years.

The national floor level 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. **Determination of Minimum Wage by Appropriate Government**

As in section 5 above, each State/Union Territory shall also notify for all employments or activities a state minimum wage which shall not be less than the National Floor Level Minimum Wage and where considered appropriate, State/Union Territory may notify separate minimum wages for different regions of the State, so however that no minimum wage is not less than the national floor level minimum wage.

7. **Central and State Minimum Wages Advisory Boards**

The Central Government and State Government shall constitute Minimum Wages Advisory Boards for advising the Central Government or as the case may be the State Government in fixation or revision of minimum wages and other connected matters. The Boards may constitute committees to look into any matter pertaining to minimum wages. The wages may be determined on the advice of the board/committee or by notification method.

8. **Composition of Minimum Wage**

The minimum rates of wages may consist of a consolidated wage or consist of basic pay, dearness allowance adjusted every six months on the basis of 100% neutralisation to a cost of living index as may be prescribed and cash value of any food items given on concession to the worker. Where the appropriate Government is declaring dearness allowance as mentioned herein above the minimum wages of workers shall be revised at least once in five years and in other cases once in two years.

Note: In fixing the national floor level minimum wage, the Central Government shall keep in view the conclusions of the Indian Labour Conference in its 15th session as also the decision of the Supreme Court of India in the case of Raptakos Brett & Co.

9. **Minimum Wages of Piece Rated Workers:**

Where a worker is employed on a job the wages whereof are paid based on piece rate, the piece rate wages shall be so fixed that the output by a normal worker in a 8 hour working shift will enable the worker to earn the equivalent of a time rated daily minimum wage that is notified. Where there is a failure or inability on the part of the employer to provide the worker with the work for all the 8 hours in a shift, the worker shall be entitled to proportionate wages, subject to the condition that the piece rate wages paid to him is not less than 75% of the notified daily minimum wage.

Chapter III

Payment of Wages

10. **Mode of Payment of Wages**

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, the wages may be paid partly in kind and partly in cash, so however that at least two thirds of the wages are paid in cash. The value of wages paid in kind shall, in case of dispute, be determined by the appropriate Government or its designated authority and its decision shall be final.

11. **Fixation of Wage Period**

The employer shall fix the wage period for workers as either daily, or weekly or fortnightly or monthly. Provided that no wage period in respect of any worker shall be more than a month.

12. **Time of Payment of Wages**

- (1) All wages shall be paid before the 7th day of the succeeding month, in cases of monthly payment; where daily wage payments are made, it shall be paid at the end of the shift, in cases of weekly rated payments, it shall be paid on the last working day of the week i.e. before the weekly holiday and in case of fortnightly period before end of second day after the end of the fortnight.
- (2) Where a worker has been removed or dismissed from service or has been retrenched or has resigned, the wages payable to him shall be paid to him within 48 hours of his removal, dismissal, retrenchment or as the case may be of his resignation.

13. **Payment of Wages without deductions**

There shall be no deductions made from the wages of the worker, except those as are specified in Sec 14.

14. **Deductions which may be made from wages**

- (1) Notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of a worker shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I) – Every payment made by the worker to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(Explanation II) – Any loss of wages resulting from the imposition, for good and sufficient cause, upon a worker of any of the following penalties, namely:-

- a. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar):
- b. The reduction to a lower post or time-scale or to a lower stage in a time scale; or
- c. Suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.

(2) Deductions from the wages of worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely: -

- (a) fines;
- (b) deductions for absence from duty;
- (c) deductions for damage to or loss of goods expressly entrusted to the worker for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government (or any officer specified by it in this behalf) may by general or special order, authorise.

Explanation- the word services (in this clause) does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any Welfare Fund statutory or otherwise constituted by the employer or a trade union for welfare of workers and their families with approval of appropriate Government (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payments of wages;
- (g) deductions of income tax payable by the worker or any other tax levied by the Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions for payment to cooperative societies approved by the appropriate Government (or any officer specified by it in this behalf)
- (j) deductions, made with the written authorisation of the worker for payment of any premium of his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;) or to a scheme of insurance maintained by the Indian Post Office;

- (k) deductions made, with the written authorisation of the worker, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
 - (l) deduction for payment of insurance premia on Fidelity Guarantee Bonds
 - (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the worker of counterfeit or base coins or mutilated or forged currency notes;
 - (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the worker to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
 - (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the worker where such loss is directly attributable to his neglect or default;
 - (p) deductions, made with the written authorisation of the worker, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification in the Official Gazette, specify;
- (3) Notwithstanding anything contained in this Act, the total amount of deductions which maybe made under sub-section (2) in any wage-period from the wages of any worker shall not exceed –
- (q) in cases where such deductions are wholly or partly made for payments to cooperative societies under clause (i) of sub-section (2), seventy five percent of such wages, and

(r) in any other case, fifty per cent of such wages;

Provided that where the total deductions authorised under subsection (2) exceed seventy five per cent or, as the case may be, fifty percent of the wages, the excess may be recovered in such manner as may be prescribed.

- (4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the worker or otherwise any amount payable by such person under any law for the time being in force other than Indian Railways Act, 1890 (9 of 1890).

Chapter IV

Payment of Bonus

15. There shall be paid to every worker who has worked atleast for 90 days in calendar year and whose wages do not exceed Rs. 7500/- per month an annual bonus calculated at 8 1/3% of the wages earned by him/her during the previous accounting year, to be paid within eight months of the close of the accounting year or as may be determined by negotiationis between the employer and the negotiating agent. (Wages for the purpose of calculating bonus shall comprise basic wage, dearness allowance, retention allowance, if any, in case of seasonal industries and no other allowance) Demand 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 the 8 1/3% annual bonus shall not exceed 20% of the wages.

Provided that where the wages of a worker exceed Rs. 3500/- per month his wages for the purpose of calculation and payment of bonus shall be reckoned as Rs. 3500/- per month.

16. Payment of Bonus out of Allocable Surplus

- (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% of the available surplus arrived at as per provisions of sub Sec (2)
- (2) The available surplus shall be the amount calculated as per prescribed rules as may be
- (3) Audited accounts of companies shall not normally be questioned. Provided that wherever there is any dispute regarding the quantum of payment of bonus payable the authority such as the Labour Court or LRCs may call upon the employer to produce the balance sheet before it. However, the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

17. Disqualification for bonus

Notwithstanding anything contained in this Act, a worker shall be disqualified from receiving bonus under this Act, if he is dismissed from service for

- i Fraud; or
- ii Riotous or violent behaviour while on the premises of the establishment; or
- iii Theft, misappropriation or sabotage of any property of the establishment.

18. Proportionate reduction in bonus in certain cases

Where a worker has not worked for all the working days in an accounting year, the minimum bonus of 8.33 percent of his salary or wage or higher bonus that is payable to him shall be proportionately reduced taking into consideration the number of days worked in the establishment in a calendar year and number of days work put in by the worker.

19. Set on and set off of allocable surplus

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the workers in the establishment under section 15, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the workers employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth rules.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the workers in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the (Fourth) rules.
- (3) The principle of set on and set off as illustrated in the (Fourth) Schedule shall apply to all other cases not covered by sub-section (1) or sub section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

20. Adjustment of customary or interim bonus against bonus payable under the Act

Where in any accounting year

- (a) An employer has paid any Puja Bonus or other customary bonus to worker; or
- (b) An employer has paid a part of the bonus payable under this Act to a worker before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the worker under this Act in respect of that accounting year and the worker shall be entitled to receive only the balance.

21. Deduction of certain amounts from bonus payable under the Act

Where in any accounting year, worker is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the worker under this Act in respect of that accounting year only and the worker shall be entitled to receive the balance, if any.

Provided that the worker shall be given an opportunity to be heard before making such deductions.

22. Time limit for payment of bonus

All amounts payable to worker by way of bonus under this Act shall be paid in cash by his employer-

- (a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

- (b) in any other case, within a period of eight months from the close of the accounting year

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

23. **Special provision with respect to payment of bonus linked with production or productivity**

Notwithstanding anything contained in this Act -

- i Where an agreement or a settlement has been entered into by the workers or the negotiating agent with their employer before the commencement of the Wages Act.
- ii Where the workers or the negotiating agent enter into any agreement or settlement with their employer after such commencement,

For payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such workers shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

24. **The Provisions of Payment of Bonus not to apply to certain classes of workers**

Notwithstanding anything contained in this Act the workers employed as seamen in the establishment of Merchant Shipping Companies, workers of establishments & Departments of Central Government, State Government and local authorities, workers of Indian Red Cross Society or any like institutions, workers of hospitals, chambers of commerce, or

charitable institutions not established for making profits, workers of universities, other educational institutions, or a construction work which is not carried for more than a year shall not be entitled to bonus under this Act.

Chapter V

Miscellaneous

25. Removal of difficulties

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

26. Making of Rules

The Central Government will have the power to make Rules.

27. Repeal and Savings

The Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 shall stand repealed on enactment of this law.

28. Issue of Wages Slip

Every worker shall be issued a wages slip 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, when such payment has been made showing the amount of wages/allowances after authorised deductions, with the signature of the worker for having received such payment.

29. Claims under the Act

- (1) The appropriate Government shall appoint an authority to hear the claims arising out of non-payment of Remuneration, deductions made by employer from the wages or remuneration of a worker which are not according to this Act, payment of less wages than the

minimum, wages non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to female workers as prescribed under this Act or non-payment of bonus.

- (2) The authority may order compensation upto 10 times in addition to the dues involved as specified in sub section (1). The authority shall before ordering compensation have regard to the circumstances due to which the dues had remained unpaid or less paid.
- (3) If an employer fails to pay the outstanding dues of a worker that are ordered to be paid by the authority under Sub-Section (1) the authority shall issue a certificate of recovery to the Collector of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned worker.
- (4) Any claim arising out of any dues payable as prescribed under sub-section (i) above may be filed before the authority by either the worker himself or any Trade Union of which the worker is a member or a Non Government Organisation duly authorised by the worker or an Inspector appointed under this Act.

30. **Records, Returns and Notices**

- (3) Every employer of an establishment to which this Act applies shall maintain the following registers:
 - (i) Register of persons employed
 - (ii) Register of muster roll cum wages.
- (4) Every employer shall display a notice on the notice board at a permanent place in the establishment containing the wage rates of workers category wise, the wage period, the day or date and time of payment of wages and the name of the person responsible for payment of wages to the workers.

- (5) Every employer of an establishment shall send an annual return in the prescribed form to the Chief Inspector or to the authority as may be prescribed.

31. **Appointment of Inspectors**

An appropriate Government shall appoint a Chief Inspector, Joint Chief Inspectors, Deputy Chief Inspectors, Assistant Chief Inspectors and sufficient number of Inspectors for the country as a whole or State or for different areas to carry out the objectives and purposes of this Act.

32. **Cognisance of offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by a worker or a trade union or a recognised welfare institution or an inspector appointed under this Act.
- (2) No court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences mentioned in sub sec (2) of Section 33.

33. **Penalties**

- (1) For offences of minor nature such as non or improper maintenance of records fines may be imposed by an Assistant Chief Inspector or a Deputy Chief Inspector upto Rs. 5,000/- for each violation.
- (2) For other offences such as non-payment of wages, or payment of wages at lesser rate than that are payable or making deductions from wages not authorised under this Act, then notwithstanding any other provision of this Act penalty of imprisonment which may extend upto 3 months or fine which may extend to Rs. 5,000/- or both may be imposed.
- (3) Whosoever files a claim which is found totally false shall be punishable with fine which may extend to Rs. 1,000/-.

34. **Exemptions**

Nothing in this Act shall apply to workers employed in any establishment carried on by a department of Government directly.

35. **Burden of Proof**

Where a claim has been filed on account of non payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Act from the wages of a worker the burden to prove that the above mentioned dues have been paid shall be on the employer.

36. **Contracting Out**

Any contract or agreement whereby a worker forgoes his right to minimum wages or agrees to deductions from his wages not authorised under this Act or foregoes his right to bonus shall void ab initio.

APPENDIX - IV

THE HOURS OF WORK, LEAVE AND OTHER WORKING CONDITIONS AT THE WORKPLACE ACT, 2002

An Act to provide for regulation of hours of work, leave and other working conditions in all establishments

Whereas it is expedient to consolidate the provisions pertaining to hours of work, leave and other working conditions in all enterprises and for certain other purposes as in hereafter specified, it is hereby enacted as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application

- (1) The Act may be called the Hours of Work, Leave, and Other Working Conditions at the Workplace Act, 2002.
- (2) It extends to whole of India.
- (3) It shall come into force on ... or from the date notified by the Central Government in this behalf
- (4) It shall apply to all establishments of factories, mining, plantation, construction, service, motorised transport or air transport or inland water transport or establishments of shipping companies, ports & docks or other establishments including cinema theatres workers, cinema and clubs, hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, charitable, research, training, educational institutions, consultancy and solicitors or lawyers organisations wherein 20 or more workers are employed.

Provided that Chapters III and IV of this Act shall not apply to workers governed by FRs & SRs, Central or State Civil Service Rules, CSR or any other Rules as may be specified in this behalf by the appropriate Government.

2. **Definitions**

(1) In this Act unless there is anything repugnant in the subject or context the:

- (a) 'appropriate Government' means the Central Government in respect of the establishment for which it is the appropriate Government under the Labour Management Relations Act and in respect of any other establishment the Government of the State in which that other establishment is situated.
- (b) 'adolescent' means a person who has completed 14th year of his age but not completed the 18th year.
- (c) 'child' means a person who has not completed 14th year of his age.
- (d) 'contract labour' means a worker employed in or in connection with the work of an establishment when he or she is hired in or in connection with such work by or through a contractor with or without the knowledge of principle employer.
- (e) 'contractor' means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.
- (f) 'construction' means the construction, alteration, repair, maintenance or demolition of or in relation to buildings, roads, streets, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage work), generation, transmission, and distribution of power, water works (including channels for distribution of water), oil and gas installations,

electric lines, wireless, radio, television, telephone, telegraphs, and overseas communication, dams, canals, reservoirs, water course, tunnels, bridges, wire ducts, aqua ducts, pipelines, towers, cooling towers, transmission towers, and such other works as may be specified in this behalf by the appropriate Government by notification.

- (g) 'day' means a period of 24 hours beginning at midnight.
- (h) 'employer' means an owner thereof or a person who has ultimate control over the affairs of the establishment.
- (i) 'factory' means a place where manufacturing process is carried on.
- (j) 'manufacturing process' means the process for making altering, making, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal and includes pumping of oil, water, sewage or any other substance or generating transforming or transmitting power or composing, type printing, letter printing, lithography or other similar processes or book binding or constructing, repairing, refitting, finishing or breaking up of ships or vessels or preserving or storage of articles in cold storage.
- (k) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-
 - (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
 - (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
 - (iii) all levels and inclined planes in the course of being driven;

- (iv) all open cast workings;
 - (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine or minerals or other articles or for the removal of refuse therefrom;
 - (vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
 - (vii) all protective works being carried out in or adjacent to a mine;
 - (viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purpose connected with that mine or a number of mines under the same management;
 - (ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
 - (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operation in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
 - (xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;
- (l) 'plantation' means any land used or intended to be used for growing tea, coffee, rubber or cardamom which admeasures 5 hectares or more and in which 20 or more persons are employed or were employed on any day of preceding 12 months

Explanation: The appropriate Government may declare growing of any other plant on land which admeasures not less than 5 hectares and in which 20 or more workers are employed as plantation by notification in official gazette after obtaining the approval of the Central Government.

- (m) 'principal employer' includes -
- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf;
 - (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, (63 of 1948), the person so named.
- (n) 'worker' means a person who is employed for wages or reward in connection with the work of the establishment and includes a contract labour engaged through a contractor in accordance with the provisions made in chapter VII but does not include a person employed in supervisory, managerial or administrative capacity.

All other terms used in this Act but not interpreted or defined shall have the same meaning as assigned to them under the Labour Management Relations Act or Wages Act.

CHAPTER II

REGISTRATION

3. Application of this Chapter

- (1) The provisions of this chapter shall apply to all establishments except the establishment of factories, mine, plantation, construction or any other establishment covered under the Occupational, Safety and Health Law.

- (2) In respect of the establishments exempted from the provisions of this chapter under sub section (1), the registration issued by a governmental authority under the Occupational, Safety and Health Law shall hold valid under this Law also.

4. **Registration of establishments**

- (1) Within three months from the date of setting up on an enterprise the employer of the establishment shall send an application in the prescribed form for registration of his or her establishment to the authority as mentioned below.
- i Where the central Government is the appropriate Government – to the Regional Labour Commissioner (Central) of the region.
 - ii In all other cases the Labour Commissioner of the State or as the case may be the Union Territory.
- (2) The application shall be accompanied by prescribed fee and shall be sent or delivered to the concerned authority either personally or by registered post.
- (3) The authority concerned on being satisfied about the correctness of the information shall register the establishment and issue a certificate of registration within one month. The registration certificate so issued by the authority shall be valid for a period of five years.
- (4) Any change in particulars furnished by the employer for the purposes of registration, if occurs after the registration of the establishment the same shall be intimated by the employer to the concerned authority within 30 days of occurrence of such change and the authority shall, after being satisfied of the correctness of the information furnished by the employers in this regard record the change and inform the employer of the same within three weeks.

5. Renewal of Registration

- (1) The application for renewal in the prescribed format shall be made at least one month before the date of expiry of the registration and where the employer fails to make an application within one month of the date of expiry of the registration he or she shall be required to pay additional fee as may be prescribed by the appropriate Government. The renewal shall also be valid for a period of five years.

CHAPTER III

HOURS OF WORK

6. Daily & Weekly Hours of work

- (1) The hours of work of any adult worker employed in any establishment shall not exceed 9 hours in a day and 48 hours in a week except in case of adult workers employed in a mine below ground.
- (2) The hours of work in case of adult workers working in a mine below ground shall be 8 hours a day and 48 hours in a week.

Provided that the hours of work mentioned in sub sections (1) and (2) may be exceeded to facilitate the change of shifts.

7. Intervals of rest

- (1) The work periods of an adult worker shall be so fixed that no work period shall exceed 5 hours and the worker shall not work for more than 5 hours unless he or she has had an interval of rest of not less than half an hour.
- (2) The appropriate Government may by written order or by making rules exempt any establishment or a class of establishments from the provisions of sub section (1) so however that the total number of hours worked by a worker without an interval of rest does not exceed 6.

- (3) The hours of work in respect of the workers working in mines below ground as prescribed in sub section (2) of section 6 shall be inclusive of interval of rest.

8. **Spread over**

- (1) The period of work of an adult worker in an establishment except in case of below ground working in a mine shall be so arranged that the spread over including the interval for rest shall not exceed ten and half hours on any day.

Provided that the Chief Inspector may for reasons to be specified in writing increase the spread over to 12 hours.

9. **Weekly holidays**

- (1) No adult worker shall be required or allowed to work in an establishment on the first day of the week i.e. Sunday.

Provided that the appropriate Government may prescribe that there shall be different days of weekly rest for different areas or for different establishments.

- (2) Where it is not possible for an employer to give a weekly holiday to a worker as laid down under sub section (1) or prescribed by the appropriate Government, the employer shall give a holiday to the concerned worker on one of the three days immediately before or after the said day.
- (3) Where the employer substitutes a weekly holiday in respect of a worker as provided in the sub section (2) he shall forthwith issue a notice to the concerned worker and also display a copy of the same on the notice board at a prominent place in the establishment.

Provided that no substitution shall be made in such a manner that any worker is required to work for more than ten days consecutively without a holiday for the whole day.

- (4) A notice issued to the worker under sub section (3) may be cancelled by another notice not later than a day before the said day or the holiday to be cancelled whichever is earlier, and a copy of the notice is also displayed in the establishment.
- (5) The appropriate Government may by making rules provide for granting exemption to an establishment from operation of sub section (3) and where due to such an exemption granted by the appropriate Government a worker loses a weekly holiday he shall be allowed a compensatory holiday in lieu of the weekly holiday so lost within the month in which the holiday was due to him or within two months immediately following that month.

10. **Shift Working**

- (1) The shift working shall be so arranged that as far as possible there is one relay of workers engaged in the work of same kind at the same time.
- (2) In case a shift of a worker working extends beyond midnight then a weekly holiday for a whole day in respect of that worker shall mean 24 consecutive hours beginning when his shift ends and the hours of work he has worked after midnight shall be counted in the previous day.

11. **Overtime work and extra wages for overtime**

- (1) A worker may be required to work overtime in case of exigency such as urgent repairs of break down of machinery or non reporting of a worker required to work at the beginning of a new shift without prior intimation of his absence.
- (2) Where a worker other than a person holding a supervisory, managerial and administrative position who is required to work extra hours above 9 hours a day or 48 hours a week including due to relaxation given under this Act or work on weekly holiday or a holiday so declared by an establishment, he shall be paid in respect of the extra hours or in respect of the work done on a holiday, extra wage at double the rate of ordinary wages.

- (3) In case of a worker paid wages on piece rate basis the time rate shall be deemed to be equivalent to daily average of his full time earnings for the days on which he actually worked on the same job or on a job identical to his job during the month preceding the month in which the overtime is done by him and such time rate shall be deemed to be the ordinary rate of wage for him.

12. **Notice of periods of work for adults**

- (1) Every employer shall display in every establishment a notice of periods of work for adults clearly stating the periods during which the adult workers will be required to work.
- (2) Any change required to be made in the periods of work shall be intimated to the workers at least twenty-four hours in advance and also displayed on the notice board.

13. **Conditions for Employment of Female Workers**

- (1) No female employee shall be required to work in any establishment between 7 p.m. and 6 a.m. except as following
 - (a) There are at least five female workers working at the premises of the establishment.
 - (b) The work is not carried on beyond 10.30 p.m. except where permission to employ female workers is granted to the employer.
 - (c) The employer arranges for the safety of female workers at the workplace and their transportation from the place of work to their residences.
- (2) No female worker shall be employed in a mine in below ground working.
- (3) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotion vis-à-vis the male workers.

14. Power to make Rules

- (1) Every employer shall prepare a list of persons who hold the position of supervision or management or are employed in confidential capacity in an establishment and who shall be exempt from the provisions of daily hours and weekly hours of work, intervals of rest and compensatory holidays. The list so prepared by the employer shall be subject to the approval of the state Government.
- (2) The workers as are required to work beyond the daily and weekly hours of work prescribed under this Act shall be paid overtime irrespective of the fact that they are working in confidential capacity or they are required to work due to exempting rules prepared by the appropriate Government.
- (3) The appropriate Government may make rules for the workers in all establishments for exempting them from the provisions of Sec. 6,7,8,9,10,12 and 13 of the Act including the conditions of exemptions as under:
 - (a) The workers engaged in urgent repairs in a factory or mine,
 - (b) Workers engaged in the work which is in the nature of preparatory or complementary and which must be carried on outside the limits laid down for weekly and daily hours of work, rest intervals and spread over
 - (c) Workers engaged in any work which for technical reasons or reasons of public convenience must be carried out continuously
 - (d) Workers engaged in making or supplying articles of prime necessity for the community which must be supplied every day.
 - (e) The workers engaged in the manufacturing process which can be carried on during a fixed season.
 - (f) Workers engaged in public transport for carrying of passengers by

road, by air or by inland water transport system.

- (g) Workers engaged in medical and hospital services for treating the sick persons.
- (h) Workers working in hotels, restaurants and eating-houses.
- (i) Workers engaged in securing sanitation and hygiene
- (j) Working engaged in manufacturing process which cannot be carried on except at times dependent on irregular action of natural forces
- (k) The workers working in or tending the engine rolls, boiler house, power plant, pressure plant and transmission machinery
- (l) Workers engaged in printing of newspapers
- (m) Workers engaged in loading/unloading of railway wagons, lorry or trucks
- (n) Workers engaged in any work notified by the central or state government to be of national importance
- (o) In a mining activity:
 - (i) of all or any of the persons employed in a mine, where an emergency involving serious risk to the safety of the mine or of the persons employed therein is apprehended;
 - (ii) of all or any of the persons so employed, in case of an accident actual or apprehended;
 - (iii) of all or any of the persons engaged in work of a preparatory or complementary nature, which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine; and
 - (iv) In any construction:

- (i) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
 - (ii) persons engaged in any work which for technical reasons has to be completed before the day is over;
- (3) In prescribing rules under this section the following limits shall be adhered to
- (a) The total number of hours of work on any day shall not exceed 11
 - (b) The spread over inclusive of interval shall not exceed 12 hours on any day
 - (c) The total number of hours of work in a week shall not exceed 64.
 - (d) The total number of hours of overtime work shall not exceed 90 in a quarter

Explanation: Quarter means a period of three consecutive month beginning first of January, April, July and October.

- (e) The appropriate Government may grant exemption to an establishment if it satisfied that going by the nature of work carried on in the establishment or to meet the targets of production or the orders received by the employer of the establishment for delivery of goods or services produced by him on time subject to the limits prescribed in the sub section (4) above, the exemption is justified.

15. Prohibition and Regulation of Employment of Children & Adolescents

- (1) No child shall be required or allowed to work in any establishment.
- (2) No adolescent shall be required or allowed to work in any establishment of a mine.
- (3) Where an adolescent is intended to be employed in any establishment except in a mine the employer shall get the adolescent medically examined and such adolescent shall be employed in the establishment if he or she is declared medically fit for the work in that establishment.

CHAPTER IV

EARNED LEAVE WITH WAGES, HOLIDAYS AND CASUAL LEAVE

16. Entitlement of Earned Leave

(1) Every worker employed in an establishment who has worked for 240 days or more in a calendar year in the establishment shall be allowed during the subsequent calendar year earned leave with wages to be calculated as following

- (a) One days earned leave for every 20 days work put in, in case of all establishments including an establishment of mine above ground
- (b) One days earned leave for every 15 days work put in, in case of a mine where the work is being carried on below ground

Provided that where a worker joins the establishment after 1st January he shall be required to work for at least 2/3 number of days calculated from his date of joining the establishment upto the end of the calendar year to be entitled to earned leave.

- (c) For the purpose of calculation of 240 days or 2/3 of the total attendance the number of days on which worker was laid off by agreement or contract or law, in case of female employee the maternity leave not exceeding 12 weeks and the leave earned and availed by the worker during the year on the basis of the work put in by him during the preceding year shall be counted.
- (2) The leave earned by a worker under sub sec (1) shall be allowed in addition to the weekly and other paid holidays.
- (3) Where a worker is discharged or removed form service or dismissed or he quits his employment or is superannuated or dies while in service, he or his nominee shall be entitled to wages in lieu of the quantum of leave to his credit and the leave which he shall be entitled to be calculated as above till the date of his separation on account of any of the above mentioned grounds and such wages shall be paid within 48 hours of such separation.

- (4) The worker shall be permitted to accumulate the leave upto 60 days.
- (5) Every employer shall decide the procedure for making application for the leave and for sanction thereof in consultation with recognised negotiating agent or college and the procedure so decided shall be displayed on the notice board for the information of the workers.

17. Entitlement for better leave

- (1) Where a worker is entitled to better benefits of leave in accordance with any agreement or settlement with the recognised negotiating agent or college or as per the rules framed by the employer he shall be governed by such better provisions of leave.

18. Wages for the Leave Period

- (1) For the leave allowed to a worker under sec 16 or 17 as the case may be, he shall be entitled to wages at the rate equal to his daily average of total remuneration or earnings for the days on which he actually worked during the preceding month excluding the overtime and bonus but including the house rent allowance, dearness allowance, the city compensatory allowance or any other allowance.
- (2) The worker shall be allowed wages to be paid in advance before proceeding on leave if he has made an application in this regard at least five days in advance.

19. Every worker shall be allowed 12 days casual and sick leave in a year. A person joining the services in a establishment after 01st January shall be allowed casual leave pro-rata.

20. Every establishment shall observe 8 holidays in a year out of which 3 national holidays i.e. Independence Day, Republic Day and Gandhi Jayanti shall be observed by every establishment and balance of holidays will be decided in consultation with the negotiating agent.

CHAPTER V

OTHER WORKING CONDITIONS & WELFARE

21. Cleanliness

- (1) Every establishment shall be maintained clean by removal of dirt, dust and refuse by sweeping or other effective methods including the staircases and passages. The sweeping and dusting shall be done on daily basis.
- (2) The employer shall ensure effective disposal of diffuse, effluvia arising from any drain or in case of a factory the disposal of fumes or gases.
- (3) The employer shall make arrangement for treatment of wastes and affluent arising from the manufacturing processes if it is carried on in his establishment.

22. Ventilation, Temperature and Lighting

- (1) The employer shall take effective steps for adequate ventilation by circulation of fresh air and maintenance of temperature at reasonable levels.
- (2) It shall be the duty of the employer to see that there is no overcrowding in workrooms and workplaces in his establishment.
- (3) The employer shall ensure that there is proper lighting, natural or artificial, as per the requirement of work carried on in the establishment.

23. Drinking Water

- (1) There shall be effective arrangement to provide and maintain suitable points for wholesome drinking water at convenient places for all workers employed in the establishment. All these points will be marked drinking

water in the language understood by the majority of workers employed in the establishment.

- (2) Provision shall be made for cool drinking water during summer.
- (3) The drinking water points shall be away from latrines, urinals and located at places away from the places where there can be possibility of contamination.

24. Latrines & Urinals

- (1) There shall be sufficient latrines & urinals of prescribed type conveniently located for use by the workers during working hours.
- (2) Separate enclosed accommodation for latrines & urinals shall be provided for male and female workers.

25. Washing Facilities

- (1) In every establishment of a factory, plantation, construction or mine adequate and suitable facility for washing shall be provided and maintained.
- (2) For female workers such facilities for washing to be provided in adequately screened accommodation.
- (3) The washing facilities shall be provided at conveniently accessible places and shall be maintained clean.

26. Facilities for Storing of Clothes

- (1) In every establishment of a factory, mine or construction suitable arrangement shall be provided for keeping clothes not worn during the working hours.

27. Facilities for sitting

- (1) In every establishment including a factory, mine, plantation or construction suitable arrangement shall be provided for all workers for sitting wherever workers are obliged to work in a standing position in

order to enable them to make use of the same during opportunities for rest due to rest intervals or otherwise.

28. **Canteens, lunch rooms and rest rooms**

- (1) In every establishment employing 200 or more workers the employer shall arrange to provide a canteen or canteens with arrangement to supply items of food and beverages on no profit no loss basis.
- (2) The appropriate Government shall make rules laying down the time limit by which the canteen shall be required to be provided, prescribe the standards for construction of canteen accommodation, furniture and the other equipment of canteen, the food stuffs to be served and the charges which may be levied for such food stuff, constitution of managing committee for managing the canteen consisting of representatives of workers and the management and the items of expenditure which will not be taken into consideration while fixing the cost of foodstuff.
- (3) The Employer of every establishment to which this Act applies shall provide lunch rooms and rest rooms for the workers where the workers can take their meals brought by them and take rest during the rest intervals or the lunch period.

29. **Crèches**

- (1) In every establishment the employer shall provide and maintain a suitable room or rooms for the use of children under the age of 6 years of workers.
- (2) Such rooms as are required under sub section (1) shall have adequate accommodation and lighted and ventilated and shall be maintained in a clean and hygienic condition. Rooms shall be under the charge of women trained in the care of children and infants.
- (3) The establishments (including those employing no female workers) may provide crèches in collaboration with other employers/establishments in the same area on cost sharing basis.

30. Welfare Officers

- (1) In every establishment or factory, mine, plantation, construction, hospital or service organisation wherein 300 or more workers are ordinarily required to be employed, the employer shall appoint one or more welfare officers.
- (2) The appropriate Government shall prescribe the duties, qualifications, conditions of service and the number of officers required to be appointed.

31. Welfare Committees

- (1) In every establishment employing 300 or more workers a welfare committee shall be constituted by the employer in consultation with the negotiating agent identified by the employer under the Labour Management Relations Law to advise the employer on the management of welfare measures.

32. Seeking Help of Local Bodies in Creation of Common Facilities

The appropriate Government shall make efforts to provide common facilities of canteen, crèches, toilets, and dispensary in industrial and business clusters by seeking cooperation of local bodies.

CHAPTER VI

ADDITIONAL WELFARE MEASURES FOR PLANTATION WORKERS

33. Housing

The workers employed in plantation establishments shall be provided family accommodation or dormitory accommodation of the prescribed type having facilities as may be prescribed.

34. Educational Facilities

Every employer in plantation establishments either by himself or jointly with other employers of plantation establishments shall provide educational facilities for the children of workers of plantation establishments as may be prescribed.

35. Medical Facilities

- (1) In every plantation the employer shall provide and maintained so as to be readily available such medical facilities for the workers and their families as may be prescribed by the appropriate Government.
- (2) If medical facilities are not provided and maintained by any employer as required in sub sec (1) the Chief Inspector may cause to be provided and maintained such facilities and recover the cost thereof from the defaulting employer by sending a recovery certificate to the collector who shall recover the same from the employer as arrears of land revenue.

Provided that if the Central Government enacts a composite law on social security to provide for health care and such a provision is extended to the plantation workers and their families this section will cease to apply to establishments of Plantations.

CHAPTER VII

CONDITIONS OF EMPLOYMENT OF CONTRACT LABOUR

36. Application of this Chapter

- (1) The provisions of this chapter shall apply to every establishment employing 20 or more contract labour and to every contractor who employs 20 or more contract labour in relation to the work of an establishment.
- (2) It shall not apply to establishments in which the work only of an intermittent or casual nature is performed. Where the question arises whether the work performed in an establishment is of intermittent or casual nature the question shall be decided by the Labour Court or the Labour Relations Commission appointed by the appropriate Government under Labour Management Relations Law.

Explanation : For the purpose of this sub section work performed in an establishment shall not be deemed to be of intermittent nature –

- (i) if it was performed for more than 120 days in the preceding 12 months or
 - (ii) if it is of seasonal character was performed for more than 60 days in a year.
- (4) For the purposes of this chapter establishment means-
- (i) any office or department of the Government or local authority or
 - (ii) any place where any industry, trade, manufacturer, business or occupation is carried on.

37. Registration of Establishment for Engaging Contract Labour

- (1) Every principal employer of an establishment to which this Act applies shall before engaging contract labour in his establishment make an application to the registering officer appointed by the appropriate Government for registration of his establishment. The application shall be accompanied by the information as may be prescribed and the prescribed fee.
- (2) If the application for registration is complete in all respects the registering officer shall register the establishment and issue to the principal employer a certificate of registration containing such particulars as may be prescribed within 10 days of furnishing the complete information by the principal employer.
- (3) Any change occurring in the information rendered by the principal employer for seeking registration shall be communicated by him to the registering officer and the registering officer if he is satisfied that the material change has taken place as may be prescribed shall affect the change in the particulars of registration of the establishment. Wherever such change is on account of increase in the number of contract labour to be employed such request for change shall be accompanied by the required fee.

- (4) If the registering officer is satisfied that registration of an establishment has been obtained by misrepresentation or suppression of material fact or that the registration has become ineffective and requires to be revoked the registering officer shall after giving an opportunity to the principal employer to be heard revoke the registration after seeking prior approval of the appropriate Government.

38. Effect of Non-Registration

- (1) No principal employer of an establishment to which this Act applies, shall
 - (i) if the establishment was required to be registered but which has not been registered within the prescribed period or
 - (ii) if the registration of the establishment has been revoked, employ contract labour in the establishment.

39. Licensing of Contractors

- (1) Every contractor to whom this Act applies shall before engaging contract labour in relation to an establishment of principal employer obtain a license from a licensing officer appointed by the appropriate Government by making an application in the form as may be prescribed with a prescribed fee and security.
- (2) Any change occurring after obtaining the license shall be intimated to the licensing officer by the contractor and where the change involves increase in number of contract labour to be employed in the establishment such intimation shall be accompanied by additional fee and security deposit as may be prescribed and the licensing officer shall accordingly issue an amended license.
- (3) The license shall be issued subject to such conditions as may be prescribed.
- (4) The license of the contractor may be cancelled or revoked or security may be forfeited by a licensing officer if he is satisfied that the license was

obtained by misrepresentation or suppression of material fact or that the conditions of license have not been fulfilled or the contractor has violated the provisions this Act or the rules made thereunder.

40. Prohibition of Employment on Contract Labour

- (1) Notwithstanding anything contained in this Act no contract labour shall be employed in any core function or activity of an establishment.
- (2) In non-core function or activity of perennial nature as given in Schedule I an employer may employ contract labour.

Provided that where a question arises whether an activity is core or non-core activity the same shall be decided by the Labour Court or Labour Relations Commission.

- (3) Where engagement of contract labour in non-core activity of perennial nature results in retrenchment or displacement of regular employees on the pay rolls of the principal employer, the principal employer shall engage contract labour in such activity after consulting the negotiating agent.
- (4) Nothing in this section shall prevent an employer from engaging workers on temporary basis including in core activity to meet the sporadic seasonal demand or supply/despatch products against sudden or sporadic orders.

41. Welfare Measures and Payment of Wages of the Contract Labour

- (1) The contractor shall be responsible for provision of welfare measures in respect of a contract labour as prescribed under Chapter V of this Act and if the contractor fails to provide the same within 15 days of engaging the contract labour the principal employer shall be responsible for providing the same.
- (2) The contract labour shall be subject to the same hours of work and leave as prescribed under this Act.

- (3) The contractor shall be responsible for payment of wages to the contract labour as per Wages Act and all wages shall be paid by the contractor in the presence of a representative of the principal employer and where the contractor fails to pay the wages within the period prescribed under the Wages Act or pays wages at lesser rate than that are prescribed under that Act the principal employer shall be held responsible to pay the wages to the contract labour as per provisions of the Wages Act.
- (4) The principal employer shall be responsible for complying with the provisions of Social Security Laws in respect of the contract labour employed in his establishment and he may do so either directly or through the contractor but the principal employer shall be held responsible for non deposit of any contribution to the social security fund in respect of the contract labour.

42. Wages to be paid to contract labour in certain cases

- (1) Where a contract labour is performing same or similar work as performed by a regular worker of the Principal Employer such Contract Labour shall be paid same wages as are paid to the regular worker and where there is no such comparable regular worker in the establishment of the principal employer, the contract labour shall be paid wages at the lowest rate of the comparable unskilled, semi skilled or skilled regular worker.

Chapter VIII

Miscellaneous

43. Employer's obligation in respect of interstate migrant workers in certain circumstances

- (1) It shall be the duty of every employer to see that the workers belonging to a State other than the State in which his establishment is situated are not discriminated against in any manner such as in hours of work, leave, welfare measures and payment of wages.
- (2) Where a workmen belonging to a State other than the State in which the establishment is located is employed in the establishment in any unskilled

or semi skilled category work the employer shall inform the State of origin of such worker and also the State in which the establishment is situated about the employment of such worker by registered post.

44. Bar against double employment

No worker shall work in an establishment on the day on which he has already worked in another establishment.

45. Removal of difficulties

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

46. Making of Rules

The Central Government as well as the State Government will have the power to make Rules.

47. Registers/Records, Returns, Notices, Identity cards

(1) Every employer of an establishment and every contractor to whom this Act applies shall in addition to maintaining the registers as are prescribed under the Wages Act shall maintain the following registers:

- a. Register of relays of shifts
- b. Leave Record Register

(2) Every employer who engages contract labour through contractors shall maintain a register of contractors.

(3) Every contractor shall send an annual return to the inspector with a copy to the licensing officer in the prescribed form provided that where the work allotted to the contractor by the principal employer comes to an end without completing full calendar year the return in question shall be sent by the contractor to the inspector of the area with a copy to the licensing officer within 15 days of completion of the work.

48. Repeals and Savings

- (1) The Shops and establishments Acts of different States, Chapter VI and VII of the Mines Act, 1952, Chapter III, Chapter V, Chapter VI, Chapter VII & Chapter VIII of the Factories Act, 1948, Chapter III, Chapter IV & Chapter VI of the Building & Other Construction Workers (RE&CS) Act, 1996, Contract Labour (R&A) Act, 1970, the Interstate Migrant Workmen (RE&CS) Act, 1979, the Motor Transport Workers Act, 1961, Cine Workers and Cinema Theatres Workers (Regulation of employment) Act, 1981, Bidi and Cigar Welfare (Conditions of Employment) Act, 1966 and Chapters I to VI A of the Plantation Labour Act, 1951 shall stand repealed on enactment of this Act.

49. Appointment of Inspectors

- (1) The inspectors appointed under the Wages Act by the appropriate Government shall be the inspectors under this Act.

50. Cognisance of Offences

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by an inspector or a worker or a Trade Union operating in the establishment or a recognised welfare institution.
- (2) Fines may be imposed for violation for any provision of the Act by the Chief Inspector or an Joint Chief Inspector as provided in Section 43.

51. Penalties

For every violation of the Act fine may be imposed which shall not be less than Rs. 5,000/- but which may extend to Rs. 10,000/-. For every subsequent offence or violation of the same nature a fined of Rs. 10,000/- may be imposed. Where the violation continues an additional fine of Rs. 200/- per day may be imposed for the period till such violations continues.

SCHEDULE -I

- a) Canteen
- b) Watch and Ward
- c) Cleaning

Note : More non-core perennial functions, as determined by the appropriate Government may be added

DRAFT LAW ON WAGES

Chapter I

Preliminary

Whereas it is expedient to consolidate all legal provisions relating to wages to workers, it is hereby enacted as follows: -

1. Extent, application and commencement

- (i) This may be called the Wages Act.
- (ii) It extends to the whole of India
- (iii) It applies to all establishments wherever there are 20 or more workers irrespective of the nature of activity that is carried on in the establishment.

2. Definitions

In this Act, unless the context indicates otherwise:

- a. Appropriate government: (Same as in laws on Labour Management Relations Act.)
- b. Bonus
- c. Employer: (Same as in Law on Labour Management Relations Act)
- d. Worker: (Same as in Law on Labour Management Relations Act)
- e. Wage: (As defined at present under P.W. Act)
- f. National Floor Level Minimum Wage
- g. Central or State Minimum Wage
- h. Remuneration: (Means wages and value in terms of money of the facilities or benefits given by the employer at concessional rates or free of cost.

3. **Prohibition of Discrimination Against Female Workers**

- (1) 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.
- (2) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotions vis-à-vis the male workers.
- (3) Where there is any dispute as to whether work is of same or similar nature, the matter will be decided by the appropriate government who may designate a person to decide the question.

Chapter II

Minimum Wages

4. **Payment of Minimum Wages**

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. **National floor level minimum wage**

There shall be a National minimum wage which the Central Government will determine and notify; the national minimum wage will be revised by the Central Government from time to time and in no case less frequently than once in two years. In fixing the national minimum wage, the Central Government will keep in view the conclusions of the Indian Labour Conference in its 15th session as also the 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. **Determination of Minimum Wage by Appropriate Government**

As in section 5 above, each State/Union Territory will also notify for all employments or activities a state minimum wage which shall not be less than

the national minimum wage; where considered appropriate, State/Union Territory may notify separate minimum wages for different regions of the State, so however that so that minimum wage is not less than the national minimum wage.

7. **Central and State Minimum Wages Advisory Boards**

The Central Government and State Government shall constitute Minimum Wages Advisory Boards for advising the Central Government or as the case may be the State Government in fixation or revision of minimum wages and other connected matters. The Boards may constitute committees to look into any matter pertaining to minimum wages. The wages may be determined on the advice of the board/committee or by notification method.

8. **Composition of Minimum Wage**

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% neutralisation to a cost of living index as may be prescribed and cash value of any food concession given to the worker. Where the appropriate Government is declaring dearness allowance as mentioned herein above the minimum wages of workers shall be revised at least once in five years and in other case once in two years.

9. **Minimum Wages of Piece Rated Workers:**

Where a worker is employed on a job the wages whereof are paid based on piece rate, the piece rate wages must be so fixed that the outputs by a normal worker in a 8 hour working shift will enable the workers to earn the equivalent of a time rated daily minimum wage that is notified. Where there is a failure or inability on the part of the employer to provide the worker with the 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% of the notified daily minimum wage.

Chapter III

Payment of Wages

10. Mode of Payment of Wages

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, the wages may be paid partly in kind and partly in cash, so however that at least two thirds of the wages are paid in cash. The value of wages paid in kind will, in case of dispute, be determined by the appropriate Government or its designated authority and its decision will be final.

11. Fixation of Wage Period

The employer shall fix the wage period for workers as either daily, or weekly or fortnightly or monthly. Provided that no wage period in respect of any worker shall be more than a month.

12. Time of Payment of Wages

(1) All wages will be paid before the 7th day of the succeeding month, in cases of monthly payment; where daily wage payments are made, it must be paid at the end of the shift, in cases of weekly rated payments, it must be paid on the last working day of the week i.e. before the weekly holiday and in case of fortnightly period before end of second day after the end of the fortnight.

(2) Where a worker has been removed or dismissed from service or has been retrenched or has resigned, the wages payable to him shall be paid to him within 48 hours of his removal, dismissal, retrenchment or as the case may be of his resignation.

13. Payment of Wages without deductions

There shall be no deductions made from the wages of the worker, except those as are specified in Sec 14.

14. Deductions which may be made from wages

- (1) Notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of a worker shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I) – Every payment made by the worker to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(Explanation II) – Any loss of wages resulting from the imposition, for good and sufficient cause, upon a worker of any of the following penalties, namely:-

- a. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar):
- b. The reduction to a lower post or time-scale or to a lower stage in a time scale; or
- c. Suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.

- (2) Deductions from the wages of worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely: -

- (a) fines;
- (b) deductions for absence from duty;
- (c) deductions for damage to or loss of goods expressly entrusted to the worker for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

- (d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government (or any officer specified by it in this behalf) may by general or special order, authorise.

Explanation- the word services (in this clause) does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any Welfare Fund statutory or otherwise constituted by the employer or a trade union for welfare of workers and their families with approval of appropriate Government of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payments of wages;
- (g) deductions of income tax payable by the worker or any other tax levied by the Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions for payment to cooperative societies approved by the appropriate Government (or any officer specified by it in this behalf)

- (j) deductions, made with the written authorisation of the worker for payment of any premium of his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;) or to a scheme of insurance maintained by the Indian Post Office; and
- (k) deductions made, with the written authorisation of the worker, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
- (l) deduction for payment of insurance premia on Fidelity Guarantee Bonds
- (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the worker of counterfeit or base coins or mutilated or forged currency notes;
- (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the worker to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
- (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the worker where such loss is directly attributable to his neglect or default;
- (p) deductions, made with the written authorisation of the worker, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification in the Official Gazette, specify;

- (3) Notwithstanding anything contained in this Act, the total amount of deductions which maybe made under sub-section (2) in any wage-period from the wages of any worker shall not exceed –
- (q) in cases where such deductions are wholly or partly made for payments to cooperative societies under clause (j) of sub-section (2), seventy five percent of such wages, and
 - (r) in any other case, fifty per cent of such wages;

Provided that where the total deductions authorised under sub-section (2) exceed seventy five per cent or, as the case may be, fifty percent of the wages, the excess may be recovered in such manner as may be prescribed.

- (4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the worker or otherwise any amount payable by such person under any law for the time being in force other than Indian Railways Act, 1890 (9 of 1890).

Chapter IV

Payment of Bonus

15. There shall be paid to every workers an annual bonus calculated at 8 1/3% 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, if any, in case of seasonal industries, city compensatory allowance and no other allowance) Demand 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 the 8 1/3% annual bonus shall not exceed 20% of the wages.

16. Payment of Bonus out of Allocable Surplus

- (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% of the available surplus arrived at as per provisions of sub Sec (2)
- (2) The available surplus shall be the amount calculated as per schedule appended to Act.
- (3) Audited accounts of companies shall not normally be questioned. Provided that wherever there is any dispute regarding the quantum of payment of bonus the authority such as the Labour Court or LRCs may call upon the employer to produce the balance sheet before it. However, the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

17. Disqualification for bonus

Notwithstanding anything contained in this Act, a worker shall be disqualified from receiving bonus under this Act, if he is dismissed from service for

- i Fraud; or
- i Riotous or violent behaviour while on the premises of the establishment; or
- iii Theft, misappropriation or sabotage of any property of the establishment.

18. Proportionate reduction in bonus in certain cases

Where a worker has not worked for all the working days in an accounting year, the minimum bonus of 8.33 percent of his salary or wage or higher that is payable to other workers in the establishment for the days he has worked in that accounting year, shall be proportionately reduced.

19. Set on and set off of allocable surplus

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the workers in the establishment under section 11, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the workers employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the workers in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the (Fourth) Schedule.
- (3) The principle of set on and set off as illustrated in the (Fourth) Schedule shall apply to all other cases not covered by sub-section (1) or sub section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

20. Adjustment of customary or interim bonus against bonus payable under the Act

Where in any accounting year

- (a) An employer has paid any Puja Bonus or other customary bonus to worker; or
- (b) An employer has paid a part of the bonus payable under this Act to worker before the date on which such bonus becomes payable, then, the

employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the worker under this Act in respect of that accounting year and the worker shall be entitled to receive only the balance.

21. Deduction of certain amounts from bonus payable under the Act

Where in any accounting year, worker is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the worker under this Act in respect of that accounting year only and the worker shall be entitled to receive the balance, if any.

22. Time limit for payment of bonus

All amounts payable to worker by way of bonus under this Act shall be paid in cash by his employer-

- (a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) in any other case, within a period of eight months from the close of the accounting year

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

23. Special provision with respect to payment of bonus linked with production or productivity

Notwithstanding anything contained in this Act -

- i Where an agreement or a settlement has been entered into by the workers with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976) or
- ii Where the workers enter into any agreement or settlement with their employer after such commencement,

For payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such workers shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

24. The Provisions of Payment of Bonus not to apply to certain classes of workers

Notwithstanding anything contained in this Act the workers employed as seamen in the establishment of Merchant Shipping Companies, workers of establishment & Departments of Central Government, State Government and local authorities, workers of Indian Red Cross Society or any like institutions, workers of hospitals, chamber of commerce, or charitable institutions not established for making profits, workers of universities, other educational institutions, a construction work which is not carried for more than a year.

Chapter V

Miscellaneous

25. Removal of difficulties

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

26. Making of Rules

The Central Government will have the power to make Rules.

27. Repeal and Savings

The Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 shall stand repealed on enactment of this law.

28. **Issue of Identity Cards**

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 payment.

29. **Claims under the Act**

- (1) The appropriate Government shall appoint an authority to hear the claims arising out of non-payment of Remuneration, deductions made by employer from the wages of a worker which are not according to this Act, payment of less wages than the minimum wages non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to female workers as prescribed under this Act or non-payment of bonus.
- (2) The authority may order compensation upto 10 times in addition to the dues involved as specified in sub section (1). The authority shall before ordering compensation have regard to the circumstances due to which the dues had remained unpaid or less paid.
- (3) If an employer fails to pay the outstanding dues of a worker that are ordered to be paid by the authority under Sub-Section (1) the authority shall issue a certificate of recovery to the Collector of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned worker.
- (4) Any claim arising out of any dues payable as prescribed under sub-section (i) above may be filed before the authority by either the worker himself or any Trade Union of which the worker is a member or a Non Government Organisation duly authorised by the worker or an Inspector appointed under this Act.

30. **Records, Returns and Notices**

- (3) Every employer of an establishment to which this Act applies shall maintain the following registers:
 - (i) Register of persons employed
 - (ii) Register of muster roll cum wages.
- (4) Every employer shall display a notice on the notice board at a permanent place in the establishment containing the wage rates of workers category wise, the wage period, the day or date and time of payment of wages and the name of the person responsible for payment of wages to the workers.
- (5) Every employer of an establishment shall send an annual return in the prescribed form to the Chief Inspector or to the authority as may be prescribed.

31. **Appointment of Inspectors**

An appropriate Government shall appoint a Chief Inspector, Joint Chief Inspectors, Deputy Chief Inspectors, Assistant Chief Inspectors and sufficient number of Inspectors for the country as a whole or State or different areas to carry out the objectives and purposes of this Act.

32. **Cognisance of offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by a worker or a trade union or a recognised welfare institution or an inspector appointed under this Act.
- (2) No court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences mentioned in sub sec (2) of Section 33.

33. **Penalties**

- (1) For offences of minor nature such as non or improper maintenance of records fines may be imposed by an Assistant Chief Inspector or a Deputy Chief Inspector upto Rs. 5,000/- for each violation.

- (2) For other offences such as non-payment of wages, or payment of wages at lesser rate than that are payable under then notwithstanding any other provision of this Act penalty of imprisonment which may extend upto 3 months or fine which may extend to Rs. 5,000/- or both may be imposed.
- (3) Whosoever files a claim which is found totally false shall be punishable with fine which may extend to Rs. 1000/-.

34. Exemptions

Nothing in this Act shall apply to workers employed in any establishment carried on by a department of Government directly.

35. Burden of Proof

Where a claim has been filed on account of non payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Act from the wages of a worker the burden to prove that the above mentioned dues have been paid shall be on the employer.

36. Contracting Out

Any contract or agreement whereby a worker forgoes his right to minimum wages or agrees to deductions from his wages not authorised under this Act or foregoes his right to bonus shall void ab initio.

APPENDIX - V

LAW ON LABOUR MANAGEMENT RELATIONS

An Act to consolidate and amend the law relating to registration of Trade Unions, rights and obligations of registered Trade Unions, conditions of employment of workers, settlements of disputes between the workers and the management, promoting healthy industrial relations based on mutual cooperation with a view to ensure accelerated economic growth while securing social justice for the workers, be it enacted as follows:

CHAPTER I

PRELIMINARY

1. Short title, Extent, Commencement & Application

- (1) This Act may be called the Labour Management Relations Act, 2002.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may by notification appoint and different dates may be appointed for different provisions of this Act and for different States, so however, the entire provisions of the Act will be brought into force in the whole of India within three years of the enactment of the Act.
- (4) It shall apply to every establishment or undertaking wherein 20 or more workers are employed, provided that nothing in this Act shall apply to an establishment of a Government performing sovereign functions of the State.

2. Definitions

- (1) In this Act unless there is anything repugnant in the subject or context the
 - (a) 'appropriate Government' means the Central Government in respect

of establishments of Departments of Central Government, railways, posts, telecommunications, major ports, light houses, Food Corporation of India, Central Warehousing Corporation, banks (other than Cooperative banks), insurance, financial institutions, mines, stock exchanges, shipping, mints, security printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Cantonment Boards, Central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR NCERT and in respect of industrial disputes between the contractor and the Contract Labour engaged in these enterprises/establishments and in respect of all others, the concerned State Government/Union Territory administrations.

- (b) 'Arbitrator' means an Arbitrator or a body of Arbitrators chosen by parties to a dispute or named so in the collective agreement or settlement drawn from the panel of Arbitrators maintained by the State Labour Relations Commission or Central Labour Relations Commission or other eminent persons in the community who are accepted or nominated as such by any person or persons who is or are party to any individual, industrial or trade union dispute.
- (c) 'average wage' means the average of wages (including piece rate earnings) payable to a worker
 - (i) in case of a monthly paid worker and piece rated worker, in three complete calendar months
 - (ii) in case of a fortnightly or weekly paid worker in four complete fortnights or four complete weeks
 - (iii) in case of daily paid worker, in the 12 full working days

preceding the date with reference to which the average pay becomes payable if the worker had worked for three complete calendar months or four complete fortnights or four complete weeks or as the case may be 12 full working days and where such average cannot be calculated, as

aforesaid, the average of wages payable to the worker during the period he actually worked.

- (d) 'award' means an interim or final determination of any individual dispute or industrial dispute or trade union dispute by an Arbitrator, Lok Adalat, Labour Court, State Labour Relations Commission, Central Labour Relations Commission or National Labour Relations Commission,
- (e) 'banking company' means a banking company as defined in section 5 of the Banking Companies Act, 1949, and includes the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934, the State Bank of India constituted under the section 3 of the State Bank of India Act, 1955, any subsidiary bank as defined in clause(k) of section 2 of the State Bank of India (subsidiary banks) Act, 1959, the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 and a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (f) 'negotiating agent' means a registered trade union recognised or certified as such under this Act being the single negotiating agent or a combination or college of more than one registered trade unions and includes a negotiating committee;
- (g) 'closure' means the permanent closing down of any place of employment or part thereof;
- (h) 'employer' means who employs workers in his establishment and where the establishment is carried on by any department of Central Government or State Government, the authority prescribed in this behalf or where no authority is prescribed the head of the department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority;

- (i) 'establishment' means any activity carried on by co-operation between an employer and workers and includes any branch or office of the establishment within a specified local area as may be prescribed;
- (j) 'executive' means the body by whatever name called, to which the management of the affairs of a trade union is entrusted;
- (k) 'individual dispute' means any dispute or difference between an employer and any of his worker in relation to, or arising from, transfer or promotion of, or refusal or failure to promote, such worker or the termination of his employment or any punishment (including discharge or dismissal) imposed on such worker and includes any dispute or difference as to the money due to such worker from the employer or as to the amount at which a benefit, which is capable of being computed in terms of money, is to be computed.

* Explanation: Where a question arises whether a dispute is an individual dispute or an industrial dispute the same shall be decided by a Labour Court or as the case may be the appropriate Labour Relations Commission.

- (l) 'Industrial dispute' means any dispute or difference between employers and workers, or between employers and employers, or between workers and workers, which is connected with the employment or non-employment or the terms of employment or conditions of labour, of any person, but does not include an individual dispute or a trade union dispute.
- (m) 'Insurance company' means a company defined as such in section 2 of Insurance Act, 1938
- (n) 'lay off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stocks or break down of machinery or natural calamity or for any other connected reason to give employment to

a worker whose name is borne on the muster roll of his establishment and who has not been retrenched;

Explanation: Every worker whose name is borne on the muster rolls of the establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause:

Provided that if the worker, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid off only for one half of that day;

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

- (o) 'lock out' means the (temporary closing of a place of employment) or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;
- (p) 'managerial or other employee' for the purposes of Chapter X means a person who is appointed or engaged as a supervisor or an officer or a manager and includes a person engaged as a worker but excluded from the definition of a worker under this Act due to the wage limit but does not include a manager or a general manager who has overall control over the affairs of an establishment or the undertaking;

- (q) 'notification' means a notification published in the Official Gazette;
- (r) 'office bearer', in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;
- (s) 'prescribed' means prescribed by rules made under this Act;
- (t) 'registered trade union' means a trade union registered under this Act;
- (u) 'Registrar' means Registrar of a trade unions appointed under this Act;
- (v) 'retrenchment' means the termination by the employer of services of a worker on account of surplusage of manpower and does not include
 - (i) termination of service of a worker by way of punishment on account of misconduct;
 - (ii) voluntary retirement of a worker or resignation;
 - (iii) retirement of a worker on reaching the age of superannuation in terms of contract of employment, rules or standing orders, applicable to the worker;
 - (iv) termination of service of a worker on grounds of ill health;
 - (v) termination of service of a worker as a result of the contract of employment coming to an end or non renewal of contract of employment or termination of contract under stipulation in that behalf contained therein;
- (w) 'settlement' means a written collective agreement between the employer and the negotiating agent arrived at otherwise than in the course of conciliation proceedings which has been sent to the concerned Labour Relations Commission and includes a settlement arrived at in the course of conciliation proceedings a copy of which has been sent by the Conciliation Officer before whom it is signed to the concerned Labour Relations Commission and the appropriate Government;

- (x) 'socially essential service' means an establishment carrying on the activity of water supply or sanitation or generation and supply of electricity or public transport or any activity connected with any medical service;
- (y) 'sovereign functions' mean and include the functions pertaining to maintenance of law and order, making of law and justice, levy and collection of taxes, external relations and defence of the country performed by Government;
- (z) 'strike' means total or partial cessation of work by body of persons employed in any establishment acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept work or employment;
- (aa) 'trade union' means any combination whether temporary or permanent formed primarily for the purpose of regulating relations between the workers and the employers or between workers and workers or between employers and employers and includes a federation of Trade Unions or a central organisation of Trade Unions and includes an association or union of unorganised sector workers registered under this Act notwithstanding the fact that there is no employer-employee relationship or such relationship is not clear;
- (bb) 'trade union dispute' means any dispute –
 - (i) between a trade union and another trade union or
 - (ii) between a member or two or more members of a trade union and the trade union, or between two or more members of a trade union relating to registration, certification, administration management of affairs of that trade union including election of officer bearers thereof;
 - (iii) between a worker and a trade union regarding non

admission as a member of the trade union without sufficient reason;

- (cc) 'undertaking' means a body set up set up under the Companies Act or under any other law relating to setting up of banking or insurance companies or a partnership or proprietary firm and includes the offices, sections, units and branches of an undertaking whether situated in an area or in the whole of the country.

Explanation: a body corporate, partnership or proprietary firm shall be treated as a separate undertaking where it is drawing a separate balance sheet and preparing separate profit and loss account.

- (dd) 'wages' or 'remuneration' will have the same meaning as assigned to them in the Wages Act and wages generally used in this Act may mean remuneration wherever the context so requires.

- (ee) 'worker' means any person employed for carrying out any activity in an establishment for hire or reward whether the terms of employment be expressed or implied and whose wages do not exceed Rs. 25,000 per mensem and for the purposes of any proceedings under this Act in relation to an individual dispute includes any such worker who has been dismissed, discharged or retrenched and whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is a subject of Air Force Act, Navy Act or Army Act;

(ii) who is employed in the police service or as an officer or other worker of a prison; or

(iii) who is employed in a managerial, administrative or supervisory capacity;

CHAPTER II

AUTHORITIES TO BE SET UP UNDER THE ACT

3. Registrar of Trade Unions

- (1) Appropriate Government may by notification appoint a person to be the Registrar of Trade Unions, and other persons as Additional Registrars of Trade Unions, Joint Registrar of Trade Unions and Dy. Registrars of Trade Unions who shall exercise such powers and perform such duties of the Registrar as the appropriate Government may by notification specify from time to time.
- (2) Subject to the provisions of any order made by the appropriate Government where an Additional Registrar of Trade Unions or a joint Registrar of trade unions or a Dy. Registrar of Trade Unions exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated such Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Dy. Registrar of Trade Unions shall be deemed to be the Registrar in relation to that Trade Union for the purposes of this Act.

4. Grievance Redressal Committee

- (1) In every establishment there shall be established a Grievance Redressal Committee consisting of equal number of workers and employers representatives for looking into grievances of workers.
- (2) The Grievance Redress Committee shall consist of not more than 10 and not less than 2 members depending on the employment size of the establishment and where the number of representatives is 4 or more it shall have a chairman and a vice chairman elected by the Committee.
- (3) Where in respect of an establishment there is recognised negotiating agent, the workers representatives on the committee shall be nominated by such negotiating agent certified under this Act.

- (4) The appropriate Government shall make rules to prescribe the number of representatives to be nominated by the negotiating agent and the employer depending on the employment size of the establishment, election of chairman and vice chairman and such other matters as may be necessary for the conduct of business of the Grievance Redressal Committee for resolution of grievances of workers.

5. Lok Adalats

- (1) The appropriate Government may by notification establish such number of Lok Adalats as it thinks fit and define the local limits of their jurisdiction.
- (2) The Lok Adalat shall have its headquarter at such place as the appropriate Government may by notification specify in this behalf. Provided that nothing shall prevent the Lok Adalat from holding its sittings at such other place or places within the local limits of its jurisdiction as it considers necessary.
- (3) The qualification for appointment as Presiding Officer of a Lok Adalat shall be the same as have been prescribed for appointment of Presiding Officer of a Labour Court under this Act.
- (4) Lok Adalat shall subject to others provisions of this Act have powers to arbitrate in individual disputes, industrial disputes, trade union disputes and perform such other functions as may be assigned to it under this Act.

6. Conciliation Officers And Their Duties & Functions

- (1) The appropriate Government may by notification appoint such number of persons as it thinks fit depending on the number of cases to be the Conciliation Officers charged with the duty of conciliating in and promoting the settlement of individual and industrial disputes.

- (2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area either permanently or for a limited period.
- (3) The duties and functions of a Conciliation Officer shall be as under:
 - (i) to assist employers or their representatives and the trade unions to achieve and maintain effective labour relations;
 - (ii) to chair conciliation proceedings;
 - (iii) to deal with such matters as are referred to him by the Labour Court or the Labour Relations Commission;
 - (iv) to offer his services to the parties to a dispute, and to assist them to resolve the dispute including making of enquiry as may be necessary;
 - (v) to exercise such other functions as are conferred on a conciliator under this Act.

7. **Arbitrators**

'Central Labour Relations Commission' or as the case may be the State Labour Relations Commission shall maintain a panel of persons who have distinguished themselves in the field of Trade Union, management, economics or have distinguished themselves as conciliators or being in the service of Central or State Government are dealing with the labour issues, to function as Arbitrators in individual disputes, industrial disputes and trade union disputes.

Provided that nothing shall prevent the parties to any individual, industrial or trade union dispute to accept or nominate by agreement other eminent persons in the community to arbitrate in their disputes.

8. Labour Courts

- (1) The appropriate Government in consultation with the Central Labour Relations Commission or as the case may be the State Labour Relations Commission shall by notification establish such number of Labour Courts as it thinks fit and define local limits of their jurisdiction and appoint Presiding Officers of such Labour Courts.

The Labour Court shall have its headquarters at such place as the appropriate Government in consultation with the Central Labour Relations Commission or as the case may be the State Labour Relations Commission may by notification specify.

- (2) Provided that the Labour Court may hold its sittings at such other place or places within its local limits of jurisdiction, as it considers necessary.

Provided further that nothing shall prevent the appropriate Government from transferring a Presiding Officer of the Labour Court to another Labour Court set up by it.

- (3) No person shall be qualified as Presiding Officer of a Labour Court unless:

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- a. he has for a period of not less than one year been a District Judge or an Additional District Judge or
- b. he has held a judicial office in India for not less than 7 years or is a member of Indian Labour judicial Service, or
- c. he has practiced as an advocate or attorney for not less than 7 years in any court or
- d. he has held the post of a Dy. Labour Commissioner or above under the State Government or held the post of Regional Labour Commissioner or above in the Central Government and has experience of dealing with Labour matter for not less than 10 years.
- e. he has in the opinion of appropriate Government distinguished himself in the field of Industrial relations or human resource management.

- (4) The Labour Court shall subject to other provisions of this Act have powers to adjudicate in individual disputes; and Trade Union disputes and claims as prescribed under this Act and may be assigned such other functions such as settlement of disputes and claims, and trial of offences under this Act and other enactments as may be specified in this behalf by appropriate Government by notification.

9. **Central & State Labour Relations Commission**

- (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) (a) The Central Labour Relations Commission and each of the State Labour Relations Commission shall consist of a president and such number of other members as are necessary provided that the number of members representing labour shall be equal to the number of members representing management.
- (b) 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.
- (c) (i) A bench shall consist of not less than three members of whom one shall be a judicial member.
- (ii) The President may discharge the functions of a judicial member of any bench.
- (iii) 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 or, as the case may be, by the State 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 and one member representing the workers.

- (iv) The benches of the Central or State Labour Relations Commission shall sit at such place or places as the Central or as the case may be the State Government may by notification specify.
- (4) (a) The President of the Central Labour Relations Commission or State Labour Relations Commission shall be a sitting or retired judge of a High Court or is eligible to be appointed as a judge of the High Court.
- (b) The Members of the Central and State Labour Relations Commission shall be persons who have distinguished themselves in the field of economics, labour or labour relations, trade union movement and management.
- (5) Central and State Labour Relations Commission will be deemed to be set up under Article 332- B of the Constitution.

10. **National Labour Relations Commission**

- (1) The Central Government may by notification establish a National Labour Relations Commission to
 - (i) hear appeals against any order or award of the Central Labour Relations Commission or a State Labour Relations Commission involving substantial question of law.
 - (ii) adjudicate in an industrial dispute of national importance.
 - (iii) adjudicate in an industrial dispute in which establishments situated in more than one States are likely to be interested.

- (iv) adjudicate in a trade union disputes of a Trade Union having offices in more than one State.
- (2) The National Labour Relations Commission shall consist of President who shall be a sitting judge of the Supreme Court or a person who is eligible to be appointed as a judge of the Supreme Court and such other number of members as may be prescribed one of whom shall be from judiciary or from Indian Labour Judicial Service and other members shall be distinguished persons from the field of Labour, trade union, economics or management.
- (3) The National Labour Relations Commission may issue any direction to any Labour Court, Labour Relations Commission or an official of the Government for carrying out purposes of this Act.
- (4) The National Labour Relations Commission may have benches or have sittings at such places as may be decided by the Commission and where a bench is set up it shall have not less than 3 members presided over by a judicial member.
- (5) National Labour Relations Commission shall have the powers exercisable by the Supreme Court under Clause 3 of Article 32 of the Continuation in pursuance thereof.

11. Tenure of Office of the President and members of the Commission, Procedure of removal, staff of the Commission, and other related matters

- (1) 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 Act to fill such vacancy enters upon his office.

- (2) 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.
- (3) The president and members of a Labour Relations Commission shall hold office until they attain the age of sixty-five years.
- (4) 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 State 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.

- (5) (a) 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 grounds of proved misbehaviour or incapacity on the recommendation of the National Judicial Commission or a Committee set up in this behalf under chairmanship of Chief Justice of India 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.
- (b) The president or any other member of a State Labour Relations Commission may be removed from office by an order made by the Governor of the State on the ground of proved misbehaviour or

incapacity by the National Judicial Commission or a Committee appointed under the Chairmanship of the Chief Justice of the High Court, 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.

- (c) 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 (a) and (b).
- (6) (a) 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.
- (b) 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.
- (7) (a) No High Court shall have any power of superintendence over the Labour Relations Commissions.
- (b) No Court shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of or in relation to the Labour Relations Commission.
- (8) (a) 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.

- (b) 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.
- (9)
- (a) 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 Labour Relations Commission in the discharge of their functions and provide the Commission with such officers and other employees as it may think fit.
 - (b) 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.
 - (c) The officers and other employees of the Labour Relations Commission shall discharge their functions under the general superintendence of the president.
- (10) The Central Labour Relations Commission and the State Labour Relations Commission shall have the following functions, namely :-
- (a) Hearing of appeals against the award of a Labour Court.
 - (b) adjudication of disputes as provided under this Act which are not settled by collective bargaining and there is no agreement to refer the same to arbitration.

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 or of the appropriate Government. 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.

CHAPTER III

Trade Unions

12. Trade Unions to be Formed

- (1) A Trade Union may be formed by workers or employers and in case of a federation or central organisation by Trade Unions of workers or employers.
- (2) Every Trade Union shall carry on its activities in accordance with the provisions of this Act and the constitution and rules framed by it and approved by the Registrar.
- (3) A Trade Union, which is not registered under this Act, shall not be entitled to any rights and privileges under this Act.

13. Requirement for Registration

- (1) (a) In case of Trade Union of workers a minimum of 10% of workers employed in an establishment, undertaking or industry with which a Trade Union is connected shall be required to be the members of the Trade Union for making an application for registration

Provided that where 10% of workers exceed 100 it shall be sufficient if the application is made by 100 workers.

Provided further that where 10% of workers of an establishment or undertaking or an industry is less than seven workers a minimum of 7 workers shall be required to make an application for registration.

- (b) In the case of unions or association of workers in unorganised sector where there is no employer-employee relationship or such relationship is not clear, the requirement of 10% membership in an establishment or undertaking or industry shall not apply.
- (2) In the case of a Trade Union of employers not less than 7 employers shall be required for making an application for registration.

14. **Application for Registration**

- (1) Every application for registration of a Trade Union shall be accompanied by —
 - (a). A statement showing –
 - (i) The names, occupations and addresses of the persons making the application, the name and address of the establishment, undertaking or industry, and where the establishment has two or more units, branches or offices, the name and address of the unit, branch or office, wherein such persons are employed;
 - (ii) The name of the Trade Union and the address of its head office;
 - (iii) The title, name, age, residential address and occupation of each of the office bearers of the Trade Union;
 - (iv) In the case of a Trade Union, being a federation or central organisation of trade unions, the names, addresses of registered offices and registration numbers of the member Trade Unions;

- (b). Three copies of the rules of the Trade Union together with a copy of the resolution by the members of the Trade Union adopting such rules;
- (c). A copy of the resolution adopted by the members of the Trade Union authorising the applicants to make an application for registration; and
- (d). In the case of a Trade Union, being a federation or a central organisation of Trade Unions, a copy of the resolution adopted by the members of each of the member Trade Unions, meeting separately, agreeing to constitute a federation or a central organisation of Trade Unions.

Explanation: For the purpose of this clause, resolution adopted by the members of the Trade Union means, in the case of a Trade Union, being a federation or a central organisation of Trade Unions, the resolution adopted by the members of each of the member trade unions, meeting separately.

- (2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

15. **Prohibition of Craft, category or caste based unions**

A union which comprises workers of a craft or category or a union which is based on caste shall not be registered under this Act.

16. **Power to call for further information or alternation of name**

- (1) The Registrar may call for further information from the persons making application for registration with a view to satisfy himself that the

application made for registration of the Trade Union complies with the provisions of this Act and it is otherwise entitled for registration under this Act and may refuse to register the Trade Union until such information is furnished.

- (2) If the name under which the Trade Union is proposed to be registered is identical with that of an existing Trade Union or in the opinion of the Registrar so nearly resembles the name of an existing trade union that such name is likely to deceive the public or the members of the either Trade Union, the Registrar shall require the persons making application to alter the name of Trade Union and shall refuse to register the Trade Union until such alteration has been made

17. Provisions to be contained in the Constitution & Rules of the Trade Union

- (1) A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules of the Trade Union provide for the following matters, namely: -
 - (a). the name of the trade union;
 - (b). the whole of the objects for which the trade union has been established;
 - (c). the whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
 - (d). the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office bearers and members of the trade union;
 - (e). the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the establishment, undertaking or industry, or units, branches or offices, of an establishment as the case may be, with which the

trade union is connected, and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 35 to be office bearers to form the executive of the trade union;

- (f). the payment of a subscription by members of the trade union as prescribed under this Act;
- (g). the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;
- (h). the annual general body meeting of the members of the trade union, the business to be transacted at such meeting, including the election of office bearers of the trade union;
- (i). the manner in which the members of the executive and the other office bearers of the trade union shall be elected once in a period of every two years and removed and filling of casual vacancies’
- (j). the safe custody of the funds of the trade union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office bearers and members of the trade union;
- (k). the manner in which the rules shall be amended, varied or rescinded; and
- (l). the manner in which the trade union may be dissolved.

18. **Registration of a Trade Union**

- (1) If the information furnished by the trade union which has made the application is complete in all respects the Registrar shall make an order within 60 days from the date of receipt of the application for registration of the Trade Union for either granting or refusing to grant the registration and shall communicate his order to the applicant union.

Provided that where the Registrar refuses to grant the registration he shall state the reasons thereof for such refusal

- (2) Where the Registrar makes an order for registration of a trade union he shall issue a certification of registration to the applicant trade union in the prescribed form which shall be the conclusive evidence that the trade union has been registered under this Act.
- (3) If the Registrar has issued a registration certificate to a trade union he shall enter the name and other particulars of the trade union in a register maintained in this behalf in the prescribed form.

19. Deemed Registration in Certain Cases

- (1) Every trade union registered under the Trade Unions Act, 1926 having valid registration before the commencement of this Act shall be deemed to be registered under this Act.

Provided that a union which does not fulfil the requirement of Section 13 and 17 or a union which consists of workers of a certain craft or category as members or a union which is based on the caste shall not be automatically deemed to have been registered.

- (2) The Registrar shall within 6 months of commencement of this Act serve on every union covered by the proviso to sub section (1) a notice requiring such trade union to either amalgamate with other trade union or unions or become a general union or to otherwise comply the requirements of the proviso.
- (3) Where any such union which has been served a notice under sub section (2) fails to comply with the direction given by the Registrar in his notice within the specified period the registration of such a trade union shall stand cancelled.

20. Cancellation of Registration

- (1) Certificate of registration of a trade union may be cancelled by the Registrar -

- (a). on the application of the trade union to be verified in such manner as may be prescribed;
- (b). if the union had obtained the registration by misrepresentation or fraud or mistake;
- (c). if the union has failed to maintain the accounts or to submit the annual return in the prescribed manner or within the prescribed period or the annual return submitted by it is false or defective and the defect is not rectified within the prescribed period;
- (d). if the trade union has wilfully after the notice from the Registrar contravened any provision of this Act or rules made thereunder or has contravened its constitution and rules;
- (e). if the trade union has not held its elections as prescribed under this Act within the prescribed period;
- (f). if the trade union has made or allowed to continue any provision in its constitution and rules which is inconsistent with this Act or rules made thereunder or has rescinded any of its rules providing for any matter, provision for which is required to be made by section 17.

Provided that not less than 60 days previous notice in writing specifying the grounds on which it is proposed to cancel the certificate of registration of a trade union shall be given by the Registrar to the trade union before the certificate of registration is cancelled otherwise than on the application of the trade union

- (g). if the trade union no longer fulfills the requirements of registration as prescribed under section 13.
- (2) A certificate of registration of a trade union shall be cancelled by the Registrar where a Labour Court or the Central or the State Labour Relations Commission or the National Labour Relations Commission has made an order for cancellation of registration of such union.

- (3) While cancelling the certificate of registration of a trade union the Registrar shall record the reasons for doing so and communicate the same in writing to the trade union concerned.

21. Appeal against Non-Registration or Cancellation of Registration

- (1) Any person aggrieved by the refusal of the Registrar to grant registration to a trade union under section 18 or by cancellation of a certificate of registration under section 20 or if the Registrar has not acted within 60 days on the application for registration may within such period as may be prescribed prefer an appeal to the Labour Court whose decision shall be final.
- (2) The Labour Court may after giving the parties concerned an opportunity to be heard dismiss the appeal or pass an order directing the Registrar to register the trade union and to issue a certificate of registration or set aside the order of cancellation of certificate of registration as the case may be and forward a copy of the order to the Registrar.

22. Registered Office of the Trade Union

All communications and notices to a registered trade union may be addressed to its registered office which shall be the address of the head office of the trade union as entered in the register maintained by the Registrar of the trade unions.

23. Change in Address & other Particulars of the Trade Union

It shall be incumbent on a trade union to inform the Registrar by a registered post if any change in the particulars of the trade union as contained in section 13 and 17 has occurred or there is change in the address of the registered office of the trade union within 14 days of occurring of such change.

24. Incorporation of a Registered Trade Union

Every registered trade union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal

with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

25 **Certain Acts not to Apply to Registered Trade unions**

The following Acts namely –

- (a). the Societies Registration Act, 1960
- (b). the Cooperative Societies Act of the Central Government & similar enactments of the State Governments, and
- (c). the Companies Act, 1956

shall not apply to any registered trade union and the registration of any such trade union under any such Act shall be void.

26. **Objects on Which General Funds of a Trade Union may be Spent**

The general funds of a registered trade union shall not be spent on any objects other than the following namely: -

- (a). the payment of salaries, allowances and expenses to office bearers of the trade union;
- (b). the payment of expenses for the administration of the trade union including audit of the accounts of the general funds of the trade union;
- (c). the persecution or defence of any legal proceeding to which the trade union or any member thereof is a party when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the trade union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (d). the conduct of individual, industrial or trade union disputes on behalf of the trade union or any member thereof;
- (e). the compensation of members for loss arising out of any individual or

industrial dispute;

- (f). allowances to members or their dependants on account of death, old age, sickness, accidents, or unemployment of such members,
- (g). the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
- (h). the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or the dependants of members;
- (i). the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workers as such;
- (j). the payment, in furtherance of any of the objects on which the general funds of the trade union may be spent, of contributions to any cause intended to benefit workers in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one fourth of the combined total of the gross income which has up to that time accrued to the general funds of the trade union during that year and of the balance at the credit of those funds at the commencement of that year; and
- (k). subject to any conditions contained in the notification, any other object notified by the appropriate Government in the (official gazette).

27. Constitution of a Separate fund for Political purposes

- (1) A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2)
- (2) The objects referred to in sub section (1) are –

- (a). the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or
 - (b). the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
 - (c). the maintenance of any person who is a member of any legislative body constituted under the constitution or of any local authority; or
 - (d). the registration of electors or the selection of a candidate for any legislative body constituted under the constitution or of any local authority; or
 - (e). the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.
- (3) No member shall be compelled to contribute to the fund constituted under sub section (1) and a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the trade union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the trade union.

28. **Immunity from Civil Suit in Certain Cases**

- (1) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of an individual dispute, industrial dispute or trade union dispute to which a member of the trade union is a party on the ground only that such act

induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he desires.

- (2) A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortuous act done in contemplation or furtherance of an individual dispute, industrial dispute or trade union dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union.

29. **Criminal Conspiracy in Industrial Disputes**

No office bearer or member of the registered trade union shall be liable to punishment under sub section (2) of Section 120-B of Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in Section 26, unless the agreement is an agreement to commit an offence.

30. **Enforceability of Agreements**

Notwithstanding anything contained in any other law for the time being in force an agreement between the members of a registered trade union shall not be void or voidable merely by reasons of the fact that any of the objects of the agreement are in restraint of trade.

Provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a trade union shall or shall not sell their goods, transact business, work, employ or be employed.

31. **Bar on Membership of Multiple Unions**

No worker shall be a member of more than one trade union at a time.

32. Right to Inspect Books of Trade Union

The account books of a registered trade union and the list of members thereof shall be open to inspection by an office bearer or member of the trade union at such times as may be provided for in the rules of the trade union.

33. Rights of Minor to Membership of Trade Union

Any person who has attained the age of fifteen years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may, subject to as aforesaid enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules;

34. Membership Fee & Mode of Its Collection

- (1) The subscriptions payable by the members of the trade union shall be
 - (i) in case of a trade union of persons employed in agricultural operations or rural establishments or workers employed in the establishment in the unorganised sector not less than 50 paise per month per member; and
 - (ii) in other cases not less than one rupee per month per member;
- (2) Workers who are members of a trade union shall give a written authorisation in the prescribed manner in favour of the trade union of which they are members authorising the employer to deduct their subscription from their wages and to pay that over to the trade union concerned in the prescribed manner.
- (3) Where any worker is not a member of any trade union he shall be liable to pay subscription to the welfare fund established by the State Government for securing welfare of workers in general at a rate equal to the membership fee of the sole negotiating agent or the highest subscription of any union included in the negotiating college and where there is no general fund of the State Government to the fund established by employer with the approval of the State Government for the welfare of workers of the establishment or undertaking.

35. **Disqualification of Office Bearers of Trade Unions**

- (1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office bearer of a registered trade union if—
- (i) he has not attained the age of 18 years;
 - (ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment unless a period of 5 years has elapsed since his release after undergoing such imprisonment;
 - (iii) he is already office bearer of 10 trade unions;
 - (iv) the Labour Court or a Labour Relations Commission has directed that he shall be disqualified for being chosen or for being office bearer of a trade union for a period specified therein

36. **Adjudication of Trade Union Disputes**

- (1) Where a dispute arises between –
- (a) one trade union and another;
 - (b) one group of members and another group of members of a trade union;
 - (c) one or more members of a trade union and the trade union;
 - (d) one or more workers who are members of the trade union and the union regarding registration, administration or management or election of office bearers of the trade union; and
 - (e) one or more workers who are refused admission as members and the trade union

an application may be made in the prescribed manner to the Labour Court having jurisdiction over the area where the Registered office of the trade union or trade unions is located for adjudication of such disputes –

- (i) where the dispute is between one trade union and another by the principal office bearer of any one of the trade union;
 - (ii) where the dispute is between a worker and a trade union on account of non admission as a member by the worker himself;
 - (iii) where the dispute is between one group of members and another groups of members of the union or between one or more members of the union and the union, by any person who is a member of the trade union; or
 - (iv) where a dispute is in respect of a trade union which is a federation of trade unions by principal office bearer authorised in this behalf by the trade union.
- (2) Notwithstanding anything contained in sub section (1) where the appropriate Government is of the opinion that any trade union dispute is of considerable importance the appropriate Government may make an application to the Central Labour Relations Commission or as the case may be to the State Labour Relations Commission for seizing the trade union dispute in adjudication.
- (3) Notwithstanding anything contained in sub section (1) & sub section (2) where the Central Government is of the opinion that the dispute involves any question of national importance or the party to the dispute is a registered trade union having offices in more than one state the office bearer of the trade union, the Central Government may make an application to the National Labour Relations Commission for seizing the trade union dispute in adjudication for resolution of such dispute.
- (4) The order or award of the Central or State Labour Relations Commission or as the case may be of the National Labour Relations Commission shall be final.
- (5) No civil court shall have power to entertain any suit or other proceedings in relation to any dispute referred to in sub section (1).

37. Proportion of Office Bearers not engaged in the establishment or industry

- (1) Not more than one third of total number of office bearers or a total number of five office bearers whichever is less shall be the persons who are not actually engaged or employed in the establishment or industry with which the trade union is connected.

Provided that the appropriate Government may by special or general order declare that the provisions of this sub section shall not apply to any trade union or class of trade unions specified in the order.

Explanation: for the purpose of this Sub section a worker who has retired or has been retrenched from the establishment or industry with which the trade union is connected shall not be construed as outsider for the purposes of this sub section.

- (2) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the trade union is connected) in the Union or a State shall be a member of the executive or other office bearer of a trade union.

38. Change of Name

Any registered trade union may, with the consent of not less than two thirds of the total number of its members and subject to the provisions of Section 18, change its name.

39. Amalgamation of Trade Unions

Any two or more registered trade unions may be amalgamated as one trade union with or without dissolution or division of the funds of such trade unions or either or any of them, provided that the votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least 60% of the votes recorded are in favour of the proposal.

40. Notice of Change of Name or Amalgamation

- (1) Notice in writing of every change of name and of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the trade union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every trade union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated trade union is situated in a different state to the Registrar of such state.
- (2) If the proposed name is identical with that by which any other existing trade union has been registered or in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either trade union, the Registrar shall refuse to register the change of name.
- (3) Save as provided in sub section (2) the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in Section 8, and the change of name shall have effect from the date of such registration.
- (4) The Registrar of the State in which the head office of the amalgamated trade union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the trade union formed thereby is entitled to registration under section 18, register the trade union and the amalgamation shall have effect from the date of such registration.

41. Effects of Change of Name And of Amalgamation

- (1) The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

- (2) An amalgamation of two or more registered trade unions shall not prejudice any right of any such trade unions or any right of a creditor of any of them.

42. **Dissolution**

- (1) When a registered trade union is dissolved, notice of the dissolution signed by seven members and by the secretary of the trade union shall, within fourteen days of the dissolution, be sent to the Registrar, and such Union shall be deregistered by him if he is satisfied that the dissolution has been affected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such deregistration.
- (2) Where the dissolution of a registered trade union has been registered and the rules of the trade union do not provide for the distribution of funds of the trade union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

43. **Annual Returns**

- (1) Every registered trade union shall forward annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of such registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union, existing on such 31st day of December.
- (2) The general statement shall be prepared in such form, and shall contain such particulars, as may be prescribed.
- (3) Together with the general statement referred to in sub-section (1) every registered trade union shall forward to the Registrar a statement showing all changes of office bearers made by the trade union during the year to which such general statement relates, along with a copy of the rules of the trade union corrected up to the date of despatch thereof to the Registrar.

- (4) A copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration.
- (5) For the purpose of examining the documents referred to in sub section (1), (3) and (4), the Registrar or any officer authorised by him by general or special order, may at all reasonable time inspect the certificate of registration, account books, registers and other documents, relating to a trade union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometres from the registered office of such trade union.

CHAPTER IV

STANDING ORDERS

44. Non application of this Chapter in Certain Circumstances

The provisions of this Chapter shall not apply to an industrial establishment in so far as the workers employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

45. Making of Rules and Model Standing Orders by the Central Government

- (1) The provisions of this section and sections 46, 47 and 48 shall apply to all such establishments or undertakings as have employed not less than 50 or more workers on any day during preceding 12 months.

Provided that where the provisions of this section and sections 46, 47 and 48 have become applicable to an establishment they shall continue to apply to such establishment notwithstanding the fact that less than 50 workers are employed at any time thereafter.

- (2) The central Government shall make rules and Model Standing Orders to provide for the following matters, namely: -
- (a) classification of workers, that is to say, whether permanent, temporary, apprentice, probationers, badlies;
 - (b) conditions of service of workers, including matters relating to the hours of work, holidays, pay day, wage rates, attendance and late coming, entry and exit from specified gates, liability for search, closing and opening or reopening of sections and shops of establishment, temporary stoppage of work and rights and obligations of employer and workers arising therefrom, issue of orders of appointment of workers, procedure to be followed by workers in applying for, and the authority which may grant, leave and holidays and issue of service certificate;
 - (c) acts of misconduct on the part of the workers, classification between minor and major acts of misconduct, enquiry to misconducts, suspension pending enquiry, graded punishment such as suspension, stoppage of increment(s), reduction to lower rank, removal or dismissal from service depending on the nature and gravity of misconduct;
 - (d) the list of misconducts which shall be either exhaustive or be treated as illustrative and should include in alia sexual harassment of female workers, go slow, work rule, refusal to undergo training organised by employer at his cost without sufficient cause, etc.
 - (e) superannuation of workers;
 - (f) shift working of workers,
 - (g) method of filling vacancies, transfers, confirmation, secrecy to be

maintained by the workers, supply of copies of standing orders;

(h). production norms and productivity, multi stuffing, job enrichment

(i). medical aid in case of accident; and

(j). any other matter as may be deemed appropriate by the Central Government.

(3) Appropriate Government may by making additional rules and additional Model Standing Orders provide for any matter as it may deem appropriate.

46. Preparation of Draft Standing Orders by the Employer and Procedure for Certification

(1) The employer shall prepare draft the standing orders based on the rules and model standing orders and on any other matter considered necessary by him for incorporation in the standing orders for his establishment or undertaking considering the nature of activity in his establishment or undertaking provided such provision is not inconsistent with any of the provision of the Act and discuss and decide the same by agreement with the negotiating agent and forward a copy of the same for being certified by the certifying officer.

(2) Where no agreement is reached between the employer and the negotiating agent on the standing orders proposed by the employer in the draft or where there is no recognised negotiating agent in the establishment or undertaking the employer shall forward the draft of proposed standing orders to the certifying officer appointed by appropriate Government in respect of the establishment or in case of an undertaking the certifying officer appointed by the appropriate Government in respect of the Head office of the undertaking requesting the certifying officer to intervene in the matter.

(3) Where the employer has requested the certifying officer to intervene in the matter, as mentioned in sub section (2), the certifying officer shall

issue notice to the negotiating agent, if any, of the establishment or undertaking and where there is no certified negotiating agent to all the unions operating in the establishment or undertaking for seeking their comments in the matter and after receipt of their comments give an opportunity to be heard to the negotiating agent or as the case may be to the unions and decide whether or not any modification or addition to the draft standing orders is necessary to render the draft standing order certifiable and shall make an order in writing in this regard.

- (4) The provisions of Standing Order agreed upon under sub-section (1) or certified sub section (3) may be modified by the employer, in relation to any establishment or undertaking, if a period of one year has elapsed from the date of certification or last modification and if an agreement is entered into by him with the negotiating agent in this regard for such modification:

Provided that where no agreement is reached on any modification proposed by the employer and the negotiating agent the procedure laid down in sub section (2) and sub section (3) shall be followed for deciding the proposed modification.

Provided further that where the Standing Orders is modified by agreement a copy of the same shall be sent to certifying officer concerned.

47. **Appeals**

An employer or the negotiating agent or where there is no negotiating agent in an establishment or undertaking any union if not satisfied with the order of the certifying officer given under sub section (3) of section 45 may file an appeal within 60 days of receipt of the order of the certifying officer to the Labour Court having jurisdiction over the establishment.

48. **Interpretation, etc. of Standing Orders**

If any question arises as to the application, or interpretation, of the Standing orders certified under sub-section (1) or sub section (3) of section 46 or the modification made therein by an agreement entered into under sub section (4) of that section, the employer or any worker or workers concerned or the negotiating agent in relation to the workers employed in the establishment or undertaking, wherein the question has arisen, may apply to the Labour Court, within the local limits of whose territorial jurisdiction such establishment or the office, section or branch of the undertaking is situated, to decide the question and the Labour Court shall, after giving all the parties concerned a reasonable opportunity of being heard, decide the question and such decision shall be final:

49. **Special Provisions for Model Standing Orders in Certain Cases**

The appropriate Government shall make simple separate rules and model standing orders for establishments employing less than 50 workers.

Provided that nothing shall be construed to prevent an employer who intends to have a certified Standing Order in respect of his establishment notwithstanding the fact that less than 50 workers are employed in his establishment from having a certified Standing Orders as provided under section 46.

50. **Time Limit for Completing Disciplinary Proceedings and Liability to Pay Subsistence Allowance**

- (1) Where any worker is suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him, such investigation or enquiry, or where there is an investigation followed by an enquiry both the investigation and enquiry shall be completed ordinarily within a period of ninety days from the date of suspension.
- (2) The Standing Orders certified under sub section (1) or sub section (3) of section 46 or modified under sub-section (4) of that section shall provide

that where a worker is suspended as aforesaid the employer in relation to an industrial establishment or undertaking shall pay to such worker employed in such establishment or undertaking subsistence allowance at the rates specified in sub section (3) of this section for the period during which such worker is placed under suspension pending investigation or enquiry into complaints or charges of misconduct against such worker.

- (3) The amount of subsistence allowance payable under sub-section(2) shall be-
- (a) fifty per cent of the wages which the worker concerned was in receipt immediately preceding the date of suspension, for the first 90 days of suspension;
 - (b) seventy five per cent of such wages for the next 90 days of suspension; and
 - (c) full wages for the remaining part of the period of suspension the total period of which shall not exceed one year and where the employer considers it necessary to keep the worker under suspension, he shall be liable to pay the worker his/her full wages for the period in excess of one year;

Provided that where the delay in the completion of disciplinary proceedings against the worker is directly attributable to the conduct of such worker, the rate of subsistence allowance payable to such worker shall in no case be more than 50% of his wges.

- (4) If any doubt or dispute arises regarding the quantum or rate of subsistence allowance payable to a worker, the worker or the employer concerned may apply to the Labour Court within the local limits of whose jurisdiction the establishment or unit, branch or office of an undertaking wherein such worker is employed is situate, and the decision of the Labour Court shall be final.

51. **Laying of Standing Orders before the Houses of Parliament**

Every Rule or Model Standing Order made by the Central Government under sub section (1) or it being the appropriate Government under sub section (2) of section 44 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period to 30 days and every rule of model standing orders made by the State Government under sub section (2) of Section 44 shall be laid by the State Government before the legislature of the state while it is in the session for a period of 10 days.

CHAPTER V

NEGOTIATING AGENT

52. **Manner of collection of Subscription/Check Off System**

- (1) The provisions for certification of unions based on check off system shall apply to an establishment or undertakings wherein 300 or more workers are employed;
- (2) Every member of a registered trade union of workmen shall authorise his employer, being an employer in relation to an establishment or branch unit or office of an undertaking in writing in such manner as may be prescribed, the deduction from his wages of monthly subscription payable by him, to the trade union of which he is a member and remittance thereof to such trade union in whose favour he has authorised the deductions of subscription from his wages and submit a copy of the same with the official of the establishment appointed by the employer for the purpose;

Provided that no such member shall authorise his employer to deduct the monthly subscription in relation to more than one registered trade unions.

- (3) The trade union shall prepare a list of authorisations received by it containing the names of the workers their token or ticket numbers, the shop, office or branch of an undertaking where the workers included in

the list are employed and forward the same to the employer and record of correspondence made in this regard by the trade union with the employer shall be maintained in its office;

- (4) Every authorisation under sub section (2) shall be valid for a period of four years and any document relating to such authorisation shall be maintained by the employer and the trade unions in such manner as may be prescribed.
- (5) Every employer shall prepare and maintain a record of all authorisations received under sub-section (1) and the subscriptions deducted in such manner as may be prescribed and such record shall be available for perusal to every registered trade union.

53. Certification of Negotiating Agent Based on Check Off System

- (1) Where a trade union has received authorisations for deduction of subscription from 66% or more of workers of an establishment or undertaking from their wages in its favour or where there is only one trade union, that union shall make an application to the appropriate Labour Relations Commission claiming certification of the union as single negotiating agent.
- (2) Where no union has received authorisations in its favour from 66% or more of workers of the establishment or the undertaking, the unions having received authorisations from 25% or more of workers of the establishment or undertaking may by making an application to the appropriate Labour Relations Commission claim to be included as constituents of the negotiating college and such negotiating college shall be certified as negotiating agent in respect of the establishment or undertaking under this Act.
- (3) The single negotiating agent or negotiating college to be certified as negotiating agent shall consist of such number of representatives to be nominated by the single negotiating agent or the constituents of negotiating college in proportion to their membership verified based on the check off system as may be prescribed.

54. Certification of Negotiating Agent by Secret Ballot in Certain Cases

- (1) In any establishment or undertaking wherein there is more than one union and wherein less than 300 workers are employed, any party in relation to such establishment or the undertaking may approach the appropriate Labour Relations Commission for holding secret ballot for identification of negotiating agent instead of by the check off, and if the Labour Relations Commission orders the secret ballot to be held, the secret ballot shall be held in such establishment for determination of relative membership of the trade unions wherein all the workers shall be entitled to vote in favour of a union of their choice and in such establishments the certification of negotiating agent shall be in following manner.
 - (a) Where there is only one registered trade union of workers in an establishment, or undertaking that union shall be certified as single negotiating agent.
 - (b) Where a union has secured votes of 66% or more of workers of the establishment or undertaking in its favour at the secret ballot that union shall be entitled to be certified as single negotiating agent.
 - (c) Where no union has secured votes of 66% or more of workers in its favour at the secret ballot all the unions as have secured 25% or more votes at the secret ballot in their favour shall be included as constituents in the negotiating college, which shall be certified as negotiating agent in respect of that establishment or undertaking.
- (2) The single negotiating agent or negotiating college to be certified as negotiating agent as per sub section (1) shall consist of such number of representatives to be nominated by the single negotiating agent or the constituents of the negotiating college in proportion to their verified membership based on the secret ballot as may be prescribed.
- (3) Notwithstanding anything contained in sub section (1) where there is no union in an establishment a negotiating committee consisting of such

number of representatives as may be prescribed shall be set up by electing such representatives by secret ballot and shall be certified as negotiating agent.

55. Savings

- (1) Where in an industry there is a practice of having negotiations at the industry cum region or industry cum national level nothing in this chapter shall be constituted to prevent such industry from carrying on with such practice.
- (2) Where any question as to at what level the negotiations shall be held in respect of an industry covered by sub section (1) or otherwise the same shall be decided by the appropriate Labour Relations Commission.

56. Period of Validity of Negotiating Agent

The negotiating agent whether certified based on the check off system or by secret ballot as single negotiating agent or included as a constituent in the negotiating college or the negotiating committee shall continue to be recognised as such for a period of four years from the date of such certification.

57. Duties and Functions of the Labour Relations Commission in Respect of Certification of Unions or Negotiating Committee as Negotiating Agent

- (1) Wherever in an establishment or undertaking secret ballot is required to be held for identification of negotiating agent in respect of that establishment or undertaking the concerned Labour Relations Commission shall arrange to get such secret ballot conducted.
- (2) Where in respect of an establishment or undertaking a trade union has been identified as single negotiating agent or as a constituent of negotiating college whether by check off or otherwise or where there being no union in an establishment or undertaking a negotiating committee has been set up by electing representatives on the committee by secret ballot, such single negotiating agent or negotiating college or

as the case may be the negotiating committee shall be certified by the concerned appropriate Labour Relations Commission as negotiating agent in respect of that establishment or undertaking for the purpose of this Act.

- (3) No application for certification of a trade union of employees as negotiation agent shall be entertained by a Labour Relations Commission if any other trade union or trade unions or as the case may be the negotiating committee is already certified as negotiating agent unless the term of such negotiating agent has expired.

Provided that nothing shall prevent a Labour Relations Commission from directing an employer of establishment concerned within the jurisdiction of such Labour Relations Commission to initiate the process of identification of negotiating agent 60 days before the expiry of the term of the negotiating agent already certified in respect of an establishment or undertaking.

58. Employer Bound to Recognise the Negotiating Agent

Where any trade union or college of trade unions or negotiating committee has been certified as negotiating agent in relation to an establishment or undertaking, the employer shall so long as the certification is in force continue to recognise such negotiating agent.

59. Rights of Negotiating Agents

A registered trade union or college of registered trade unions or as the case may be the negotiating committee certified as negotiating agent shall be entitled : -

- (a) to approach the employer in relation to the establishment or undertaking, or unit, branch or office, of the establishment or undertaking, in regard to the general matters concerning employment or non-employment or terms of employment and conditions of labour of the workers of such establishment or undertaking including the unit branch or office of the establishment or undertaking to commence negotiations and enter into collective agreements or settlements with such employer in pursuance of

negotiations under section 70 or in conciliation under section 73 or agree to refer such disputes for arbitration under section 71 or adjudication under section 76;

- (b) subject to the other provision of this Act, to call for a strike;
- (c) to obtain from the employer such accommodation for its office as the employer is capable of providing for conduct of its business as negotiating agent;
- (d) to put up or cause to be put up a notice board on the premises of the establishment or undertaking or unit, branch or office of the establishment or undertaking and affix or cause to be affixed thereon, notices relating to meetings, statement of accounts of its income and expenditure and other statements or announcements other than statements or announcements which are subversive of discipline;
- (e) to hold discussions after prior intimation to the employer concerned with the workers within the premises of the establishment or undertaking or any of unit, branch or office of the establishment or undertaking at such place as shall be allowed by the employer concerned;

Provided that such discussions shall not interfere with the due working of the establishment or undertaking;

- (f) to hold discussions with the employer concerned or any person nominated by such employer for the purpose of redressing any grievances of all or any of the workers of the establishment or undertaking;
- (g) to hold discussions with the employer in relation to the establishment or undertaking or unit, branch or office of the establishment or undertaking regarding the state of finance and economy of such establishment or undertaking;
- (h) to seek and receive as and when required information in regard to the finance and economy of such establishment or undertaking so as to enable such negotiating agent to make suggestions and proposals in order to safeguard the interests of the workers of such establishment or

undertaking or of the public and for improving the efficiency in functioning of the establishment;

- (i) for the purposes of effectively discharging its functions under this Act, to inspect, by prior arrangement with the employer concerned, books of accounts maintained in the establishment or undertaking or the unit, branch or office of the establishment or undertaking constituting;
- (j) to nominate representatives of workers on the shop floor council, Establishment council, on Board of Management and grievance redress committee constituted under this Act;
- (k) to nominate representatives on behalf of workers on the Canteen Managing Committee or the Welfare Committee required to be constituted under the Hours of Work, Leave and Other Leave and other Working Conditions at the Work Place Act or any other body, whether or not established by or under this Act, in relation to the establishment or undertaking consisting of representatives of workers;
- (l) to represent all or any of the workers of the establishment or undertaking before any authority under this Act,

Provided that where a union or unions are certified as negotiating agent being a single negotiating agent, or negotiating committee may represent all workers in any individual or industrial dispute and where a negotiating college is certified as negotiating agent such college may represent all workers in any industrial dispute and the individual constituents may represent their members in individual disputes.

- (m) in the case of a registered trade union of workers certified as single negotiating agent or constituent of negotiating agent or college to collect sums payable by the members thereof to such registered trade union of workers by the check off system; and
- (n) to exercise such other powers conferred on it by or under this Act.

Provided that a negotiating agent shall not disclose any information obtained by it under clause (h) or in pursuance of inspection of books of

account under clause (i) to any person for any purpose other than for the purpose of properly discharging its functions under this Act.

60. **Rights of Other Unions in Certain Cases**

A union, which is not certified as negotiating agent on account it being neither the sole Negotiating Agent or constituent of negotiating college but has received authorisations for deduction of subscriptions of 10% or more of workers of the establishment or undertaking in its favour or where identification of negotiating agent has been done by holding secret ballot, has received votes of 10% or more of workers of the establishment or undertaking in its favour such union may –

- (i) represent the workers who are its members in their individual disputes before any authority set up under this Act;
- (ii) take up the matter of the workers who are its members with the management;
- (iii) request the employer to deduct subscription payable by its members to the union from their wages and remit the same to the union;
- (iv) have any other right as may be prescribed.

61. **Protection of Conditions of Service**

During the period when any worker continues to be an office bearer of any registered trade union of workers certified as negotiating agent or continues to be the chairman or other member of a negotiating committee and for a further period of 2 years immediately after he ceases to be such office bearer or chairman or member, the employer in relation to such worker shall not –

- (a) alter to the prejudice of such worker the conditions of service applicable to him immediately before he became such office bearer, chairman or member; or
- (b) discharge or punish (whether by dismissal or otherwise) any such worker for anything done by him as such office bearer or chairman or member, not being anything done in contravention of any provision of this Act or any other law except with the prior permission of the appropriate Labour Relations Commission.

62. Penalty for Giving Authorisations in Favour of More than One Union

Any worker who gives authorisation for making deductions of subscription from his wages in favour of more than one union shall be punishable with fine as may be specified in this Act.

63. Rules to be Made to Provide for Procedure Under this Chapter

The appropriate Government may by making rules to provide for the procedure for identification of negotiating agent by check off system or by secret ballot and provide for the duties, responsibilities and functions of the employer, trade union and the Central or as the case may be the State Labour Relations Commission and also lay down the time frame for the check off system or the secret ballot to be conducted once in 4 years in every establishment or undertaking.

CHAPTER VI

STRIKES & LOCKOUTS

64. Prohibition of Strikes and Lockouts in Socially Essential Services

- (1) No worker employed in any socially essential service shall go on strike unless
 - (i) the strike has been called by the recognised negotiation agent, and
 - (ii) the call for strike by the recognised negotiation agent has been preceded by a strike ballot, in which not less than 51% of the workers have supported the proposed strike.
- (2) The strike ballot would be conducted by the negotiation agent, under the overall supervision of officers appointed by the Registrar of Trade Unions of the local area and in case the strike is called in respect of establishment or undertaking having its branches or units in more than one state or union territory, the strike ballot would be coordinated by the Registrar in whose jurisdiction the Registered or the Head Office of the

undertaking is located but would be conducted by the Registrars of the respective areas.

- (3) (i) If a recognised negotiating agent decides to conduct a strike-ballot, it shall inform the Registrar of Trade Unions of its intention to conduct a strike ballot together with details of issues/disputes involved, the total number of workers in the establishment or units, offices or branches of the undertaking, a list of such workers and such other details as may be prescribed. A copy of the notice shall be sent to the employer also. The Registrar of Trade Union shall appoint officers who shall conduct the secret ballot, with assistance of the workers of the establishment.
 - (ii) The Registrar may direct the employer of the establishment or undertaking to provide premises for the purposes of conducting of the strike ballot.
 - (iii) The cost of conducting the secret ballot would be borne by the recognised negotiation agent.
 - (iv) The appropriate government may prescribe rules for the conduct of strike ballot.
- (4) The strike ballot shall be conducted as expeditiously as possible keeping in mind the number of workers involved, the number of branches/units of the establishment or the undertaking
- (5) (i) The negotiation agent shall send a copy of the notice of strike ballot to the Labour Commissioner of the State Government or Regional Labour Commissioner appointed by the Central Government and the Conciliation Officer in whose jurisdiction the establishment is situated.
 - (ii) The Conciliation Officer shall, on receipt of the notice or on getting information of the proposed strike ballot, initiate conciliation proceedings in the matter with a view to bring about a settlement of the industrial dispute.

- (6) If not less than 51% of the workers in the establishment or the undertaking support the proposed strike, the strike would be deemed to have taken place and the appropriate government shall forthwith refer the industrial dispute for arbitration by an Arbitrator or Arbitrators agreed upon by the employer and recognised bargaining agent or an Arbitrator or Arbitrators from the panel maintained for the purpose by the appropriate Labour Relations Commission.
- (7) No employer of a socially essential service shall declare a lockout unless the decision to declare a lockout has been taken at the highest level of the management.
- (8)
 - (i) The decision to declare a lockout as indicated in sub-section (7), would be communicated to the negotiating agent and the Regional Labour Commissioner (C) or as the case may be the Labour Commissioner and the Conciliation Officer in whose jurisdiction the establishment or the head office is located.
 - (ii) The information in Clause (1) shall include details of issues/disputes involved, the total number of workers in the establishment or the undertaking, a list of such workers and such other details as may be prescribed.
- (9) The lockout would be deemed to have commenced on the receipt of the communication referred to in sub-section (8), by the representatives of workers or the negotiating agent and the authorities prescribed therein and the appropriate government shall in such case forthwith refer the industrial dispute for arbitration by an Arbitrator or Arbitrators agreed upon by the employer and recognised negotiating or an Arbitrator or Arbitrators from the panel maintained for the purpose by the appropriate Labour Relations Commission.
- (10) Where the parties do not agree to appointment of Arbitrator or Arbitrators the appropriate Government may make an application to the concerned Labour Relations Commission for appointment of an Arbitrator or Arbitrators to arbitrate in the dispute.

65. General Prohibition of Strikes and Lockouts

- (1) Workers in an establishment or undertaking which is not socially essential service may go on strike if there is failure of negotiations and the employer has refused arbitration.
- (2) No worker in any establishment or undertaking mentioned in sub-section (1) shall go on strike -
 - (a) unless a strike ballot is held in the manner prescribed in sub-section (3), (4) and (5) of Section 64 and not less than 51%, of the workers of the establishment or undertaking support the strike.
 - (b) a notice of strike is served by the negotiating agent in the prescribed manner on the matter in dispute on the employer of the establishment or the undertaking.
 - (c) within fourteen days of giving notice.
 - (d) before the expiry of the date of strike specified in the notice.
 - (e) during the pendency of conciliation proceedings and fourteen days after the conclusion of such proceedings.
 - (f) during the pendency of arbitration or adjudication proceedings on the matters in dispute.
 - (g) during any period in which a settlement or award is in operation in respect of the matters covered by the settlement or award except where the strike is commenced for seeking implementation of settlement or award.
- (3) The notice of strike shall be served only by the recognised negotiation agent.
- (4) An employer may declare a lockout if there is failure of negotiations on the matters in dispute and the negotiating agent has refused arbitration

thereon provided the decision to that effect is taken at the highest level of the management except in case of grave threat to the establishment or management.

- (5) No employer shall lockout any of his worker:
 - (a) without giving notice in the manner prescribed.
 - (b) before the expiry of the date of lockout specified in the notice.
 - (c) within fourteen days of giving such notice.
 - (e) during the pendency of conciliation arbitration or adjudicatory of proceedings.
 - (f) during any period in which a settlement or award is in operation in respect of the matters covered by the settlement or award except where the lock out is commenced for seeking implementation of settlement or award.
- (6) An appropriate government may by a general or special order prohibit a strike or lockout and refer the dispute for adjudication.

66. Illegal Strikes and Lockouts and Penalties for Illegal Strikes and Lockouts

- (1) A strike or lockout shall be illegal if it is declared in contravention of sections 64 and 65.
- (2) Three days' wages shall be deducted, by the employer, in respect of a worker who goes on an illegal strike for each day during which such illegal strike is continued.
- (3) A union which leads an illegal strike would be derecognised and deregistered and office bearers of this union would be debarred from becoming office bearers of any union for a period of three years.

- (4) An employer who resorts to an illegal lockout will be liable to pay wages equivalent to three days' wages to those workers who have been locked out for each day during which such illegal lock out continued.

CHAPTER VII

PROCEDURE FOR EFFECTING CHANGES IN THE CONDITIONS OF EMPLOYMENT

67. Notice of Change of Terms of Employment & Conditions of Labour

- (1) No employer who proposes to effect any change in the terms of employment or conditions of labour applicable to any worker in respect of: -
- (i) (a) wages, including the period and mode of payment;
 - (b). contributions paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the worker under any law for the time being in force;
 - (c). compensatory and other allowances;
 - (d). hours of work and rest intervals;
 - (e). leave with wages and holidays;
 - (f). starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
 - (g). classification by grades;
 - (h). withdrawal of any customary concession or privilege or change in usage;
 - (i). introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;
 - (j). rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workers;
 - (k). any 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).

Shall do so without giving notice to the workers effected by such change and the negotiating agent, and

(ii) Within 21 days of giving of such notice

Provided that such disagreement between the workers or the negotiating agent and the employer shall not operate as a stay on the changes proposed by the employer.

- (2) The workers affected by such change or the negotiating agent in relation to such workers may object to the proposed change in the terms of employment or conditions of labour and, where the employer and the workers or the negotiating agent do not agree to the proposed change, the provisions of this Act shall apply in relation to such dispute as they apply in relation to any other industrial dispute.
- (3) Notwithstanding anything contained in sub section (1) no notice shall be required under sub section (1) for effecting any change where the change is proposed to be effected in pursuance of any agreement, settlement or award of an Arbitrator or a Labour Court, Central or State Labour Relations Commission or the National Labour Relations Commission where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, Apply.
- (4) Where the employer and the negotiating agent fail to arrive at a settlement in regard to any change in respect of any matter relating to terms of employment or conditions of labour or the negotiations to arrive at a settlement continue for a period of more than sixty days, the

employer and the negotiating agent shall forward, jointly or separately in the prescribed manner a report to the Conciliation Officer, having jurisdiction in relation to the dispute, regarding the failure of the negotiations or the continuance thereof as aforesaid and the facts of the dispute and the provisions of this Act shall apply in relation to any dispute in this regard as they apply in relation to any other industrial dispute.

68. Terms of Employment, etc. to remain unchanged under Certain Circumstances

- (1) Where an industrial dispute pertaining to an establishment or undertaking is already pending before a Conciliation Officer or an Arbitrator or a Labour Court or a Central or State Labour Relations Commission or the National Labour Relations Commission, as the case may be with regard to matters not covered by the notice of change issued by an employer under section 67, no employer shall –
 - (a). in regard to any matter connected with the dispute alter to the prejudice of the workers concerned in such dispute the terms of employment or conditions of labour applicable to them immediately before the commencement of such proceedings ; or
 - (b). for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise any worker concerned with such dispute,
save with the express permission in writing of the authority before which the proceeding is pending.
- (2) During the pendency of any proceeding referred to in sub section (1) the employer may, subject to the other provisions of this Act –
 - (a). alter, in regard to any matter not connected with the dispute, the terms of employment or conditions of labour applicable to that worker immediately before the commencement of such proceedings; or
 - (b). for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that worker:

Provided that no such worker shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the application is pending for the approval of the action taken by the employer.

- (3) Where an employer contravenes the provisions of this section during the pendency of any proceeding referred to in sub section (1), any worker aggrieved by such contravention, may make, a complaint in writing, in the prescribed manner to the authority before which such proceeding is pending, and such authority shall, on receipt of such complaint, adjudicate upon the complaint and in so doing the authority shall have all the powers conferred by or under this Act on a Labour Court while adjudicating an individual dispute.

CHAPTER VIII

RESOLUTION OF DISPUTES

69. Resolution of Individual Disputes

- (1) In the case of an individual dispute, the worker or any registered trade union of which the worker is a member provided the union has at least 10% membership amongst the workers in that establishment, may refer the dispute to the Grievance Redressal Committee set-up by the employer in accordance with the rules made under this Act for a decision.
- (2) Where the Grievance Redressal Committee is not able to settle the dispute within 30 days, or if no Grievance Redressal Committee is in existence, either partly to the dispute may refer the dispute for arbitration to a mutually agreed Arbitrator or Conciliation Officer or to a Lok Adalat or Labour Court in the prescribed manner.
- (3) The provisions of section 71 and section 73 shall so far as may be, apply to the arbitration or as the case may be the conciliation proceedings of any individual dispute referred for arbitration or conciliation under sub-section (2).

- (4) An individual dispute may be filed before a Labour Court by the aggrieved worker or the trade union to which he belongs provided such a trade union has at least 10% membership amongst the workers in that establishment, for adjudication of the dispute.
- (5) (i) No application shall be made under sub-section (1) to the Grievance Redressal Committee after expiry of 3 months from the date of arising of the cause of action and no application shall be made under sub-section (4) to the Labour Court after the expiry of one year from the decision of the Grievance Redress Committee.
- (ii) Provided that the Labour Court may entertain an application under sub-section (2) after the expiry of the aforesaid period if –
- (a) the Labour Court is satisfied that the delay in making the application is for reasons beyond the control of the party making the application;
 - (b) the parties to the dispute making the application jointly agree that the application may be entertained notwithstanding the expiry of the aforesaid period of one year.
- (6) Where an individual dispute relating to the discharge or dismissal of a worker has been filed before a Labour Court, Arbitrator, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission for adjudication and in the course of adjudication proceedings the Labour Court, Arbitrator, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission is satisfied that the order of discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the worker on such terms and conditions if any, as it thinks fit and give such other relief to the worker including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that where a worker has been discharged or dismissed from service after a proper and fair inquiry on the charges of violence, sabotage, theft, or assault and if the Labour Court, Arbitrator, the Central or State Labour Relations Commission or the National Labour Relations Commission, as the case may be comes to the conclusion that the grave charge or charges have been proved then the Labour Court or the Arbitrator or the Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission shall not order reinstatement of the delinquent worker.

- (7) Where in any case a Labour Court by its award directs reinstatement of any worker and the employer prefers proceedings against such award in the Labour Relations Commission, the employer shall be liable to pay such worker during the pendency of proceedings full wages last drawn by him, including any maintenance allowance admissible to him, under any rules.

Provided that no such wages shall be payable for the period where the worker is employed or self-employed and earning wages or income not less than wages last drawn by him and an affidavit by such a worker has been filed to that effect is such Labour Court or the Labour Relations Commission.

70. **Collective Agreements**

- (1) Negotiations for an agreement on one or more issues may be initiated by either party, namely, the employer or the recognised negotiation agent by making request to the other party in the prescribed form provided there is no collective agreement already in force with respect to those issues.
- (2) Every collective agreement shall be reduced to writing and signed by the authorised representatives of the parties and shall contain the following information, namely –
- (a) the names of employers or employers' associations and the trade unions certified as negotiating agent or negotiating committee who negotiated the agreement;

- (b) the period for which the agreement or settlement is concluded;
 - (c) the categories or classes of employees covered by the agreement;
 - (d) the agreed terms and conditions that are to govern individual employment relationships during its currency;
 - (e) method of settlement of disputes arising from the agreement between the contracting parties in connection with the application of the agreement including by an Arbitrator or a panel of Arbitrators;
 - (f) procedure for renewal or termination or alteration of the agreement.
- (3) Every collective agreement shall be filed before the concerned Conciliation Officer appointed by the appropriate Government who shall maintain the collective agreement on his records till the validity of such agreement.
- (4) Unless otherwise specified in the collective agreement, a collective agreement shall be binding on –
- (a) all parties to the agreement;
 - (b) successors and assignees of the employer concerned;
 - (c) all persons who were employed in the establishment, or undertaking as the case may be, on the date of the agreement and all persons who subsequently become employed therein.
- (5) A collective agreement shall come into operation on such date as is agreed upon by the parties and if no date is agreed upon the date on which the memorandum of agreement is signed by the parties concerned.
- (6) A collective agreement shall be binding for such period as is agreed upon by the parties and if no such period is stipulated for a period of four

years from the date on which the memorandum of agreement is signed by the parties and shall continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement, or until a new agreement is reached whichever is earlier.

- (7) All parties to the negotiations of a collective agreement shall disclose all information relevant to the negotiations including information contained in records, papers, books or other documents and make earnest effort to conclude the negotiations in absolute good faith.

71. **Arbitration**

- (1) Where any industrial dispute exists or is apprehended and the employer and the negotiating agent is not able to mutually settle such dispute, they may agree to refer the dispute to arbitration by a written agreement, and the reference shall be to such person or persons as an Arbitrator or Arbitrators or a Lok Adalat as may be specified in the arbitration agreement.
- (2) Where an arbitration agreement under sub-section (1) provides for reference of the dispute to an even number of Arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, and if the Arbitrators are equally divided in their opinion, the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.
- (3) Where the parties agree to refer a dispute for arbitration but do not agree on the Arbitrator, the appropriate Labour Relations Commission shall nominate an Arbitrator or Arbitrators on the request of the parties or where there is difference or dispute about the cost of arbitration to be born between the parties the same shall be decided by the appropriate Labour Relations Commission keeping in mind the nature of dispute or the financial position of the parties.

- (4) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.
- (5) A copy of the arbitration agreement shall be forwarded to the Conciliation Officer and the appropriate Labour Relations Commission.
- (6) The Arbitrator or Arbitrators shall investigate the dispute and announce the award. A copy of the award will be submitted to the appropriate government and the concerned Labour Court.
- (7) Provisions of this Act in respect of arbitration shall prevail over any other law on the subject.
- (8) Subject to the provisions of this Act Arbitrator or Arbitrators shall follow such procedure as he or they may deem fit.
- (9) An Arbitrator or Arbitrators may for the purpose of the inquiry into any dispute, after giving reasonable notice enter the premises of any establishment to which the dispute relates.
- (10) The award of an Arbitrator or Arbitrators shall be in writing and signed by Arbitrator or Arbitrators.
- (11) An arbitration award shall be final and shall not be called in question by any court in any manner whatsoever.
- (12) An arbitration award shall come into operation with effect from such date as may be specified therein and where no date is specified, it shall come into operation from the date on which it is signed.
- (13) An arbitration award shall be binding on –
 - (a) all parties to the dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute unless the opinion is recorded by the Arbitrator or Arbitrators that they were summoned without proper cause.
 - (c) where a party referred to in clause (a) or (b) is an employer his successors or assignees in respect of the establishment to which the dispute relates;

- (d) where the party referred to in clause (a) or (b) is composed of workers all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of dispute and all persons who subsequently became employed therein.
- (14) An arbitration award shall be in operation for a period of four years and shall continue to be in force and to be binding on the parties after the expiry of period four years until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating the intention to terminate the award or until a fresh award is given, or settlement signed, whichever is earlier.
- (15) No notice given under sub-section (14) shall have effect unless it is given by a party who is recognised as the negotiating agent.

72. **Functions of Labour Relations Commission**

- (1) The Central Labour Relations Commission and the State Labour Relations Commission shall have the following functions, namely :-
 - (a) certification of negotiating agents;
 - (b) adjudication of disputes which are not settled by collective bargaining, conciliation or arbitration: 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 and shall prescribe fee to be paid to Arbitrators and by whom it shall be paid.
 - (c) Supervise over the functioning of the Labour Courts and hear

appeals against the awards or decisions of a Labour Courts.

73. Conciliation in Industrial Disputes

- (1) Where any labour dispute exists or is apprehended the Conciliation Officer may and where a notice of strike or lockout has been served in an industrial dispute, the Conciliation Officer shall hold conciliation proceedings in such manner as may be prescribed.
- (2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all other things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- (3) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lockout is received by the appropriate commission or, on the date the Conciliation Officer issues notices asking the parties concerned to attend a joint discussions before him.
- (4) A conciliation proceeding shall be deemed to have concluded -
 - (a) where a settlement is arrived at, when a memorandum of settlement is signed by the parties to the dispute;
 - (b) where no settlement is arrived at when the report of the Conciliation Officer is received by the appropriate government;
 - (c) when a reference is made to a Labour Court or the Labour Relations Commission during the pendency of conciliatory proceedings.
- (5) If a settlement of the dispute on any of the matters in dispute is arrived at, in the course of the conciliation proceeding the Conciliation Officer shall send a report thereof to the appropriate Labour Relations commission and the appropriate government together with a memorandum of settlement signed by the parties to the dispute.

- (6) If no such settlement is arrived at, the Conciliation Officer shall as soon as practicable after the close of the investigation send to Labour Court, the appropriate commission and the appropriate government, a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which in his opinion, a settlement could not be arrived at.
- (7) The report referred to in sub section (6) shall be submitted by the Conciliation Officer before the expiry of 90 days from the commencement of conciliation proceedings.

74. Disputes of the Trade Unions

- (1) A dispute of trade union or trade unions of workers registered under this Act shall be determined by the Labour Court concerned on a reference by any party; and no civil court shall have jurisdiction over such disputes.
- (2) Any Dispute between one employers' trade union and another or between one or more members of the employers' trade union and the employers' trade union or between one or more employers who are not member of the employers' trade union and the employers' trade union shall be determined by a Labour Court on a reference by any party and no civil court, shall have jurisdiction over such disputes.

75. Adjudication of Industrial Disputes by Labour Court

In the event of failure of conciliation either party to an individual dispute or a trade union dispute may make an application in prescribed format to the Labour Court for adjudication.

76. Adjudication by Labour Relations Commission

- (1) The Central Labour Relations Commission and the State Labour Relations Commission shall adjudicate in all industrial and other disputes relating

to any matter except a matter which falls within the jurisdiction of a Labour Court.

- (2) The Labour Relations Commission shall have the jurisdiction and exercise all the powers 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 (1) an appeal against an order or award by the Central Labour Relations Commission or a State Labour Relations Commission in cases where substantial question of law is involved (2) industrial dispute considered by the Central Government to be of national importance or where establishments situated in more than one state are likely to be interested in and central Government makes an application in this behalf to the National Labour Relations Commission.
- (4)
 - (a) Where the appeal against an order of a Labour Court in relation to the legality or otherwise of a strike or lockout the same shall be preferred within thirty 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 filing 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 days 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 same powers and authority in respect of contempt of itself as a

High Court has and may exercise and for this purpose the provision 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 Commissions;
 - (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 and its equivalent in Union Territories.
- (6) (a) Where benches of a Labour Relations Commission are constituted the appropriate Government may, from time to time by notification, make provisions as to the distribution of the business of the commission, amongst the Benches in consultation with the Labour Relations Commission and specify the matters which may be dealt with by each Bench.
- (b) 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 desire to be heard, or on his own motion without such notice the president of the Labour Relations Commission may transfer any case pending before one 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 rights of the members to canvass their dissenting opinion if given any in other cases.
- (10) The award of a Labour Court or a Labour Relations Commission shall be in writing and the signed by the presiding officer concerned.

CHAPTER IX

LAY OFF, RETRENCHMENT & CLOSURE

77. Definition of Continuous Service

In this chapter continuous service in relation to a worker, means the uninterrupted service of such worker, including his service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the worker.

Explanation I: where worker is not in continuous service within the meaning of this clause for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- a. for a period of one year, if the worker during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than-
- (i) one hundred and 90 days in the case of a worker employed below ground in a mine; and
 - (ii) 240 days, in any other case;
- b. for a period of six months, if the worker during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than:

- (i) 95 days in the case of worker employed below ground in a mine;
and
- (ii) 120 days, in any other case

Explanation II: for the purpose of Explanation 1, the number of days on which a worker has actually worked under an employer shall include the days on which –

- (ii) he has been laid off under an agreement or as permitted by or under this Act or any other law applicable to the establishment ;
- (iii) he has been on leave on full wages earned in the previous years;
- (iv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (v) in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed twelve weeks.

78. Rights of Workers Laid off for Compensation and Duty of Employer to Maintain Muster Rolls of Workers Notwithstanding Lay Off

- (1) Whenever a worker whose name is borne on the muster rolls of an establishment (whether or not such establishment is of a seasonal character or in which work is performed only intermittently) and who has completed not less than one year of continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all the days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the wages, that would have been payable to him had he not been so laid off.

Provided that workers engaged in any establishment which is of a seasonable character shall be entitled to compensation under this sub

section only in relation to any lay off during the season in which such establishment ordinarily carries on its activity.

(2) No compensation shall be payable by the employer under sub section (1) to a worker who has been laid off: -

(a). if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situated in the same town or village or within a radius of 8 kilometres from the establishment, as the case may be, to which he belongs, and-

(i) such alternative employment does not, in the opinion of the employer, call for any special skill or previous experience and can be done by the worker;

(ii) the wages which would normally have been paid to the worker had he not been laid off are offered for the alternative employment also; and

(iii) the acceptance of the alternative employment does not involve undue hardship to the worker having regard to the facts and circumstances of his case; or

(b). if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(c). if such laying off is due to a strike or slowing down of production on the part of workers in another part of the establishment .

(3) If during any period of 12 month a worker is so laid off for more than 45 days no lay off compensation shall be payable in respect of any period of lay off after expiry of first 45 days, if there is an agreement to that effect between the worker and the employer.

Provided that it shall be lawful for the employer in any case falling within sub section (3) to retrench the worker in accordance with the provisions contained in this Act at any time after expiry of first 45 days of lay off.

- (4) Notwithstanding that workers in any establishment have been laid off or not, it shall be the duty of every employer to maintain for the purpose of this Chapter a muster roll and to provide for making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours under clause (b) of sub section (2).

79. **Prohibition of Lay Off in Certain Cases**

- (1) No employer of an establishment (other than the establishment of a seasonal character or in which work is performed intermittently) wherein 300 or more worker are employed on a average per working day for the preceding 12 months, shall lay off the workers (other than badli and casual workers) for more than 30 days.
- (2) No worker (other than a badli worker or a casual worker) whose name is borne on the muster rolls of an establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 300 workers were employed on an average per working day for the preceding 12 months, shall be laid off for more than 30 days by his employer and if in the opinion of a employer of an establishment to which sub section (1) is applicable the lay off is likely to continue for more than 30 days the employer shall forthwith or as soon as is possible but before the expiry of 30 days from the date of commencement of lay off shall make an application to the appropriate Government for seeking post facto approval of the Government for such lay off and for continuance of the lay off after 30 days.

- (3) In the case of every application for the approval of lay off or for permission to continue lay off under sub section (2), the appropriate Government may, after making such inquiry as it thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for or refer the matter to Labour Relations Commission for adjustment.
- (4) Where an application for the approval of lay off under sub section (2) or for permission to continue lay off under sub section (3) has been made and the specified authority does not communicate the permission or approval or refusal of permission or approval to the employer within a period of 60 days from the date on which the application is made, the permission applied for, shall be deemed to have been granted on the expiration of the said period of 60 days.
- (5) Where no application for the approval or for continuance of lay off under sub section (2) has been made or where such permission or approval has been refused, such lay off shall be deemed to be illegal from the date on which the workers have been laid off and the workers shall be entitled to all the benefits under any law for the time being in force as if they had not been laid off.
- (6) If a question arises whether an establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Explanation: Badli worker means a worker who is employed in an establishment in place of another worker whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purpose of this section if he has completed one year of continuous service in the establishment.

80. Conditions Precedent to Retrenchment of Workers

- (1) No worker employed in any establishment who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until: -

- (a). the worker has been given two months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of notice;
 - (b). a copy of the notice as mentioned in clause (a) has been sent to the negotiating agent.
 - (c). the worker has been paid at the time of retrenchment compensation as prescribed in sub section (2).
 - (d). notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in official gazette.
- (2) Where an employer has served notice for retrenchment on the concerned worker, the negotiating agent and the appropriate Government he shall be liable to pay retrenchment compensation as under: -
- (a). if the establishment has been making profits, 60 days average wages for every completed year of continuous service or any part thereof in excess of 6 months; and
 - (b). if the establishment has not been making profits, 45 days average wages for every completed year of continuous service or any part thereof in excess of 6 months

Provided that in case of establishment employing less than 100 workers the compensation payable shall be reduced by 50% of the compensation prescribed in clause (a) or as the case may be clause (b) of sub section (2).

81. **Procedure for Retrenchment**

- (1) Where any worker in an establishment, is to be retrenched and he belongs to a particular category of workers in that establishment, in the absence of any agreement between the employer and the worker in this behalf, the employer shall ordinarily retrench the worker who was the last person to be employed in that category.

Provided that the employer may for reasons to be recorded in writing retrench a worker other than the last worker employed in a category.

82. Reemployment of Retrenched Worker

Where any worker is retrenched and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workers who are citizens of India to offer themselves for reemployment and such retrenched workers as offer themselves for reemployment shall have preference over other persons.

83. Compensation to Workers in Case of Transfer of Establishment

Where the ownership or management of an establishment or undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment or undertaking to a new employer, every worker who has been in continuous service for not less than one year in that establishment or undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 80 as if the worker had been retrenched.

Provided that nothing in this section shall apply to a worker in any case where there has been a change of employer by reason of the transfer, if-

- (a). the service of the worker has not been interrupted by such transfer;
- (b). the terms and conditions of service applicable to the worker after such transfer are not in any way less favourable to the worker than those applicable to them immediately before the transfer; and
- (c). the new employer is under the terms of such transfer or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation and gratuity on the basis that his service has been continuous and has not been interrupted by the transfer.

84. Procedure for Closing Down of the Establishment

- (1) An employer who intends to close down an establishment shall not do so unless: -

- (a). the workers have been given two months notice in writing indicating the reasons for closure and the period of notice has expired, or the workers have been paid in lieu of such notice wages for the period of notice;
 - (b). a copy of the notice as mentioned in clause (a) has been sent to the negotiating agent;
 - (c). the workers have been paid compensation as prescribed in sub section (2);
 - (d). notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette;
- (2) The compensation payable to the workers for closing down of the establishment as per sub section (1) shall be as under: -
- (a). where the establishment has been making profits, 45 days wages for every completed year of continuous service or any part in excess of 6 months thereof; and
 - (b). where the establishment has not been making profits for the last 3 years continuously, 30 days wages for every completed year of continuous service or any part in excess of 6 months thereof;

Provided that in case of establishment employing less than 100 workers the compensation payable shall be reduced by 50% of the compensation prescribed in clause (a) or as the case may be clause (b) of sub section (2).

85. Conditions Precedent to Closing Down of Establishment in Certain Cases

- (1) The provisions of this section shall apply to all establishments employing 300 or more workers irrespective of the nature of activity carried on in the establishment.

Provided that nothing in this section shall apply to an establishment set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

- (2) An employer who intends to close down an establishment to which this section applies shall, in the prescribed manner, apply, for prior permission at least 90 days before the date on which the intended closure is to become effective, to the appropriate Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the worker or negotiating agent in the prescribed manner:
- (3) Where an application for permission has been made under sub section (2), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers, the negotiating agent and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer, and the negotiating agent.
- (4) Where an application has been made under sub section (2) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of 60 days.
- (5) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub section (6) be final and binding on all the parties and shall remain in force for one year from the date of such order.
- (6) The appropriate Government may, either on its own motion or on the application made by the employer, the negotiating agent or any worker

review order granting or refusing to grant permission under sub section (3) or refer the matter to Labour Relations Commission for adjudication:

Provided that where a reference has been made to a Labour Relations Commission under this sub section, it shall pass an award within a period of 30 days from the date of such reference.

- (7) Where no application for permission under sub section (2) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the worker shall be entitled to all the benefits under any law for the time being in force as if the establishment had not been closed.
- (8) Notwithstanding anything contained in the forgoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub section (2) shall not apply in relation to such establishment for such period as may be specified in the order.
- (9) Where an establishment is permitted to be closed down under sub section (3) or where permission for closure is deemed to be granted under sub section (4), every worker who is employed in that establishment immediately before the date of application for permission under this section, shall be entitled to receive compensation as prescribed under section 84.

CHAPTER X

PROTECTION OF MANEGERIAL AND OTHER EMPLOYEES AGAINST UNFAIR DISMISSALS AND DENIAL OF REMUNERATION

86. Effect of Laws Inconsistent With the Act

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or in any other law, contract of service, settlement or arbitration award.

Provided that where under the provisions of such other law or contract of service, settlement or arbitration award a managerial or other employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the managerial or other employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

87. Employer to Make Regulations in Regard to Penalties for Misconduct

- (1) Every employer in relation to any establishment shall make regulations to provide for the following matters, namely: -
 - (a). any act or conduct which, in relation to a managerial or other employee, shall constitute misconduct;
 - (b). the penalties for such misconduct, including termination of employment or reduction in rank or in salary or allowances;
 - (c). the authorities to impose such penalties; and
 - (d). the procedure for enquiry into such misconduct.
- (2) Every regulation made under sub section (1)(including any modification thereto) shall be : -
 - (a). registered in the prescribed manner with such officer as the appropriate Government may, by notification in the official gazette, specify in this behalf (hereinafter referred to as the specified officer); and
 - (b) notified on the notice board of the establishment.
- (3) The regulations referred to in sub section (1) shall be made and submitted to the specified officer for registration under clause (1) of sub section (2) by the employer in relation to an establishment:

- (a) where such establishment is in existence at the commencement of this Act, within a period of six months from such commencement; and
 - (b) where such establishment comes into existence after the commencement of this Act, within a period of six months from the coming into existence of such establishment; and
 - (c) every modification to such regulations shall be submitted by the employer to the specified officer for registration within a period of six months from the date on which such modification is made.
- (4) The employer shall supply to any managerial or other employee on a request made therefore by such managerial or other employee a copy of the regulations made by the employer, under sub section (1) or modified under sub-section (3) to managerial or other employee.

88. Model Regulations

- (1) Notwithstanding anything contained in section 87 the appropriate Government may, by notification in the official gazette make model regulations in respect of the matters referred to in sub section (1) of that section.
- (2) The model regulations made under sub section (1) in regard to any matter shall be deemed to be in force in every establishment in the same manner as regulations made by the employer in regard to establishment until regulations made by such employer in regard to that matter are registered with the specified officer under sub section (2) of section 87.

89. Termination of Employment of Managerial or Other Employee

- (1) The employment of no managerial or other employee shall be terminated except in accordance with the provisions of this Act.
- (2) Where an employer proposes to terminate the employment of any managerial or other employee, such employer shall give in the prescribed

manner three months notice to the managerial or other employee declaring the intention of the employer to terminate the employment of such managerial or other employee stating the reasons for such termination.

Provided that no such notice shall be required where such termination is on the ground of misconduct of such managerial or other employee and after an enquiry into the alleged misconduct in accordance with the regulations made under section 87 or section 88 as the case may be.

- (3) Any managerial or other employee –
- (a). who is served with a notice under sub section (2) declaring the intention to terminate his employment; or
 - (b). whose employment is terminated on the ground of misconduct, may, before the expiry of a period of three months from the date of the service on him of the notice referred to in clause (a), or the termination of his employment on the ground of misconduct, represent to the employer against the proposed termination or termination, as the case may be.
- (4) Where –
- (a). an employer does not communicate his decision on the representation, referred to in sub section (3), to the managerial or other employee concerned before the expiry of a period of thirty days from the date on which such representation is made; or
 - (b). the managerial or other employee is aggrieved by the decision of the employer on such representation,
- such managerial or other employee may apply to the appropriate Labour Relations Commission within such time and in such manner as may be prescribed to set aside the notice referred to in sub section (2) or the termination of employment on the ground of misconduct under sub-section (3), as the case may be.

- (5) The Labour Relations Commission, after giving the managerial or other employee and the employer a reasonable opportunity of being heard and after holding such enquiry, as it deems fit, shall decide
- (a). Where the application is to set aside a notice declaring the intention to terminate the employment of the managerial or other employee whether
- (i) the reasons stated in the notice for such proposed termination are true and justify the proposed termination; or
- (ii) the proposed termination is in contravention of the contract of employment, rules or any law; or
- (b). where the application is to set aside a termination of employment on the ground of misconduct, whether
- (i) the enquiry into the alleged misconduct has been conducted in accordance with the regulations made under section 87 or 88, as the case may be; and
- (ii) the findings of the enquiry justify the termination of employment on the ground of misconduct.

90. **Application in Respect of Non-Payment of Dues**

- (1) Any managerial or other employee may apply to the Labour Relations Commission in such manner as may be prescribed –
- (a) for an award of any money due to him from his employer in the course of his employment; or
- (b) for the determination of the amount at which a benefit which is capable of being computed in terms money is to be computed.
- (2) The Labour Relations Commission shall, after giving the managerial or other employee and the employer a reasonable opportunity of being heard and after making such investigation, as it deems fit, give its award which shall be final

91. Persons on Whom Awards are Binding

Every award of the Labour Relations Commission in any proceeding under this Chapter and every order of the Labour Relations Commission under Section 89 shall be binding on –

- (a) the parties to the proceeding; and
- (b) in the case of a party to the proceeding being an employer

his successors or assignees in respect of the establishment to which such proceeding relates.

92. Recovery of Money Under an Award

Where any money is due to any managerial or other employee under any award or an order of the Labour Relations Commission under Section 89 or 90, the managerial or other employee or any other person authorised by him in writing in this behalf or, in the case of the death of the managerial or other employee, his assignee or heirs may without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that the 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:

Provided that every such application shall be made within one-year from the date on which the money became due to the managerial or other employee from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, but not exceeding two years if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within such period.

93. **Penalties**

Any employer who

- (a) refuses or fails to submit for registration the regulations or any modification thereto as required by section 87; or
- (b) terminates the employment of any managerial or other employee in contravention of the provisions of section 89; or
- (c) refuses or fails to comply with the award of a Labour Relations Commission or any order made by it under section 89,

shall be punishable with penalty as may specified in this behalf.

Chapter XI

Participation of Workers in Management of Enterprises

94. **Application of this Chapter**

- (1) Nothing in this chapter shall apply to establishments employing less than 300 workers.

Provided that appropriate Government may by a non-statutory scheme provide for workers participation in management limited to exchange of information and consultation in respect of establishments employing less than 300 workers.

- (2) Every employer of an establishment to which this Chapter applies shall set up shop floor or department or section level councils for each shop floor or department or section and an establishment level council and where the number of workers employed in a shop, department or section is less than 20, a joint shop floor or department or section level council up for two or more shop floors, departments or sections as may be prescribed by rules by appropriate Government.
- (3) The shop floor, department or section level council and the establishment level council shall consist of equal number of representatives of workers to be nominated by the negotiating agent certified in respect of the establishment and the employer of that establishment.

Provided that a person representing the workers shall cease to be a member of the council when he ceases to be a worker of the establishment and the vacancy so caused shall be filled up for the un-expired term of the council.

(4) The chairman, and other office bearers of the council shall be chosen by the council from amongst its members as may be prescribed by the appropriate Government.

95. The Composition, Powers, Functions and Procedure of the Council

(1) The matters within the competence of a Shop Floor, Department or Section level Council and the Establishment Level Council shall be as specified in Schedule I and II respectively.

(2) An Establishment Level Council may in consultation with employer identify matters on which there shall be exchange of information or consultations and matters on which there shall joint decisions.

(3) The composition, the procedure for conducting the business of the shop floor, department or section level councils and establishment level councils, the procedure for nomination of members, the manner of filling up of vacancies and election of chairpersons of councils shall be such as may be prescribed in this behalf by the appropriate Government.

96. **Board of Management**

(1) Notwithstanding anything contained in any other law for the time being in force, the Board of Management of every body corporate owning an establishment or undertaking shall include persons to represent workers and managerial and other employees employed in that establishment or undertaking and the persons representing workers shall constitute 12^{1/2} (twelve and half) per cent and the persons representing managerial and other employees shall constitute twelve and half per cent of the total strength of such Board of Management.

Provided that in case of a fraction of a number, such number shall be rounded off to the nearest whole number and, for this purpose, where such fraction is one-half or more, it shall be increased by a whole number and if such fraction is less than one-half it shall be ignored.

Provided further that where the total strength of the Board of Management is not sufficient for giving representation to workers and managerial and other employee, the Board of Management shall include at least one worker and one managerial and other employee.

- (2) The persons to represent the managerial and other employees shall be elected from amongst, managerial and other employees of the establishment or undertaking by secret ballot, in accordance with the Scheme as may be prescribed.
- (3) The persons to represent the workers shall be nominated by, the negotiating agent of the establishment or the undertaking in accordance with the Scheme as may be prescribed.
- (4) The term of office of the representatives of the workers and managerial and other employees shall be four years from the constitution of the Board of Management.

Provided that a person representing the workers or, as the case may be managerial or other employees shall cease to be a representative on the Board of Management when he ceases to be a worker or managerial or other employees in an establishment or undertaking and the vacancy so caused shall be filled up in such manner as may be specified in the Scheme.

- (5) For the removal of doubts, it is hereby declared that every representative, of the workers and the managerial and other employees shall exercise all the powers and discharge all the functions of a member of Board of Management and shall be entitled to vote.

- (6) The Board of Management shall review the functioning of each Shop Floor Council and the Establishment Council of the establishment or undertaking concerned.

CHAPTER XII

PROCEDURES, POWERS & DUTIES OF AUTHORITIES

97. Adjudicating Authorities to Determine their Procedure Subject to the Provisions of the Act and the Rules

Subject to the provisions of this Act, and any rules made thereunder:

- (a) by the appropriate Government in the case of an Arbitrator, Lok Adalat, Labour Court or Central or State Labour Relations Commission; or
- (b) by the Central Government, in the case of a National Labour Relations Commission,

an Arbitrator, Lok Adalat Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall follow such procedure as he or it thinks fit

98. Powers to Summon Witnesses, to Inspect Premises, etc.

- (1) Every Arbitrator, Presiding Officer of a Lok Adalat or Labour Court or Central or State Labour Relations Commission or National Labour Relations Commission shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely: -
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) compelling the production of documents and material objects;
 - (c) issuing commissions for the examination of witnesses; and
 - (d) in respect of such other matters as may be prescribed;

and every enquiry or investigation by an Arbitrator, a Presiding Officer of a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

(2) A Conciliation Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person;
- (b) examining any person;

Provided that such examination shall not be on oath;

- (c) compelling the production of documents and material objects; and
- (d) in respect of such other matters as may be prescribed.

(3) A Conciliation Officer, a single Arbitrator or member of a body of Arbitrators, Presiding Officer of a Lok Adalat or Labour Court, or Central or State Labour Relations Commission or National Labour Relations Commission for the purpose of enquiring into any matter connected with any existing or apprehended individual dispute,, industrial dispute or trade union dispute, may, after giving reasonable notice (not being less than twenty-four hours) enter the premises in which any establishment or undertaking or the office of a trade union to which the dispute relates is situated and inspect any record or books of account.

99. Power of Labour Court, etc. to Proceed in Absence of Parties of Dispute

(1) Where on the day fixed for hearing of any dispute or any other proceeding, pending before a Labour Court or Central or State Labour Relations Commission or National Labour Relations Commission, any of the parties to the dispute or other proceeding, having notice of the hearing does not appear, the Labour, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, may proceed with the hearing of the dispute or other proceeding

notwithstanding the absence of such party and, where it does so, it shall have the same powers in relation to the making of any award or determining or deciding any question as it would have had such party appeared as aforesaid.

Explanation: In this sub section "day fixed for hearing" includes the day fixed for the appearance of any party, filing of any statement, examination of witnesses, production of documents, hearing of arguments or the doing of any other thing by the party concerned or his authorised representative in connection with the adjudication of the dispute or other proceeding.

- (2) Where any party to a dispute or other proceeding to whom time has been granted for producing his evidence, or causing attendance of witnesses, or performing any other act necessary for the further progress of the adjudication of the dispute or other proceeding fails to do so within the time so granted, the Labour Court, Central or State Labour Relations Commission, or National Labour Relations Commission, as the case may be, may notwithstanding such failure: -
 - (a) if the parties are present, proceed to adjudicate the dispute or other proceeding forthwith; or
 - (b) if any of the parties are absent, proceed under sub section(1)
- (3) Where any of the parties to the dispute or other proceedings, who fails to appear, or to do any act referred to in sub section (2) within the time allowed therefore, subsequently satisfies the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, within such time as may be prescribed, that there was sufficient cause for his non appearance or for such failure, it may make such order as it considers just and proper in the circumstances of the case (including an order setting aside any award or order made) and direct re-hearing of the dispute or other proceeding subject to such conditions (including a condition as to payment of costs) as it may think fit to impose.

100. Appointment of Assessors to Assist Court of Inquiry, etc.

An Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission may, if he or she so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor to advise him or it in the proceeding before such Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be.

101. Power to Grant Interim Relief

It shall be lawful for the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission to grant to any party to any proceeding in relation to any individual dispute, industrial dispute or trade union dispute pending before it, such interim relief (whether subject to any conditions or not) including stay of any order, issue of injunction or direction in regard to payment of wages or subsistence allowance including the non-payment of such wages and subsistence allowance, as it deems just and proper in the circumstances of the case:

Provided that the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall not grant any such interim relief unless all the parties to the proceeding have been served with a notice on the application for such interim relief and have been given a reasonable opportunity of being heard:

Provided further that the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission may, having regard to the nature of the interim relief sought and the circumstances of the case pass appropriate orders granting or refusing to grant such interim relief as it deems just and proper in the circumstances of the case before the notice referred to in the proviso is served on the parties to the proceeding:

Provided also that where the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission makes any order under the proviso immediately preceding, it shall record the reasons for making the order before complying with the requirements specified in the first proviso.

102. Power to Transfer Proceedings

- (1) Where any proceeding relating to the adjudication of any individual dispute is pending before a Labour Court, or a bench of Central or State Labour Relations Commission, the Central or State Labour Relations Commission on an application made to it in that behalf by any party to such proceeding and after notice to the other party or parties to such proceeding, and after hearing such of them as desire to be heard, may, at any stage by order and for reasons to be stated therein, transfer the proceeding to another Labour Court or other bench of Central or State Labour Relations Commission within its jurisdiction.
- (2) The Labour Relations Commission may, by order and for reasons to be stated therein withdraw any proceeding relating to the adjudication of any industrial dispute or trade union dispute or any other proceeding under this Act, other than a proceeding referred to in sub section (1) pending before any Labour Court, or any bench of the Labour Relations Commission and transfer the same to another Labour Court, or other bench of Labour Relations Commission
- (3) The Labour Court or the bench of Labour Relations Commission to which a proceeding is transferred under sub section (1) or sub section (2) may, subject to any special directions in the order of transfer, proceed either de novo or from stage at which it was so transferred.

103. Pronouncement of Award by Arbitrator, Labour Court, etc.

- (1) Every award or other determination or decision by an Arbitrator or a Lok Adalat or Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall be pronounced on the date of which notice has been given to the parties to the dispute and shall be dated and signed by the person or persons pronouncing the award and when once signed shall not thereafter be altered or added to, save as provided in this Act.

- (2) The award of an Arbitrator shall be pronounced in his office and the award of a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall be pronounced in the open court.
- (3) A copy of every award or other determination or decision referred to in sub-section (1), certified in such manner as may be prescribed, shall be given by the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, to each of the parties to the dispute free of cost and a copy of the award or other determination or decision so certified shall be sent by the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, to the appropriate Government.

104. Time Limit for Submission of Report, Making of Awards, etc.

- (1) The Labour Court shall pronounce its award ordinarily within a period of ninety days from the date on which the application is made to it.
- (2) The Central or State Labour Relations Commission or National Labour Relations Commission shall pronounce its award ordinarily within a period of 180 days from the date on which the dispute is referred to it.
- (3) Where the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission is unable to make its award within the periods referred to in sub section (1) or sub section (2), as the case may be, it shall record the reasons therefore.

105. Persons on Whom are Binding

- (1) An award of a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission which has become enforceable under section 103 shall be binding on (a) all the parties to the individual dispute, industrial dispute or trade union dispute;
- (b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Labour Court, Central or State Labour

Relations Commission or National Labour Relations Commission, as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his successors or assignees in respect of the industrial establishment or undertaking to which the dispute relates; and
- (d) where a party referred to in clause (a) or clause (b) is a negotiating agent, all persons who were workers of the establishment or undertaking on the date of the dispute and all persons who subsequently become workers of the establishment or undertaking.

106. Period of Operation of Award

- (1) Every award of an Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall, subject to the provisions of this section, remain in operation for a period of four years from the date on which the award becomes enforceable:
- (2) Notwithstanding the expiry of the period of operation referred to in subsection (1) the award shall continue to be binding on the parties until a period of 60 days has elapsed from the date on which notice in writing is given by any party bound by the award to the other party or parties, as the case may be, intimating its intention to terminate the award.
- (3) No notice given under sub section (2) shall be entertained or be valid in the case of an industrial dispute, unless it is made or given—
 - (a) where such dispute is between workers and the employer or employers, by the negotiating agent or the employer; or
 - (b) where dispute is between workers and workers or employers and employers by the majority of any of the parties bound by the award.

107. Review of Award by Authorities and correction of mistakes

- (1) Any party to an individual dispute, industrial dispute or trade union dispute, who, on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of an award made by an arbitrator, a Lok Adalat, a Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, may apply to such authority and where such authority, after giving all the parties to the individual dispute, industrial dispute or trade union dispute, as the case may be, a reasonable opportunity of being heard is of the opinion that the application for review should be granted, it shall grant the same.
- (2) Clerical or arithmetical mistakes in awards or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, either of its own motion or on the application of any of the parties to the dispute or the appropriate Government.

108. Award of Costs

Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before an arbitrator, or a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, shall be in the discretion of the arbitrator, Lok Adalat, Labour Court Central or State Labour Relations Commission or National Labour Relations Commission, and the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be shall have full power to determine by whom, to whom, and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purpose aforesaid and such costs may be recovered under section 110 in the same manner as if it were money due under any settlement or award.

109. Execution of Settlement or Award by Labour Court, etc.

Every settlement arrived at in negotiations or conciliation and every award or determination or decision of an Arbitration, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, shall be executed by the Labour Court as if it were an award made by such Labour Court in such manner as may be provided under this Act.

110. Procedure for Recovery of Money Due Under Settlement or Award

(1) Where any money is due to any of the parties to a settlement or award under such settlement or award, such party or any person, in, or on, whom the rights of such party under the settlement or award have been vested or devolved, by assignment, inheritance or otherwise, may, without prejudice to any other mode of recovery, make an application to the Labour Court, to whom an application for the execution of the settlement or award may be made under section 109 or the recovery of the money so due to such party and where the Labour Court, is satisfied that any 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 and remit the amount so recovered to the Labour Court.

Provided that every such application shall be made within one year from the date on which the money becomes due to such party.

Provided further that any such application may be entertained after the expiry of the said period of 1 year if the Labour Court, is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) The Labour Court, as the case may be, shall disburse or cause to be disbursed in such manner as may be prescribed, the amounts remitted to it by the Collector under sub section (1) to the person or persons entitled to receive the same.

111. No demand in Regard to Same Matter to be Raised So Long as Settlement or Award is in Force

So long as any settlement arrived at in the course of negotiation, or in conciliation or any award of an Arbitrator or a Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission is in operation, it shall not be lawful for the workers or negotiating agent or employer or employers as the case may be, to raise any dispute with respect to any matter covered by such settlement or award.

CHAPTER XIII

PENALITIES

112. Penalties May be Provided for:-

- (i) failure to submit information or for submitting wrongful information, withholding the information or making false statement
- (ii) failure to recognise negotiating agent
- (iii) breach of standing orders
- (iv) giving authorisations for deduction of subscriptions from wages by the workers in favour of more than union
- (v) disclosure of confidential information
- (vi) effecting lay off, retrenchment or closure in contravention of this Act
- (vii) illegal strikes or lock outs
- (viii) instigation
- (ix) giving financial aid to illegal strikes or lock outs
- (x) breach or settlement or award
- (xi) other offences and violations.

113. Cognisance of Offences

114. Offences by a company

CHAPTER XIV

MISCELLANEOUS

115. Power of the Appropriate Government to Exempt

- (1) Where the appropriate Government is satisfied that in an establishment or undertaking carried on by the department of that Government there are adequate provisions for resolution of individual as well as industrial disputes of workers through the machinery of joint consultation, administrative tribunals or otherwise, the appropriate Government may by notification exempt such establishment from any or all provisions of this Act.
- (2) The appropriate Government may by notification exempt any establishment or undertaking from any or all provisions of this Act if it is of the opinion that the application of the provision or provisions is likely to cause extreme hardship to the establishment or undertaking or due to emergent situation arising in the establishment or undertaking it is necessary to exempt such establishment or undertaking from such provision or provisions.

Provided that no exemption granted under sub section (2) shall be for a period exceeding 6 months at a time.

116. Competence to Remove the Difficulties in Interpretation of Settlement or Awards

- (1) Subject to the other provisions of this Act where any difficulty or doubt or difference of opinion arises as to the interpretation of any provision of a settlement or award, a party to the settlement or in case of an award, a party to whom the award is binding may make an application to the Labour Court for interpretation of the provision of settlement or award.
- (2) The Labour Court before whom such application is made shall after giving the parties opportunity of being heard decide such question and its decision in this regard shall be final.

117. Matters to be kept Confidential

No Conciliation Officer, Arbitrator, Lok Adalat Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission shall include in any report or award any information obtained by him or it relating to a trade union or any establishment or undertaking which is not available otherwise than through the evidence given before such Arbitrator, Conciliation Officer, Lok Adalat, Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission, if the trade union, person, firm or company in question has made a request in writing in this behalf that such information shall be treated as confidential nor shall Arbitrator, Conciliation Officer, Presiding officer of the Lok Adalat or Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission or any other person present at or concerned in such proceedings disclose any information without the consent in writing of the trade union or the person, firm or company in question.

Provided that nothing contained in this Section shall apply to any disclosure of information for the purpose of prosecution proceeding under this Act.

118. Representation of Parties

- (1) A worker who is a party to any proceedings under this Act in relation to an individual dispute shall be entitled to be represented in any such proceeding by-
 - (a) by himself or through an advocate duly appointed by him wherever permitted under this Act;
 - (b) an office bearer of a single negotiating agent or constituent of the negotiating college certified under this Act as negotiating agent if he is a member of such single negotiating agent or constituent of a negotiating college;

- (c) by an office bearer of a registered trade union of which he is a member if such registered trade union has at least 10% membership amongst the workers of the establishment where such worker is employed.
- (2) No person or a trade union other than the negotiating agent as certified under this Act shall represent the workers of the establishment in any proceedings in relations to any industrial dispute under this Act

Provided that the negotiating agent may be represented in any industrial dispute by a legal practitioner wherever permitted under this Act.

- (3) An employer who is a party to any proceeding in relation to any individual or industrial dispute under this Act shall be entitled to be represented in such proceedings by –
- (a) by himself or through an officer of an establishment duly authorised in this behalf or an advocate wherever permitted under the Act;
 - (b) an office bearer of a registered trade union of employers of which he is a member;
- (4) No legal practitioner shall be permitted to represent any party in any proceedings in relation to any individual or industrial dispute before a Conciliation Officer or a Lok Adalat.
- (5) Notwithstanding any thing contained in sub-sections (1) to (3) in any proceedings before a Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission, a party to such proceedings may be represented by a legal practitioner with the consent of the other party or parties to the proceeding and with the leave of the Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission

119. Delegation of Powers

The appropriate Government may, by notification, direct that any power exercisable by it under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also –

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and
- (b) where the appropriate Government is a State Government by such officer or authority subordinate to the State Government or the Central Government or an officer or authority subordinate to Central Government as may be specified in the notification.

120. Power to Require Production of Books, etc.

Where any person is required by or under this Act to make any statement or furnish any information to any authority, that authority may by order, with a view to verifying the statement made or the information furnished by such person, require him to produce any books, accounts or other documents relating thereto which may be in his possession or under his control.

121. Protection of Action taken Under the Act and Protection of Persons

- (1) No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.
- (2) Notwithstanding anything contained in the rules of a trade union no person refusing to take part or to continue to take part in any strike or lock out which is illegal under this Act shall by reason of such refusal or by reason of any action taken by him under this Section, be subject to expulsion from such trade union or to any fine or penalty, or to

deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of such trade union.

- (3) Nothing in the rules of a trade union requiring the settlement of dispute in any manner shall apply to any proceeding for enforcing any right secured by this section, and in any such proceeding the Labour Court, may, in lieu of ordering a person who has been expelled from membership, order that he be paid out of the funds of the trade union such sum by way of compensation or damages as that court thinks just.

122. Powers to Make Rules

- (1) The appropriate Government shall have powers to make rules for the purpose of giving effect to different provisions of this Act by notification.
- (2) Before notifying the rules the appropriate Government shall by notification publish the proposed rules giving 3 months time to the public to submit their objections, if any, to the proposals and rules shall be notified after considering the objections if any received specified in the said notification.

123. Laying of Rules before the Parliament and the State Legislatures

- (1) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.
- (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

124. Repeal and Savings

- (1) The Trade Union Act, 1976, The Industrial Employment (Standing Order) Act, 1946, the Industrial Disputes Act, 1947, including amendments made by the State Government, the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, the Bombay Industrial Relations Act, 1946, the Madhya Pradesh Industrial Relations Act, 1961 U.P. Industrial Disputes Act and similar laws of other State Governments shall stand repealed on enactment of this Law.

Notwithstanding the repeal of the Acts referred to in sub section (1) the proceedings pending under the above enactments on the date of enactment of this Law shall be disposed of as if these Acts have not been repealed.

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CHAPTER - VII

UNORGANISED SECTOR

Problem of definition and identification

One of the two main tasks entrusted to our Commission is to propose an umbrella legislation for workers in the unorganised sector. We have also been asked to see that the legislation, and the system that will be built around it, will assure at least a minimum protection and welfare to workers in the unorganised sector. We are deeply conscious of the urgency and importance of this task. In fact, both the main tasks entrusted to our Commission are urgent and difficult. But in a sense, it can be said that visualising a system of effective protection and welfare for the unorganised sector is a shade more difficult and complicated, if only because of the dimensions and variety of the workforce in the sector, and the various factors that have to be taken into consideration.

7.2 Unlike the organised sector, in this sector we are dealing with

workers who have not acquired a high profile, tasted the benefits that can be gained from organisation, or derived the advantages flowing from high visibility. In the unorganised sector, we have to deal with workers who are engaged in a variety of occupations or employments, ranging from those like forest workers, tribals trying to follow traditional vocations within their traditional habitats, and fishermen who venture out to sea in vulnerable canoes, to those who are working in their homes with software, or assembling parts for a highly sophisticated product. Many of them are victims of invisibility. The laws or welfare systems that we propose for them cannot be effective unless they themselves are conscious of the laws, and acquire the strength to ensure that laws are brought into force; unless there are effective means to implement, monitor and provide quick redress; unless breaches of the law are punished with deterrent penalties, and unless the organs of public opinion and movements and organisations mount vigil, and intercede to ensure that the

provisions of the laws and welfare systems are acted upon.

7.3 We are aware that though other Commissions before us have also looked at the unorganised sector, it is for the first time that the Government has specifically asked a Commission to propose umbrella legislation to ensure the protection and welfare of the workers in this sector.

7.4 We have to begin with a brief reference to the variety of occupations, levels of organisation etc. in the sector, of which, we will have more to say in later paragraphs. But we wish to preface our observations by saying that the variety, complexity, and dimensions of the sector, and the paucity of information about conditions of work are such that we would have liked to undertake a comprehensive, if not an exhaustive, study of the different kinds of employments, and the conditions and needs of workers in this sector. We cannot over-emphasise the need for such a study. But the time and resources at our disposal do not permit us, either to undertake such a study, or to collect comprehensive data. We are aware that our work will, therefore, bear the marks of the

shortcomings that arise from incomplete access to data.

7.5 The first difficulty that we came across was in identifying or defining the unorganised sector. Saying that the unorganised sector covers the area that falls outside the purview of the organised sector, is not saying much. We looked for a single or primary criterion or characteristic by which the sector could be defined. We found that it could not be defined or described on the basis of the nature of the work that workers or employees in the sector are engaged in, because, as we have pointed out earlier, the sector has tribal forest workers as well as home-based, info-tech and software workers. It cannot be based on the number of employees in undertakings because it covers agricultural workers, craftsmen, home-based workers, self-employed workers, workers in weavers' cooperatives, as well as workers in small scale industries where the workforce can be counted on one's fingers. It cannot be based on the level of organisation because some of the enterprises may have very few workers, and even these may be working in a dispersed manner with hardly any organisational link or interaction with each other, sometimes because of the nature of the work,

and sometimes because of the geographical or locational dispersal of the workers pursuing the same vocation. How then can we define the sector? It would seem that the vocations, employments and conditions of work are so varied and disparate that it is impossible to provide protection and welfare to all workers in all these sub-sectors, with one uniform law or one uniform system for welfare and social security. We will attempt to address these problems in the ensuing paragraphs.

7.6 It has often been pointed out, and perhaps universally accepted, that there are areas in the unorganised sector where it is difficult to identify an 'employer', and hence, an employer - employee relationship, which the law can attempt to channelise or influence by defining rights and responsibilities, and building up a system of social security on a contributory basis. The employer of the construction worker or the brick kiln worker can perhaps be identified as a direct employer or a contractor. An employer can perhaps be identified even in the case of a worker who collects minor forest produce, as one, who works for a contractor or the forest department. But no employer can be identified for a fisherman who

casts his net into a pond or stream, or for a woman who spins or weaves, or tends livestock at home, to sell surplus milk to a co-operative or to a consumer who is her neighbour. This difficulty in identifying an employer-employee relationship has its corollaries, which we have to take into account when we come to the formulation of proposals for legislation and social security.

7.7 Now, let us look at what other Commissions or Committees have done to deal with some of the difficulties we have mentioned.

7.8 To begin with, it must be pointed out that it has almost become the universally accepted practice to treat the words 'unorganised sector' and 'informal sector' as denoting the same area. They are, therefore, regarded as interchangeable terms. We too will follow the practice and treat the words as interchangeable for the purpose of our report.

7.9 The concept of an informal/unorganised sector began to receive world-wide attention in the early 1970s, when the International Labour Organisation (ILO) initiated serious efforts to identify and study the area through its World Employment

Programme Missions in Africa. Since then, the informal sector has been the subject of several studies and seminars covering various aspects like its size, employment potential, its relationship with the formal sector, technological levels etc. In 1987, the Director General of the ILO submitted a report to the International Labour Conference on the "Dilemma of the Informal Sector." In it, he referred to the role of this sector in promoting employment, the absence of adequate laws for providing protection to workers in this sector, and the scope for application of international labour standards in this area.

7.10 In India, however, the term informal sector is of recent origin, and has been in use only during the last two decades. A number of studies have been conducted to assess the size and employment structure of the sector in different urban localities by agencies like The Institute of Applied Manpower Research (IAMR) etc. during the late eighties and early nineties.

7.11 The first National Commission on Labour, under the Chairmanship of Justice Gajendragadkar, defined the

unorganised sector as that part of the workforce 'who have not been able to organise in pursuit of a common objective because of constraints such as (a) casual nature of employment, (b) ignorance and illiteracy, (c) small size of establishments with low capital investment per person employed, (d) scattered nature of establishments and (e) superior strength of the employer operating singly or in combination.' The Commission listed 'illustrative' categories of unorganised labour: 'These are: (i) contract labour including construction workers; (ii) casual labour; (iii) labour employed in small scale industry; (iv) handloom/power-loom workers; (v) beedi and cigar workers (vi) employees in shops and commercial establishments; (vii) sweepers and scavengers; (viii) workers in tanneries; (ix) tribal labour; and (x) 'other unprotected labour' (p.417).

7.12 The National Commission on Self-Employed Women, set up in 1987 under the Chairpersonship of Smt. Ela R. Bhatt, included in their terms of reference, the women workers in the unorganised sector. This report characterised the unorganised sector as one in which women 'do arduous work as wage earners, piece-rate

workers, casual labour and paid and unpaid family labour. The economic and social conditions of these women are dismal.' The report also observed that 'the unorganised sector is characterized by a high incidence of casual labour mostly doing intermittent jobs at extremely low wages or doing their own account work at very uneconomical returns. There is a total lack of job security and social security benefits. The areas of exploitation are high, resulting in long hours, unsatisfactory work conditions, and occupational health hazards.'

7.13 The National Commission on Rural labour, set up in 1987, defined rural labour as 'a person who is living and working in rural area and engaged in agricultural and/or non agricultural activities requiring manual labour, getting wage or remuneration partially or wholly, in cash or in kind or both during the year, or such own account workers who are not usually hiring labourers but are a part of the petty production system in rural areas.' According to this definition, rural labour comprised 150 million persons or roughly 60% of the total rural workforce in the country during 1986-87. The Commission pointed out

that (a) the number of rural labour both in agricultural and non-agricultural operations was increasing at a faster rate than the rate of growth of the rural population, and (b) a number of factors like the uneven and declining labour absorption in agriculture, declining land base, and scarcity of non-farm employment opportunities had led to large scale migration and casualisation of rural labour.

7.14 The National Council for Applied Economic Research (NCAER) and Self-Employed Women's Association (SEWA) conducted a joint workshop on the subject of defining the informal sector in March-April 1997. The Central Statistical Organisation formed an expert Group on the informal sector (Delhi Group) to suggest a definition of the informal sector. In the NCAER-SEWA workshop, a Gujarat-based Group of experts on Estimation of the Informal Sector proposed a definition for the informal sector based on employment. According to the Group, the informal sector included all workers in informal enterprises, some workers in formal enterprises, self-employed workers, and those doing contract work for informal or formal sector enterprises

and contractors¹. The NCAER-SEWA workshop raised doubts on the enterprise-based definition of the informal sector. It pointed out that such a definition would leave out workers who were working on contract basis. It said that the definition should be based on activities and ranks of the self-employed producing non-tradeable services and items for the local markets. It further said that the National Accounting must cover the informal sector which included home-based workers, artisan groups and contract workers, besides workers in the unorganised sector of services, manufacturing and agriculture.

Definition and Identifiable characteristics

7.15 It may be seen from these observations that the unorganised sector is too vast to remain within the confines of a conceptual definition. Hence, descriptive means are often used to identify the unorganised or informal sector.

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¹ Kantor, 1997

7.16 The term 'informal' per se, denotes the informal nature of work in the activity concerned, irrespective of the actual number of workers employed, and irrespective of whether it is within the purview of the requirements for registration. Some studies done in India restrict the informal sector to enterprises employing less than 10 persons. These tend to set an upper limit of employment at 9 persons and also identifies other criteria for identifying informal sector activities.

7.17 As we have said earlier, in India, the terms 'unorganised sector' and 'informal sector' are used interchangeably in research literature. The term 'unorganised sector' is used commonly in all official records and analyses. It is defined as the residual of the organised sector. The term 'organised' is generally used when we refer to enterprises or employees in which 10 or more employees work together. The various methods employed in estimating data on employment in the organised sector by the Annual Survey of Industries (ASI), Employment Market Information (EMI) programme, etc., as well as those used in assessing overall employment like the decennial

Population Census and quinquennial surveys of the National Sample Survey Organisation (NSSO) have their own limitations.² Problems of underestimation and insufficient coverage in the unorganised sector lead to further problems in deriving the residual estimate of the unorganised sector. Therefore, definitions based on the residual approach, that consider the organised sector as employing 10 or more workers and the unorganised sector as the residual, no longer seem to be dependable. Many new types of enterprises and employments that have emerged in recent years, have to be taken into account.

7.18 As we have said earlier, the unorganised sector is very diverse. Many efforts have been made to identify the characteristics of employments or undertakings in the sector. But none of the characteristics can be termed as crucial in defining the sector. However, it will be useful to list some of these characteristics:

- (a) low scale of organisation
- (b) operation of labour relations on a casual basis, or on the basis of kinship or personal relations
- (c) small own account (household) or family-owned enterprises or micro enterprises
- (d) ownership of fixed and other assets by self
- (e) risking of finance capital by self
- (f) involvement of family labourers
- (g) production expenditure indistinguishable from household expenditures and use of capital goods
- (h) easy entry and exit
- (i) free mobility within the sector
- (j) use of indigenous resources and technology
- (k) unregulated or unprotected nature
- (l) absence of fixed working hours
- (m) lack of security of employment and other social security benefits
- (n) use of labour intensive technology
- (o) lack of support from Government

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² Suryanarayanan, 1998

- (p) workers living in slums and squatter areas
- (q) lack of housing and access to urban services
- (r) high percentage of migrant labour

7.19 Some analysts differentiate the terms unorganised and informal. They argue that the number of workers in an undertaking or employment is not the factor that enables one to distinguish the unorganised from the organised. According to them, the organised sector can be distinguished from the unorganised by the presence of legal protection, size of establishments, capability of the workers to organise themselves in unions, and the systematic manner in which production processes are organised in perceptible patterns. The distinguishing factors often mentioned to demarcate the organised from the unorganised, cannot be applied to the informal sector. For instance, let us look at the rules that municipal bodies frame for licensing shops that sell medicines under the Drugs Act, and those that are framed for licensing eateries. There is considerable difference in the nature of the work undertaken by these establishments.

The nature of medical practice or druggists' shops is highly organised, systematic and sophisticated, requiring high levels of skills acquired through formal education. On the other hand, the nature of the work involved in small or medium restaurants cannot be said to be formal or organised. Again, work in numerous garment-manufacturing units, many of which employ a large number of workers, is organised in nature, but is entirely informal.

7.20 However, the formal-informal categorising has helped in identifying a variety of new income generating activities that have hitherto remained un-enumerated and excluded from statistics. It has also been pointed out that the informal sector employment often occurs in circumstances in which the labour processes and the conditions of work are outside the area of public scrutiny.

7.21 In the broader sense, the number of workers employed in an enterprise cannot be the basis of defining the unorganised sector because such an enterprise based definition does not take into account the vast masses of unorganised labour who work as agricultural

workers, cultivators, construction workers, self-employed vendors, artisans, traditional crafts persons, home-based workers, traditional service workers, workers depending on the common property resources such as forests and fisheries and others. Almost the entire non-agricultural activity in rural India is unorganised. All these sectors are mostly unorganised in terms of organisation, employment and labour participation.

7.22 The unorganised sector is in no way an independent and exclusive sector. It is linked to, or in many cases, dependent on the organised sector and the rest of the economy through a variety of linkages. It depends on the organised sector for raw materials and other capital requirements, generation of employment, marketing facilities, and so on. The subcontracting model is used by the formal sector for engaging labour in the unorganised sector.

7.23 It cannot be denied that the unorganised sector does not get enough protection through labour legislation. Despite the existence of labour laws, for various reasons, the

workers in this sector do not get social security and other benefits, as do their counterparts in the formal sector. Here, workers are highly exploited by entrepreneurs. They are employed on a casual basis. With the exception of very few cases (where organisations like SEWA are present), there is hardly any trade union or other institutional machinery to fight for the workers. Up to now, collective bargaining has not been able to get any visible space in the unorganised sector. As the workers in the unorganised sector, particularly women, have not been able to organise themselves, they are further discriminated against in the sector. Thus, this is a sector in which workers do not have protection or adequate bargaining power.

7.24 In the organised sector too, there is a section of permanent workers who are getting casualised and contractualised as a consequence of the new economic and industrial policies. At the same time, there are sections of workers in the unorganised sector, who are organised and unionised as, for example, the head load workers in some of the industrial and trade centres. However, for practical purposes, we propose to

look upon these unionised workers too as part of the workers in the unorganised sector. Thus, workers in the unorganised sector include all the workers of the unorganised sector as well as the casual and contract workers in the organised sector who, for one reason or another, have failed to get the benefits of protective legislation or laws on social security.

7.25 In a sense, all workers, who are not covered by the existing Social Security Laws like Employees State Insurance Act, Employees Provident Fund and Miscellaneous Provisions Act, Payment of Gratuity Act and Maternity Benefit Act, can be considered as part of the unorganised sector.

7.26 Perhaps, then, the unorganised sector is a term that eludes definition. Its main features can be identified, and sectors and processes where unorganised labour is used can be listed, though not exhaustively. Apprentices, casual and contract workers, home-based artisans, and a section of self-employed persons involved in jobs such as vending, rag picking and rickshaw pulling come in the unorganised sector. Agricultural workers, construction workers, migrant labour and those who perform manual

and helper jobs also come in the category of unorganised sector workers. Workers who depend directly or indirectly on natural resources that are open or common property-based are also included in the unorganised sector provided:

- a) that it does not include any such person who is subject to the three armed forces Acts or prison services;
- b) and that they are not employed as permanent workers in:
 - factories, as defined in section 2(m) of the Factories Act of 1948,
 - plantations, as defined in section 2(f) of the Plantations Labour Act of 1951,
 - mines, as defined in section 2(j) of the Mines Act of 1952, and
 - shops and commercial establishments, as defined by the different State Acts.

7.27 Other casual and contract workers in defence establishments, factories, plantations, mines and shops and commercial establishments,

who for some reason do not enjoy the benefits of the Social Security Laws, should however, be regarded as part of the unorganised sector workforce. The form of employment or the labour relationship is important in demarcating different sectors. However, conventional labour laws do not define most of them as employees or workers, because a principal employer is unidentifiable in most of these sectors.

7.28 In India, the official definition of the informal sector enterprises consists of Directory Establishments that employ at least six persons but not more than nine, Non-Directory Establishments which employ five persons or less, and Own Account Enterprises that employ oneself. Officially, these constitute the unorganised sector of industries. However, the available database and hence, the modes of estimation of the unorganised sector workforce are not so dependable.

7.29 Now, let us turn to another characteristic of employment in the unorganised sector. According to Haensenne, 'what all informal sector activities have in common is their vulnerability. Their vulnerability is due

to the fact that they have to rely as best as they can on self-supporting and uniform institutional arrangements which operate separately and independently of the institutions of the modern economy.'

7.30 The sample study of economic activities that our study group conducted, has brought out some general characteristics of enterprises or employment in the unorganised sector. It has been seen:

- a) It is in general a low wage and low earning sector.
- b) Women constitute an important section of the workers in this sector.
- c) Family labour is engaged in some occupations such as home-based ones.
- d) Economic activities, which engage child labour, fall within this sector.
- e) Migrant labour is involved in some sub-sectors.
- f) Piece-rate payment, home-based work and contractual work are increasing trends in this sector.
- g) Direct recruitment is on the decline. Some employees are engaged through contractors.

An increasing trend to recruit workers through contractors is visible in areas of home-based work. There is a sort of convergence of home-based work and engagement in work through contractors.

- h) If some kinds of employment are seasonal, some others are intermittent. As such, under-employment is a serious problem.
- i) Most jobs are, for the greater part, on a casual basis.
- j) Both employed and self-employed workers can be found in a number of occupations.
- k) Workers are not often organised into trade unions. The self-employed are seldom organised into associations. There is not much recourse to collective bargaining.
- l) There are many co-operatives of self-employed workers.
- m) Very often, others supply raw materials, Production by self-employed workers, therefore, becomes dependent on, or linked with enterprises or individuals active in other sectors.
- n) Debt bondage is very common among the employed as well as the self-employed workers in the unorganised sector.
- o) The self-employed have less access to capital. Whatever capital they manage, is mostly from non-banking and usurious sources, especially from the trader-contractor.
- p) Health hazards exist in a majority of occupations.

7.31 There are certain other factors specific to some of the sub-sectors in the unorganised sector. For instance, the depletion of, or decreasing access to open resources such as forests and fisheries, is adversely affecting those who depend on common property resources for their livelihood. Hawkers and vendors face harassment from authorities such as police, traffic police and local self-Governments.

Instances/examples of categories and conditions

7.32 We will now look at some of the specific groups of employments in the unorganised sector and the problems confronted by them.

7.33 HOME WORKERS/HOME-BASED WORKERS: The home worker or home-based worker falls within a grey area, in a category between employed workers and self-employed workers. There is no system to enforce minimum wages because of the informal contractual relationship between the worker and the employer, the employer's agent or the contractor. Usually, the home worker is looked upon as a self-employed person, and not a 'worker.' But, there are self-employed workers, as well as workers employed by others, among home-based workers. It has been pointed out that 'the term 'home-based workers' refers to two types of workers who carry out remunerative work within their homes - a) independent own-account producers, and b) dependent subcontract workers - whereas the term 'home workers' refers only to the second category. Under this usage, home workers are a subset of home-based workers. Both types of home-based work involve production for the market, and should not therefore, be confused with unpaid housework or subsistence production.' Another term used for the subcontract workers who work from home is 'industrial outworkers.'³

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³ Carr, et all June 2000

7.34 The ILO Convention No. 177 of 1996 (Convention Concerning Home Work) clarifies that 'many international labour Conventions and Recommendations laying down standards of general application concerning working conditions are applicable to home workers.' It says further, 'it is desirable to improve the application of those Conventions and Recommendations to home workers, and to supplement them by standards which take into account the special characteristics of home work.'

7.35 Article 1 of the Convention No. 177 defines a home worker and an employer. In the eyes of this Convention Article I of this Convention says:

- a. the term 'home work' refers to the work carried out by a person, who is to be referred to as a home worker,
 - in his, or her home, or in other premises of his or her choice, other than the workplace of the employer;
 - for remuneration;
 - that which results in a product or service as specified by the employer,

irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

- b. persons with employee status do not become home workers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;
- c. the term 'employer' means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.'

7.36 The ILO definition, thus, does not give importance to who provides the raw materials and inputs. It only refers to such factors as the dependency of the worker, his or her involvement in producing the product/

rendering the services specified by the employer for remuneration, and the work being carried out at home or a place of the worker's choice.

7.37 Article 4 of the Convention calls for the promotion of equality of treatment for home workers including provision of the right to organise, protection against discrimination, occupational safety and health, remuneration, statutory social security protection, access to training, minimum age for admission to employment, and the right to maternity protection. The South Asia Declaration on Home-based Workers, held in Kathmandu on 18-20 October 2000, in which the national Governments of India, Pakistan, Bangladesh, Sri Lanka and Nepal, and Trade Unions, NGOs etc. from South Asia participated, also endorsed the need to assure these rights. The ratification of this Convention of the ILO will offer substantial safeguards to millions of home workers in India.

7.38 A National Consultation with the Labour Secretaries, Labour Commissioners of the State Governments, representatives of Central Ministries and Departments, research and academic institutions, and NGOs/representatives of home-

based workers was held on the 17th of January 2000 in New Delhi. The discussion paper presented by the Ministry of Labour at the Consultation made an effort to define home-based workers (HBWs). Paragraphs 4 to 12 of the paper try to explain the characteristics and situation of HBWs in India. The paper says: "Home-based Workers are those who are otherwise unemployed, intending to, but not absorbed by the organised sector, with skills limited to certain jobs which have economic value... The issues and problems of such workers are complicated, because of there being no direct employer-employee relationship between the home worker and the person or organisation for whom he works- the relationship being of a loose, contractual and tenuous nature. The home worker has, thus, economic dependence on the person for whom he works, but the latter carries no responsibility for him. The relationship being ambiguous and indefinite, he is also subjected to exploitation in various forms. The home worker is, thus, a self-employed person conducting his economic activity for a person or an organisation. The mode of payment or price can be on piece-rate or time rate basis, depending on the economic activity.

7.39 "Among these home-based workers there are some for whom this is their main economic activity, while there are others for whom this is a supplementary source of income during their spare time. The gravity of the problems of home workers is therefore felt more acutely by the former category than by the latter.

7.40 "There is still some amount of avoidable confusion regarding the term Home-based Workers. HBWs would really indicate that they are workers within the confines of their respective homes and could be termed: 'self-employed' as well. In many of these cases, either the head of the family or a member of the family does the work himself/herself with the help of other members of the family. It is a collective self-employment effort and strictly speaking, there is neither an employee nor an employer. In fact, all these home-based workers are workers, materials managers, production managers, finance managers, personnel managers, marketing managers and chief executives of their businesses – all rolled into one.

7.41 "The absence of specific data pertaining to HBWs in official statistics

in India is a reflection of lack of recognition of their legitimacy as workers and also of a refusal to acknowledge their economic contribution. It is argued that HBWs 'subsidize capitalist growth by providing space, tools, and equipment and by working for below minimum wages.' Their contribution to national income in quantifiable terms is yet hazy, but is estimated to be substantial. Partly because of this lack of recognition, HBWs, particularly women workers, have borne the consequences of the inequality in economic structures (formal vs. informal) and policies, in all forms of production and access to resources including social security. In fact, there would be a strong case for granting a formal status to HBWs by accepting the validity of home-based work" (Ministry of Labour, 2000).

7.42 The paper presented by the Ministry of Labour cited above, puts the informal count of home workers in India at around 50 million. It bases its tentative count on the survey done by SEWA (Self-Employed Women's Association) on the status of home-based workers in ready-made garments, *pappad* and *agarbatti* making in the States of Gujarat, Karnataka, Rajasthan, MP and UP.

Studies done by SEWA, point out that female workers constitute the majority of home-based workers.

7.43 As the paper cited above puts it, SEWA has also identified the presence of certain distinct categories of home-based workers in some of the major States of India. They are:

Rajasthan: *beedi*, *agarbatti*, readymade garments, weaving shawls and *durries*, wool spinning, food preparing and packing, handicrafts and traditional crafts, block printing.

Delhi: *zari* work, garments, *lifafa* (envelope) making.

Madhya Pradesh: *beedi* making, readymade garment stitching, smocking, embroidery, making *agarbatti*, *pappad* making, *zari* work, collection of *tendu* leaves, and *jadi booti*, and *jhadoo* making.

Bihar: lacquerwork, weaving, spinning, bamboo work, *pappad* rolling, shawl weaving, *beedi*, packing cooked food, *tussar*.

Maharashtra: *beedi* making, leatherwork, rope making, cashew, garment making, cardboard box

making, cleaning and sorting onion, seafood, handicrafts, food products.

West Bengal: handicrafts, lacquer work, bamboo work, spinning, weaving seafood, jute work, carpet making, garment stitching, sack making, leather work and footwear.

Tamil Nadu: woollen carpet making, shawl weaving, beedi rolling, manufacture of scented betel nuts, garment stitching, handloom weaving, ornament making, polishing gems, making utensils, lacquer work, sea foods, footwear.

Karnataka: *beedi* making, *agarbatti*, readymade garments, making pickles, cleaning and packing food.

Uttar Pradesh: beedi making, working on handlooms, readymade garments, *chikan* work, food products, lacquer work, rope making, *zari* work, carpet weaving.

7.44 The National Consultation on Home-based workers, mentioned in earlier paragraphs, was of the view that terms like 'home worker,' 'self-employed person' and 'own-account worker' should be defined, and policies should be formulated to cover each of them.

7.45 The recommendations that emerged from the Consultation suggest that the definition of home workers be limited to wage earners working for outside employers; that they should be included under the Minimum Wages Act so as to receive a minimum level of wage protection; that welfare schemes and provisions existing under different labour laws should be extended to them; and that the existing provisions in the organised sector should not be transplanted to the home workers. These recommendations, however, ignore the fact that self-employed home workers are also workers in the unorganised sector. Technically, it is important to note that there are both wage-employed and self-employed among the home-based workers. These two groups of home-based workers may need different measures for protection and welfare.

7.46 **DOMESTIC WORKERS:** We have now to refer to a category of workers who may well be one of the most numerous categories of workers in our country.

7.47 These are the domestic workers whom we find in the urban areas as well as rural areas. Perhaps, it is necessary for us to clarify that we are

not here referring to home-based workers who work from their homes but are not categorized as persons engaged in domestic service. There is no reliable estimate of the number of persons who are engaged in domestic service. Perhaps, no effort has been made to arrive at such an estimate. We are well aware of the difficulty in trying to make an estimate of this category of workers. They are somewhat visible in the urban areas, and it may be possible to make some estimate of their numbers in the towns and cities of our country. But we cannot forget the fact that households all over the country, even in the most distant, dispersed and intractable areas of our country employ women or children, in some cases, both women and children, for helping them with their household work. There are some men too, who are employed in such work. But, it can perhaps be said without fear of contradiction, that a large majority, perhaps a predominant majority of those engaged in this category of service are women and children. An estimate made by the College of Social Work in Bombay claims that 80% of domestic workers are women.

7.48 It is well known that many persons, who are employed in

domestic work, are people who have migrated to the urban areas in search of employment. It is believed that domestic service does not need any special skill. Perhaps those who seek such service are also under the impression that they will be protected in the household, and will receive the kind of treatment that can be expected from the members of a respectable family. There are many instances which show that they are extremely poor, illiterate, that they come from rural areas and have no acquaintance with the ways of the town and townspeople.

7.49 They have to eke out their existence and therefore, often agree to work at nominal wages, taking the risks of uncertainty and uncivil or inhuman conditions of work and treatment. The existing laws do not provide them the protection they need. It is well known that there is no system of social security on which they can fall back. In general, the circumstances are such that domestic workers have a very hard life. They have to work many hours, rising much before their employers do, doing a variety of work, and sometimes making do with very few hours of undisturbed sleep. There are no fixed hours of work. They have to be at the

beck and call of their employer. In many cases, they are not provided with adequate food. In some cases, they have to be satisfied with the leftovers of the employers. They do not earn enough to buy adequate clothing, and in some cases clothing that will protect them from the rigours of the climate. Again, in many cases, they are not provided with a safe and clean place where they can rest and sleep. It is not our contention that all households in which domestic servants are employed treat their servants shabbily. There are many employers whose attitude is enlightened, and who look upon those who work in their homes, as those who work with them, helping them with the daily chores in the household. In many houses, the housewife also works with the domestic worker. In spite of all these, it can hardly be claimed that the domestic worker gets his/her hard earned dues, in terms of wages, limitation on hours of work, humane treatment, care in cases of illness, opportunity to enjoy leisure, medical needs and so on. It must be pointed out that since most of the domestic servants are women and children, they run the risk of sexual harassment and exploitation in some houses.

7.50 It is therefore, very clear to us that domestic servants must be provided at least a modicum of protection and satisfactory safeguards for security. In our discussions in Mumbai, during evidence sessions, we were told that a Non-Governmental group has formulated a Bill that incorporates provisions for protection and safety of domestic workers. They wanted that any such law must provide for the benefits of PF, Gratuity, medical needs, leave, fixed working hours, wages and social security. The promoters of the Bill asked for the following:

- a) The domestic worker should be recognised as a worker, and issued an Identity Card or/and letter of appointment.
- b) Working hours for domestic workers should be fixed at 8 hours a day.
- c) They should be paid overtime allowances in case they have to work longer.
- d) They must be entitled to some personal free time during the day.
- e) They must be entitled to a night's rest.

- f) They must be entitled to one paid holiday in a week, and 15 days leave with wages after one year of service.
- g) They should be allowed 15 days sick leave every year.
- h) They should have access to the provisions of PF, and Gratuity, and be provided with uniforms.
- i) They should have living quarters which are strictly hygienic, and have security.
- j) The employer should give one month's notice if he wants to dispense with the services of the worker.
- k) There should be provisions in the law for periodic inspection to verify that the conditions in which domestic workers are employed are consistent with what the law lays down.

7.51 The Bill provides for the appointment of an Advisory Body consisting of social workers, representatives of trade unions, and domestic workers. It also wants labour judiciary to be empowered to look into disputes between domestic workers and employers.

7.52 We are not including a bill of this kind in our recommendations, though we agree that the proposals contained in the bill are goals towards which we have to work. We strongly feel that adequate protection should be made to ensure satisfactory conditions of work, humane treatment and acceptable levels of social security. We are recommending that all workers in whatever employment they are engaged, should be provided with Identity Cards that specify the names of their employers, wages paid, entitlement to social security and so on. We have also talked elsewhere in the report, of the protection that must be available, minimum wages that should be paid, etc. to workers in the unorganised sector. We believe that acting on the suggestions that we have made in this regard can make a reasonable beginning. We are not proposing a separate piece of legislation to cover the domestic workers, primarily because we want to minimize the number of separate laws for different kinds of workers. Our attempt is to ensure that the existing laws are consolidated, and reformulated to provide protection and welfare, to all workers.

7.53 **SEX WORKERS:** In all the sessions for evidence that we held in

the many States, and in the many seminars that we held, the question of those who are now described as sex-workers was raised only once, and that too furtively. We feel that we cannot close our eyes to this question. There are no grounds today, to believe that the phenomenon, or if one wants to term it a 'profession,' will disappear merely through exhortation. And as long as it exists, we have to recognise that it is related to exploitation, inhuman conditions and public health. The fear of sexually transmitted diseases has been with humanity for long. But in recent times, the rapid spread of AIDS is causing concern and anxiety in most countries and all continents. We do not have to go into the suffering and dangers that the disease holds. But we have to point out that these can be ignored only at the risk of enervation and decimation of our species.

7.54 We cannot therefore ignore the problems of 'sex-workers' to respect norms of prudery.

7.55 In the interest of public health, sex-workers need to be subjected to periodic health checks. To ensure this, they have to be registered. In terms of protection and welfare as workers,

they have to be considered as self-employed workers. They should, therefore, have the facility to be registered as self-employed workers with access to health policies, insurance etc. that all self-employed workers will be entitled to under the schemes that we have recommended. As for the need to ensure safe and humane working conditions and protection from occupational hazards, we have not gone into the related questions in detail.

7.56 We recommend that the Government undertakes consultations with social scientists, NGOs, Trade Unions, human rights organisations, and vigilance authorities, and formulate policies and measures that will ensure protection, public health and public safety, including the protection of public morality.

7.57 We do not have any reliable estimates of the number of women who fall in the category of sex-workers or the number of those who work in brothels with their own special problems of unlawful confinement, exploitation, torture, buying and selling of these "workers" and so on. The number of sex

workers may run into many lakhs or millions.

7.58 The experience of many countries has revealed the insidious ways in which AIDS is contracted and transmitted even to the innocent and unsuspecting. We have seen results leading to highly reduced life expectancy, infant mortality, disintegration of the power of resistance and resilience in body and mind, and the erosion of the ability to work. We, therefore, recommend that sex workers should have the right to register themselves as self-employed workers, and should be entitled to benefits of all the schemes that we are recommending for self-employed workers, including welfare, medical benefits, etc. We should make special mention of the children of these women workers. They should not be denied opportunities for education etc. open to other children. Mothers should, therefore, have access to the children's allowances that we have recommended elsewhere.

7.59 PLANTATION WORKERS: We have already dealt with the condition of the plantation industry elsewhere in this Report. Since the focus in this chapter is on the working conditions of

plantation labour, it is necessary to refer to the definition of plantation workers. The Plantation Labour Act 1951 applies only to those plantations which measure 5 hectares or more, and in which 15 or more persons are employed or were employed on any day during the preceding 12 months. It includes workers employed in offices, hospitals, dispensaries, crèches, *balwadis* and schools, but does not include those employed in a factory, medical officers or those employed in managerial capacity. It also does not apply to workers who get monthly wages of more than Rs. 750/-. The minimum wages received by a plantation worker in the Plantation industry in the South today vary between Rs. 59.02 – Rs. 81.75 per day, and in the North East, from Rs. 40 – Rs. 61.20 per day, both of which are much higher than Rs. 750 per month. Thus, legally, the situation that exists today is highly anomalous. No worker in any plantation is covered under the Act because the Act stipulates an upper wage limit of Rs. 750/- per month.

7.60 Every plantation has a certain number of employees in its regular workforce. They are required for day to day jobs such as pruning, weeding,

making roads and drains, planting and filling, spraying pest control chemicals, manuring, irrigation and other related jobs, including the manning of offices and administering, and overseeing welfare measures. A large number of additional workers are employed during the harvesting season for work such as plucking coffee beans or tapping rubber, or plucking cardamom pods, and pepper (plucking of tea leaves goes on almost round the year). Casual workers are employed for harvesting activity for a certain number of months depending upon the nature of the crop/plantation and the time of harvest. The method of recruitment of these workers is the same as that of other workers. It is migratory labour that is specially recruited during the harvesting season. These are mostly brought through middlemen. In the southern plantations these middlemen are known as Kanganis. A similar system of engaging casual workers through middlemen exists in Assam. During the Commission's visit to different States, the trade unions operating in plantations told us that large numbers of casual and contract workers are employed even in jobs that are regular, and which are, in no way, seasonal.

7.61 Essentially, plantation operations have to be carried out in open fields. The workers are, therefore, exposed to all the vagaries of climate and weather, such as scorching sun, heavy rain, and chilly winter, while at work. They have to go through slushy roads and tricky paths during the rainy season, often infested with worms, beetles, and blood sucking insects. The Act stipulates that plantations employing 300 or more workers should provide the prescribed number of umbrellas, blankets, raincoats etc. for the protection of workers. These amenities have to be provided even in smaller plantations where 50 or fewer workers are employed. To protect workers from insect bites, snakebites, etc., it should be made mandatory for all employers to provide gumboots. It is also necessary to lay down safety norms in respect of the work of handling fertilisers and spraying pesticides. Every plantation should have trained personnel to carry out these operations, and such workers should be provided with gloves, masks and other safety equipment. Every plantation is required to provide medical facilities and housing. Other facilities like education, canteen and crèches, depend upon the number of workers employed.

7.62 Workers, engaged on jobs other than harvesting of crops, are paid wages on time rate basis i.e. daily rates, while those engaged in harvesting are paid wages on the piece-rate system. For workers on the piece-rate system, there are incentive schemes too, if their output exceeds fixed norms. In plantations in Southern India, wages, including payments of incentives, are decided by mutual negotiations, while in Assam wages are paid as notified by the State Government under the Minimum Wages Act. Trade Unions have told us, during our visits to Thiruvananthapuram and Guwahati that proper wages are not paid to contract workers as the middlemen keep their margin out of the wages given by the management. We, therefore, recommend that the State Governments, and the employers ensure that workers are paid proper wages as decided by settlements or notified under the Minimum Wages Act, and middlemen do not siphon away part of the wages that legitimately belong to the workers. Almost all plantations have trade unions. While these are quite strong in plantations in the South, they are weaker in Assam because of the difficult terrain and the current law and order problems.

7.63 The representatives of the plantation industry told the Commission that globalisation has badly affected the viability of plantations. The costs at which competing countries are able to sell their produce in India, are far lower than the prices at which indigenous produce sells. The case of tea, coffee, cashew and other products was cited. Sale prices are below the cost of production in our plantations. When we wanted to know why our cost of production was higher than that in other countries, we were told that the reasons related to higher wages, absence of mechanisation, rules that make it obligatory for plantations to run schools and hospitals, provide accommodation, etc. They also said that our plantations make better use of pesticides and our seeds or leaves are of higher quality. According to the planters, the additional burden of all these raised the cost of production of our products. When we urged that wages could not be reduced, and facilities could not be taken away, they answered that they may be relieved of the responsibility to run schools and hospitals. We however, feel that these facilities should be continued, and made more satisfactory in plantations, which are located far away, at inaccessible places. We agree with the

suggestion of the United Plantation Association of Southern Indian (UPASI) that wherever possible, these facilities may be provided by a group of plantations on a cost-sharing basis. This will require necessary amendments in the Act and Rules. It will also involve efforts on the part of the respective State Governments to persuade employers to agree to set up joint hospitals, schools, crèches, etc taking the necessary initiative and persuading small plantations to work on a joint or cooperative basis. Where schools and hospitals are available close to the plantation, workers may make use of these schools and hospitals.

7.64 Another suggestion planters made was that, to lighten the burden on the industry, taxes, particularly agricultural income tax, should be reduced. At present, the rate of the tax is as high as 65% in some states like Tamil Nadu. We are of the opinion that the industries should be helped to be competitive, by reducing the tax burden and the cost of production.

7.65 We had opportunities to visit the living quarters provided to workers in some plantations. We feel, that in most cases, they are far below the

standards that one would want to be made available, in terms of ventilation, lighting, neighbourhood facilities etc. and need to be improved.

7.66 MINES AND QUARRY WORKERS:

According to the Mines Act any person who works in a mine as Manager, or who works under appointment by an owner, agent or manager of a mine with or without knowledge of such person whether for wages or not, is treated as 'employed in a mine.' The Act, therefore, covers persons employed in mining operations including in transporting minerals to the point of dispatch, or within the mining area, or in any operations relating to the development of the mine or in any operation of servicing, maintenance, or repair of any machinery used in the mine, or in any office in the mine or in any welfare health or conservancy service required to be provided under the Mines Act, or any watch and ward staff within the premises of the mine (excluding the residential area), or in any kind of work whatsoever which is preparatory or incidental to or connected with mining operations. But persons employed in any construction activity, which is not

connected with the mine, are not treated as persons employed in a mine.

7.67 The term 'mine' is also very widely defined in the Act. It not only covers all borings, bore holes, oil wells, shafts and inclines, and open cast working but also all adits, level planes, machinery, railways and tramways belonging to the mine; all workshops and stores situated within the mines; all transformers and sub stations in a mine meant for supplying electricity solely for the purpose of the mine; all premises used for depositing sand or other material for use in a mine, etc. However, Section 3 of the Act lays down that the provisions of the Act except Sections 7,8,9, 40,45,46, shall not apply where, in any mine or a part of the mine, excavation is being made for only prospecting minerals, and not for the purpose of obtaining minerals for use or sale; if not more than 20 persons are employed on any day in such excavations and the depth of the excavation from the highest to the lowest point does not exceed 6 metres for prospecting minerals other than coal, and 15 meters for prospecting coal. The mining activity for

excavation of minor minerals such as *kankars, murrum, laterite, boulder, gravel, building stones, road metal, earth, fullers' earth and limestone* is also similarly exempted if the working does not extend below superjacent ground; or in the case of an open cast working, if the depth of excavation measured from the highest to the lowest point does not exceed 6 metres; or if the number of persons employed on any day does not exceed 50, and if explosives are not used for excavations. The Central Government has, however, powers to apply any provisions of the Act to these exempted mines by issuing an appropriate notification.

7.68 According to the Annual Report of the Director General Mines Safety (DGMS) for the year 1999-2000, coalmines employed 5,50,000 workers, and non-coalmines employed about 1,95,000 workers (1998). But the actual number of persons employed in the mining industry will be much higher since many mines, particularly the smaller ones and stone quarries, do not submit annual returns.

7.69 Mines can be divided broadly into three categories:

- a) Public Sector mines whether worked independently or as captive mines of public sector enterprises such as Coal India Ltd. (CIL), Steel Authority of India Ltd. (SAIL), Hindustan Zinc Ltd., Hindustan Copper Ltd., National Aluminium Company (NALCO), Cement Corporation of India Ltd, Kudremukh Iron Ore Co. Ltd., Mines of National Mineral Development Corporation (NMDC), Uranium Corp. Ltd., The oil fields of the Oil and Natural Gas Commission (ONGC), Oil India Ltd. etc. The private sector captive mines of some of the larger steel and other smelting plants such as ferro manganese, ferro chrome, cement, etc. can also be included in this category.
- b) Larger private sector metalliferous and non-metalliferous mines.
- c) Small mines and quarries.

7.70 The workers in the first category of mines are mostly employed directly by the enterprises though, on some jobs, contract labour is also engaged.

In the second and third categories of mines, workers are mostly employed through contractors.

7.71 Workers' organisations are fairly strong in the first category of mines. They are sufficiently active in the second category of mines as well. Workers in the third category mines are mostly unorganised. The working conditions of workers working in underground mines are full of hazards. They run high risks of losing their limbs and lives, due to flooding, fire, the collapse of roofs, and the emission of gases, failure of ventilation or collapse of sides. As a result of the high content of carbon monoxide and lack of oxygen, these workers often develop breathing problems. The presence of coal particles and toxic dust inside the closed tunnels of underground mines or the presence of particles of minerals, dust etc. in the open cast mines and quarries result in lung diseases like pneumoconiosis and tuberculosis. Workers working above ground and those working in open cast mines have not only to work under the open skies in scorching heat and rain, but they are also exposed to the risks of being injured by the fall of sides, falling or flying

objects, moving dumpers and other vehicles, material handling equipments, and injuries during mine blasting. These injuries may result in death or loss of limbs. We have compared the rate of accidents in India, calculated in terms of the quantity of minerals produced, with

some of the figure for other countries. The rate of accidents in India in mining activity is very high as compared to other countries. The death rate per million tonnes of coal raised in India and other countries is given below: -

Country	1995	1997
India	0.77	0.52
Japan	0.32	0.47
Czechoslovakia	0.26	0.23
France	0.12	0.15
U.S.	0.05	0.03
Australia	0.02	0.02

The wages and other terms and conditions of service of workers in the first category of mines are generally decided by collective bargaining between the employers and the trade unions operating in these mines. Most of the mining industries such as coal, iron ore, copper, bauxite, zinc, the oil sector and the cement industry have evolved a system of national level

negotiations and settlements. By and large, in the second category of mines too, wages are settled by negotiations. However, in the third category of mines in which workers come under the category of unorganised labour, wages are paid on the basis of the minimum wages declared/fixed by the Central Government.

7.72 The mines falling in the first category provide welfare measures for workers, such as healthcare, education of children and housing or house rent allowance. They also provide social security benefits in accordance with the social security laws and schemes. The second category of mines normally provides social security benefits as per social security laws, but other benefits such as healthcare or housing needs are not taken care of by the employers. In the third category of mines, workers do not have the benefit of any welfare measures. Employers normally try to avoid implementing social security laws and schemes in these mines by circumventing laws in various ways. Since these mines are normally operated through contractors, they employ fewer workers than the threshold limits that social security laws prescribe for the applicability of these laws. The problem gets further aggravated because contractors are changed frequently and the workers, therefore, do not fulfil the requirements for entitlement of social security. For example, the payment of Gratuity Act requires five years of continuous

employment with an employer to make an employee eligible for gratuity. Similarly, because of the frequent changes of employers or contractors, the membership number under the Employees Provident Fund Act also changes because of changes in the code number of the employer. Consequently, contributions made by the employees towards the PF, do not get credited to their accounts. In case of accidents too, contractors in such mines avoid the payment of workmen's compensation by various means such as holding out threats of removing from employment, intimidating workers and discouraging them from reporting to the authorities, or making out of court settlements by paying lower amounts than what are payable in law. Though the Minimum Wages Act, the Equal Remuneration Act, The Contract Labour (R&A) Act and the Interstate Migrant Workmen's' (RE&CS) Act apply to the workers in these mines, we find that these laws are observed more in violation than in application. The incidence of child labour and bonded labour too is seen in quarries in gross violation of the Mines Act, The Child Labour (P&R) Act, and Bonded Labour System Abolition Act.

7.73 We would like to cite an example. Rajasthan⁴ has about 2 million mineworkers working throughout the State. 15% of them are children, and about 22,000 of them are in the age group of 10-12 years (60% of these children are bonded labourers). 37% of the total mineworkers are women, and more than 80% of all the mineworkers are in the age group of 16-40 years, i.e., in the prime of their age. Only 7% of mine workers are in the age group of above 40 years. Most of them become unfit for heavy work after 40 years of age.

7.74 The working hours in the mines are irregular. There is no provision for holidays or a weekly off. Nor is there a system of medical/maternity leave or compensation for illnesses or injuries. The rule of the mines is 'no work, no wage.' Almost all workers work for 8 hours every day. About 25% of them work for 10 or more than 10 hours a day. 70% of the workers are on daily wage basis, and the rest of them work on piecework basis. The minimum wage is Rs. 20-30 per day for children,

Rs. 30-35 per day for women, and Rs. 50 for unskilled male labourers, Rs. 75 for semi-skilled male labourers, and Rs. 100 per day for skilled male labourers.

7.75 According to memoranda received by us, working conditions in the mines are pathetic. There is no shade or protection for the mineworkers at the work place. They have to brave the harsh weather, scorching heat or chilling cold. Work in the mines is done manually with heavy hammers, chisels and other tools.

7.76 Workers are exposed to serious health hazards, which affect their longevity. The most serious health hazards are silicosis, pneumoconiosis and tuberculosis, which the labourers acquire from mines due to lack of on site and off site care and protection. One factor, which largely contributes to the contraction and incidence of silicosis, is dry drilling. A procedure of dry drilling, with compressor fitted pneumatic machines, is in practice in the mines. This type of drilling releases a huge quantity of dry silica laden dust, which is inhaled by the operators of drill machines and persons assisting them. This kind of

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⁴ Source: Asia- Pacific Newsletter on Occupational Health and Safety 2000

drilling work is done by the young and strong in the lot. There is an estimated 5 lakh (25%) cases of silicosis, TB and pneumoconiosis among the mineworkers in Rajasthan. About 72% of the mineworkers complain of one or the other respiratory tract problems.

7.77 SCAVENGERS⁵ : There is a very large number of people engaged in manual scavenging in different parts of the country, in rural areas as well as urban areas. We are citing excerpts from a report compiled by the Human Rights Watch on the state of these workers in some parts of the country where special surveys were conducted. We are quoting extensively, because of the authenticity and detailed information that characterise the report.

7.78 Allocation of labour on the basis of caste is one of the fundamental tenets of the caste system. Within the caste system, Dalits have been assigned tasks and occupations that are deemed virtually polluting for other caste communities. Throughout this report, Human Rights

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⁵ Source: Human Rights Watch Report 1999.

Watch has documented the exploitation of agricultural labourers who work for a few kilograms of rice or Rs.15 to Rs.35 a day. A Sub-group of Dalits is condemned to even more exploitative labour. An estimated forty million people in India, among them fifteen million children, are bonded labourers. A majority of them are Dalits. According to Government statistics, an estimated one million Dalits are manual scavengers who clean public latrines and dispose off dead animals; unofficial estimates are much higher. In India's southern states, thousands of Dalit girls are forced into prostitution before reaching the age of puberty.

7.79 Bondage is passed on from one generation to another. Scavenging is the hereditary occupation of some 'untouchable' castes. Dalits face discrimination when seeking other forms of employment, and are largely unable to escape their designated occupation even when the practice itself has been abolished by law. In violation of their basic human rights, they are physically abused and threatened with economic and social ostracism from the community for refusing to carry out various caste-based tasks.

7.80 Manual scavenging has been a caste-based occupation. Dalit manual scavengers exist under different caste names throughout the country, such as the Bhangis in Gujarat, the Pakhis in Andhra Pradesh, and the Sikkaliars in Tamil Nadu. Members of these communities are invariably placed at the very bottom of the caste hierarchy, and even the hierarchy of Dalit Sub-castes. Using little more than a broom, a tin plate, and a basket, they are made to clear faeces from public and private latrines and carry them to dumping grounds and disposal sites. Though long outlawed, the practice of manual scavenging continues in most states.

7.81 Those working for urban municipalities are paid Rs. 30–40 a day, and those working privately are paid Rs. 5 a month for each house they clean. Even those working for municipalities rarely get paid, and are offered little health benefits for a job that entails many health hazards. In cities scavengers are actually lowered into filthy gutters in order to unclog them; they are fully immersed in human waste without any protective gear. In Mumbai, there are instances of children who were made to dive into manholes having died from carbon

monoxide poisoning. In many communities, in exchange for leftover food, scavengers are also expected to remove dead animal carcasses and deliver messages of death to the relatives of their upper-caste neighbours. Their refusal to do so can result in physical abuse and ostracism from the community.

7.82 A social worker in the Dhandhuka taluk of Ahmedabad district, Gujarat, explained the relevance of caste to this work. *Bhangis* are the section of *Dalits* that do this work. In villages, the cleaners and those they clean for are always divided by caste. At all levels, villages and municipalities, *Bhangis* are the workers, and they always work for upper castes.

7.83 In a 1997 report, the National Commission for *Safai Karamcharis* claimed that manual scavengers are 'totally cut off from the mainstream of progress' and are 'still subjected to the worst kind of oppression and indignities. What is more pathetic is the fact that manual scavenging is still largely a hereditary occupation. *Safai Karamcharis* are no doubt the most oppressed and disadvantaged section of the population.' The Commission

was a statutory body set up pursuant to the National Commission for *Safai Karamcharis Act, 1993*. *Safai Karamcharis* are defined as persons engaged in, or employed for, manually carrying human excreta or any sanitation work.

7.84 Martin Macwan is founder-director of Navsarjan, an NGO that has led the campaign to abolish manual scavenging in the western state of Gujarat. In an interview with Human Rights Watch, he claimed that when Navsarjan attempted to rehabilitate scavengers it was difficult to find alternative employment for them, and even more difficult to convince scavengers that they were able to take on, or were 'worthy of performing,' different occupations.

7.85 Members of the *Bhangi* community in Gujarat are paid by state municipalities to clean the gutters, streets, and community dry latrines. In an article in the 'Frontline,' a *safai karamchari* of Paliyad village, Ahmedabad district, complained that in the rainy season, the 'water mixes with the faeces that we carry in baskets on our heads, it drips onto our clothes, our faces. When I return home, I find it difficult to eat food.

The smell never leaves my clothes, my hair. But in the summer there is often no water to wash your hands before eating. It is difficult to say which (season) is worse.'

7.86 Human Rights Watch spoke to members of the Bhangi community in Gujarat's Ahmedabad district. The Bhangis lived in a residential area called Bhangivas separate from the Darbars, Rajputs, and Banniyas who constitute the caste Hindus in the area. The Bhangis were primarily employed as manual scavengers. They were also responsible for removing dead cats and dogs, and were given Rs.5 or small amounts of food for doing so.

7.87 Forty year old Manju, a manual scavenger employed by the urban municipality, described her daily routine and wages:

7.88 'In the morning I work from 6.00 a.m. to 11.00 a.m. cleaning the dry latrines. I collect the faeces and carry it on my head to the river half a kilometre away seven to ten times a day. In the afternoon I clean the gutters. Another Bhangi collects the rubbish from the gutters and places it outside. Then I come and pick it up

and take it one kilometre away. My husband died ten years ago. Since then, I have been doing this. Today, I earn Rs.30 a day. Nine years ago, I earned Rs.16, then Rs.22, and for the last two years, it has been Rs.30. But the payments are uncertain. For the last two months, we have not received anything. Every two months, they pay, but there is no certainty. We are paid by the Nagar Palika municipality chief officer.'

7.89 A permanent worker, i.e; a worker who has an appointment letter earns Rs.2000 per month, a retirement pension, and some medical benefits. But the State Government has to give grants to the municipalities depending on the number of permanent workers that are employed, so the municipalities try to keep them as casual labourers instead. But the number of hours they work is usually the same. Despite the similarity in work and hours spent, casual labourers are paid only Rs.34 a day while permanent labourers are paid Rs.80. Most casual labourers never achieve permanent status, even after years of employment.

7.90 The situation of private workers, mostly women working in

upper-caste households, is even bleaker. In the Bhangivas residential area, in July 1998, there were a total of thirty private workers; the municipality employed the rest. Many private workers were paid only Rs.3 a day.

7.91 An activist in the southern state of Andhra Pradesh, who has been working for the rehabilitation of 'cleaning' workers for the past fourteen years, described a similar pay scale in his State: 'Private cleaners receive Rs.5 to 10 a month for each house they clean. They clean up to ten to fifteen houses a day, many of which have six or more family members. Those employed by urban municipalities are paid Rs.2,000 to Rs. 2,500 a month, but are only paid once every four to six months. Some are permanent, and some are casual. There are no health benefits, no gloves, no masks, no utensils. The majority are women.'

7.92 A survey conducted by Safai Karamchari Andolan, an NGO movement for the elimination of manual scavenging, found over 1,650 scavengers in ten districts in Andhra Pradesh. Many were also engaged in

underground sewage work. The survey also revealed that 98 percent of manual scavengers in the state belonged to scheduled castes.

7.93 A third category of cleaning workers is responsible for cleaning the railway systems. In Andhra Pradesh they are paid Rs. 300 a month with very few benefits. In Gujarat, they are paid Rs.12 a day 'for unlimited hours of work. They are told they can stop working when the train comes, but in India you never know when the train will come.'

7.94 An activist working with the Sikkaliar (Dalit) community of Tamil Nadu described the community's economic exploitation and the tasks that its members are forced to perform. His village had 200 Thevar families. Seventy Sikkaliar families lived in a separate Government-built colony. Those who worked as scavengers and removed dead animals from the village received Rs.150 per month for their services.

7.95 Social discrimination against scavengers is rampant. Most scavengers live in segregated rural colonies and are unable to make use of common resources.

7.96 In one toilet, there can be as many as 400 users, and the toilets have to be manually cleaned. This is the lowest occupation in the world, and it is done by the community that occupies the lowest status in the caste system. Even other scheduled caste people will not touch the safai karamcharis (cleaning workers). It is 'untouchability' within the 'untouchables,' yet, nobody questions it.

7.97 Despite their appalling work conditions, manual scavengers are unable to demand higher wages or sanitary instruments for use in the collection of human excreta: 'When we ask for our rights from the Government, the municipality officials threaten to fire us. So we don't say anything. This is what happens to people who demand their rights.' According to Macwan, in Ranpur town, Ahmedabad district, women who arrived late for work were made to clean men's urinals as punishment, 'even if the men were still inside.'

7.98 An activist of Tamil Nadu referred to the Dalit women in his village as 'sexual slaves' and claimed that Thevar men frequently enter Dalit houses at night to rape the women:

'Dalit people have anger against Thevar people in mind. Thevars use their women, but Dalits cannot do anything.' (206) According to R. Balakrishnan, Director of the Tamil Nadu Chapter of the National Commission for Scheduled Castes and Scheduled Tribes, the raping of Dalit women exposes the hypocrisy of the caste system: 'No one practices untouchability when it comes to sex.'

7.99 They give one person too much work so they have to take their family members, even their children, at night to finish the work; otherwise they would get fired. It takes four people to do the work that they give one person. None of the children are really studying. Girls sometimes study upto fifth standard, boys upto seventh.

7.100 Given the insignificant amount of remuneration and the need to engage several family members in work assigned to one, it comes as little surprise that many families borrow money from their upper-caste neighbours and consequently, go into bondage. Their poverty is so acute that Macwan has even documented Bhangi practice of separating non-digested wheat from buffalo dung to make *chappatis* (flat bread). One scavenger

commented, 'There is no healthcare, no benefits from the Government. We cannot live on what we get paid, but we have to. We also have to take loans from the upper caste. They charge 10% in interest per month. We have no clothes, no soap, no wages, and no payments on time.'

7.101 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 punishes the employment of scavengers or the construction of dry (non-flush) latrines with imprisonment for up to one year and/or a fine as high as Rs.2,000. (212) Offenders are also liable to prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In 1992 the Government launched a National Scheme that called for the identification, training, and rehabilitation of safai karamcharis throughout the country.

7.102 According to the National Commission for Safai Karamcharis, the progress 'has not been altogether satisfactory.' As a result, it has benefited only 'a handful of safai karamcharis and their dependents. One of the reasons for unsatisfactory progress of the Scheme appears to be

inadequate attention paid to it by the State Governments and concerned agencies.'

7.103 WORKERS IN SHIP-BREAKING INDUSTRY: The Alang–Sosiya Ship-breaking Yard is Asia's biggest yard and is located 60 kms from Bhavnagar town and 260 kms from Ahmedabad on the Gulf of Cambay coast. Natural tide conditions of the seashore at Alang-Sosiya are reputed to be most favourable for beaching of ships. As a result, the ship-breaking industry has developed at this site from 1982-83.

7.104 The industry produces about 3.5 million tonnes of steel equivalent, which averages the production of a major steel plant like TISCO. The industry presently dismantles around 300 odd ships per year, and employs about 17,000 workers (1999-2000). The entrepreneurs told us that there has been a sharp decline in the workforce employed in the yard, from 17,000 to about 7,000 during 2000-01. The number of ships dismantled however shows an increase from 276 to 350 between 1999-2000 and 2000-01. We were told that the reason for the decline was competition from other Asian countries. But it has also been brought to our notice that there has been no sharp increase in the degree of mechanisation of the operations during the period.

7.105 We, therefore, find it difficult to believe that the only cause for the decline in employment is competition from elsewhere.

7.106 The industry is located over an 11 km long strip of coast which is divided into plots of different sizes that are made available to entrepreneurs. There are 91 plots registered at Alang under the Factories Act, and 80 at Sosiya. All ship-breaking units at the yard come under the purview of the Factories Act dealing with health, safety and welfare of workers in those units. The rules regarding welding/cutting operations with LPG/acetylene/argon gas, rules regarding construction, repairing and breaking up of ships and vessels, rules regarding protection against fire and the Gujarat Government Notification of the 4th December, 1997 making it obligatory for each unit to appoint qualified safety officers for its area are the most relevant provisions for ensuring health and safety of the workers. Certificates of compliance are ensured by two factory inspectors specifically stationed at the yard. We were told during the visit that before cutting a ship/vessel it is invariably checked whether there is any inflammable gas

or accumulation of CO₂ gas which requires to be released and that all fire fighting equipments are kept readily available and in good condition. Any traces of oil are completely removed. The cutting of ships is allowed only after all the statutory permissions under the Factories Act are issued. These include the man entry certificate, naked light certificate etc. We were also told that supervisors/Mukadams were given one month's training invariably at ITI Bhavnagar, on the safety precautions that had to be observed in the ship-breaking industry, all equipment like gas cutting equipment, cranes/winches etc., were regularly tested by competent persons and workers were given protective equipments like helmets, goggles, hand-gloves etc. A look at the accident statistics revealed that in the years 1993-94 till 1999-2000, excepting the year 1996-97 when 51 deaths took place, the average number of deaths had been 28 and the number of ships broken up ranged from 183 in 1995-96 to 348 in 1996-97. In 2001 (till 9.9.2001) there were only three deaths. Almost a fourth (77) of the total 322 deaths from 1983-84 till 2000-01 were on account of fire, and about 10% each (32) were on account of gassing and strike against objects.

The next largest factor contributing to deaths over the 18-year period appears to be fall from heights and strike by falling objects (61 and 57 or roughly 19-18% of the total each). It also came to our notice that though the State Government notification made it obligatory for each unit to appoint a safety officer, none of the listed units had actually appointed one, and only about half of the units had even appointed a safety supervisor. It is, therefore, obvious that the safety standard is not what it should be. It does not even conform to the rules laid down by the State Government, and there has been no satisfactory effort to enforce what is necessary in such an inherently risk-prone activity to ensure greater safety at the workplace.

7.107 The health aspect of the workers is looked after both by voluntary actions of the industry and also by Government initiative through the Gujarat Maritime Board (GMB), which exercises control over the area. We visited some of the dormitories of the workers and found that they were congested, ill-lit and ill-ventilated, and devoid of adequate amenities. The sanitation services are generally catered to by the two complexes at

Alang and Sosiya which are maintained by the GMB. However, considering the number of workers, which was around 17,000 till 1999-2000, the available facilities are far from adequate or satisfactory. Presently, the number of baths, latrines etc. work out to roughly one per 400 plus workers. The Maritime Board is expected to undertake expansion in the services Works are in progress, including work on a housing complex for the workers.

7.108 The workforce is largely migrant, comprising about 30% each from U.P., Bihar and Orissa with the workers from the first two states being in more skilled work like cutting, staking etc. compared to higher degrees of manual work in which workers from Orissa are engaged. The rest of the workforce comes from Maharashtra, Gujarat and some other states. We were told that the wages that most of the workers receive are higher than the minimum wage. We were also told that there have been violations, and legal action has been initiated in such cases. The statistics furnished by the State Authorities revealed some action in respect of the Minimum Wages Act and the Bonus Act, having been

initiated though there is hardly any violation detected in respect of the Payment of Gratuity Act. We were also told that though the workers are mostly migrant workers they are all direct appointees by the units and there has been no contractor engaged. Our interactions with the workers largely corroborated this picture.

7.109 We were also told by the representatives of the entrepreneurs that they were in favour of enhancing the safety profile of the workers including imparting training etc. and they were also sponsoring a Red Cross hospital and contributing to the establishment of a charitable hospital besides providing a mobile medical van for the use of the workers. The association of entrepreneurs informed us that they were collaborating with the Maritime Board to construct a housing colony for the workers. But the industry needed further support from the Government as in the provision of a water hydrant system at each plot for fire fighting, piped potable water, LPG/Oxygen pipeline, landfill site for waste management, setting up a safety training institute, improved road connections, stable power supply etc. However, they

urged the importance of higher productivity to enable the industry to meet the competition from countries like China, Bangladesh, and Pakistan where, the implementation of safety norms etc. was reportedly below the standards prevalent in India. The attention of the Commission was also drawn to the address delivered by the president of the global organisation of ship-breakers during the world summit conference in June 2001, testifying to the beneficial impact that the steps taken by the ship-breakers in India and the Gujarat Maritime Board have had in improving working conditions. The industry urged that all statutory provisions should be such that help in the survival and orderly functioning of the industry; they should not be such as obstruct its growth in the era of global competition. The Commission is of the view that the statutes and regulations that relate to the safety and health of the workers were meant, not merely to ensure the safety and welfare of the workers, but also to ensure the health of the industry itself. The countries which allegedly overlook or circumvent safety requirements are bound to face the consequences of pursuing injudicious short-term policies. We would urge that the facilities for ensuring the safety and

welfare of workers and promoting their physical and social security should be more strictly implemented by all concerned. The overall condition of the industry affects, apart from those directly employed at Alang numbering around 17,000, the units in and around Bhavnagar town engaged in re-rolling, scrap processing and industrial gas manufacturing. These together are estimated to be employing around another 17,000. Besides, the industry also creates employment through trade and transportation of the processed/raw material throughout Gujarat and many parts of Western India. Considering all this, there is need to encourage the industry and protect the health and security of the workers and the provision of legitimate necessities through agencies of the state and other sources engaged in the industry.

7.110 CONSTRUCTION LABOUR: Construction workers may be broadly classified as skilled and unskilled. Usually, couples are found to be working on the same worksite. Though child labour is prohibited, children are engaged for unskilled jobs. Most of the workers in this sector are employed on a casual basis. Unstable employment/earnings and

shifting of workplaces are the basic characteristics of work for construction workers. Employment in construction is usually interspersed with periods of unemployment of varying duration, mainly due to fluctuating requirements of labour force on each worksite. The nature of work is such that there are no holidays. Surveys reveal that female workers do not in general get minimum wages. Though skilled workers secure jobs directly from employers, unskilled workers by and large, are engaged through intermediaries who introduce the workers to contractors on a commission basis. The payment of wages is routed through the intermediaries who usually enrol workers by offering loans. These loans are then recovered by manipulating the wages of the workers, with the result that the worker hardly gets out of the clutches of the intermediaries.

7.111 Since workers are generally recruited on contract basis, failing to achieve the required quantum of work results in either deductions or uncompensated overtime work. In return for providing jobs, the intermediaries often collect commission from each worker at a

fixed rate for each working day. Women engaged in construction work, are the most exploited. Frequent changes in their work and instability deprive them and their children of primary facilities like health, water, sanitary facilities, education and ration cards. In most cases, safety norms are violated. In fact, safety provisions hardly find place in building construction activity. Surveys on construction workers disclose the scepticism of workers about the effectiveness of the first aid assistance provided at sites. What is worse, the contractors remove sick and injured workers from sites and pay rolls without giving them adequate compensation.

7.112 The temporary residential sheds put up by contractors lack even minimum facilities such as separate cooking space, drinking water, lavatories, bathing and washing places. Crèche facilities are also not available at worksites. Social security benefits are virtually non-existent because of various constraints, such as lack of stable nexus between employer and employees, instability of employment, poor and uncertain earnings of workers, unreliable duration of work etc.

7.113 Unorganised construction workers can truly be described as sweat labour, and violation of laws on minimum wages, equal wages, child labour, contract labour, inter-state migrant workers, etc. is rampant in construction as in agriculture and home-based occupations. Unionisation is not allowed or encouraged, and construction workers like many others in the unorganised sector remain invisible and vulnerable, voiceless and un-unionised.

7.114 We have already pointed out that most construction workers are out of employment during the monsoons. In quarries and brick kilns as well as big construction sites, a system of bondage exists and gets extended from one generation to the next through child labour.

7.115 The existing labour laws applicable to construction workers are based on inspection, prosecution, fines etc. However, legal processes are so time consuming that the aggrieved worker may be out of employment or employed elsewhere by the time redressal materializes. He/she cannot leave his/her worksite, forgoing his/her daily wages to go elsewhere to pursue complaints against violation of

laws. His/her lot, therefore, is one of near helplessness in the face of injustice and exploitation. The existing laws do not give adequate protection to workers against victimisation.

7.116 In the post-liberalisation period, Indian construction industry is witnessing many structural changes which are going to radically transform the industry as well as the construction labour market. Since the industry has so far been based on labour intensive technologies, it has been a source of ready employment to a large mass of urban and rural poor. In fact, one major factor, which has been discouraging the modernisation of the construction industry, was the abundance of cheap labour. The present trend towards induction of modern technology in construction industry is likely to transform the traditional labour market, and indicates that there would be increased mechanisation, and manual and women workers would, therefore, be increasingly eliminated from large construction projects.

7.117 A study conducted on building workers by the National Institute of Construction Management and Research (NICMAR) in Delhi shows

that working hours are not being regulated according to the law. The writ of the *mistri* runs on the site. At the time of casting slabs, the entire crew works round the clock, and takes rest only after the casting is over. Unskilled and semi-skilled workers have no option in regard to their working hours. They have to do what the *mistri* asks them to do. In excavation, earthwork, stone breaking and stone and marble dressing, the work unit is generally, the family or the gang, and they normally work 12 hours a day, all seven days of the week.

7.118 Health and welfare amenities stipulated in the labour laws are conspicuous by their absence. Members who conducted the study did not come across rest rooms, urinals, latrines, first-aid stations or washrooms at any site. Men and women relieved themselves wherever they found suitable places, and sat down for rest or meals at their workstations. The only water available to drink was the water supplied for construction work. Members of the study team were told that the first aid boxes were kept at the site office, not at the spot where work is carried on.

7.119 All building sites had the statutory obligation to provide crèches for young children of women workers. But the study did not find them anywhere. Mothers brought their children to sites and put them up near the work places. There they lay often covered with dust and the chips of materials used, with flies settling on their faces. Older children looked after the younger ones; the mother kept an eye on them and visited them on and off. Although the standards for safety are prescribed, the sites in general, did not display warning signs of any kind, nor was there fencing of dangerous places, trap holes, heights, etc.

7.120 Only 8 out of 999 workers interviewed, stated that they were members of any trade union. Delhi has at least 3 registered trade unions of building workers, and many social activists who claimed to be leaders of building workers. The report says none of them had visited building sites or labour colonies of building workers. This may be an exaggeration. But it indicates the scant attention these workers receive from organised Trade Unions.

7.121 The social safety network of building workers is built around kinship and tradition, and trade unions have not yet found a place in this system. Contractors are paternalistic; their style of management may be authoritarian. A contractor may be tight-fisted in fixing rates of payment and may not spend on latrines, urinals and other facilities at worksites. But he would be generous when a worker sought help from him for celebrating his daughter's marriage, attending to illness in the family, etc. If a worker gets into trouble with the police, as it happens not infrequently, it is the contractor who bails him out.

7.122 One of the statutory obligations of a contractor is that he should provide workers, at his own cost, with living accommodation of given specifications. In so far as the quantitative compliance of the statutes was concerned, contractors had met their obligation of providing residential accommodation to workers. Of 999 respondents, 825 had been provided accommodation by contractors. All respondents who lived at worksites used community toilet facilities, drew water from site sources and depended upon site lamp-posts for lighting.

7.123 The quality of living accommodation, however, was another matter. The study team reviewed it and submitted reports. The labour colonies on worksites were a series of huts called jhuggis. The jhuggis were arranged in straight lines, barracks style facing one another, and separated by kachcha lanes with gutters running in the centre. A jhuggi was made of mud walls or broken bricks having sarkis or tin sheets for the roof (Sarki is a type of long staple grass used for the purpose in North India). Generally, on getting hired and arriving at the site, a worker was issued bricks, sarkis or tin sheets, bamboos and a door panel and asked to make a hut for himself and his family. Living, sleeping, cooking etc. were done in this hut. These small hovels were made somewhat liveable by women who plastered the floor and walls with mud and drew on them motifs of gods and goddesses. If a worker left employment, the hut was left behind intact to be occupied by the newcomer. When the site was closed, huts were demolished.

7.124 Women Building Workers – We will now refer to a study that was conducted in Mumbai as an illustration

of the condition of women workers employed in the construction industry. Building workers are employed mostly on daily wages, and occasionally according to measurement of the work completed. However, the names of women do not often appear on the wage register because their output gets added to that of their men folk except in the case of single women workers. Wages are paid every ten days only to men, and these include the wages due to other members of the family. Often maternity leave is not extended to women building workers, although it is a statutory obligation. This results in frequent miscarriages.

7.125 In general, women building workers are deeply concerned about conditions of work. Pay inequalities, invisibility as producers and earners, blocked opportunities of advancement for want of skill, frequent relocation, lack of freedom to plan their work, hard and long working hours and coping with multiple roles result in a high level of stress. It generates attitudes of passive acceptance of helplessness and misery and conformity, rather than reaction.

7.126 Building workers live at

construction sites in makeshift shelters provided by the contractors. Typically, shelters measure about 2.5 meters and are erected elbow to elbow like barracks. These hutments are made of flimsy material, are poorly ventilated, and unhygienic to live in. Water supply is generally provided. Under these circumstances, one would assume that women building workers would be unable to protect themselves, to keep their privacy, to avoid falling into the clutches of undesirable elements or to perform their multiple roles.

7.127 RAG PICKERS: Rag picking and other scrap collection are not a new phenomenon especially in industrial towns and metropolitan cities. They have a bearing on the urban economy. Many production enterprises depend upon the recycling of these wastes. Scrap collection is mostly done by women and children in a working environment that is most unhygienic. During the visit of our Commission to various State capitals, a number of Non-Governmental Organisations brought up the plight of these workers before us.

7.128 According to available estimates, there are about 50 lakh

scrap collectors in the country. The number is far greater if labourers in scrap establishments and re-processing units are included. Waste picking ranks lowest in the hierarchy of urban informal occupations. Illiterates, unskilled persons, illegal aliens and the poorest of the poor are pushed into this occupation, as they are unable to find any other kind of employment. Generally, there is no employer-employee relationship in this trade even though it is possible that some of the scrap picking activity is organised by contractors. Waste collectors are generally categorised as self-employed. Scrap collectors are not covered under the Shops and Establishments Act, as scrap traders do not provide any kind of receipts to them for the material they collect. No social security benefits are available to workers in this sector.

7.129 During our visit to Pune, the *Kagad Kanch Patra Kashtkari Panchayat*, which is a trade union of scrap collectors, told us about the issues and problems that affect scrap collectors. There are about 5,000 waste pickers and waste collectors in Pune who are registered with this trade union. There are over one lakh persons engaged in waste picking and

other forms of scrap collection in the urban areas of the State of Maharashtra. The demands put before us by the union were:

- a) It must be mandatory for all municipalities to register waste-pickers and other scrap collectors, and to issue a photo-identity card to each such worker as has been done by the Pune and Pimpri Chinchwad Municipal Corporations. The card authorizes the bearer to collect scrap.
- b) Every scrap collector should be issued receipts for every transaction by the scrap traders for the scrap material supplied to them by the scrap collectors.
- c) Scrap collectors should be registered as unprotected manual workers under the Mathadi Board constituted under the Maharashtra Hamal Mathadi and Other Unprotected Manual Workers (Regulation of Employment and Welfare) Act 1969. Similarly, it should be mandatory for all scrap traders and/or recycling enterprises to be registered under the same Act. It should be mandatory for

- the scrap traders and/or recycling enterprises to contribute the applicable levy towards the contributory provident fund, gratuity, paid leave, insurance and other statutory benefits as provided for under the Act.
- d) In view of their contribution to the removal and reduction of solid waste, it should be mandatory for the municipalities to provide medical and life insurance cover to all authorised waste-pickers through the levy of a welfare cess from citizens.
- e) It should be mandatory for the municipalities to protect the livelihood of waster-pickers and to consult with organisations of waste-pickers before initiating any scheme for the collection and disposal of urban solid waste.
- f) It should be mandatory for all municipalities to earmark green zones in each ward where waste-pickers can sit and sort their scrap.
- g) It should be mandatory for the municipalities to provide a rest room, drinking water, toilet and crèche facilities at garbage dumping grounds/landfill sites.
- h) All registered scrap collectors should be listed as falling Below the Urban Poverty Line by the municipalities for the purposes of State social security schemes for the weaker sections.
- i) Scrap collectors should be entitled to the allotment of land reserved for housing Economically Weaker Sections (EWS).
- j) The import of plastic scrap should not be permitted, and there should be heavy anti-dumping duties in the case of other scrap commodities. Industries using local scrap, as raw material should be given excise and other tax concessions.
- k) Child labour should not be permitted in waste picking. Waste picking should be included in the schedule of prohibited hazardous occupations under the Child Labour (Prohibition and Regulation) Act, 1986.
- 7.130 A study of scrap collectors/ scrap traders and recycling

enterprises in Pune has been conducted by the United Nations Development Programme and International Labour Organisation. The main objectives of the study were to assess the socio-economic conditions of these workers, to identify the variables to improve their living and working conditions, and explore the possibilities of extending available legislations for their protection, etc.

7.131 The preliminary findings of the study say 'the recycling sector is structured in the form of a pyramid with the scrap collectors at the base and the processors at the apex. At the bottom of it are the waste pickers who are engaged in the free collection of scrap from municipal corporation bins. Marginally above them are those who purchase small quantities of scrap from households. Between the scrap collectors and the re-processors and various levels of traders including retailers, stockists and wholesalers, the activity level of this pyramid differs in terms of the factors mediating in their socio-economic background, working conditions, market environment and levels of income.

7.132 The study shows that about 92% of scrap collectors are women in

the age group of 19 to 50. The mean age of entry of those who entered this occupation is 9-10 years. Girls outnumber boys. Most of them are first generation migrants. Ten per cent of scrap collectors reside in slum areas where civic amenities are not available. The mean monthly per capita income of a scrap collector's family ranges between Rs. 126 to Rs. 2, 233. One in four of these households falls below the poverty line. They normally work all the seven days of the week, with almost 10% leaving their homes at 6 in the morning and returning late in the evening. They are also victims of harassment from police or municipal officials.

7.133 The study made the following recommendations:

- a) Scrap collectors should be recognised as 'unprotected manual workers' who contribute to the economy and the environment in significant ways. All municipal corporations are assisted in their conservancy tasks by this large workforce. It is, therefore, essential that they enjoy the requisite status.

- b) There is also a direct economic gain to municipalities, in terms of reduction in their expenditure. This should translate into monetary compensation to the waste pickers. This could take one of the following forms.
- Creating a corpus for a fund that could be used for the welfare of scrap collectors.
 - Offering them life and health Insurance cover
 - Recognising the municipality as a part employer of scrap collectors and making necessary financial contribution to the Mathadi Board.
- c) It should be made compulsory to issue receipts to scrap collectors for each transaction. The large margins in the trade increase at each higher level. Scrap collectors do not have any share in this margin despite the significant contribution that their labour makes to it. This should be recognised by regulating the scrap trade. All traders should be made to pay a percentage of their surplus, based on the value of transactions, to scrap collectors. This could be regulated by appropriate legislation.
- d) The conditions of work of scrap collectors, particularly waste pickers are 'abominable.' Widespread and intensive campaigning should be undertaken to educate citizens about the advantages in segregation of garbage, and direct access to waste pickers should be mandated by the local self-Government.
- e) Child labour in scrap collection is hazardous, and should be included in the schedule of Hazardous Occupations as listed in the Child Labour (Prohibition and Regulation) Act. The withdrawal of children from this sector should be encouraged by offering parents incentives to educate their children. This could take the form of sponsorships, scholarships or special hostels for them.
- f) In the absence of credit facilities, scrap collectors borrow money at usurious rates of interest from moneylenders. Formal, institutional channels of credit should open their doors to poor groups by promoting self-help groups and offering them loans at low rates of interest.

7.134 We have dealt elaborately with scrap picking in Pune because of the availability of information and the presence of a Union that has presented issues clearly before us, and also because we feel that the issues and problems in other big cities are similar.

7.135 The Commission recognises the useful role played by the scrap collectors both in helping recycling activities as well as in maintaining civic hygiene. It is, therefore, essential that they should be protected from insecurity of various forms. The measures that could be thought of in this regard are providing identity cards, receipts for transactions, minimum wages when they are employed by contractors or other employers, health facilities, creation of welfare funds, prohibition of child labour from the activity and the like. The Commission fully endorses the suggestions made by the UNDP and the ILO, and the Kagad Kanch Patra Kashtkari Panchayat of Pune. We recommend that, besides the general recommendations we are making for protection and social security, municipal bodies should give thought to the questions we have raised, and make appropriate regulations and arrangements.

7.136 FISHERY: With its long coastline and extensive system of inland rivers and lakes, India is one of the major fishing countries, with about 5.4 million tonnes of fish production (both from marine and inland water sources). India ranges first among Commonwealth countries and 7th in the world. 55% of the production of fish in India is from marine sources, with coastal fishing constituting the bulk, while only 2% comes from deep-sea resources. India is one of the biggest exporters of seafood in the world. Processing of marine products into canned and frozen forms is carried out generally for the export market. There are 407 freezing units, 13 canning units, 154 ice plants, 11 fishmeals units and about 489 cold storage units in the marine product industries. From an export of Rs.3 crores in the late 60s, the exports progressively rose to Rs.800 crores in 1990. It sharply increased to Rs. 4600 crores during 1998-99, and is projected to increase to about Rs. 12,000 crores in another 5 years. The industry contributes about 4.3% of the total export earnings of the country. The fish catch per year rapidly increased from 4.16 million tonnes in 1991-92, to 5.38 million tonnes in 1997-98. It resulted

in a mushrooming of fish processing units along the Indian coastline. Many unregistered small units have also tied up with the registered units. There are more than 1 lakh migrant women workers employed in the seafood processing industry, directly or indirectly. They are mostly in the age group of 16 to 25 years and come from Kerala, Karnataka and Tamilnadu. These women are employed on contract or on piece-rate basis. Though it is a seasonal industry, many employers are giving employment to these workers through contractors.

7.137 During the visit of the Chairman, NCL to Tuticorin in July, 2000 and subsequent visits of the Chairman and the Member Secretary to Cochin in August, 2000 and Veraval in September, 2001 and the evidence received at various State capitals, the pathetic working conditions of fish processing workers, in particular, were brought to the Commission's notice by various interest groups. We were told that they work on an 8 A.M. to 8 P.M. work schedule, and much longer during the peak season. Ten to twelve migrant women workers are housed in a 15' X 12' room to ensure their instant availability at any time of the

day or night. We also found cases in which one set of women workers use the room where another set is on shift duty, and make room for those who return from shift duty, when their shift commences. Many of these women are not even paid minimum wages. Although the workers in fishing and fish curing are covered under a number of laws, the employers and the contractors find excuses for not implementing these laws. It has been pointed out to us that no social security is available to these workers, particularly those employed in smaller units, and most often they have to work in inhuman working conditions.

7.138 The information made available to the Commission by the Ministry of Labour reveals that the workers engaged in the relatively bigger fish processing units, and particularly those which are mainly export-oriented get somewhat better working conditions, as far as hygiene and equipment are concerned. This was also found to be largely true when the Chairman and the Member Secretary visited some of the export-oriented units in Cochin and Veraval. Partly, this is due to the fact that foreign buyers of these export-

oriented units insist on appropriate hygienic conditions in the plant. Generally, and in particular, in the smaller units, workers suffer from several occupational diseases such as backache, joint pains, bacterial and viral infections, bronchitis and other respiratory diseases, numbness in fingers, etc., due to the absence of safety measures.

7.139 The Hon'ble High Court of Kerala called for a report on the working conditions of the workers in the peeling units of fish processing enterprises during 1998. The report submitted to the Hon'ble Court gives a distressing picture of the working conditions of the workers in the fish processing industry. It indicates that there is overcrowding in the peeling sheds. Women workers have to sit on their feet or on wooden planks without sufficient space between two workers to enable them to move their hands. The posture of sitting is very uncomfortable, and creates health problems in the long run. The floors of the peeling sheds are wet and slippery, and workers sometimes get injured due to falls. Wage slips, etc., as per the Minimum Wages Act are not issued in many establishments. Medical facilities are also not available. Due to

the handling of frozen, cold and wet fish, workers get affected by various diseases including decay of skin, bacterial and viral infection, etc.

7.140 A study team of the Ministry of Labour was sent to study the working and living conditions of fish processing workers in Kerala, and other States, during 1999 and 2000. Their observations are also similar. They found that in some units workers were compelled to work beyond 10.00 P.M., even on holidays. Even where the people work for 2-3 years continuously, no provident fund contribution is made either by the employer or contractor. In the majority of units, no regular medical facilities are available. It has also been found that in many cases employment contracts are not written, and no employment letters are issued. This denies the workers any kind of protection and social security. The situation in other States is not different from that in Kerala. In an investigation in West Bengal during February 2000, it was recommended that general standards of hygiene, safety and protective measures, etc., should be ensured.

7.141 During the Tripartite Meeting

on Safety and Health in the Fishing Industry held in Geneva in 1999, it was recommended, inter alia, that priority should be given to ensuring occupational safety and health in the fishing industry by providing safety and health training to workers, enhancing social dialogues at all levels, extending social protection to cover fishermen, promoting appropriate international standards, etc. Conditions may not improve merely by legislation, and, therefore, a 'safety culture' has to be promoted. Safety culture can begin only when existing safety laws are enforced strictly.

7.142 One of the points raised by the owners of fish processing units was that registration/permits to engage migrant workers are not issued by the Kerala Labour Department to factory owners of other States. It was pointed out that factory owners would like to engage workers directly rather than through contractors, but the practice followed by the State Labour Department encouraged the contract system. The Commission feels that there should not be any prejudice against the direct engagement of migrant workers by the fish processing units of other States on

terms and conditions that the State authorities may like to lay down to ensure compliance by the employers.

7.143 The Commission was informed that the Ministry of Labour was also seized of the fact that there have been lapses in the implementation of the provisions of the Inter State Migrant Workers (ISMW) Act and the Provident Fund and Employees State Insurance (ESI) benefits, for workers in this sector. On the whole, the Commission finds that there is an urgent need to ensure that fish processing units acknowledge their legal obligations on wages, overtime, maximum working hours and amenities, etc., and undertake to provide them to the fullest extent. We also recommend that contracts of work with contract workers are reduced to writing and signed with the free and informed consent of all the parties and the workers are provided with a copy of the contract enumerating the rights and obligations of the parties in the language that the workers can understand; that the employers should maintain proper records of the wages, overtime, etc., paid to the workers; and that the workers are

provided with the protective equipment necessary like gloves, aprons and gum-boots and for those working in cold environment, proper woollen overalls. Workers should also be provided with clean and hygienic quarters/dormitories and facilities of drinking water, canteen, toilet, etc. In particular, there is special need to ensure that the movement of workers is not restricted after working hours and they are not coerced to restrict their movement to the precincts of the factory complex. Workers should also be able to form their own associations and associate with people outside without any fear or intimidation.

7.144 The provisions of Inter-state Migrant Workmen Act, and the Contract Labour Act should be strictly implemented in this sector. Strict monitoring and implementation of the Minimum Wages Act should be ensured and Welfare Boards should be set up to look after the needs of social security and health security in this sector.

7.145 India has a tremendous potential for the development of fish processing. The capacity utilisation of existing units is very low, but the industry has to be equipped with basic

facilities, which are required for hygienic processing. The Commission feels that while creating conditions for the growth and health of the industry, the interests of the workers engaged in it should also receive equal attention.

7.146 India has a coastline of 8041 Kilometres with an estimated marine resources potential of 3.9 million tonnes.

7.147 In 1998, the marine fish catch was about 2.6 million tonnes. 70% of this came from the West Coast.

7.148 The population of fishermen in India was approximately 6 million. Of these, 2394574 were full-time fish workers; 1403223 were part-time, and 2121347 were occasional workers. The total number of crafts employed in fishing in 1999 was 280491. Of these 181284 were traditional crafts, 44578 were modernised traditional crafts, and 53684 were mechanised boats.

7.149 Indian fishermen use a wide range of fishing gear including seines, stake nets lines, bag nets, encircling nets and lift nets.

7.150 Before leaving the subject of fish workers and fish resources, we should also point out the tremendous potential that our fish resources hold for employment, and increased availability of fish for consumption and export earnings.

7.151 According to rough estimates made by the Fisheries University in Mumbai, fishing and allied occupations can generate a large number of jobs, which may well be second only to employment in the agricultural sector.

7.152 Employment can be generated in the marine sector, fresh water sector, captive fisheries sector, inland captive fisheries sector, coastal aquaculture sector and the post harvest sector. Employment in the marine sector includes: net making, processing industry, marketing of fish products, boat building in yards, fishing in sea water, related mechanical workshops, etc.

7.153 The fresh water sector includes: net making, pearl culture, fish seed production, marketing of fish products, boat building yards, fishing

in inland water, mechanical workshops, hatchery management, refrigeration plant, aquaculture, fish food industry, processing of fresh water prawn and fish, etc.

7.154 The captive fisheries sector includes: net making, marketing of fish products, boat building yards, fishing in marine waters, mechanical workshops, refrigeration plant, rearing of seed for stocking in reservoirs, processing of marine fish, etc.

7.155 The inland captive fisheries sector includes: net making, marketing of fish products, boat building yards, fishing in inland water, mechanical workshop, refrigeration plant, rearing of seed for stocking in reservoirs, processing of fresh water fish, etc.

7.156 The coastal aquaculture sector includes: net making, marketing, boat building, harvesting of fish/prawn, aquaculture, fish food industry, mechanical workshop, refrigeration plant, rearing of seed for stocking in reservoirs, sea weed culture, pearl culture, marine prawn culture, shrimp

industry, sea food products industry, etc.

7.157 The post harvest sector includes: marketing of fish products, value addition industry, processing industry, refrigeration plant, seafood products industry and processed seafood export industry.

7.158 It is obvious, therefore, that a scientific plan for exploiting the potential of these sectors and sectoral employment can generate millions of jobs for the fisher folk or for people living on the coastline.

7.159 We were also told about the problems of migrant workers in this industry. We have already made reference to the fishermen's cooperatives that have come up in some of the coastal states and the achievements that stand to their credit. We have also referred to the problems of migrant workers in the fish processing industry. We were told that in some of these areas along the West Coast migrant workers and their families arrive to help in fishing operations. Most of them have no residential facilities. They put up makeshift tents or stretch tarpaulin or thick clothing on poles and live in

these covered enclosures. They have no facilities for drinking water, no sanitation. There are no crèches for children when parents go to work. Many of them take to begging from local fisher folk. They have no schools. Thus, they grow up without roots and without the benefits of family life or schooling. Some of them get drawn into smuggling and the underworld.

7.160 During 1987-97, there was a gradual increase in fish production, growing by 44.1% in a ten-year period, of which pelagic species contributed 51.6%, the rest being demersal species.

7.161 Among the species caught, Indian Oil Sardine (*Sardinella Longiceps*), Indian Mackerel (*Rastrelliger Kanagurta*) and Sciaenidae are dominant. Bombay duck, anchovies, cephalopods, perches and carangidae are also abundantly seen. Fish harvesting often fluctuates, and depends largely on the vagaries of the monsoons.

7.162 Establishments connected with marine products export [as registered with Marine Products Export Development Authority

(MPEDA), 1996], include 625 exporters (380 manufacturer-exporters and 245 merchant-exporters), 358 freezing plants, 13 canning plants, 4 in the agar-agar industry, 149 ice plants, 15 fish meal plants, 903 shrimp peeling plants, 451 cold storage units, and 3 chitosan/chitin plants, with 95% of the seafood processing units concentrated in 20 major clusters in 9 states.

7.163 The total installed freezing capacity is 8945 tonnes per day, but the total current production is only 1000 tonnes (approximately) per day (378 000 tonnes per year).

7.164 Commercial production is mostly export-oriented. The industry employs about 35,000 workers including registered and unregistered workers (about 60% registered and 40% unregistered). The largest number of freezing plants (109) is located in Kerala and the largest installed freezing capacity is in Gujarat (2554 tonnes per day). The fish processing activity in Kerala is more labour intensive than in Gujarat (Gujarat exports are mainly whole fish, which are not processing-intensive unlike Cochin exports which consist mainly of processed shrimp).

Including all ancillary activities, about 200,000 workers are estimated to be dependent on marine products exports in the country.

7.165 On an average, a woman handles 40 to 50 kgs. shrimp and cephalopods; and 150 kg. of fresh fish per day (from industry sources). On an average, they work 200 days in a year in Gujarat.

7.166 The term fish worker is being used to cover all men, women and children who earn their livelihood by harvesting, handling and processing or marketing of fish and fish products.

7.167 In a sense, this definition may be regarded as broad and inclusive. But, it seems most apt when we seek to make a study of labour in the fish economy of the country. More often than not, discussion about workers in the fisheries sector revolves only around 'fishermen', neglecting in this process, a large labour force involved in activities other than harvesting of fish. Therefore, by using the term 'fishworker,' we also include in the purview of this definition all persons who are involved in sorting fish at landing centres; curing fish in the villages; peeling prawns in the peeling

sheds and carrying fish to the markets – to name a few. We may also add that the term 'fishworker' is not restricted to persons from traditional fishing/communities, but covers all who depend on fish for their livelihood. One must hasten to add that the term 'fishworker,' therefore, excludes all persons involved in the fish economy solely in the pursuit of profits – by mere renting; by virtue of ownership of capital alone; or by

involvement in arbitrage and / or speculation.

7.168 Engaged in these three activities of (i) harvesting, (ii) handling and processing and (iii) marketing of fish and fish products and within these, we can find a working population that can be divided into eight distinct groups. They are enumerated below:

Activity	Group
I HARVESTING (1-3)	1. Artisanal Fishermen working on non-mechanised and motorised crafts in coastal waters.
	2. Fishermen working on mechanized boats in coastal waters.
	3. Artisanal fishermen working on non-mechanized crafts in inland waters (rivers, backwaters)
II HANDLING and PROCESING (4-7)	4. Workers at fish landing centres involved in unloading, sorting and icing, etc.
	5. Workers involved in traditional methods of fish curing and drying, etc.
	6. Workers involved in prawn peeling sheds.
	7. Workers in fish processing firms.
III MARKETING	8. Workers involved in the marketing of fish inside the state.

7.169 The total working population in the fisheries sector in India (marine and inland) is estimated to be around six million. The largest proportion is involved in harvesting activity (66% approximately) and is composed mainly of men. Women are sometimes involved in inland fishing. Women dominate the handling and processing activity accounting for about seven percent of the workforce. It is only in the harder manual jobs involved in the activity – like unloading of fish – that men have a monopoly. Though, the activity of marketing which involves a quarter of the workforce, is largely carried on by men, there are notable regional differences. In some areas women predominate, whereas in others they are in the minority and in some other areas, they hardly matter.

7.170 The quantum of employment in the fisheries sector as a whole is determined primarily by the number of working days available for harvesting activity. This, in turn, is affected by seasonality due primarily to natural factors, like rains, storms or strong winds, etc. These varying factors, therefore, get reflected in the other two activities as well, in sorting, handling, peeling, etc. and in marketing.

7.171 As we have said earlier, harvesting is conditioned by the weather, and the availability of fish in the aquatic terrain. In the marine sector, there is the paradox that the season of rough weather (making it difficult for fishermen to set out to fish) is also the time when fish is available in plenty. The converse is also true, thus highlighting the extent to which the quantum of employment is conditioned by largely uncontrollable natural factors. This also tangentially, reflects the state of technology that is being used in the sector which is largely dependent on human skills. Recently, motorisation has to a great degree reduced the fishermen's need to 'wait for the fish to come his way': he can now go after it. Taking all this into account, we can say that a fisherman gets between 150 – 200 days of work in the year.

7.172 Seasonality in employment in the other sectors is also related to weather at sea. Since that determines the availability of fish to handle/process/market. It can be said to be high in handling and processing, and moderate in the marketing sector. In these sectors, the range of days of employment may be from 100 – 250 in the year.

7.173 Employment Status: Four types of employment status have been enumerated in the fisheries sector – self-employment, wage labour, family labour and income sharers. The last category – income sharers – is somewhat equivalent to share tenancy in agriculture. However, it must be noted that in the harvesting activity even those who, for all practical purposes, are merely daily labourers, are in effect income sharers. Their income share may be considered as a form of ‘variable wage.’

7.174 The self-employed are found in all three activities of the sector. It is the dominant employment status in at least 5 of the 8 groups of workers we have referred to. Wage labour predominates when we take the handling and processing activity as a whole.

7.175 Emoluments are paid by piece-rate, salary, and as a share of net income. The last form is the most common in the harvesting activity. It provides incentive to workers to reduce on costs and enhance their productivity even without the presence of supervisors. Daily wages and a piece-rate system are used in the handling and processing activity.

7.176 The earnings of workers in the fisheries sector as a whole are rather low and marked by very wide day-to-day fluctuations – a fact most noticeable in the harvesting activity. Equally wide, are the inter-person fluctuations in this activity: two persons fishing with the same type of craft, for the same amount of time and at the same place can end up with two totally different quantities of fish, yielding very disparate earnings. The ‘average’ earning in the harvesting activity is, therefore, an extremely theoretical or elastic concept.

7.177 To the extent that the employment in the other two post-harvest activities are dependent on the supply of fish, the workers in these activities who are paid a piece-rate or daily wage are also affected by a widely fluctuating level of earnings – although it is much less than that of those involved in harvesting.

7.178 Earnings in the harvesting activity, range from Rs. 750 to Rs. 6,000 per workers per annum – those involved in inland fishing being at the lower end; workers on the mechanised boats at the upper, and the coastal marine fishermen in the

middle. The range on a working day could be between earning nothing and Rs. 20.

7.179 Earnings in the handling and processing activity vary from Rs. 1,000 to Rs. 2,000 per worker per annum. The variations here are largely a function of days of employment, which are in turn dependent on the supply of fish. It must also be mentioned that the workers in this activity are not necessarily always restricted to a particular group: those involved in fish sorting may also at times work in the peeling sheds and vice-versa. Daily earnings have wide variations.

7.180 In the marketing activity, earnings are less variable as the workers, mostly self-employed, and hence really itinerant fish sellers, have a greater degree of freedom to be 'price-setters' for the fish they sell to earn a living. Annual earnings are almost a certainty for a regular full-time fish distributor. Daily earnings may, however, fluctuate between Rs. 5 and Rs. 70 depending on the interplay between the supply and demand for fish and the extent to which they can adopt a differential price for distinct segments of their clientele.

7.181 As most of the workforce is in what is conventionally considered the 'unorganised sector of the economy,' questions of minimum wages/ earnings and security of tenure of employment are virtually absent. In the case of the workers in the processing factories, an attempt was made in Kerala to formulate minimum wages by constituting a committee to look into the question.

7.182 It may also be appropriate to mention that over the decade of the 1970s, there has been a systematic cutting-back of workers on the official pay roll of processing factories and the consequent encouragement of a decentralised 'putting out' system that largely operates in the informal sector. The rise in the number of workers in 'peeling sheds' is a consequence of this cut-back.

7.183 Minimum wages and security of tenure are further jeopardised by the use of child labour and migrant workers to which we refer in the succeeding paragraphs.

7.184 Child Labour and Labour Migration: Child labour is employed in two forms in the fisheries – as family labour and as wage labour. Family

labour is sometimes inevitable: unless a boy practises going fishing on a catamaran from the age of 9 or 10 he will never be able to get on one at a later age. Among the artisanal fishermen involved in coastal fishing, child labour is generally seen only among the self-employed catamaran fishermen of some districts. This is also equally true in inland fishing.

7.185 Child labour as part of the family enterprise is also seen in handling and traditional processing activities.

7.186 Child labour as piece-rate workers is a fairly prevalent phenomenon in the peeling sheds. They are exclusively girls, some of whom may be involved in night work after regular school time.

7.187 The fisheries sector of Kerala is noted for the migration of workers within/into it as well as the migration of a skilled workforce out to the fisheries sectors of the other maritime states in India. The former process is immigration and the latter emigration. The immigrant labour (here we use the term to include all persons who work in a location which is not their habitual place of residence) are involved largely in harvesting and handling and

processing activities. Within the former it is largely a feature among workers on mechanised boats: as much as three quarters of the workforce can be considered immigrants (from Kerala and neighbouring states), and about a third of them are likely to be from non-fishing communities. This migrant labour force in any major mechanised boat-landing centre tends to be very closely knit, and identity conscious, and seek security by maintaining a group behaviour based on their language, village of origin or religious identity.

7.188 Immigrant workers are also a sizeable number among those who are involved in fish handling at mechanised boat centres and among women workers in processing firms. However, in the above cases the immigrants generally come from the immediate hinterlands of the centre of operation.

7.189 It is a fact that immigrant workers are always faced with disadvantageous working conditions/emoluments/security of tenure, etc. when compared to the 'natives.'

7.190 Closely linked to the dynamics of immigration of workers into an

activity in the fisheries sector is also the substantial out-migration or emigration of labour to the fisheries sectors of other states, particularly neighbouring states. It may be useful to distinguish two forms of emigration – the first where fish workers move in search of fish, and the other where skilled fish workers move in search of jobs.

7.191 The first type is very much evident among the artisanal fishermen and fishermen using mechanised boats, who move with craft and gear to locations other than their own villages/centres in search of fish. It is also a feature among the small fish distributors – particularly men using cycles, – and is reportedly becoming a new phenomenon also among women fish distributors in some districts of Kerala.

7.192 The second type – the more common one, where workers have only their labour to offer – is evident in a very substantial order, among workers who move to work on mechanised boats in other states, and young women from Kerala who are taken by labour contractors to places as far off as Veraval (Gujarat) and Puri (Orissa) to peel prawns and work in

the fish processing factories. (We have dealt with their conditions in some earlier paragraphs.) We must also add that those who go as labour in this manner are not necessarily involved in the same activities in Kerala's fisheries sector at any particular time of the year.

7.193 Accident Risk at Work: The risk of accidents is especially high among workers in the harvesting activity – particularly workers on mechanised boats, and the artisanal fishermen using non-mechanised craft in the coastal waters. It is highly risky for fishermen to put out to sea while it rains heavily and when cyclonic or windy weather prevails. It is a fact that often, after they put out and venture into the distant zones when it is sunny and calm, they suddenly encounter stormy weather and rough seas. Many of them do not have the equipment necessary to monitor the weather broadcasts, and warnings while at sea. They are then tossed about without any certainty of getting their crafts or catamarans back to the shores for many days. They ride the rough waves, sometimes without food and drinking water, while their wives and other members of the family, and

sometimes the whole fishing village, wait with bated breath, not knowing whether the breadwinner will return alive. It is only those, who have experienced or witnessed these traumatic scenes, who can realise the gravity of the risks. The scenes can only be compared to the silence in a mine workers' colony when a major accident takes place.

7.194 One may state with fair certainty that the proportion of fatal accidents among workers on mechanised boats is much higher than of other fishermen. Two reasons can be put forward for this: (a) many of the workers on mechanised boats are from non-fishing communities, and they do not know how to swim (b) the safety precautions on mechanised boats are generally very poor.

7.195 Social Security and Welfare Measures: Social security and welfare measures are of two distinct types: (a) those that have evolved from traditional community caring and sharing systems (b) those that are instituted as part of the organised obligations towards workers on the part of employers and the state.

7.196 The community measures are

restricted to persons who belong to traditional fisher folk communities. The first charge on fish, landed in a traditional fishing village, is claimed by the physically handicapped, widows, orphans and persons who perform common services for the community. There is evidence to show that this can amount to 3 to 5 % of the harvest. Another form of social security within the community is the prevalence of a system of interest-free consumption loans from those who have a good harvest on a particular day and those who don't. Given that good and bad harvests (both daily occurrences among fishermen in the same village) are fairly evenly distributed, this system of giving hand loans is a very well knit but informal reciprocal social insurance against hunger.

7.197 Of the organised forms of social security and welfare measures, it is the role of the State that is the most important. Here, the Government of Kerala has measures to cover accident, risk to life and equipment; provide educational scholarships for children of all fish workers; grants and subsidies for housing; relief measures during the monsoon season and so on. One may

say that most of the benefits conferred by the State accrue to the workers (and their dependents) who come from traditional fishing communities.

7.198 The level of social security and welfare measures provided by employers – owners of mechanised boats, peeling sheds, processing firms – leaves much to be desired. They keep these to the barest minimum and grant them only when it becomes inevitable.

7.199 Association with other Organisations: The fisheries sector in some states is unique in respect of its association with the cooperative movement, quasi - Governmental organisations and voluntary agencies. Maharashtra is one of the states where the traditional fishing communities on the coast line have benefited greatly by the establishment and effective functioning of co-operatives that play a role in all three sectors of activity – catching, chilling and processing and marketing. But in most other areas, the record of performance of the cooperative movement and quasi-Governmental organisations has been inadequate. Both have been unsatisfactory, and have led to complaints.

7.200 The involvement of voluntary agencies in the fisheries sector is also not a new phenomenon, contrary to popular understanding. Their approach to the sector has varied from one of providing relief measures to the fishing community to that of organising them to fight against the injustices and exploitation they face. Their association in some states has been mostly with the members of the traditional fishing communities involved in artisanal fishing and fish marketing.

7.201 Unionisation and Union Activity: In States like Kerala interestingly the small vocal and militant unions are not found among the wage workers (like those operating mechanised boats or working in processing plants), but among largely self-employed fish workers involved in fishing and marketing. These unions are also 'independent' in that they are not organisations associated with any particular political party. Their demands have been primarily addressed to the Government, and have concentrated on issues relating to the need to prevent destruction of fish resources.

7.202 BANGLE INDUSTRY OF FIROZABAD: The glass bangle industry of Firozabad in Uttar Pradesh is a technically backward industry, employing obsolete technology, involving primitive glass melting techniques. The working conditions in most of the units in the industry are inhuman.

7.203 There are 140 registered glass bangle factories and 35 bangle cutting units. Moreover, there are 112 blowing and 65 polishing units. The industry is employing 1,30,000 persons, and the annual turnover estimates are around Rs.450 million. We would like to mention here that there are a large number of unregistered glass bangle cutting units. This was brought to our notice during our visit to the State capital of Uttar Pradesh. The bangle industry mainly caters to domestic needs. Manufacturing operations are carried out in households as well as on a non-household level. In the year 1930, there were only 30 units in Firozabad. Their number increased to 342 in 1990. A few large units are also exporting their products to USA, Middle East countries, etc. Although the glass industry of Firozabad dates back to 1910, it has not changed its

production processes, and is still using vintage machinery that adds to the hazards in the processes.

7.204 A large number of children are working in this industry. Estimates vary from 5000 to over 1,00,000. A study by the Planning Commission in 1992 estimated the factory level child workers in the glass industry as 30,000 and those at the household level at two and half times this number, i.e., 75,000 or more. The 1991 Census enumerated 8639 children (below 14 years) as main and marginal workers in the Firozabad District. As in other industries with a concentration of child workers, the glass bangle industry in Firozabad also exploits the exemption of family labour from the provisions of the Child Labour Act (1986), and resorts increasingly to sub-contracting forms of production.

7.205 The bangle industry as it is operated now, poses serious health hazards to workers. Temperatures inside the factory are extremely high, and very often cause burn injuries. Coal is mostly used as fuel in the furnaces and therefore, work

environment in the factories is highly polluted with heat, chemical fumes and coal dust, leading to respiratory disorders of various forms including tuberculosis.

7.206 Generally, payment to the workers is done on a piece-rate system. The labour employed here is mainly on a daily wage basis. As a result, they do not get any kind of protection or Social Security. This results in mass exploitation. The payment for work at the households is extremely low. For this reason, children have to pool in their labour to maximise the household earnings. No security and safety measures are available to workers in this industry, especially in household and unregistered factories. In each household, the traditional furnaces may be seen with large number of children working on them. They are employed in large numbers in backbreaking processes, which involve colouring, joining the cut ends and levelling them with each other, and grooving the bangles. Children are also sometimes employed in *Pakai Bhattis*. It is shocking to learn that child labour can be seen carrying melted glass on 7 feet long rods from

the furnaces at temperatures as high as 1600° C.

7.207 The Child Labour (Prohibition and Regulation) Act 1986, does not apply to the units that employ family labour, and according to the estimates of the Planning Commission, normally 58% of the children work in the family run units. The sub-contracting of the work and mushrooming of home-based units have resulted in shifting child labour from the organised to the unorganised sector which, at present, does not attract legislative controls or supervision. It is only the compulsory enrolment of children in schools that can prevent the exploitation of children in sweatshops. It is also necessary to make workers aware of the need to observe safety provisions in these dangerous employments and processes. It is equally necessary to ensure that social security measures are extended to this industry.

7.208 A research study conducted by the Centre for Operations Research and Training in 1998 has recommended that to improve the existing unhealthy working conditions in the industry, it is necessary to improve its production technology and work environment and to train and

equip workers with the higher skills required. It also recommended that the U. N. Development Programme should enlarge its coverage to cover the informal sector enterprises as well. At present the UNDP's technical collaboration project in Firozabad covers only large factories.

7.209 BRASSWARE INDUSTRY: The main centre for brassware industry is Moradabad in the State of Uttar Pradesh. There are more than 1,50,000 workers directly employed in this metal ware industry. Many more workers are employed indirectly. About three-fourths of the city's population depends on this industry for its livelihood. Out of the total number of workers about 45% are children in the age range of 8-12 years. 50% of workers engaged in moulding, and finishing workshops are children below the age of 14 years. While the larger factories do not employ children on the ground that the technology and equipment do not suit the height and strength of the children, the increasing practice of sub-contracting of jobs of moulding, polishing, and electroplating gives scope for the free use of cheap child labour. Children are assigned hazardous jobs such as rotating the furnace wheel which fans the furnaces; heating the ingots on top of

the furnaces, and hammering them into small pieces in the moulding process. Children work at applying chemicals on the ware to be polished and keeping the ware in acid before polishing. They are employed to tighten the ware with wires before electroplating. They also carry the load of the finished goods, and work as helpers to the welders. Here, workers work for more than 10 hours a day.

7.210 According to the District Industries Centre there are about 3000 units registered as small-scale units. There are an equal number of units, which are unregistered. The units that are not registered do not come under the ambit of the Factories Act. Therefore, workers have no right for any entitlements like the ESI, Provident fund, leave, etc. Out of the 3000 units that are registered, only a few are registered as factories and, therefore, the Factories Act is not applicable to many of them.

7.211 Middlemen recruit children in this industry or they work as family labour. According to one estimate, women constitute about 50% of the total workforce in the brassware industry. The two hazardous processes in this industry are

moulding and polishing. Electroplating and welding are equally dangerous. Slight carelessness may result in severe injuries and even loss of limbs. Children are not provided with any protective gear. They remain bare foot on the floor of the furnaces where temperatures range about 1100° Centigrade. Inhalation of fumes and gases from furnaces lead to tuberculosis and other respiratory diseases. Workers, especially children also suffer from eye burns. Most of these children do not attend any school. Wages are too low for workers to have a nutritious diet. A study by Neera Burra has found that workers earn only Rs. 400–500 per month, which is far below the minimum wage.

7.212 Carpet Workers: Mirzapur-Bhadohi area of UP state has been holding a very important position in manufacturing and exporting of hand-knotted woollen carpets and drug gets. 75% of the carpet looms may be found in this area, which is commonly known as Mirzapur-Bhadohi carpet belt. The tradition of carpet weaving in this belt is around 400 years old, having commenced in the 16th century AD. According to historical evidence, an artisan-turned-soldier from a Mughal Carvan from Agra, who was travelling along Grand Trunk Road,

found shelter in the nearby Ghosia village situated to the north of the river Ganges. The twin village settlement Madho Singh-Ghosia is said to be the birthplace of the woollen carpet industry in this region and this region has continued to enjoy reputation of excellence in carpet manufacturing. There is evidence that the carpet industry of this belt received much royal patronage from Benaras royalty since the time the craft started here. During the East India Company, some British traders were attracted to the carpet industry especially after revenues from indigo plantation and manufacture of salt petre dried up. Some foreign companies set up their shop in some prominent centres of carpet making in this region. They also established strong linkages with the western market.

7.213 Though the carpet industry of India is spread over in different states, in one sense, it is concentrated in the Mirzapur-Bhadohi belt, which generally accounts for over 75% of carpet looms. It is estimated that the carpet industry has over 3 lakhs looms, which provides employment to nearly 50 lakhs weavers. The hand-knotted woollen carpet has a share of more than 15% in handicraft export,

and also enjoys the position of being first in the total export of handicraft items. The Indian carpet industry has traditionally been dominated by traders without much regard to a balanced growth and development of production and export.

7.214 The carpet industry is full of potential for generating employment as well as foreign exchange for the country. Weaving areas are spread over in several villages and hamlets and hutments providing employment to the weaker section in rural and semi-urban areas and supplementary income for poor weavers and others engaged in carpet related industries.

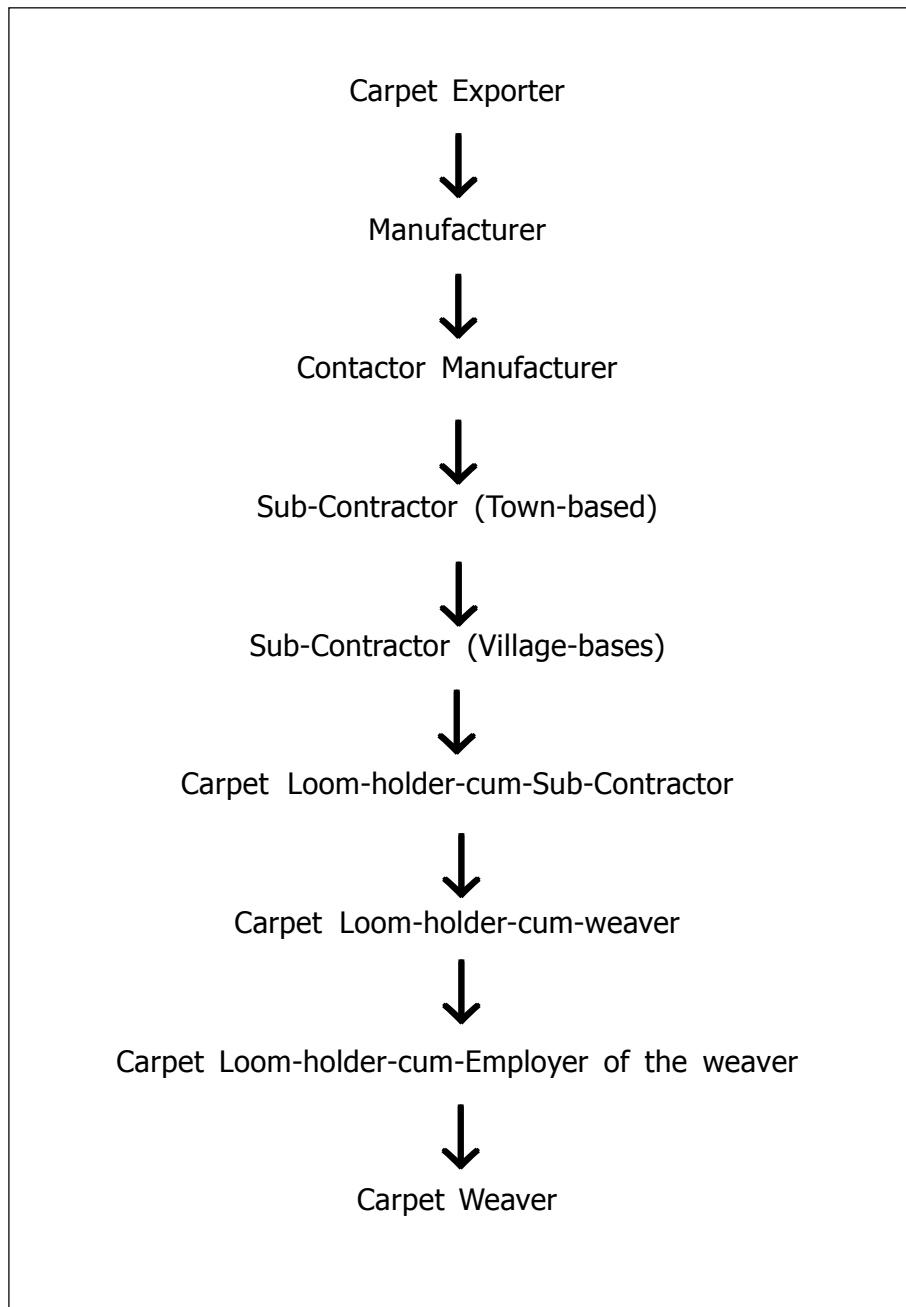
7.215 The production in the carpet industry is made against order from foreign importers and according to specifications, size, design, colour-scheme, etc given by buyers and at agreed prices quoted in advance. The carpet importers themselves or through their buying agents visit the exporters to order them for the requirements. Other designs are picked up as part of the bulk order by foreign exporters. In this type of market scenario, some exporting traders and buying agents for the leading foreign importers call the tune. It thus becomes top-down operation through a series of sub-contracting dealings.

7.216 After the order for the supply of carpets reaches the exporters, a series of contractors, sub-contractors and commission agents for every process in carpet manufacture get involved. Until 1960s it was observed that the carpet industry had two sectors, i.e, organized and un-organized, but in order to avert demands from organized labour, the sub-contracting system was introduced even for in-house activities, clipping, washing, binding, packaging, etc.

7.217 The carpet industry is therefore full of all kind of middlemen and these middlemen make fortunes from cuts from wage components. The intermediaries are in one way exploiting the weavers. It has also been observed that since the weaving areas are stretched or distanced from nucleus areas, the share of middlemen/commission agents increases and the wage decreases. Most of the middlemen or agents are selected by carpet exporters/manufacturers on the basis of their power or ability to control loom-holders/weavers. These loom-holders/weavers are normally paid advances so that they are under the clutches of exporters/manufacturers and do not slip away from exporters/manufacturers. These powerful intermediaries control loom-holders/weavers and use different methods

(even un-lawful) to recover advances and materials, if not supplied in time. There are reported instances of un-lawful behaviour met out to the poor loom-holders and weavers by

elements who command power in the community and are associated with the carpet industry. The series of intermediaries in carpet manufacture are:



7.218 With the growth of the carpet industry, there are significant changes in the agrarian and rural power structure. The majority of carpet exporters and manufacturers belongs to higher castes with higher position in the industry, the middle castes are generally the loom-holders and the Scheduled Castes/Tribes are the supply point for child and adult labour. The rapid growth of the industry brought quantitative changes. Until the beginning of 1960s normally 31 knots per square inch was considered a difficult job to handle, but today 125 knots quality is commonly woven in this region but higher knots quality is also woven according to the requirements.

7.219 The payment of wages to the weavers is based on the knottage that the weavers are able to weave. The carpet weaving is not a full-time employment for everyone who is involved in weaving. There are categories of weavers right from full-time weavers to part-time weavers and casual weavers. Mostly the landless weavers have no any other means of production system and income, are involved as full-time weavers. They even work up to late night depending on the situation of

orders to be supplied to the exporter. The second category, i.e, part-time weavers, are mainly those who normally own their own loom (normally one) and at the leisure or the time not required for the main activities is put in as carpet weaving. This category of the weavers is found to be mainly those who own some land and thus the carpet weaving becomes a secondary activity. The casual weavers are those who work as wage labourers else on other sector of activity and at the morning or evening utilize some of their time in the weaving of carpet for additional income. The carpet weavers are mostly indebted to the middleman because of the advances taken by them and in this situation of indebtedness, they do not have freedom to cross to other middlemen. The labour force required for the carpet industry is not only local one, but large numbers of labour required for different activities in the manufacturing of the carpet is the migrated labour, which come from nearby states and region, particularly Orissa, Bihar, Madhya Pradesh. These labours either come single or with their families. It has been seen that the living condition of the labourers is so deplorable that it may be called

inhuman living conditions. The carpet industry require labours for the different activities such living conditions. The carpet industry requires labours for the different activities such as weaving, embossing, washing, clipping, dying, and other manual works.

7.220 Dyes and chemicals are extensively used in the carpet industry. Synthetic chrome dyes are used exclusively for dying the wools. The chemicals agents used for colour tastening, are suspected to be highly health hazardous. The environmental pollution caused by industry is becoming increasingly higher in and around the carpet industry. There are several examples that carpet-washing plants are causing effluent problems, as the chemicals used are not biodegradable.

7.221 Child labour in carpet industry once was rampant. The situation of child labour and bonded child labour has been widely discussed as this industry activity/sector has a considerable child labour and bonded child labour. Although estimates vary, it still remains a fact that carpet industry remained the most child-labour endemic. The child labour/

bonded child labour in the carpet industry are of two categories, first those children who are brought by recruiting and supplying agents from other region and states and supplied to the carpet industry and second those who are locally employed and can be termed as wage child labour. The first category was often drawn into the situation of the bondage and the rescue was difficult unless the situation was known to concerned government departments and NGOs.

7.222 In the carpet belt, NGOs campaign and movements was although termed as misguided propaganda by some vested interest and the reports on the issue of child labour in carpet industry, appearing in the media both within and outside India have also been termed as grossly exaggerated, but fact remains that once the child and bonded child labour in the carpet industry was the sheer reality. Though the situation of the child employment has changed now but still lot has to be done to restore the right of childhood to lakhs of the children in the carpet belt

7.223 **STREET VENDORS:** Street vendors and hawkers are among the most visible and active category of the

workforce in the informal sector. Most of them come from impoverished rural families. Street vending absorbs millions of those who come to cities as economic refugees from the villages, because they can enter this occupation with small amounts of capital. They not only create employment for themselves through their entrepreneurial skills, but also generate upstream employment in agriculture as well as small-scale industry. They are the main distribution channel for a large variety of products of daily consumption – fruit, vegetables, readymade garments, stationery, newspapers, magazines and so on. Their elimination from urban markets would lead to a severe crisis for fruit and vegetable farmers, as well as small-scale industries which cannot afford to retail their products through expensive distribution networks in the formal sector. The ordinary consumers who do not travel to big towns or department stores will also find it difficult to get their basic necessities at their doorsteps. Hawkers provide a low cost, decentralized and highly efficient system of distribution covering an incredible variety of products, at prices far below those prevailing in established markets.

Middle class people buy a large proportion of their daily consumption needs from street vendors, whereas for the poor, hawkers are the only affordable source for items of daily consumption. Thus, they are a vital link between consumers and producers, and make a valuable contribution to the economy

7.224 The activities of hawkers and street vendors are comprehensive and ingenious. There are hawkers in Delhi who collect dal and spices which spill on the road during transportation, clean them and sell them to the poorer sections of the population. There are hawkers in Chennai who have set up a whole market for imported electronic consumer goods. In Mumbai's Fashion Street or on the pavements of Delhi's Sarojini Nagar, you can find the best of ready-made garments at prices which are incredibly low. A large section of population in all cities is dependent on vendors and hawkers for their meals and snacks. Traffic intersections have been virtually converted into departmental stores by the hawkers.

7.225 Hawkers and vendors of various cities have fought long drawn

battles, both in the streets as well as through the courts to assert their right to an honest and dignified livelihood. The Supreme Court itself has upheld this right through numerous judgments, but there has been little change at the ground level. In 1985, the Supreme Court, in the *Bombay Hawkers Unions vs. Bombay Municipal Corporation* case, directed that each city should formulate clear-cut schemes which earmark special Hawking Zones after which it could declare areas as No-Hawking Zones. This was followed by a landmark judgement in 1989 in the *Sodan Singh vs. NDMC* case. It held that 'Street trading is an age old vocation adopted by human beings to earn a living. (and) comes within the protection guaranteed under Article 19 (1) (g) of the Indian Constitution which guarantees the right to earn a living as a fundamental right.' Therefore, city administrations were directed to facilitate hawkers in acquiring a legal status.

7.226 Laws relating to street vending are varied. With the exception of Kolkata, most municipalities have provisions for providing licenses for hawking. Kolkata not only considers street vending an illegal activity,

but its law provides very stringent punishment for hawkers: hawking is a cognisable and non-bailable offence.

7.227 Imphal is one city which has clearly laid down rules for street vending. The Manipur Town Planning and Country Planning Act 1975, provides that in residential areas there should be a provision for 4 to 6 shops and 10 hawkers per 1000 people. The Bhubaneswar Development Authority has reserved 3% of public space as a commercial zone. Shops are allotted space in this area through draw of lots. Space is also reserved on the pavement for street vendors.

7.228 When urban plans allot space for hospitals, parks, markets, bus and rail terminals etc., they can take into account the need that residents of localities feel for the services that vendors or hawkers can provide. It is clear that if urban development plans are to be effective and people oriented, they have to make provisions for the growth of such natural markets.

7.229 The fact that street vending is looked upon as a nuisance or frowned upon by law gives a lever to the municipal authorities and police to

extort money from the vendors. Municipalities should seriously think of alternative solutions. Legalizing vending by providing licenses may solve many of the problems that are being faced today. Bribery and corruption will decrease, municipalities will earn more through license fees, and street vending will get more orderly, disciplined and regulated.

7.230 Recognition of hawking as a profession will benefit not only hawkers but also municipalities. They would be able to officially enforce levies on hawkers. In Imphal, the municipality not only provides space for vendors, but also charges fees for garbage collection and sweeping, besides collecting a license fee.

7.231 We were told that instead of creating an enabling environment, Government policies are adversely affecting the livelihood of lakhs of people who are engaged in earning their livelihood through hawking. We were further told that street vendors were being treated as law-breakers, as a public nuisance, and routinely beaten and driven out of public spaces. All this is done legally in the name of cleaning up the city by clearing it of illegal encroachments.

Our municipal laws make it unlawful for anyone to vend on the streets without a valid *tehbazari*, which is a legal permit for stationary vending. Many witnesses told us that getting a *tehbazari* from the municipality without strong political patronage or bribes, was highly difficult.

7.232 Hawkers have no other means of livelihood, and they have no option but to carry on with their trade even if it means facing harassment by the police and the municipal staff. Vendors who resist paying bribes are beaten, and have their goods confiscated. Even otherwise, the police and municipal authorities carry out frequent raids in the informal natural markets created by these hawkers and vendors, and seize their goods and pushcarts and lock-up all confiscated properties in municipal yards. Sometimes, even those who have licensed stalls are not spared. Vendors have also to pay permit-money or protection-money to local *gundas*. In a public hearing conducted by 'MANUSHI', it was contended that the 5 lakh vendors of Delhi are paying bribes to the tune of Rs. 40.0 crores a month.

7.233 A study conducted in the city of Ahmedabad indicated that while the

legal fees paid by street traders in 1998 was Rs. 5.6 crores, illegal fees paid was Rs. 5.5 crores. We cannot overlook the fact that this happened in a place where an organisation of vendors and hawkers connected with SEWA has a strong presence.

7.234 A typical vendor starts his day early in the morning with the day's purchase. The market place, his residence and the place from where he buys his goods are invariably far apart. Bringing large sacks of vegetables and fruits and loading them in a cart is a tedious job. Arranging, cleaning, sorting, weighing them and dealing with customers is not easy.

7.235 As we have pointed out, vendors have to deal with many authorities – municipal authorities, police (*thana* as well as traffic), regional development authority, district administration etc. Policy makers seem oblivious of the positive impact of street vendors on the social life of a city. The availability of work options on the street provides a positive outlet for employment and earning and for honest livelihood to a large section of the population that is poor but has high entrepreneurial skills.

7.236 The organisations that tendered evidence before us, did not ask that street vendors should be permitted to sit wherever they liked, at any place anywhere in the city. Their demand was that they should be accommodated in city spaces where they would not obstruct other essential functions such as the flow of pedestrians or traffic. The reason that vendors now seem such a nuisance is that there is no place for them, and so any place they occupy belongs to an area or land which has some other function. It is, therefore, necessary to evolve national and state policies on street vendors, and these could be borne in view while determining urban plans and schemes.

7.237 We were also told that while most of the vendors/hawkers merely manage to earn their livelihood, there are cases where hawkers have set up industries on their own, and have become examples to others in their profession. Some vendors earn enough to pay Income Tax.

7.238 In fact, most countries in the developing world are facing problems in identifying the role of vendors and providing a framework that enables

them to make their contribution to the economy, employment generation, and the services sector. This is evident by the declaration that was adopted at the International Conference on vendors that was organised at the initiative of SEWA and other similar organisations at Bellagio in 1995.

7.239 The Bellagio International Declaration of Street Vendors adopted on November 23, 1995 says:

'Having Regard to the Fact

- a) That in the fast growing urban sector there is a proliferation of poor hawkers and vendors, including those who are children;
- b) That because of poverty, unemployment and forced migration and immigration, despite the useful service they render to society, they are looked upon as an hindrance to the planned development of cities both by the elite urbanites and the town planners alike;
- c) That hawkers and vendors are subjected to constant mental and physical torture by the local officials and are harassed in many other ways which at times

leads to riotous situation, loss of property rights, or monetary loss;

- d) That there is hardly any public policy consistent with the needs of street vendors throughout the world.

'We Urge upon Governments:

- a) To form a National Policy for hawkers and vendors by making them a part of the broader structural policies aimed at improving their standards of living, by having regard to the following:
 - b) Give vendors legal status by issuing licenses, enacting laws and providing appropriate hawking zones in urban plans.
 - c) Provide legal access to the use of appropriate and available space in urban areas.
 - d) Protect and expand vendors' existing livelihood.
 - e) Make street vendors a special component of the plans for urban development by treating them as an integral part of the urban distribution system.
 - f) Issue guidelines for supportive services at local levels.

- g) Enforce regulations and promote self-governance.
- h) Set up appropriate, participative, non-formal mechanisms with representation by street vendors and hawkers, NGOs, local authorities, the police and others.
- i) Provide street vendors with meaningful access to credit and financial services
- j) Provide street vendors with relief measures in situations of disasters and natural calamities
- k) Take measures for promoting a better future for child vendors and persons with disabilities.'

7.240 RICKSHAW PULLERS: Rickshaw pullers,- particularly in the North, are mostly migrants. They migrate from the States of Bihar, Orissa, Madhya Pradesh, Uttar Pradesh and Rajasthan to bigger towns and cities. Most of them are small peasants or landless workers who were forced to migrate to the cities due to feudal oppression, exploitation by land mafia, or natural calamities like recurring floods. In big towns they have no place to stay. They generally sleep on footpaths or in their rickshaws. All of them do not own

rickshaws. They take them on hire, and have to pay a large sum of money as rent, even if they do not earn enough. Often, they are harassed by the police. They do not have any social security cover.

7.241 Rickshaw pullers are engaged in the transportation of persons as well as goods. Rickshaws appeared on the Indian horizon in the early decades of the 20th century, or perhaps, even earlier. These rickshaws were hand-pulled. Over a period of time, these gave way to cycle rickshaws in most of the cities except Kolkata. In the late 1970s, motorized versions of rickshaws were tried but did not become popular. Today, Chennai has a large fleet of motorized rickshaws used for the transportation of goods. Cycle rickshaws have not undergone any major technological transformation over several decades. They continue to remain heavy and lacking in proper balance. Recently in Delhi, a newer, lighter and a more stable and comfortable version of the cycle rickshaw has been introduced, comfortable both for the puller and the passenger.

7.242 Rickshaws continue to provide livelihood to lakhs of people. Delhi

alone has about 5 lakh rickshaws. Large-scale displacement of people from their habitats, closure of industries and the consequent retrenchment of workers due to various reasons has added to the already growing number of rickshaw pullers. Traditionally, rickshaw pulling is one of the most preferred avenues of employment in the city for the unskilled and illiterate but able-bodied persons who migrate from rural areas. Rickshaw pulling is an instant source of employment, a job for which much know-how or investment is not required. It offers great flexibility to rural migrants when agricultural employment is not available in the village. It is common knowledge that even industrial workers have a tendency to go back to their villages during the peak agricultural season to help their families with seasonal operations. The rickshaw pullers who migrate to cities are no exception. Even for those who are living in the cities on a regular basis, rickshaw pulling offers a degree of flexibility which is not available to an industrial workman. In theory, a rickshaw puller is free to work during hours that are convenient to him, although in practice this is a luxury which few can enjoy.

7.243 Rickshaw pullers are among the least protected workers in the unorganised sector. Conditions are not regulated. Nor are their social security issues addressed. The vulnerability of the rickshaw pullers is further accentuated by the fact that the majority of those who pull rickshaws do not own the rickshaws themselves. In a city like Delhi, only 14.6% of rickshaws are licensed. The rules of the Municipal Corporation permit only one rickshaw for one person. They also stipulate that the owner himself has to be the puller. Widows and physically handicapped persons are allowed to own 5 rickshaws, and to give them on hire. Illegal ownership and unlicensed plying add to the complexity of the conditions in the sector.

7.244 The only investment which the rickshaw puller has to make is his relationship with a person who is known to the rickshaw owner. It is this acquaintance which enables a prospective rickshaw puller to hire a rickshaw and start his profession. While, in principle, in most of the cities only the rickshaw owner can be the rickshaw puller, in practice this happens only as an exception. There are individuals who own a fleet of

rickshaws which are hired out on a daily rental to the rickshaw pullers. At the end of the day, the rickshaw puller has to pay the rent.

7.245 The life of a rickshaw puller is not, however, easy. The nature of the work itself has a number of hardships built into it. It is hard work further aggravated by the badly maintained roads. The rickshaw puller has to work in the open and, therefore, is at the mercy of nature. During summer, he has to face the blistering heat and in the winter, the chill makes it difficult for him to go about his normal work. The monsoons are perhaps the worst from the point of view of his profession. In Kolkata, during the rains, it is a common sight to see the rickshaw puller wade through knee-deep water to ensure that his passenger reaches home safe and dry. It is a different matter that in the process, the rickshaw puller himself becomes vulnerable to diseases like influenza, and other diseases.

7.246 The rickshaw pullers have no schemes of social security to ensure that they are taken care of during sickness. Most of the municipal and Government agencies treat rickshaws as a hindrance rather than an agency

which is performing irreplaceable and useful work for society. The traffic police view rickshaws and other non-motorised vehicles as a traffic bottleneck. The municipal authorities share the same view. They, thus, do not feel the need to create sheds or parking space for rickshaws. There have been a few experiments to create separate lanes for cycles and rickshaws. But they have not succeeded. Since rickshaws, or at least the vast majority of them are not legally owned, the rickshaw pullers cannot even think in terms of getting institutional loans to buy rickshaws. In any case, the local authorities make it so difficult for individual rickshaw pullers to obtain licenses that very few of them attempt to do so.

7.247 Non-recognition of rickshaws as a 'mode of public transport' in the transport policy makes planners blind to the economic worth or utility of this sector. The opaqueness of the system breeds corruption aggravating the insecurity and exploitation of rickshaw pullers.

7.248 The 'non-recognition' of the 'economic worth' of rickshaws as a public utility has another consequence. Government and the

private sector have never bothered to invest in the production of cycle rickshaws and on research and development that could lead to improvement. Cycle rickshaws are assembled locally with little scientific application in design and fabrication, affecting the stability of rickshaws.

7.249 As we have stated earlier, most of the rickshaw pullers are migrants, and generally stay alone in the urban areas while their families live in the villages. The rickshaw puller has to save some money to send it home to take care of his family. However, his earnings are never very large. Most of the rickshaw pullers just manage to earn their livelihood. Their earnings range from Rs. 40/- per day to Rs. 150/- per day depending upon the city in which they operate and the season. Some of the rickshaw pullers are able to add to their income by having monthly arrangements with parents to pick-up and drop children to school or to bus stops.

7.250 Most of them cannot afford to rent a room even in the basties where workers usually live. Some of them live on footpaths, under hanging balconies. Sometimes 5 or 6 persons

from the same village hire a room. Huts in unauthorized colonies are the only option for a vast number of these rickshaw pullers. Quite a number of them live in open spaces or sheds in which the rickshaws are kept by the owners.

7.251 Most of them smoke *beedis*, chew tobacco and quite a number of them drink locally brewed alcohol. Some of them are also prone to the use of drugs. The cumulative effect of this life style is that a large number of rickshaw pullers, especially in the smaller cities, suffer from tuberculosis and other diseases. Since there is no medical scheme for these persons, diseases tend to aggravate.

7.252 Apart from providing direct employment to lakhs of persons, rickshaw pulling provides indirect employment to several others due to its multiplier effect. The rickshaw manufacturing activity and rickshaw repair activity perhaps give employment to a number of persons. If we take into account the fact that each such person looks after 5-6 members of his family, it would imply that the rickshaw pullers sustain a large section of the population - and this, at a time when the organised

sector is not in a position to offer any jobs.

7.253 The Prime Minister recently intervened to help the rickshaw pullers of Delhi and wrote to the Lt. Governor of Delhi stressing 'it (policy) should recognize street hawking and cycle rickshaw pulling as legitimate occupations which help reduce poverty and facilitate their integration into the formal economy.' The note from the PMO highlighted the following issues:

- (i) existing license system with quantitative limits must be scrapped.
- (ii) The metropolis must be divided into green, amber and red zones signifying free access, fee based access and prohibited access, respectively.

Any person who wishes to be a street hawker or cycle rickshaw puller may do so by a simple act of registration. The sole purpose of registration would be to provide identification.

7.254 Unorganised workers depending on common property resources: A good number of workers depend on natural resources for their

livelihood. Natural resources include forests, water bodies and mineral/stone deposits. Forest workers including adivasis, graziers, fisher-people, cultivators, miners, potters and quarry workers depend on these resources. The State has taken over the ownership of some of these resources through legislation. This appropriation of ownership has made a change in the status of these resources, like forests, etc from common property to State or Government property. Those who lived in forest villages or tribal habitats or those who lived in the proximity of common grazing land, had access to these since they were the base on which their livelihood depended. Thus, fishermen on the banks of rivers, lakes, seas, and so on had the right of access to these common property resources for purposes of earning their livelihood. In other words, these were commonly owned, but were the means of livelihood for individuals living in them (forests) or beside them (lakes etc). With the new legislation, the State has inhibited this right of access, and in some cases totally taken away this right of access, thus denuding the poor, unorganised subsistence workers of their means of livelihood.

The case of mineral deposits and fisheries is not very different. Panchayats now own the water tanks where any leaseholder can do fishing. The leaseholder does not have to be a fisher-person. This development leads to two results: One, the new players from outside do not depend on these resources for their livelihood, and therefore, do not mind exploiting these resources to their exhaustion and at the cost of the social assets in fish and water resources. Two, the natural stakeholder is pushed out totally, or subjected to serious jeopardy of subsistence.

7.255 As resources, these are open resources. As property, these belong to the State or public domain. Regulated tapping is the way to sustain open resources or common property. Private individual tapping of an open or common resource brings in the question of ownership of the community or the question of communal property. Communal property is a domain that stands between individual property and public property. In fact, the take over of open access to resources like forests and fisheries through legislation from practically the communal hold of adivasis and fisher people or village

communities, has led to private leasing of public property, effecting a transfer of ownership. We feel that society, and the state will have to give thought to the remedial strategies advocated by the affected people, including involvement of the communities in the sustenance of these resources. Village commons, grazing land and the source of wood, fuel and other food items, are also on the decline, pushing people who are dependent on these into further degrees of impoverishment, and poverty. Let us examine the state of some of these common property based workers.

7.256 For the fishing communities, fish harvesting is a traditional source of livelihood solely dependent on the natural fish resources in the seas, rivers, lakes, lagoons, canals, dams, reservoirs and other water bodies. Damage and destruction done to these water bodies due to industrial, agricultural or civic pollution, reclamation, etc., or any other activity affecting their natural state or status, cause depletion of the natural fish stock. To ensure fuller employment of the fish-workers there should be sufficient provision in the law to protect water bodies as well as aquatic resources.

7.257 Although fish harvesting is the only occupation of the traditional fisher-folk since ages, law does not protect their right over water bodies and fish resources. Practically an open access regime prevails in the fisheries sector. As a result, merchants, mafia and other profiteering interests enter into the fisheries, taking advantage of modern fishing technologies. This causes serious threat to the sustainability of the resources, and displaces the traditional fisher folk from their only source of livelihood.

7.258 A study by Abhijit Guha estimates the range of decline of the area under common property resources (CPRs) at 31-55% (period not mentioned). The same study points out that before 1952, the CPR products ranged from 27 to 46. Because of reduced bio-diversity, these products now range only from 8 to 22. Use of inorganic fertilisers and insecticides, population load, encroachment on the commons and the takeover by the state have reduced the area and bio-diversity of the village commons (Guha, 1998).

7.259 What is said about CPRs is also true of forests. The adivasis and other pastoral groups who depend on

forests are increasingly losing their livelihood or getting displaced because of (i) the lopsided policies of the state and (ii) the depleting forest cover.

7.260 Meanwhile, there are encouraging people's efforts to share resources like water on mutually agreed principles. The stories of the success of water panchayats among farmers in villages (about which we have referred elsewhere in this report) also are well known, and do not need to be retold in detail.

7.261 Agricultural lands are also being 'developed' for other purposes or submerged by 'projects.' These developments are the result of policy shifts. Given the considerations of food security and unemployment among agricultural workers, positive steps should be taken to conserve agricultural lands and promote agriculture. The input-output imbalance in agriculture is working against farmers. Over and above this, the input of self-labour and family labour is not even getting accounted. Besides effecting changes in policy orientation, new legislation should take steps to insure crops against damage and incurring loss from market fluctuations.

7.262 OTHER COMMON PROPERTY RESOURCES BASED WORKERS:

Traditional artisans such as basket weavers and rope makers depend on a number of resources taken from forests and village commons. Village forests offer various varieties of grasses, canes and bamboo. The '*bann*' workers of Saharanpur produce ropes from the *bhabhar* grass, abundant in the Shivalik hills of Saharanpur district of Uttar Pradesh. Village commons are the source of food, fodder and fuel for the poor villagers.

7.263 All these workers depending on common property resources, whether employed or self-employed, have low earnings for a number of reasons such as depletion of resources and lack of work. Debt bondage is prevalent among them. It is obvious that they belong to the unorganised sector.

7.264 Artisans: Artisans are persons with some skill or craft with which they produce products of every day use, ornamental goods or other tools for their livelihood. Like the home-based workers, some among the artisans are self-employed while some are employed under others. As

in many cases raw materials are supplied, the products become linked, and a sort of chain gets established. For employed artisans as well as the self-employed artisans, wages and earnings are low.

7.265 'Unskilled workers': Manual workers and a number of other workers in the unorganised sector performing diverse activities are considered unskilled workers. As specific skills are acquired through formal or informal training, untrained hands performing all kinds of jobs that do not need substantial specialization are treated as unskilled workers. Unskilled workers who are not employed in the organised sector, come in the category of workers in the unorganised sector. The majority of agricultural workers and construction workers belong to this category. Helper category of jobs in all sectors, the manual workers, roadside workers available for all kind of petty jobs, head load workers/porters, etc. come under this category. It should be noted that they possess some skills that other persons in the skilled categories do not have. But since their wages are fixed low, these unorganised workers get only subsistence wages.

7.266 **Piece-rate Workers:** Piece-rate workers do not constitute a separate category of employment, but consists of workers who are paid on a per-piece-basis. The piece-rate issue is an extremely important, but has not been adequately addressed. Piece-rates are rampant in the unorganised sector. Many among the home based workers, contract workers, earth diggers, brick workers, etc. fall in this category. Piece-rates are fixed in such a way that the wages earned are very low. The Minimum Wages Act, 1948 has provisions for both time-rates and piece-rates. But the mechanism for fixing piece-rates is not clearly spelt out. The Act also has provision for a 'guaranteed time-rate' for piecework [section 3(2) (c)]. But we find that this Section has not been invoked adequately.

7.267 **Unorganised workers in the organised sector:** Casual and contract workers in the organised sector are more or less equal to unorganised workers as far as benefits are concerned, though they are eligible for most of the benefits under law. Regular and permanent workers are mostly eligible for, and receive legislative benefits. There is a section of workers on the official waitlist in

most of the enterprises. They are the casual workers who are often called *badli* workers, daily-wage workers and so on. The present trend is one of increasing casualisation where even regular workers in the organised sector are losing their work security. This section of labour, even though in the organised sector, has to be considered part of the unorganised sector. This is also the case with contract workers. Public Sector Undertakings (PSUs) engage contract labour. Most of the large-scale factories are engaging an increasing number of contract labour, in some cases more than 50% of the workforce in the enterprise. Often, these contract workers are not properly educated, not fully trained to handle machines, chemicals, electricity etc. Yet, they are employed to work on dangerous machines and dangerous processes. Contractualised and casualised labour has to be considered part of the unorganised sector.

7.268 **AGRICULTURAL WORKERS, MARGINAL FARMERS AND SHARECROPPERS:** The Annual Report of the Ministry of Labour, 1999-2000 considers cultivators, sharecroppers and agricultural labourers as

unorganised workers. In fact, the agricultural sector constitutes the largest segment of workers in the unorganised sector. Inadequacy of employment opportunities, poor security of tenure, low incomes, and inadequate diversification of economic activities are the main problems for the workers in this sector. Agricultural labour gets employment for less than six months in the year, and they have often to migrate to other avenues of employment, like construction and similar occupations during the off-season. Circumstances force most agricultural workers to borrow money from time to time from private sources, either for needs of consumption or for meeting social obligations like marriages (Ministry of Labour, 2000b: 106-107). The cost of inputs needed in farming and the amount of family labour put in by farmers is not recovered in agriculture because of the existing price system. There is a mechanism to fix the minimum wages in certain occupations; however, there is no system to fix the minimum prices for crops, and farmers have no say in the pricing of their agricultural products. This has had its effect on the wages of agricultural workers as well as attitudes to the fixation, quantum,

and payment of minimum wages to agricultural labour.

7.269 AGRICULTURAL LABOUR: Agriculture is the single largest contributor to the GDP, and also the biggest sector for employment. According to latest estimates, out of 369 million workers in the unorganised sector, 237 million workers are in activities that relate to agriculture. Agricultural labourers constitute a distinct section in the peasantry. Yet, their total strength, community allegiance, comparative socio-economic status and political position in agrarian society have been overlooked because they belong to a poorly organized, badly exploited and oppressed class of rural society. They work on lands that belong to others, in various capacities, without owning any means of production. They are unable to organise themselves despite being a distinct class, because they are absolutely dependent on landowners. Historically, socio-economic power has remained concentrated in the hands of powerful Zamindars and Chieftains. They often treat their agricultural labour as slaves, and pay wages in kind. In many parts of the country, a system of renting out land in return for half

or three-fourth of the produce has become established. Peasants as well as tenants work as labourers. In the social caste hierarchy, most agricultural labourers are from so called lower castes or tribes, and are considered only marginally above the lowest.

7.270 Since agricultural workers are unorganised, their bargaining capacity is marginal; this leads to ruthless exploitation by moneylenders, and rich farmers. The report of the National Commission on Rural Labour (NCRL) has made observations on the acute indebtedness of rural workers and agricultural labour households. It observed that about 16.08 million rural labour households, including those of agricultural labour, were indebted. Of these, 5.67 million were from the Scheduled Castes, and 1.79 million were from Scheduled Tribes. 8.62 millions were others. According to the Rural Labour Enquiry Report (50th Round of NSS), the per capita debt of Scheduled Castes household agricultural workers was Rs. 576, and the debt of Scheduled Tribes household agricultural workers was Rs. 484 during 1993-94. A majority of agricultural workers had to seek loans to meet their basic needs. This clearly

shows that agricultural workers did not receive the minimum wages prescribed by the States. Moreover, they did not get employment round the year. In most of the States, agricultural work extended only for four months in the year. The resultant under-employment was a cause that increased labour poverty.

7.271 It has been observed that approximately 40% of agricultural workers are migrant labourers. The migration ranges from inter-district migration to inter-state migration, and even migration to far off states like workers from Bihar migrating to Punjab and U.P., and workers from Chattisgarh migrating to Maharashtra, Gujarat and Punjab. Similarly, migration in the Southern States too is intensive. There is widespread migration to distant places and from agriculture to mining, and construction, and migration in the reverse direction. Jobs in construction and mining industries absorb workers from agriculture after the season of agricultural operations. In one way such migration offers agricultural workers jobs throughout the year. The problems of all migrant workers are very severe. Most of them work for 12 hours a day; they do not get

weekly rest. There is very scanty availability of housing or dwelling units. Employers try to continue exploiting workers by delaying and defaulting on payment of full wages so that workers may continue helplessly in the hope of receiving full payment before they leave the employer. Often, after waiting long, they leave their jobs in sheer desperation, without taking their dues from the employers. The Inter State Migrant Workmen's Act (ISMW Act) has proved ineffective because of the reluctance of State Labour Departments to cooperate with the Labour Departments of the originating State, ineffective enforcement and the ignorance of agricultural workers. Trade unions too have not given much attention to the plight of migrant workers. The most severely affected migrant agricultural workers are women and children. It is admitted that the agriculture of many prosperous states like Punjab depends on the labour of migrant workers. These states owe their prosperity to migrant workers, and it is therefore legitimate to demand that migrant workers should receive commensurately fair treatment, to assure them fair housing, adequate wages, social security and similar

benefits. They should not be subjected to discriminatory or exploitative conditions.

7.272 The Central Government and State Governments have fixed minimum wages under the Minimum Wages Act. In the year 1997-98, the wages of agricultural workers in the States ranged from Rs. 20 per day to Rs. 60 per day. This wide variation in minimum wages raises questions on the criteria that are followed in fixing minimum wages. In many states, these have not been revised since 1997-98. The enforcement of minimum wages in agriculture is a real problem because inspectors are generally reluctant to visit farms and fields, and employers are reluctant to cooperate with them whenever such visits are undertaken. The ordinary farm labourer, who is illiterate, is not aware of the law or the machinery for enforcing minimum wages. Poverty stricken, illiterate and ignorant agricultural workers appear very weak, and grow old even before they advance in age. Unhygienic living conditions and inadequate food result in many ailments.

7.273 The Agricultural Sector accounts for 60% of the total

employment in the rural sector, but it does not show any increase in employment opportunities. Under-employment and disguised unemployment is prevalent on a large scale. The impact of globalisation too is very much evident in all sub-sectors of the agricultural sector. Globalisation has underlined the concepts of cost efficiency, increase in productivity, technological improvements and competition. Besides, problems have arisen with cuts in input subsidies. The agricultural support price system is also under strain. All this has resulted in a downward trend in the prices of agricultural commodities, and this has directly hit small farmers and labourers. Many have been ruined. Quite a few cases of suicide have been reported from many states. It often appears as though poverty or starvation compels them to accept subsistence wages, half a loaf of bread, when a full bread is not available.

7.274 Our Commission believes that agriculture can offer job opportunities to lakhs of unemployed, if it is given due priority and the State does not neglect it. Countries like China, Japan and USA could grow on a strong

base, and at a faster growth rate, only after giving priority to agriculture. In USA, agriculture was considered as the engine of growth in the early stages. In our country, areas requiring special policies and programmes include agro-based food processing industry, cash crops of medicinal plants, floriculture, aqua-culture, poultry, horticulture, natural resource management, farm management, technological improvements, bio-technology, multi-dimensional research, development of agriculture financing network, development of markets, etc. There is urgent need for a vocational training network for agricultural workers. The overall improvement in agriculture will, and can create a large number of jobs in the primary and secondary allied sectors. The improvement in agriculture would generate jobs in agricultural machinery production, fertilizer distribution and marketing, and construction, food-processing, and other small-scale industries. This is all the more urgent, because globalisation has reduced job opportunities in the organised secondary sector of the economy, and particularly in industries and mining. Agriculture, being the only sector

capable of generating more and more employment opportunities commensurate with India's population, it demands concentrated attention on a war footing. Agricultural labour must become the central point, along with rural industries and crafts, for evolving a suitable labour policy, for the vast rural areas of the country.

7.275 The existing labour laws which are applicable to, and partially safeguard the interest of agricultural workers are: i) The Workmen's Compensation Act, 1923; ii) The Minimum Wages Act, 1948; iii) The Maternity Benefit Act, 1961; iv) The Contract Labour (Regulation and Abolition) Act, 1970; v) The Personal Injuries (Compensation Insurance) Act, 1973; vi) The Bonded Labour System (Abolition) Act, 1976; vii) The Inter-State Migrant Workmen (RE & CS) Act, 1979; viii) The Child Labour (Prohibition and Regulation) Act, 1986 and; ix) Payment of Wages Act, 1936. The main legislation dealing with aspect of safety is: i) Insecticides Act, 1968, and ii) Dangerous Machines (Regulation) Act, 1983. The Government also implements several schemes and programmes for the

welfare of rural workers including agricultural workers such as the Employment Assurance Scheme, Jawahar Gram Samridhi Yojana, Swarnajayanti Gram Swarajgar Yojana, etc. However, considering the inadequacy of these legislative measures and welfare schemes, attempts have been made to enact a separate comprehensive legislation for agricultural workers. A draft Bill, 'The Agricultural Workers (Employment, Conditions of Service and Welfare Measures) Bill, 1997' was prepared by the Central Government. The proposed bill incorporated provisions relating to registration of land-owners and agricultural workers, working conditions, creation of a welfare fund, implementation of welfare schemes, setting up a dispute resolution mechanism, etc. However, the efforts of the Central Government have not succeeded so far because of opposition from some States that were opposed to Central legislation, and wanted the states to be left free to deal with the question, at a time, and in a way that they considered appropriate.

7.276 An agricultural worker has often been defined in Government

statements as 'a person who follows one or more of the following agricultural occupations either as a smaller marginal land holder who part of the time offers himself for wage employment or a landless labourer who offers himself full time on hire, whether he is paid in cash or kind or partly in cash and partly in kind in any of the following activities: a) farming b) dairy farming c) production, cultivation, growing and harvesting of any horticultural commodity d) raising of livestock, bee-keeping or poultry farming e) fishing and f) any practice performed on a farm as incidental to or in conjunction with the farm operation (including spraying of chemicals, well-digging and any forestry timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products.'

7.277 The Government has recently launched a Krishi Shramik Samajik Suraksha Yojana 2001 in 50 selected districts in the country to cover 10 lakh agricultural workers in the span of three years. We have been told that the response to this scheme is very encouraging. This is a social security scheme providing for

life-cum-accident insurance, money back and superannuation benefits. It is a contributory scheme requiring payment of Rs. 1/- per day by the worker and Rs. 2/- per day by the Government. If this is to be extended to cover about 200 million agricultural workers, as was announced, the Government exchequer will have to contribute Rs. 400 million per day. That will amount to Rs. 14,600 crores per year.

7.278 Unlike workers in the organised sector, agricultural workers do not have access to a system of social security or laws that provide for security of jobs, adequate minimum wages, and healthy and safe working conditions. Even where minimum wages are fixed, workers do not receive these wages in full, in most states. The procedure to enforce payment of wages, even where the machinery is available, is too cumbersome and time consuming. As has been stated earlier, the social milieu from which they come is often the lowest rung in the traditional hierarchy. They are the most vulnerable victims of natural calamities like floods or drought. They need protection from such disasters.

7.279 We have neglected the agricultural sector of the economy and agricultural labour during the last 50 years, although agriculture has been the backbone of our society and economy. It still holds the promise of prosperity. It is time that an effective framework of laws and social security was put in place for workers in this unorganised sector.

7.280 FOREST CULTIVATORS: Traditional forest based agriculturists, mostly Adivasis, are facing a livelihood crisis following the legislation on forests that has vested monopoly rights over forests in the state. Numerous national parks, sanctuaries and the forest department are very often in conflict with these subsistence-farming people who are the traditional residents of the forests. Today, the forest people do not have property rights over their traditional habitat in the forest. Forest villages are not considered legal entities. There is no definition of a 'forest village' in either the Indian Forest Act or the Wild life (the Protection) Act (Krishnan, 1996). *Rabhas* are one such people who live in the buffer zone of the Buxa (West Bengal) tiger reserve. Through eco-development committees, they have been

officially made partners in wildlife conservation. But their situation is often worse than that of their livestock, and their rights of cultivation and crops are in danger (Karlsonn, 1999). These cultivators are also unorganised workers like the other cultivators that we have referred to.

7.281 Gatherers of Forest produces: Forests provide a large number of non-timber products. Gathering and selling of these produces like firewood, *tendu* leaves, fruits, *saal* seeds, *mahua* petals, gum, tamarind, *amla* (gooseberry), medicinal herbs and roots, and honey provide livelihood for millions of people. Though the trading of these items is big business, the collectors do not get adequately or commensurately paid for the labour they put in because networks of mafia- traders control the market price. In some cases, state sponsored bodies like forest development corporations work as buyers. They too buy at prices that are kept inordinately low.

7.282 The problems of forest workers are manifold. The limitation of State sector activity in a seasonal

operation like forestry, coupled with the budgetary constraints in creating employment on a more or less regular basis in the vast expanses covered by forests needs to be recognized, although it is an important component in providing employment in those areas. The restrictions on traditional rights of forest dwellers and surrounding people in reserved forests, and the curtailment of such rights in protected forests have adverse implications on their monetised and non-monetised income levels, increasing the incentive for engaging in illegal activities of felling timber, poaching etc. These impact on the lives of 100 million forest dwellers in and around the country, and another 275 million for whom forests constitute an important source of livelihood support. This is particularly so, in respect of tribal people and women who have either been dispossessed or who do not have any property rights in land, and have meagre income producing assets. Forest products and common property resources provide the only source of income for them. The importance of this sector in the rural energy supply chain is also enormous. Studies have indicated that in the northern hilly areas of H.P. and the tribal areas of

Chattisgarh, about 15 to 20% of cash incomes at village level are derived from the collection and sale of Non-Timber Forest Produce (NTFP). Besides, NTFP has huge potential in processing industries, particularly for women, mostly at the cottage and household levels. Studies have also shown that non-monetised consumption from forest products is often 10% of the per capita income, and inclusive of firewood and grazing facilities, the benefits tend to equal the per capita income levels. It is in this context that the process of globalisation and continued initiatives in the sphere of deregulation, liberalisation and public expenditure reforms and their impact on the forestry sector workers and people dependent on forests need to be looked at. Conceptually speaking, globalisation does have some positive potential on forestry and forest dependent people. These can be by way of curbing the imbalance between agriculture and forest in favour of the latter, by redirecting the surplus and often unviable subsidies in power, water etc. which tend to push agriculture into marginal and forest lands, by creating alternative livelihood in the manufacturing and service sectors thereby reducing

excessive biotic interference on forests, and by development of affordable substitutes. By redirecting the State initiative, it can also induce positive influences by arresting the harmful features of ineffective protection and disincentives to investments in afforestation and protecting the long-term interests of forest dependent communities, encouraging the incentives for the dependent communities to protect diverse multi-production systems through restored community and individual rights for non-timber forest products (consequently reducing degradation via intensive fuel wood extraction and grazing once the NTFPs are partially or fully denationalised), review of the policies of supply of cheap raw material to industries thereby arresting extensive cutting down of waste and by opening of imports through reduction of tariff and non-tariff barriers thus reducing load on domestic forests. However, there is scope for exercising caution in any abrupt or wholesale withdrawal of the State initiative in the forestry sector. It is worth noting that the State initiatives have increased forest cover in the country and reversed the earlier trend. However, in some quarters, like State monopoly of non-

timber forest produce etc. which have led to monopoly of State operations in collection and sale, necessarily involving a large complement of Government/Public Sector staff and huge overheads on this account, there is scope for reducing the grip and opening up the sector to private initiatives, specially for the forest people and those dependent on forests like tribals and women-folk. Again, some State presence may be required in the near future to prevent monopolisation and exploitation by traders and middlemen, as was existing prior to the times of nationalisation, so that these instruments of State initiatives can play a role in ensuring proper competition alongwith the private players.

7.283 Taungya Workers: We have already made some reference to the plight and problems of thousands of workers who work in the forests of our country. These workers include those who are employed by the forest departments or their contractors to work on 'coupes' or on programmes in their working plans; those who are on construction projects within the forests; those who are engaged in the collection of fuel wood or minor forest

produce, tendu leaves and so on; the inhabitants of forest villages – mainly tribals – who have been living in the forest from time immemorial, whose habitats are the forests, and whose lives are interwoven with the forests. Much is not known about the lives or working conditions and employment related problems of many of these categories of workers. Many of them live in such inaccessible areas that they do not get enumerated even in the countrywide census operations.

7.284 One such group to whom we want to refer is the 'Taungya' planters or labourers of Gorakhpur in Eastern Uttar Pradesh. We refer to them since they are a little more known than some other groups about whom even so much is not known. According to a census of taungya workers in Gorakhpur, the number of inhabitants in their settlements came to approximately 30,000 in 1999.

7.285 They are the descendents of worker-planters whom the British Government settled in these forests of Eastern UP to grow trees in relatively thinly wooded areas. It may not be possible here to go into the 'forest policy' that the British Government forged to plunder the wealth of our

forests, firstly by claiming sovereign rights over all forest land, and particularly over some species of trees wherever they were found – even in the residential plots of citizens, and secondly, by felling and selling and exporting timber, cutting down forests to develop 'coupes' to cultivate timber yielding trees like teak, etc. Nor may we be able to describe how, even after freedom, some of these policies persisted, and how forest dwellers were ousted from their habitats to provide land for dam-sites or sites for other projects including heavy industries, or in later days, for the setting up of sanctuaries for wild life. By ousting these forest dwellers and workers from their traditional and natural habitats, lakhs, perhaps millions, of people of tribal origin were uprooted and cast into uncertainty and privation. For centuries, their lives had been interwoven with the forest. They had no acquaintance with the kind of employments one finds in urban areas. Yet, many of them were ousted or wrenched from their habitats without compensation, without provision of alternative habitats, or occupations, to float or drown in strange and distant waters.

7.286 The taungya population which we refer to here, falls in a slightly different category. The taungya scheme was built on the allocation of patches of degraded forestlands or clear-felled woods to resident labourers for planting and growing trees. In return for their work, the labourers were permitted to grow food-crops in three meter wide strips between the rows of tree-saplings. The selection of trees and the food-crops to be raised, as well as the entire process of plantation was monitored by the Government which had appropriated the ownership of the forest.

7.287 The necessary weeding and tending of the seedlings were to be carried out by the taungya cultivators simultaneously with the tilling of food-crops. After a few (usually 5) years the tree seedlings grow up and become independent. The cultivators would then be ordered to abandon the nurseries they had developed and protected, and march to an adjoining part of the forest, sometimes, to distant areas, to repeat the process.

7.288 The taungya method is believed to have been in vogue in Myanmar, and it is believed that after

the conquest of Myanmar (Burma), the British introduced the system in many areas of their Empire. The colonial powers apparently devised the taungya system to establish monopoly control over the forest resources of their colonies, as also to change the character of the natural forests through clear felling and artificial monoculture regeneration, more precisely through raising commercially valuable species of trees.

7.289 The taungya method was introduced between 1920 and 1923, chiefly for the plantation of Sal trees. This method was essential for guaranteeing early regeneration of sal trees. The method not only involved planting seedlings of the tree, but also nurturing and protecting the young trees against animals. It demanded twenty-four hours' vigilance. The taungya method was a kind of *Begar*, (forced labour) as the labourers were given a temporary lease to cultivate the strips between the rows of seedlings, at their own cost and in lieu of any wage or payments made for raising and protecting the plantation. They had to function under severe restrictions. They could raise only short duration

crops that did not draw many nutrients from the soil adjoining the saplings.

7. 290 The exploitative nature of the taungya technique did not change even after the country gained Independence. In the post-Independence era a male adult taungya labourer was assigned a plot of about 0.2 hectare in area on which he was expected to work along with his family. The work increased considerably under this new arrangement. By the end of every fifth year, after nurturing the sal seedlings in the allotted areas, these labourers had to move their huts to the newly assigned plots. More and more parts of forests were put under the taungya scheme.

7.291 The taungya system is characterised by cheap and captive labour. The labourers are out of the mainstream, and are exposed to many hazards in the forest. They have no alternative means to earn livelihood, and are compelled to survive on the taungya technique. They are prone to frequent attacks of malaria and other ailments due to the virtual absence of protection in the forests. Most of the taungya workers are at least 8 km. away from any primary health centre or a primary school and even a

market. The taungya settlements are approachable only through narrow footpaths, which are under constant threat from wild animals. The process of taungya cultivation is hazardous, and often led to casualties and abnormal deaths, through the falling of trees, snake bites and the like. In this situation the condition of their women folk is far worse than that of the ordinary lower class peasant women. They have to walk for long hours to reach health centres, and even markets, to purchase articles for their basic needs. The muddy and lonely forest tracks make it difficult for them to travel independently. This is especially so for young girls.

7.292 Although the land holdings of the taungya families are near their huts, they are not consolidated. Each taungya family, generally, occupied four small plots scattered across a radius of one kilometre. Generally, all the taungya workers are marginal farmers cultivating one-acre land or less, and supplementing their livelihood by tending cattle.

7.293 Some NGOs have tried to improve the conditions of these workers but the dimensions of their problem are well beyond the means

available to voluntary organisations. At best they have been able to improve the literacy of the taungya workers' children. They have started schools and also supported poor cultivators with credit to buy high yielding seeds and pumps for small irrigation. But the poor numerical strength of these workers and dispersal over a number of assembly constituencies have denied them an available political voice.

7.294 Even decades after independence, the taungya workers do not see any hope of permanent settlement. The problem worsened in the 80's when the Forest Department insisted on a written agreement which denied hereditary transfer of taungya plots, as was conventional in the past. There was even a proposal prepared by higher range officials for the closure of the schools of the taungya children. The literate taungya workers realised that such an agreement would render their future bleak. In 1982, workers began to organise themselves with the formation of a trade union named Vantangiya Mazdoor Sangathan but that was not very successful. By 1983, taungya programmes ran into trouble, and when the Forest Department did not

lease land to workers who had not accepted the agreement, the workers decided to distribute the forestland for themselves for planting sal seedlings as well as food crops. This led to physical conflicts between forest officials and the taungya workers, and police firing in which two workers died in 1985.

7.295 There have been periodic informal attempts to forcibly evict these workers. Even after the local judiciary of Gorakhpur issued a stay order against all eviction in 1983 on a petition from workers, the taungya workers continued to live under constant threat of eviction. The Uttar Pradesh Government changed their strategy. They declared a large part of the forest in the Gorakhpur region as a Wild Life Sanctuary in 1987, and a public eviction notice was issued. Many taungya workers appealed for resettlement, and, in course of time, obtained stay orders against eviction. While the District Administration of Maharaj Ganj tried to help these workers by initiating steps to declare their settlements as revenue villages, this move was opposed and halted by the Forest Department. In 1992, an organisation called the Vantaungya Vikas Samiti was constituted which

spearheaded a resistance movement on behalf of taungya workers. The major demand of the taungya workers has been ownership titles for the plots they possess, and recognition of their settlements as revenue villages so that they might enjoy the benefits of local self Government through village panchayats. The Forest Department, however, has been alleging that the taungya cultivators have become rebellious, that they are involved in smuggling of forest properties, that they have anti-social elements among them, that they have become a vote bank, and that they have illegally occupied forestland. But facts do not substantiate these allegations. Forcible eviction continued till the Allahabad High Court issued a stay order in 1997.

7.296 We feel that these workers are entitled to considerate treatment and should be rehabilitated with alternative jobs/land, and their villages should be treated as revenue villages. No rehabilitation policy or programme has as yet been formulated for taungya workers.

7.297 There are, no doubt, other forest communities with a similar or worse plight elsewhere in the country.

We have cited the case of the taungya workers as an example of an exploited and neglected category of workers as told to us during our interaction with different social groups.

7. 298 Pastoral toilers: Shepherds, nomads who depend on domestic animal herds, and animal graziers, utilising village commons and forestlands, are another category of self-employed groups who often live at below subsistence level.

7.299 One of the characteristics of the new economy is the speed with which technology is changing, and the consequent need for new skills that keep emerging. In earlier days, a specialisation in one skill was usually enough for lifetime employment. Today, there is need to continually adapt or acquire new skills.

7.300 A NEW KIND OF BONDEDNESS: When earnings and wages are below the statutory minimum wage, and workers have to live by borrowing, conditions of workers slide into bondage. When the worker is paid below the dignified wage and the farmer does not get a justifiable price for his produce, it attracts Article 23 of the Constitution.

The Bonded Labour System (Abolition) Act, 1976 and the Asiad worker's case (People's Union for Democratic Rights Vs. Union of India, AIR 1982 SC 1473) together point out that the prevailing situation in some sub-sectors of the unorganised sector is equivalent to bondedness.

7.301 Section 2 of the Bonded Labour System (Abolition) Act, 1976 defines the 'bonded labour system' as the system of forced, or partly forced labour, under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that:

- a) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
- b) in pursuance of any customary or social obligation, or
- c) in pursuance of an obligation developing on him by succession, or
- d) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- e) by reason of his birth in any particular caste or community, he would:
 - render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
 - forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
 - forfeit the right to move freely throughout the territory of India, or
 - forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for, a debtor enters, or has or is presumed to

have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.'

7.302 Section 2 (g)(v) and sub-clause (4) of this Act guard against bondage on caste grounds and forfeiting 'the right to appropriate or sell at market value any of his property or product of his labour or the labour.' (The Bonded Labour System (Abolition) Amendment Act (1985).

7.303 Article 23 (1) of the Constitution of India, relating to Fundamental Rights, states that "traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." The Hon'ble Supreme Court, in the People's Union for Democratic Rights Vs. Union of India (AIR 1982 SC 1473) and Bandhua Mukti Morcha Vs. Union of India (AIR 1984 SC 802), cases have redefined the scope of the Bonded Labour System (Abolition) Act 1976. In the Asiad Workers' Case the

Supreme Court pointed out that the Constitution makers decided "to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the Chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force."

7.304 The Asiad workers' case (People's Union for Democratic Rights Vs. Union of India AIR 1982 SC 1473) added a very important dimension to the definition of bonded labour, when the Hon'ble Supreme Court ruled that force arising out of economic compulsions to make one volunteer to work below minimum wages, is also forced labour. The Court, basing its argument on Article 23, held that: 'This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obliged to provide labour or service. The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him.'

7.305 'Where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. The word 'force' must therefore be construed to include not only physical or legal force, but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage' (1983).

7.306 In the *Bandhua Mukti Morcha* case, the power of the Supreme Court under Article 32 was invoked to free forced labour in two stone quarries in Faridabad. In the light of these historic judgments that we have cited, when a person enters even into a willing contract by force of circumstances, if the person is paid only nominal wages or gets only nominal prices for products, the conditions of the wage attract the rigour of the interpretation that the Supreme Court gave to Article 23. Therefore, the cases of farmers who

do not get minimum prices for crops and workers who do not get minimum wages, need a correctional legislative step. In other words, both employed and self-employed workers need a guaranteed income or wage. Such a wage can be provided only through a comprehensive legislation on a National Minimum Wage.

7.307 Anganwadi and Balwadi workers are getting only nominal wages. Some health workers who are 'employed' as *Swasthya Rakshaks* by the Health Department/Ministry or by para-state organisations get insignificant remuneration, euphemistically called 'honoraria,' given for 'voluntary service.' These workers, whose working conditions are not regulated, are neither given wages nor considered employed by the institution. They are used by Governmental and Semi-Governmental wings for tasks like campaigns against malaria and polio. At the same time, the employers are not ready to own them, and since the wages are insignificantly low, they officially term them as honoraria. These, and similar workers, are considered part of the unorganised sector. They are entitled to minimum wages and other relevant social

security measures which we propose in the umbrella legislation that we are recommending.

7.308 GENDER COMPOSITION OF THE WORKFORCE: Most of the workers in the unorganised sector are women. The share of casual labour and self-employed workers among female labour is higher compared to that among male labour. As early as in 1986, it was pointed out, on the basis of three NSS rounds, that when the proportion of casual labour to wage labour increased from 64% in 1972-73 to 73% in 1983 for the males, the figure for females rose from 88 to 92%. The NSSO rounds of 1993-94 showed that while 56.8% of the female workforce were self-employed, the figure for males was only 53.7. When the figure for casual labour was 29.6 for males, it was as high as 37% for females (NCAER, 1998). Thus proportionately, the unorganised component is higher among the female workforce compared to what prevails among males. This trend of increasing women labour in the unorganised sector is growing with the casualisation of labour, and the increasing number of employments coming into the home-based sector.

7. 309 We can now recapitulate the basic facts about the dimension of the unorganised sector, and the characteristics that have been revealed by our brief survey of some of the major sub-sectors in the sector. The unorganised sector accounts for around 91% of the total workforce in the country, i.e., around one-third of India's population. 60% of unorganised workers are self-employed/home-based workers. The Annual Report 1999-2000 of the Ministry of Labour (2000b:106-107), basing its figures on the 1991 Census, gives the following information about unorganised workers (the detailed labour data based on 2001 Census is not yet out, and the Annual report 2000-2001 of the Ministry of Labour also does not provide any new data):

- a) Out of the total workforce of 314 million, 286 million are main workers and 28 million are marginal workers. Out of the 286 million main workers, 259 million are in the unorganised sector.
- b) In relative terms, unorganised labour accounts for 90.6% of the total workers.

- c) Out of 191 million workers engaged in agriculture, forestry, fishery and plantations, 190 million (99.2 %) are in the unorganised sector.
- d) Out of the 28.92 million workers in the manufacturing sector, 21.62 million (75%) are in the unorganised sector.
- e) In building and construction, 78% of workers are in the unorganised sector.
- f) In trade and commerce, 98% are unorganised workers.
- g) In transport, storage and communication, there are 4.9 million (61.5 %) unorganised workers.

7.310 We have seen that it is not possible to prepare an exhaustive list of processes and jobs in the unorganised sector. All manual and un/semi-skilled work, both piece-rated and time-rated, and all jobs that are executed in the informal/unorganised sector, should be identified as eligible to be brought under the coverage of the Umbrella Legislation for the Workers in the Unorganised Sector. If we base ourselves on the list in the Schedules

in the State and Central Minimum Wages legislation, the employments mentioned in the report of the National Commission on Self-employed Women and Women in the Informal Sector, and on the papers of the Ministry of Labour on home-based Workers, the following kinds of employments/occupations can be identified. (We reiterate that the list is not exhaustive).

- a) Employment in plantations, farms and agricultural fields: any form of farming including the cultivation and tillage of the soil; the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, and any practice performed by a farmer; farm operations including any forestry or timbering operations, and the preparation for market and delivery to storage or market or to carriage for transportation to market of farm produce; employment in cleaning and sorting of onions and other incidental work; employment in sericulture, horticulture, floriculture, mushroom cultivation; cotton-picking, pod opening, unskilled and manual works.

- b) Dairy farming, animal husbandry, poultry, piggery, bee-keeping.
- c) Employment in forestry including silviculture: aligning and stacking, surveying and demarcation of forest lands, digging pits for planting, transport of seedlings and other planting materials, planting, weeding, tending, soil working, ploughing, fencing, application of fertilizers and pesticides, timber and logging operation, raising of nurseries, breaking plots, watering, collection of fertile earth or silt collecting, clearing and grading of seeds, scraping fire lines, road works, building operations, up-keep of livestock, collection of minor forest produce and other operations or occupations connected with forestry; plucking and processing of kendu/tendu leaves, forest produces and hill produces industry.
- d) Furniture, carpentry, interior decoration/ furnishing, saw mills, plywood, cardboard, paperboard, pulp and paper production, reed work, basket weaving.
- e) Elephant handling and caring.
- f) Fisheries, fish processing; packing, drying of fish; aquaculture; processing of molluscs and other shellfish, squids and shrimps.
- g) Cold storage, ice plants, fruit and vegetable preservation, canning of fish and meat, processing and export of seafood, frog legs, etc.
- h) Beverages, leaf tea factories, coffee curing, distilleries, breweries, bottling plants, toddy tapping and other related occupations, neera tapping, liquor vending.
- i) Handloom, power loom, textile, ready-mades, woollen carpet making, shawl weaving, hosiery, cotton carpet weaving, tagai-work, cotton ginning, pressing, spinning, weaving, blankets, durries, garments, knit-wear, tailoring, embroidery, charkha-spinning, knitting, lace/tilla, work, Gota, kinari, lappa establishments; zari/jari, zardozi, chikan, brocade, chindi/chandi work; kosa silk, silk industry.
- j) Rice, flour and dal mills, oil mills, sugarcane, khandsari,

- sugar mills; food processing and agro-business trades; rice workers (making of *murmura*, *chivda*, etc.); baking processes, bread/biscuit making, confectionery, *pappad* making, home-cooked food, *masala* pounding; ice cream and cold drinks, aerated syrups and drinks, fruit juices.
- k) Khadi and village industries, handicrafts and traditional crafts; cashew processing, *copra*, coir, jute, tobacco processing, *beedi* making, *supari*-cutting, lac manufacturing,, *tanneries* and leather works/leather products, shoe-embroidery, footwear, rope making, envelope making, lacquer work, *bindi* pasting, *jhadoo*, *jadi booti*, *agarbatti*, *tushar*, food packing, laundry and washing, gunny bag stitching.
- l) Construction and maintenance of roads, runways, dams, irrigation facilities, embankments and buildings; sinking of wells and tanks: earth cutting, removing, and filling and drilling activities; tube well industries.
- m) Transport and ferries.
- n) Mining, quarrying, stone crushing, slate factories.
- o) Commercial establishments, shops, saloons/salons, parlours, catering units, eateries, hotels, tourism-related jobs, clubs, canteens, restaurants; cinema stalls, motion picture industry; Small media/newspaper establishments; door-to-door selling/sales promotion; petrol and diesel pumps.
- p) Employment in religious and social institutions, co-operative establishments, NGOs, private educational institutions, pre-schooling institutions/ nursery schools, coaching and technical institutions, private hospitals, nursing homes, clinics.
- q) General engineering, workshops, garages,, printing presses, bookbinding, plumbing, wiring; laying underground cables, electric lines, water supply lines and sewerage pipelines; metal industries; tie-and-dye.
- r) Manufacturing of utensils and household articles; sports goods.

- s) Stationery industries; manufacture of articles of artistic design; packers, couriers.
- t) Electronic and electrical goods; photography, reprography, audio and video processes.
- u) Manufacture of Ayurvedic, Allopathic and Unani medicines; chemicals, pharmaceuticals, pesticides, fertilisers, feeds; sindur and rang manufacture; Cosmetics; plating; dyeing, bleaching, etc., plastic and PVC goods industry, natural and artificial rubber and rubber products; salt-pans; bone-crushing; matches, crackers/ fireworks.
- v) Kilns-tiles, bricks; potteries including crockery, sanitary-ware, refractory, jars, electrical accessories, hospital-ware, textile accessories, toys, glazed tiles, etc.; pottery-painting; Ceramics/chinaware; stoneware; hard-coke ovens and foundries; processes in glass/bangle manufacturing and glass sheet manufacturing, bead piercing; lock and trunk making, brassware, metal ware;
- w) Gem cutting and polishing bobbins.
- x) Cement industry, cement-ware, asbestos cement, cement prestressed products industries, cement concrete products, hardware and building materials.
- y) Cleaning/safai works; assistant/helper jobs; unskilled and manual works; domestic labour; loading and unloading, head load work.
- z) Persons involved in any other jobs, processes avocations or professions, not covered by any other industrial legislation, who have to be treated as workers in the unorganised sector.

Existing legislation and the unorganised sector

7.311 After this bird's eye view of the vast and undulating terrain of the unorganised sector, it is now necessary for us to look at the existing laws/schemes, to see whether they cover the entire area we have surveyed, and whether they are adequate to give even the minimum of protection, safety and social security to the vast and varied workforce in the unorganised sector. If we find that the existing laws do not cover or adequately cover the

workforce in the unorganised sector, we have no escape from concluding that more than 90% of our workforce do not enjoy the minimum protection and security that they need. This, then, will be a situation which should shame all those who talk of care and commitment to the rights and welfare of labour, as well as all those who bear responsibility for ensuring the rights and welfare of our people, in particular, the overwhelming majority of our people who are in the labour force.

7.312 We have many labour laws in our Statute book. All of them do not cover workers in the unorganised/informal sector. All of them are not applicable, and were not meant to be applicable to the employments in the unorganised sector. Some are applicable. But none of the laws that form the base of the social security system covers the whole unorganised sector. We will look at the laws that apply wholly, or partly to this sector.

7. 313 But before we do so, we have to draw attention to the questions or alternatives that arise. One is whether protection and security can be extended by amending existing Acts, *mutatis mutandis*, to employments and labour in the

unorganised sector. The other is whether to achieve the goals of assuring protection and welfare to workers in this sector, we have to enact separate laws for each employment and occupation, including a separate law for the self-employed. A third question is whether one single law can cover the needs of all the workers in the informal/unorganised sector because it does appear that one single law cannot cope with the variety of conditions in a sector, in which even the employer-employee relationship cannot be identified in many cases; where there are vast differences in the state of awareness, literacy, education, skills, degree and level of organisation means of monitoring, etc. The fourth is whether the problem of variety can be solved or addressed by enacting an Umbrella Law that provides for a minimum of protection, access to welfare or social security, and redressal of grievances, while retaining existing sub-sectoral laws and sub-sectoral welfare systems and providing for the addition of further sub-sectoral systems when and were found necessary.

7. 314 In this chapter, it is not necessary for us to examine all the

labour laws in the Statute Book. We have already done so in the chapter on 'The Review of Laws.' Here, we shall look only at laws that are germane to the unorganised sector. These laws are: The Factories Act, the Minimum Wages Act, the Equal Remuneration Act, the Payment of Wages Act, the Industrial Disputes Act, the Workmen's Compensation Act, the Payment of Gratuity Act, etc. which are applicable to the workers in the unorganised sector where there is an identifiable employer-employee relationship. In some of the employments or avocations, contractors are engaged, and this results in a situation in which the principal employer does not come into the picture, as in building/construction activity, *beedi* rolling, mining, (particularly stone mining) or quarrying, and various other occupations. These workers are sometimes covered under more than one law e.g. the Contract Labour (Regulation and Abolition) Act as well as under one specific law or another like *Beedi* and Cigar Workers (Regulation of Employment and Conditions of Service) Act, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act etc. In spite

of the existence of these beneficial laws, the benefits and facilities prescribed under these laws are denied to them in most cases. We will examine some of these Acts and schemes in succeeding paragraphs.

7.315 THE FACTORIES ACT, 1948: The Factories Act 1948 is designed to protect workers in the factories. The Act has undergone various amendments, and was last updated in 1987. Various sections of the Act deal with benefits and welfare facilities and health, safety and hygiene, inside the factory premises. The implementation of the Act is under the jurisdiction of the State Governments. It is enforced through the Factory Inspectorates. Any worker can complain to the Inspector about conditions inside the factory, and the source from which the complaint has come is not supposed to be disclosed. Unfortunately, the implementation mechanism of the Act is unsatisfactory. Each factory inspector has more than a thousand factories under him. The infrastructural facilities available to him are totally inadequate. (We refer to the subject in detail elsewhere.) The first schedule of the Act lists industries involving hazardous processes; the second

schedule is on the permissible levels of certain chemicals in the work environment; and the third deals with notifiable diseases.

7.316 This Act, in its updated form, has a very broad definition of 'worker.' However, contract and ad hoc workers do not get the benefits given to permanent workers. It imposes restrictions on employment of women during the night, especially the period between 7.00 p.m. to 6.00 a.m. There are also restrictions of daily working hours for men and women in factories, i.e. not more than 9 hours in a day, and 48 hours in a week; Women cannot be engaged for extra hours of work in a factory. Sections 23 and 27 of the Factories Act prohibit women from handling dangerous devices. However, all these provisions are not applied in practice for a section of the workers. Moreover, the Act is applicable only to manufacturing units, organised as factories. The provisions of this Act do not apply to the vast masses of workers in the unorganised sector employed in smaller manufacturing units and other sectors.

7.317 INDUSTRIAL DISPUTES ACT, 1947: The Industrial Disputes Act (I.D. Act) has been enacted

mainly to provide for the investigation and settlement of industrial disputes.

7.318 MINIMUM WAGES ACT, 1948: The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefit of unorganised labour. It was enacted for fixing, reviewing and revising the minimum rates of wages in the scheduled employments where workers are engaged in the unorganised sector. The Minimum Wages Act is meant to ensure that the market forces, and the laws of demand and supply are not allowed to determine the wages of workmen in industries where workers are poor, vulnerable, unorganised, and without bargaining power. The minimum rates of wages are fixed, keeping in view the minimum requirements of a family, and wages at these rates are to be paid by all employers irrespective of their capacity to pay. (Questions relating to Minimum Wages have been discussed in detail elsewhere.)

7.319 The Act helps unorganised workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganised sector is self-employed or home-based. Thus, they remain

outside the purview of the Minimum Wages Act, 1948, although they constitute the majority in the sector.

7.320 PAYMENT OF WAGES ACT, 1936: The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of employed persons. It ensures the correct and timely payment of wages and ensures that no unauthorized or arbitrary deductions are made. This Act applies to persons employed in factories, mines, oil fields, railways and various other establishments specified in the Act. However, because of the wage limit of Rs. 1600 for the purpose of applicability of the Act, 95% of the unorganised workers are excluded from the coverage of the Act.

7.321 The Act is not applicable to self-employed/home-based workers, as they are not persons employed in the category of establishments mentioned in the Act. It does not, therefore, protect a large number of workers in the unorganised sector.

7.322 WORKMEN'S COMPENSATION ACT, 1923: The Workmen's Compensation Act, 1923 provides for the payment of compensation to workmen for injuries sustained in

accidents. After the amendments effected in 1995, the Act has 4 schedules. Schedule I provides a list of injuries with percentage of disablement (loss of earning capacity). If the injury is not a scheduled injury, the loss of earning capacity has to be proved by evidence. The majority of workers who are not insured under the ESI Scheme are covered under the Workmen's Compensation Act. The Act does not apply to those who are employed in occupations enlisted in the Schedule II. Nor is relief available if the injury has taken place when the injured worker was not actually engaged in discharging duties related to the employer's trade or business. The employer is liable to provide monetary compensation to the worker or dependant in case of death or disablement provided it occurs 'out of and in the course of employment.' An occupational disease listed in Schedule III of the Act is also accepted as an accident that occurred while on duty. The burden of proving that the accident arose out of employment is upon the worker.

7. 323 The method of claiming compensation for disability is so long and torturous that one rarely gets the

compensation to which one is entitled by law. Any qualified medical practitioner can certify the case, and the victim can file a claim in the court of the workmens compensation commissioner with a copy to the employer. The workmens compensation commissioner decides the case, and the revenue department recovers the amount of compensation. But workers who are in the unorganised sector, often find it very difficult to prove who is their employer, and as a result cases are prolonged, and often workers die without receiving any compensation.

7.324 The Workmen's Compensation (Amendment) Act, 2000 that came into effect in December 2000 provides for compensation even to casual workers. The minimum amount of compensation for death has been enhanced from Rs. 50,000 to Rs. 80,000 and for total disablement from Rs. 60,000 to Rs. 90,000. The ceiling on monthly wage / salary reckoned for determining the compensation amount has also been increased from Rs. 2000 to Rs. 4000. The amount of funeral expenses payable has also been increased to Rs. 2500 from Rs. 1000.

7.325 INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (ISMW) ACT, 1979: The vast majority of migrant workers fall in the unorganised sector. Workers are recruited from various parts of a State through contractors or agents commonly known as 'sardars,' generally for work outside the State wherever construction projects are available. This system lends itself to various abuses. The promises that contractors make at the time of recruitment about higher wages and regular and timely payments are not usually kept. No working hours are fixed for these workers and they have to work all days in the week under extremely bad, often intolerable working conditions in inhospitable environments. The provisions of various labour laws are not observed, and migrant workers are often subjected to various forms of malpractices. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was enacted to regulate the employment and conditions of service of inter-State migrant workers.

7.326 The benefits include non-discrimination in wage rates, holidays,

hours of work and other conditions of work for inter-State migrant workers in relation to local workers. They are eligible for a non-refundable Displacement Allowance equal to 50% of their monthly wages in addition to the wages. A journey allowance, equal to rail fares both ways, is to be paid by the contractor with wages during the period of journeys. Other provisions include regular payment of wages, equal pay for equal work to both men and women workers, and provisions for suitable conditions of work, suitable residential accommodation, adequate medical facilities, and adequate protective clothing and equipment. In case of accidents, there is a provision to ensure intimation to the authorities of both the States (Home State and Host State) and to the next of kin.

7.327 To understand the applicability and utility of the Act, we must look at the definition of the inter-State migrant workman in the Act. It says, 'any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.'

7.328 According to this definition, we find that all migrant workers (who are generally unorganised workers) are not inter-State migrant workers as defined by the law, and cannot, therefore, enjoy the benefits of the ISMW Act. To prove in court that the Act is applicable is very difficult, as employers deny that workmen were recruited from another State (Home State) by any of their contractors. They often contend that the workers were recruited from nearby places within the State where the industry is located. Thus, the Act is only of very limited benefit to workers in the unorganised sector.

7.329 The Commission has, therefore, been urged by many witnesses to recommend amendments that will make the ISMW Act more effective, and cover all migrant workers. The suggestion is that the definition of 'inter-State migrant worker' be amended to mean any worker who is employed in an establishment situated in a State other than the Home State of the worker.

7.330 It was argued that this change can make the ISMW Act cover a large number of unorganised

workers, and at the same time plug some of the loopholes in the present Act. We have made recommendations about the Act in the Chapter on Review of Legislation.

7.331 BUILDING AND OTHER CONSTRUCTION WORKERS' (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996: The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 is an Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare and other incidental matters. The Act applies to every building or other construction work establishment, which employs or had employed ten or more workers. It covers all Central and State government establishments. The special feature of the Act is that it covers all private residential buildings if the cost of construction is more than Rupees ten lakhs.

7.332 Registration of the Establishment is compulsory, and no Establishment without Registration can employ any building or

construction worker. A worker between 18 and 60 years has to be registered to become eligible for the benefits of the Act. He/she must have put in at least 90 days of work in the previous year to acquire eligibility for registration. Every registered worker gets an identity card, and work entries are made in the card. The worker remains a beneficiary up to the age of 60, and for the year when he/she puts in at least 90 days of work.

7.333 A fund has to be created with the revenue from a cess collected from the employers, and contributions by the workers. Benefits include assistance in cases of accident, payment of pension, house building loans, assistance for group insurance schemes, education of children, maternity benefits for female beneficiaries and so on. There are provisions for regulating working hours, welfare measures and other conditions of service. The law also prescribes safety and health measures, and all other precautions that are required for safe working, e.g. safety devices for installation work, demolition work, excavation, underground construction, handling measures, proper ladders, ropes and

fencing, etc. Inspections and penalties are provided for. In actual practice, the provisions of this Act are beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do not work with a construction establishment continuously, may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to the fund as per the provisions of the law. The responsibility for collecting of contributions from workers and remitting the same to concerned welfare boards, requires to be entrusted to the employer. In the seminars organised at different places (e.g. Chennai, Mumbai, New Delhi) by some of the voluntary organisations (e.g. National Campaign Committee, Nirman Mazdoor Panchayat, T.N. Forces etc jointly), to which this Commission was also invited, allegations were levelled against State Governments accusing them of conniving with the builders by not notifying the rules and not setting up Boards as prescribed. It was alleged that the builders had saved several thousand crores of the cess which was to be paid under the Act.

These organisations demanded that Rules be framed by all State Governments immediately to implement the law. They further demanded inter-alia that (a) the Act should be made applicable to the construction of residential houses without limit of cost (b) the cess should be increased from 1% to 2% of the construction cost (c) there should be provision in the Act for the regulation of employment of building workers, and the welfare boards prescribed under the Act should be set up on the lines of boards constituted under the Maharashtra Mathadi and other Manual Workers Act by amending the Central Act (d) The Board should have powers to regulate natural resources and promote the rights of workers to have open access to the resources.

7.334 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970: Contract Labour (Regulation and Abolition) Act, 1970 regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act is applicable if the principal employer engages twenty or more contract workers in an establishment. The contractor who

employs twenty or more workers in his contract work will be covered under the Contract Labour (R and A) Act 1970. The Act provides for the registration of all establishments of Principal Employers and licensing of all contractors. There is a special provision (Section 10) for the abolition of the contract system if certain conditions are met, like the nature of jobs being of a perennial nature and connected with the core business of the principal employer. There are a number of provisions in the Act for the welfare and safety of contract labour. For regulating its implementation, certain registers, records, returns etc. are to be maintained by the principal employers and contractors. Penalties have been prescribed for those who violate the law. This Act is meant for unorganised labour. But its scope is very limited. The limitations in the law are such that the contractor stands to gain if he engages less than twenty workers. This provision provides a loophole for all manner of manipulations by employers and contractors. Therefore, it can be seen that the coverage that this Act provides is far from satisfactory.

7.335 *BEEDI* AND CIGAR

WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966: *Beedi and Cigar Workers* (Conditions of Employment) Act, 1966 is an Act that provides for the welfare of the workers in Beedi and Cigar establishments, and regulates the conditions of their work and related matters. The Act provides for licensing of all industrial premises where *beedi* or cigar or both are made. It provides for cleanliness, and ventilation and prohibits overcrowding of the premises. The welfare measures that it provides for include arrangements for drinking water, latrines and urinals, washing facilities, crèches, first aid and canteens. Working conditions prescribe working hours, wages for overtime, interval for rest, spread over, weekly holidays, annual leave with wages, and a ban on child labour, and night shift for women and adolescents.

7.336 The employees who are given raw material by an employer or a contractor for making *beedi* and cigars at home are covered under the Act. Persons not employed by an employer or a contractor but working with the permission of, or under agreement with the employer or contractor are also covered. Section

43 of the Act does not cover the self-employed persons in the *beedi* and cigar making industry. If the owner or occupier of the dwelling or house is not the employee of an employer, and carries on any *beedi* and cigar-making work as self-employment, the person is not covered under the Act. It looks anomalous that unorganised workers can receive the limited benefits of the existing labour laws only if they happen to work for employers, in other words, if there is an employer-employee relationship. None of these labour laws can provide protection to the vast majority of unorganised workers who are self-employed or home-based, or to other workers who are employed in enterprises where the number of employees does not reach the threshold prescribed by the Acts.

Review of the existing welfare funds and boards

7.337 SOCIAL SECURITY LEGISLATION, LABOUR WELFARE SCHEMES AND FUNDS: There are a number of legislations and other welfare schemes that provide social security to workers in the organised sector. Some of these are applicable to certain categories of workers in the unorganised sector too. We propose to deal with questions relating to

social security including existing arrangements, institutions, and improvements in the new overall structure that we are proposing, in a separate chapter on social security. We are aware that a review of the system, the existing legislation and the boards existing now in the unorganised sector, may give the impression of repetition. But we felt that a brief review of the inadequacies, and the lessons that have to be drawn from the experience and problems in the sector, was necessary to enable a proper understanding and appreciation of the proposals that we are making for social security in the unorganised sector.

7.338 The existing laws on social security include Employees State Insurance (ESI) Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, (EPF) 1952, Payment of Gratuity Act, 1972, Maternity Benefit Act, 1961 etc. The ESI Act provides medical benefits, sickness benefits, maternity benefits, disablement benefits and dependents' benefit in case of sickness, and employment injury. The Act is not applicable to the workers in the unorganised sector as it has a

threshold limit of employment of 10 persons. The EPF Act is applicable to the factories and establishments that employ 20 or more persons. A large number of workers, working in smaller units, remain out of the ambit of this Act. But the contract workers in bigger establishments, though they get covered under both the above mentioned laws, are often denied the benefits of these laws. The Payment of Gratuity Act is applicable to factories, plantations, shops and establishments, mines, oil fields, ports and railway companies, etc., which employ 10 or more employees. Moreover, a continuous service of 5 years or more with one employer is also essential to be eligible for the gratuity benefit. It is evident that a large number of workers do not meet the eligibility criteria. Similarly, the Maternity Benefit Act is applicable to the factories, mines, plantation, etc., where 10 or more persons are employed. A women employee who completes at least 80 days of work prior to delivery is entitled for benefit under the Act. In practice, this Act also does not cover women workers in the unorganised sector.

7. 339 It may be seen from what we have said that the existing labour

laws do not cover the vast majority of workers who work as home-based workers, domestic workers, self-employed workers and those working in small units.

7.340 The Government of India has set up welfare funds for workers in six classes of mines – mica, iron ore, manganese ore, chrome ore, limestone and dolomite. Welfare funds exist also for *beedi* workers, cine workers, and building and construction workers through welfare board and funds to be setup by State Governments under the Central Act. They provide mainly medical care, assistance for the education of children, housing and water supply, and recreational facilities. Among the States, Kerala has set up more than 20 welfare funds for the benefit of workers in the unorganised sector. Many of these are statutory but some are non-statutory. A statutory fund was created for financing welfare measures for plantation workers in Assam. Mathadi Boards exist for various groups of head load workers in Maharashtra.

7.341 The Central welfare funds have been set up by special Acts of Parliament. *Beedi* workers are

covered by the Beedi Workers Welfare Fund Act, 1976 (and *Beedi Workers Welfare Cess Act, 1976*). A fixed cess is levied per bundle of 1000 *beedis* manufactured. Building and Other Construction Workers' Boards are constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. As per the Building and Other Construction Workers' Welfare Cess Act, 1996 a cess is collected at the rate not exceeding 2% of the cost of the construction made. Among the Funds related to mines, for mica, the cess is collected at a certain percentage of its export value. However, the cess is levied for other mine products on the basis of the quantum of production, not on the basis of the value of production. The Cine Workers Welfare Cess Act, 1981 has adopted a method of levying cess on films on the basis of production, not on the basis of collection. There are three different rates for films in different languages. The rationale for differential rates and the wide variation in the rate structure of the cess have attracted criticism.

7.342 The welfare funds fall broadly into two groups – tax-based

and contributory. The funds set up by the central government are tax-based, while those set up by the government of Kerala are mostly contributory. A contributory scheme is akin to social insurance. In India, there is only one social insurance scheme, and that is the Employees State Insurance Scheme (ESIS). The experience of this scheme has not been encouraging. Nor has Kerala experience been encouraging, with contributory schemes where coverage has been limited, and increasing difficulty in collecting contributions. There is a view that in Indian conditions, tax-based schemes would work better. However, a combination of contributory and tax-based schemes can bring in resources, and also encourage the participation of the actors involved, particularly the workers. As far as the ESI scheme is concerned, it could be said that, despite constraints, it is still the scheme that unorganised workers like construction workers are aiming at (Nirman Mazdoor Panchayat Sangam demands it).

7.343 Benefits through Central Welfare Funds: The end use of the welfare funds is prescribed in the respective laws or schemes. The

Central Welfare Funds for mine workers and *beedi* rollers are used to fund the improvement of public health, sanitation, medical facilities, water supply and educational facilities, prevention of disease, the improvement of standards of living including housing and nutrition, and the amelioration of social conditions and provision of recreational facilities. In actual practice, most of the expenditure from the welfare funds has been on health, education and housing. For example, in 1992-93 in the case of the limestone/dolomite mineworkers, 51.49% was spent on health, 9.7% on education/recreation, and 17.83% on housing.

7.344 Healthcare: The assistance and facilities provided for medical care include the purchase of spectacles for those with ophthalmic problems, reimbursement of actual expenditure for heart disorders, kidney transplants and cancer, reservation of beds in hospitals that treat tuberculosis and domiciliary treatment for those with tuberculosis, grants for treatment, diet, transportation charges, subsistence allowance for those with mental disorders or leprosy, and the supply of artificial limbs for those with orthopaedic problems. The central

welfare Funds have adopted the integrated model of healthcare, and have undertaken to provide medical services directly. Each Fund has created its own hospitals, dispensaries and other facilities. However, this approach of each Fund developing its own chain of hospitals does not help the Funds either to cater to all the needy patients or deal with complicated diseases needing highly specialised treatment. We have been told that Funds could have done better if they had assigned the responsibility to agencies specialising in health, instead of trying to build up their own costly set-up of expertise in fields that are found to be too expensive.

7.345 Housing: The mineworkers and *beedi* workers schemes include housing. But considering the present costs of construction, it is doubtful whether the scale of assistance provided is adequate.

7.346 Education: Education of workers' children has been a thrust area as it was felt that this would bring a qualitative improvement in their lives on an enduring basis. Among other things, scholarships, school uniforms, textbooks and stationery are provided.

7.347 Barring medical care, the welfare funds set up by the Central government for mine and *beedi* workers have no provisions for meeting expenditure on any of the well-recognised branches of social security, such as occupational injury benefit, invalidity benefit, old-age benefit, survivor benefit or unemployment benefit. Sickness benefit is given as medical attention for the whole family, but no cash allowance is given in sickness. Yet, these welfare funds have the scope and the potential to become instruments of social security if suitable amendments are made to the laws.

7.348 The end use of the welfare funds has been changed in the latest Act on building and construction workers. It provides the benefits of immediate assistance in cases of accident, payment of pension, loans or advances for construction of houses, payment of premiums for group insurance schemes, financial assistance for the education of children, payment of medical expenses for the treatment of major ailments, payment of maternity benefits, and provision for other welfare measures.

7.349 Tamil Nadu: Tamil Nadu has been one of the pioneer States in spearheading social welfare measures. Even before the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 made it necessary for every State to set up Welfare Boards for these workers, Tamil Nadu set up a statutory scheme in 1994, namely The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme.

7.350 Tamil Nadu Labour Welfare Board: The Welfare Fund is collected annually at the revised rate of contribution at Rs. 5, Rs. 10 and Rs. 5 per from the Employees, Employers and the Government respectively. The Board functions with 19 representatives consisting of 4 Government Officials, 5 Employers' Representatives and 5 Employees' Representatives, 3 Members of the Legislative Assembly and 2 Women Representatives. The Minister for Labour is the Chairman of the Board. The Board is implementing several welfare schemes and Rs. 28,50,660 have been disbursed to 5552 beneficiaries during the year 1999.

7.351 The Board runs 52 Labour Welfare Centres and 71 Tailoring Centres throughout the State. Each Labour Welfare Centre consists of a Tailoring Class for women dependants of workers and a childcare centre. Tailoring classes are conducted for the wives and unmarried daughters of the workers. The training period is for one year. So far, 2279 persons have been given training in tailoring. During the training period, a stipend amount of Rs. 80 per month is being paid for each trainee. The Board also pays their examination fees. Further, a sewing machine is given to the trainee who secures top marks in the Lower/Higher Grade Government Examination in each centre.

7.352 In the childcare section, free primary school education is provided to the children, apart from providing nutritious midday meals, milk, eggs, fruits and medical care, etc. Qualified doctors medically examine these children twice a month. Two sets of uniforms are also supplied to the children each year. A new prize scheme is being implemented to encourage children who study in the 10th and 12th standards, and secure first and second highest marks in each

Educational District. Libraries are run at 9 places by the Board to encourage the reading habit among the workers and their dependents.

7.353 The Board has maintained Holiday Homes for the workers and their families. Separate TB Wards have been constructed in Government Hospitals for the benefit of the workers: TB Sanatorium, Tambaram (26 Beds), Tiruppur (26 Beds), Asaripallam (30 Beds), Austinpatti (26 Beds) and Kilpennathur (24 Beds) in Vellore District.

7.354 The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme: The Government has constituted the Tamil Nadu Construction Workers Welfare Board to administer this scheme for the welfare of construction workers. It was initially implemented within the areas of Chennai, Madurai and Coimbatore Corporations. The scheme was extended throughout Tamil Nadu in 1997.

7.355 To implement the construction workers welfare schemes, a 'Manual workers General Welfare Fund' has been constituted. As per Section 8A of the Tamil Nadu

Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982, any person who undertakes any construction work within Tamil Nadu will be liable to pay 0.3 % of the total cost of construction to the Fund. The Government and Governmental Departments should also pay their contribution to the Fund directly. As and when other persons undertake any construction work, the Local bodies collect the 0.3 % of the total cost of construction and remit the amount to the Manual Workers General Welfare Fund. As on December end 1999, the Board had received Rs. 16,74,52,803 as contribution, and 1,93,601 construction workers were registered. Rs. 48,40,025 had been collected as Registration Fee at the rate of Rs. 25 per worker. Every manual worker whose name has been registered has to renew his/her initial registration after two years or get subsequent renewals done, by paying Rs. 10 per annum to the Board as Renewal Fee. Identity Cards have been issued to all registered construction workers free of cost.

7.356 Tamil Nadu Labour Welfare Board is implementing the following schemes for the welfare of the

Registered Construction Workers:

- a) Group Personal Accident Insurance Scheme: In the event of death of a registered construction worker in an accident, a sum of Rs. 1 lakh is paid to the nominee of the deceased. For loss of limbs, eyes, etc. compensation is paid upto Rs. 1 lakh depending upon the percentage of loss.
- b) Educational Assistance Scheme: Assistance for the education of son/daughter of a registered construction worker is given as below:

10 th pass:	Rs. 750
12 th pass:	Rs. 1000
- c) Marriage Assistance Scheme: Assistance of a sum of Rs. 1,000 is paid to meet the marriage expense of the son or daughter of a Registered Construction Worker.
- d) Maternity/Abortion Assistance Scheme: Assistance of a sum of Rs. 2,000 is paid towards expenses related to Maternity/Abortion to a Registered Woman Construction Worker.

e) Natural Death Assistance Scheme: In the event of natural death of a registered construction worker, a sum of Rs. 5,000 is paid as Assistance to the nominee of the worker. Apart from this, in the event of death (either natural or through an accident) of a registered construction worker, the nominee is paid an additional sum of Rs. 2,000 to meet the funeral expenses.

7.357 Tamil Nadu Manual Workers Social Security and Welfare Scheme, 1999: In 1997, three committees were constituted to study the conditions of unorganised workers and to give their recommendations. One committee was constituted to exclusively study the conditions of agricultural workers. Of the other two committees, one was to study the working conditions of unorganised workers, who come under one or other of the labour enactments, and the other was for unorganised workers who are not covered by any labour enactment. Based on the report of the last two committees in 1998, the Government added 43 employments to the existing 12 employments in the scheme of Tamil

Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. Two employments viz. cycle repairs and domestic work have also been subsequently added to the schedule of the above Act.

7.358 The State government amended the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act inserting a new Section 8 B expanding the definition of the term 'manual worker' and also enabling the collection of contribution from the employer. The Tamil Nadu Manual Workers Social Security and Welfare Scheme for the unorganised workers was formulated in 1999. The Scheme provides for the establishment of the 'Tamil Nadu Manual Workers Social Security and Welfare Fund' and outlines ways for augmenting the financial position of the Fund.

7.359 The object of the scheme is to provide (1) for a Group Personal Accident Relief Scheme, (2) a Maternity Benefit Scheme, and (3) a Terminal Benefit Scheme. The workers are entitled to enjoy the benefits under the scheme, after 12 months of their registration. In addition to the grant of Rs 40 lakhs

sanctioned by the Government, the Board received Rs. 47 lakhs from the collection of 1% of the Motor Vehicle Tax (figures for 02.03.2000). The activities of the Board have been computerized through the Electronic Corporation of Tamil Nadu (ELCOT).

7.360 Changes in the latest scheme: The Tamil Nadu Manual Workers Social Security and Welfare Board was initially mooted as a mother board, taking appropriate lessons from the multiplication of Boards in Kerala. The idea was that administrative expenditure could be reduced if multiplication of Boards is avoided. The Tamil Nadu Board is tripartite. It was kept flexible to add more occupations, and new schemes or benefits. Initially 60 employments were included. We were told that 'political' compulsions had forced the Government to announce a number of new separate boards, for instance, for workers of autos and taxis; for tailors, barbers, dhobis, palm tree climbers and handicraft workers. Three employments have been taken out from the original list of 60. We were told that four more employments were likely to be added. The scheme is meant for the wage-employed as well as the self-employed. Registration is

optional. A fee of Rs. 25 for registration, and a monthly contribution of Rs. 20 are charged from the worker. Now it is a one-time contribution of Rs. 100 including the registration fee. Eligibility for benefits has changed to a waiting period of four months and, according to reports, that period itself is going to be further reduced. A terminal benefit of the contribution at 12% compound interest and some gratuity, and accidental death (not necessarily in the course of work) insurance of Rs. 1 lakh are part of the scheme. Very recently, in 2000, two more boards were announced, one for artists and the other, for audio and video workers. So now, it appears that the original concept of an umbrella or principal board has been given up.

7.361 The Kerala State has set up more than 20 welfare funds for the benefit of workers in the unorganised sector, like *abkari*/toddy workers, agricultural workers, handloom workers, auto-rickshaw workers, cashew workers, coir workers, construction workers, motor transport workers, some artisans and others. Most of them are statutory bodies. These provide a wide range of benefits including old-age benefit,

medical care, education, assistance for marriage, housing, etc to the workers. The schemes are administered by autonomous boards and financed by contributions from employers, workers and others.

- a) Let us look at the welfare schemes for the fisher people in Kerala as an example of what can be done for those relying on common property resources. Apart from the welfare fund boards, the Department of Fisheries, Kerala has taken a number of steps for the fisher people. The Kerala Fishermen Welfare Societies and related Rules have led to the delimiting and notification of the boundaries of 'Fisheries Villages,' and the publication of a list of all fishermen in the villages. This has been done for both marine and inland fisheries. The process has helped in identifying fish-workers. Subsequent orders of the Government have included 'the wives of fishermen engaged in fish vending' in the list of fishermen. By another circular issued in 1987 'the widows of fishermen,' have also been

included in the list of fishermen. Once the fishermen, their families and villages were defined and identified, the working of the welfare fund has become easier.

7.362 The Kerala Fishermen Welfare Fund Act, 1985 provides for the setting up of a Board and a contributory Scheme under it. The Board and the Scheme came into existence in 1986. The statutory Board under the Fishermen's Welfare Commissioner has three regional executives and 54 Fisheries Officers under it, for looking after 235 fisheries villages of which 13 are in the inland circles. The fish-worker has to contribute Rs. 30 per year for the initial three years, and then on 3% of the price of his/her catch or of the wage or earning he or she gets. The trader has to contribute 1% of the annual turnover or an amount fixed by the Board as per relevant clauses of the Act. The owner of the fishing vessel, owner of the fishing net, and prawn and pisciculture owners have also to contribute to the Fund.

7.363 The Kerala Fishermen Welfare Fund Board runs 15 schemes in all. They are:

Schemes under the Kerala Fishermen Welfare Fund Board

No.	Name of the Scheme	Financial support as on 1996
1	Group Insurance Scheme	Accidental death or disappearance – Rs. 5000 Permanent full injury – Rs. 5000 Permanent partial injury – Rs. 2500
2	Financial support for dependants on the natural death of fishermen during or immediately after fishing	Rs. 15000 since 1986 (as the fishermen become ineligible for group insurance scheme)
3	Financial support for the marriage of daughters (not to be repaid)	Rs. 1500 since 1995
4	Funeral expenses support for death of dependants	Rs. 300 since 1991
5	Pension due to old age or physical infirmity (per month)	Rs. 100
6	Temporary injury due to accident	Rs. 500 since 1991
7	Funeral expenses support for dependants on the death of fishermen	Rs. 5000
8	Support for the wards of fishermen who pass with highest marks in the matriculation examination For continued studies for 2 years for the 1 st and 2 nd at State level.	(since 1994) First at State level – Rs. 3000 Second – Rs. 2000 1 st at district level – Rs. 1000 each Rs. 100 per month
9	Those who undergo Family Planning operations	Rs. 500 since 1994
10	Expert treatment for fatal diseases Pension for patients with serious diseases.	Maximum of Rs. 40000 Rs. 100 per month since 1995
11	Sanitation scheme	Rs. 2500
12	Chairman's relief fund	From Rs. 100 to Rs. 2500
13	Netrajyoti (scheme for eye treatment)	Expenses needed for eye camps and surgery
14	Special grants from Board	As the Board meeting decides
15	Support for delivery related expenditure and treatment	(since 1997) Rs. 500 each for the first two deliveries.

Source: The Kerala Fishermen Welfare Fund Board (1997)

7.364 The Kerala Welfare Fund schemes, including that for the fishermen, provide a much wider range of benefits, including many of the branches of social security that are included in the ILO Convention concerning Minimum Standards of Social Security. For instance, the Kerala Fishermen Welfare Fund Act provides payment for injury in any accident sustained while fishing, lump sum assistance for funeral expenses, interest-free loans for the marriage of daughters, educational assistance, and medical facilities. In actual practice however, the welfare funds in Kerala are not able to provide all the benefits because of resource constraints.

7.365 The Central and the Kerala models represent two extremes, one the minimalist approach, the other the maximalist approach. Neither can be considered ideal for the future development of welfare funds in India as far as benefits to the workers in the unorganised sector are concerned. What needs to be done is to prepare a standardised list of benefits which may be provided from the welfare funds and to prioritise them, somewhat as follows: healthcare, invalidity, old-age and survivor

benefits, maternity and child care, educational assistance, and housing.

7.366 Recently, the Kerala Government has set up an apex authority for Labour Welfare, through the Kerala State Labour Authority Ordinance. The Authority is to serve as an apex body to coordinate, regulate, streamline, monitor and control the activities of the Labour Welfare Schemes, Boards and the Government.

7.367 This Labour Authority shall, among other things, monitor and issue guidelines and direction to the Statutory Welfare Fund Boards for the proper implementation of the various schemes, advise the Government on matters pertaining to labour, and administer the existing non-statutory Welfare Funds and Schemes, transferred by the Government to the Labour Authority.

7.368 Funds of the Labour Authority are the Kerala State Labour Authority Fund and the Kerala Labour Welfare (Manpower Development and Training) Fund. The Kerala State Labour Authority Fund is authorised to borrow, receive loans and grants from governments, and get

contributions from Schemes administered by it. For the Kerala Labour Welfare (Manpower Development and Training) Fund, every employer has to contribute one rupee for each worker engaged by him per month to the Labour Authority. The Labour Authority will collect the Fund through Labour Welfare Fund Boards or other agencies as may be specified by the Government.

7.369 The money collected by the Labour Welfare (Manpower Development and Training) Fund is to be apportioned and utilised as follows: 70% is earmarked for the Institute of Labour Studies and Management, 10% for research, information and extension, 10% for establishment and promotional expenses of the Labour Authority, and 10% for human resources development through other institutions. Institutions like the Institute of Labour Studies and Management and Labour Academy of Advanced Learning, are also visualised in the Ordinance establishing the Authority.

7.370 The apex authority for Labour Welfare, i.e., the Kerala State Labour Authority, announced through an Ordinance in 2000, is facing rough

weather now. Irrespective of political and ideological differences, trade unions related to the Welfare Fund Boards have objected to such an authority over and above each Board, to control Boards and receive contributions from the specific Boards. Therefore, the concept of a mother board in the case of vast sections of unorganised workers, can be thought of not as an authority over various boards, but as a single board, for the purpose of coordination and effective functioning.

7.371 The Maharashtra Labour Welfare Board (MLWB) is a statutory body constituted by the State Government under the Bombay Labour Welfare and Fund Act, 1953 for the promotion of welfare of labour and their dependants in the State of Maharashtra. The finances of the Board include the fines realised, unpaid dues of the employees collected from various factories and establishments, six-monthly tripartite contributions, i.e., contribution from employees, employers and the government. All factories coming under the Factories Act, 1948, all shops and establishments within the meaning of the Bombay Shops and Establishments Act, 1948

employing 5 or more persons, and all motor transport undertakings coming under the Motor Transport Workers' Act, 1961, are required to pay to the Labour Welfare Funds, employees' and employers' contributions, in respect of all employees on their establishment register, as on 30 June and 31 December every year at the prescribed rates.

7.372 The Board conducts a variety of institutionalised and non-institutionalised welfare activities through 247 small and big welfare centres in and around 127 cities and towns all over the State. Educational, recreational, health and sports activities form the main agenda of the Board. The facility for training in sewing and handicraft under a trained female teacher constitutes a special programme for wives and wards of workers. Each centre is provided with a minimum of 4 sewing machines. Fabrication orders are undertaken at times as part of subsidiary occupation programmes. All Welfare Centres have Montessori training facilities for children in the age group of 3-6 years. These children are served mid-day snacks daily. Community crèches have been established at some centres in Mumbai, Nagpur, and Sholapur.

7.373 The Welfare Commissioner is the Principal Executive Officer of the Board, and is directly responsible to the Board for the implementation of the various programmes of the Board. All Executive and financial powers of the Board are exercised through the Welfare Commissioner.

7.374 A note prepared by the MLWB makes it clear that their schemes do not reach out to the large majority of unorganised workers (perhaps with the exception of head load workers). In its note, the Board says that it is willing to extend its welfare programmes to the unorganised rural agricultural and other categories of labour as well as child labour. However, due to paucity of funds it is unable to take any steps in this direction. The Board believes that it has the necessary infrastructure to undertake any welfare activities for the benefit of unorganised urban and rural labour and child labour. If the Central Government and/or international organisations like the ILO and United Nations Food and Agriculture Programme (UNFPA) make the necessary funds available, it may undertake implementation of some welfare programmes for the unorganised labour.

7.375 Mathadi Boards in Maharashtra have been successful in decasualising the head load workers to a great extent. A *mathadi* is a worker who carries a load on his head, back, neck and/or shoulders. His work is mainly physical labour, and he is expected to be strong and to withstand heavy weights for stacking. All this work is performed in a gang or *toli* system. All the workers in a *toli* belong to the same village and are often related to each other. According to their convenience, when some of them go to their native places, others, mostly their relatives come and take their place in the *toli*. The *toli* workers work under a headman known as *mukaddam*, who actually arranges the work, is responsible to the employer, gets the labour charges from the employers, and distributes the wages among the workers. However, there is no single fixed employer, and the situation is one of one-employee-multiple-employers. We have been told that the *mukaddam*, sometimes exploits *toli* workers by conniving with the employer. Since the availability of the work depends on the arrival, availability and departure of ships, trains, goods trucks, etc. it is extremely difficult to predict the time and volume of work. As a result, there

are no fixed hours of work, no overtime, and no paid holidays or leave. The location of work also spreads all over Greater Mumbai.

7.376 Though many witnesses who appeared before us in Maharashtra as well as in other States extolled the work done by the Mathadi Board and recommended it as a model for the unorganised sector all over India, some witnesses did point out that the system works like a closed shop, and therefore, keeps out other head load workers. They were of the opinion that this was discriminatory. Some representatives of the management also felt that this system created a monopoly and resulted in arbitrary fixation of wages.

7.377 During the 1950s, tripartite bodies could get the dockworkers statutory rights through a process of decasualisation. The decasualisation scheme for dock labourers (and for the *badli* workers in the textile mills in Mumbai introduced about the same time) was the first of its kind to evolve a method to secure basic protective social security for unorganised workers by regularising their intermittently available work and developing employer-employee

relationships. Under this scheme, the tripartite body could get the workers their statutory rights to an attendance allowance of 50% of daily wages, weekly off, one-day holiday wage, and 12 days' minimum guaranteed wages.

7.378 Anna Sahib Patil, who has had long experience of working with dock labour during the dock workers struggle to decasualise themselves in the early 1950s, started organising *mathadis* in the late 1950s in Mumbai. Efforts on similar lines were also made in Pune by Baba Adhav, and in Dhule, by Paranjpe, to organise *mathadis*. Committees were appointed. The recommendations of the three committees paved the way for the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Since 1969, the Mathadi Tripartite Boards regulate the *mathadi* labour market. Today, there are around 50,000 registered employers with almost 1.5 lakh workers registered under 30 different boards in Maharashtra. A chairperson, appointed by the Government of Maharashtra, heads each of these boards. There is an equal number of representatives from the unions and the employers' association. Each

board has its own staff including secretary, personnel officer, chief accountant, inspectors and clerks. The staff gets paid out of the levy, which is negotiated every 3-4 years, and charged to the employers.

7.379 We have been informed that there are some *mathadis* who earn enough to pay Income Tax. They pay professional tax as well. Their Dearness Allowance is linked to the CPI. The PF contribution of workers is 8.33%. Their hospital contribution is Rs. 20 per month. They receive medical benefits and HRA. Wage variations are still sharp, and wages fluctuate from less than Rs. 1000 to Rs. 10,000 per month. Besides better health facilities, social security also gives importance to housing and education with the help of the *mathadi* boards. 4000 *mathadi* workers have been able to get housing facilities on an ownership basis. For this purpose, they have taken loans from the GIC and HDFC, and also drawn from their own provident fund. The boards are also trying to promote formal education among *mathadi* families. Since 1992, they have instituted quite a few scholarships for the children of *mathadi* workers. More than 100

children have been given scholarships till 1997.

7.380 We now refer to some important points that arose during discussions at different centres:

- a) Mathadi Boards in Maharashtra could regulate the open entry of new, employable workers through a process of decasualisation of existing workers, by bringing them into an organised set-up. Young blood is brought into such organised structures through a process of recruitment, and age-based superannuation.
- b) Lessons from the Kerala and Tamil Nadu experience: It can be seen that with the latest ordinance, Kerala is trying to integrate or interlink its various enactments in the area of social security, while in Tamil Nadu, the latest trend is towards separate set-ups. The experience of both the States, in fact, points out the need for some sort of linkage among the various welfare boards. Both commonality and variety have to be taken into account while structures for social security are built up.

Kerala started from individual schemes and ended up with an apex body to interlink them, while Tamil Nadu traversed an opposite path. The experience of welfare boards in both the States tells us that a mother board that can accommodate variety serves as a better model.

- c) The Central Welfare Funds are administered departmentally by the Ministry of Labour through Welfare Commissioners appointed by the government, with the help of advisory committees that have no financial or administrative powers. They require to be sensitised to acquire a spirit of initiative.
- d) Moreover, an unnecessary multiplicity of Funds has led to administrative problems and proved uneconomical. In the mining sector, as will be recalled, three separate Funds have been constituted – one for mica, one for limestone and dolomite, and a third for iron ore, manganese ore and chrome ore mines. The cost of administration of central welfare funds has varied from 0.83% of

the total benefit expenditure in the case of cine workers to 22.1% of the benefit expenditure in the case of the Limestone and Dolomite Labour Welfare Fund for the year 2000-2001. The total average administrative cost of central welfare funds for the same year was 7.96%. The problems arising from multiplicity can be seen in the working of the welfare funds set up by the Government of Kerala, which are administered by auto-nomous boards. There are as many boards as there are funds. Overheads can be reduced appreciably by integrating the separate welfare funds.

- e) Establishing a Board for the unorganised sector as a whole and using the mechanism of cess collection from products, can overcome the problem of identifying individual employers, which is often a major obstacle in the unorganised sector.
- f) In some cases, it will be better to levy cess as a percentage of the sale value. In such cases, it will not be on the basis of the quantum of production or sale.

However, this method is applicable only for product-based occupations, and the case of service providers will have to be tackled separately.

- g) Cess collection from products is possible at various points of transactions like the wholesale, retail and export stages.
- h) It is advisable to combine tax-based as well as contributory systems of financing of the Fund under the Board, because it would enhance the financial viability of the Fund on the one hand, and the initiative of the workers on the other.
- i) The actual per capita expenditure on medical care incurred by the State governments under the Employees State Insurance Scheme during 1994-95 ranged from Rs. 315 to Rs. 1,035. It can be seen that the expenditure incurred on medical care from the welfare funds is comparatively low. Due to the increasing specialisation of health care and the increasing number of private and public hospitals, the model of the health service provision has

proved to be neither popular nor viable, both in the case of welfare funds and the Employees' State Insurance Scheme. Both will therefore, benefit by adopting the alternative model of reimbursing expenditure, or providing services indirectly by entering into agreement with the providers of the service, confining their own function to the financing of the services.

- j) However, we are of the opinion that health has to be retained as a component of social security. Studies show that workers have to spend more on health problems in the unorganised sector.
- k) One of the major problems that arise in the administration of central welfare funds is the identification of beneficiaries. Welfare funds do not now have a system of registration. Instead, they have a system of identity cards. The identity cards are to be issued by the employers, who have not been very responsive to the idea. The Ministry of Labour has reported in its Annual Report (2000-

2001) that identity cards for beedi workers have been issued for about 36,89,116 workers while the total number of *beedi* workers is said to be about 44,11,275. Workers cannot get the benefit of the welfare funds unless they have identity cards. Thus, nearly 7,22,159 workers have been denied benefits because identity cards have not been issued. On the other hand, in Kerala, the system of registration exists, but since the schemes are optional, the number of workers who have registered varies from scheme to scheme, and in some cases the coverage has been very low. The new Board that we propose, will have to take up registration of workers in an effective, useful and meaningful way.

- l) Though the Acts, under which the Central Welfare Funds have been set up, do not prescribe any ceiling, in practice there is a ceiling in the application of the benefits of the welfare funds. This used to be Rs. 1,600, and was raised to Rs. 3,500 in 1991. Income ceilings screen most of the workers from availing of the benefits, and in some cases this

measure goes against the very objective of the legislation. If one gets more than Rs. 1600 per month, the worker is not covered by the Payment of Wages Act. In practice, similar filters exclude most of the eligible workers.

- m) In spite of the many problems associated with the welfare funds and their implementation, they provide one of the most important ways of reaching workers in the unorganised sector. We believe that the new structure that we are suggesting will overcome these problems. Welfare Boards, whether at the State level or at the Centre, have addressed situations where employer-employee relationships exist. Since most of the unorganised workers are self-employed or home-based, there will be no benefit if we replicate the structure and method of functioning of these Welfare Boards. Issues like establishing the identity of workers, the constitution of boards, the financing and disbursement of funds, etc. have therefore to be worked out. The concept of a mother board seems relevant in

the light of our experience with the Central and State Boards.

Proposal for Umbrella Legislation

7.381 The review in the preceding paragraphs has shown that most of the Labour Laws that we have today, are relevant only to the organised sector. Furthermore, the laws in the statute book that relate to some sectors of the unorganised sector are too inadequate to give protection or welfare for the vast majority of workers in the unorganised sector. The schemes of Welfare Funds and Welfare Boards are also confined to a few states and specific categories of workers in the unorganised sector. It is in this context that we have to look at the need for new legislation that will have general applicability and will provide essential protection.

7.382 To recapitulate, the sector is vast and varied. Over 90% of our labour force works in this sector. The employments in which they are engaged vary from the most unskilled jobs like stone breaking or collecting minor forest produce, to sophisticated jobs in software technology or info-systems. The vast majority of the

workers are extremely poor. It can also be said that 90% or more of the poor in our country are in the unorganised sector: employed, under-employed or unemployed. They are not only poor and marginally employed, but are deprived and discriminated against. Many of them belong to the Schedule Castes and Tribes for whom our Constitution has prescribed special consideration and protection. Their incomes are so low that they cannot provide for, or 'buy' social security; they cannot even buy food or clothing. Many of them are victims of the system of 'bonded slavery' and are described as bonded labour. The laws that we have enacted, and the ways in which they are being implemented have not given these workers the protection and welfare that our Constitution promises. The Constitution talks of equality and human dignity and providing the minimum requirements of livelihood and welfare. (We will refer to this subject in a little more detail in some succeeding paragraphs). The rights and benefits guaranteed in our Constitution are not only for the rich and the highly 'visible' and organised, but for the poor, the 'invisible' and the unorganised as well. Fifty years after Inde-

pendence and the promulgation of the Constitution, if this 90% do not enjoy 'guaranteed' rights, there is every reason to say that we have not practised what we have preached, to say that there has been lack of will or lack of focus or lack of sincerity. We give critics a chance to say that our promises are hypocritical. What is worse, we allow indignation and cynicism to gather momentum and create a mood that questions our very bona fides and the real intentions of our political, economic and social systems. This provides a fertile ground for the birth and growth of movements that aim at overthrowing the system, like the Naxalite movement or similar violent movements that we see in many parts of the country with increasing ferocity. One, if not the most important, of the ways of reversing this trend and preempting violent upheavals or guerrilla movements, is to fulfil the promises that the Constitution makes to the poor and under-privileged in the unorganised sector, in the rural and in the urban areas. Reports of the violent activities in many parts of the country should make us wonder whether time is running out for us. All those who mould public opinion and are in a position to influence

those in authority have to ask themselves whether time is really running out.

7.383 Land reforms have not been implemented, in spite of reminders from many Commissions, and the manifestos of political parties. Employment opportunities are not adequate. Those in employment often do not get the minimum wages that have been guaranteed in law. Working conditions are deplorable, sometimes, inhuman. The existing laws have proved inadequate. It is, therefore, necessary to construct a new legal framework and system of social security that will provide protection and welfare to the workers in the unorganised sector.

7.384 We have already pointed out that the way to extend legal protection to the employments and vocations in the unorganised sector is not by legislating separately for each employment or vocation. This will only multiply the number of laws when one of our goals is to simplify and reduce the number of existing laws. It is, therefore, logical and wise to enact an umbrella type of law for the unorganised sector which would guarantee a minimum of protection

and welfare to all workers in the unorganised sector, and would leave it open to the Government to bring in special laws for different employments or sub-sectors if experience indicates the need for it, provided that the sub-sectoral laws do not take away any of the basic rights or the access to social security that the umbrella legislation provides. Such an arrangement will give full respect to the federal nature of our Constitution as well as the different needs of diverse groups of workers. It will also be open to Governments to repeal existing sub-sector laws or merge existing (welfare) Boards with the Boards or Funds that we are suggesting in the Umbrella Legislation.

7.385 Our Constitution, the ILO Conventions that we have ratified and the existing laws together guarantee some rights to the workers. The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on 10 December 1948, is an assertion of the universal right to freedom and life with dignity. Article 23(1) of the Declaration states: 'Everyone has the right to work, to free choice of employment, to just and favourable

conditions of work and to protection against unemployment.' In fact, the legislative steps we take should satisfy the contents of this Article. This UN Declaration is one of the basic documents on human rights and justice that has become a standard-bearer or standard setter for peoples, communities and nations.

7.386 Article 1 of the Universal Declaration of Human Rights of 1948 considers that: 'All human beings are born free and equal in dignity and rights.' Article 3 says that 'Everyone has the right to life, liberty and security of person.' According to Article 4, 'No one shall be held in slavery or servitude.' All these Articles guarantee freedom and security of life and aim at banishing slavery and all types of bondedness. Articles 20 and 23 provide rights of association, employment and unionisation. Article 20 says, 'Everyone has the right to freedom of peaceful assembly and association.' Article 23 guarantees right to work and TU rights. According to Article 23 (4), 'Everyone has the right to form and join trade unions...' Article 22 states that 'everyone, as a member of society, has a right to social security ... indispensable for his dignity and the free development of

his personality.' Other relevant Articles guarantee the 'right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay' (Article 24), and the 'right to a standard of living adequate for the health and well-being...' (Article 25(1)). Article 26 provides the right to education. Article 26(1) says that: 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...' All these Articles together ask, in essence, for the overall social security of all individuals including workers.

7.387 This Declaration (1948) talks also about motherhood and childhood. Its Article 25(2) says: 'Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.' We have dealt with issues such as child labour in a subsequent chapter of our report. However, it should be mentioned here that a number of Conventions reiterate the rights of children including the right to education. The need to extend special attention and care to the child has been affirmed in

the Geneva Declaration of the Rights of the Child (1924) and in the Declaration of the Rights of the Child adopted by the General Assembly of the UN in November 1989. These rights are endorsed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (Article 10) and the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children. The Declaration of the Rights of the Child tells us, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth...'

7.388 The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by a resolution of the General Assembly in November 1989. It came into force in 1990, and India acceded to it in 1992. Articles 28 and 29 of the Child Rights Convention prescribe free and compulsory primary education for children. (Details of the Convention can be

found in the chapter on women and children).

7.389 Before presenting a draft for Umbrella Legislation in the sector, let us again remind ourselves of the Fundamental Rights and Directive Principles in our Constitution and the International Conventions to which our Government have subscribed. The context in which we have to frame our proposals includes these. We cannot therefore, overlook them or wish them away.

7.390 The Constitution of India: We have already pointed out that the Constitution of India offers, protection and social security to all citizens of India. It is obvious that the workers in the Unorganised Sector are as much entitled to protection and welfare or social security as citizens in any other groups. Fundamental Rights include the right to equality (Article 14), the protection against discrimination (Article 15), the rights to freedom of speech and association (Article 19), the rights to life and personal liberty (Article 21), protection against traffic in human beings, protection from forced labour (Article 23), and the rights of the child (Article 24). The Directive

Principles of State Policy (Part IV of Constitution – Articles 36 to 51) spell out the concept of social security. Article 38 of the Constitution, requires the state to strive to promote the welfare of the people by ‘securing justice – social, economic and political, and minimize inequalities in income and status between individuals, groups and regions.’

7. 391 We have cited these Articles in detail elsewhere, and looked at what they promise in the fields of freedom and Social Security.

7.392 Article 39 (a), (b) and (e) of the Constitution requires that the citizens have the right to adequate means of livelihood, that the material sources are so distributed as best to serve the common good, that the health and strength of workers and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 requires that within the limits of its economic capacity and development, the state shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age,

sickness and disablement, and in other cases of undeserved want. Article 42 requires that the State should make provision for securing just and humane conditions of work and maternity relief. Article 43 requires that the state shall endeavour to secure work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the State should regard the raising of the level of nutrition and the standard of living of its people, and improvement of public health, as among its primary duties.

7.393 Section 2(1)(d) of the Protection of Human Rights Act, 1993 (Act 10 of 1994) defines human rights as ‘the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.’ This Act also justifies the need for legislation in favour of workers who are not yet covered by existing legislation.

7.394 ILO Conventions: ILO conventions are codifications of universally applicable labour

standards and have led many countries to accept labour rights as basic rights. Some of its conventions protect children from labour, women from night shifts, and all workers from forced labour. As on September 2000, ILO with 175 member states could convince only 22 countries to sign its eight Core Conventions. Another 52 countries signed seven of the eight Core Conventions. Thus, 74 countries have signed seven or more Core Conventions. However, the ILO Conventions are binding on member states. While the ratified Conventions work as legal sanction, the other conventions have the force of moral sanction for the practices of member states. Most recently, in the 86th Session of the International Labour Conference in 1998, the ILO adopted the 'Declaration on the Fundamental Principles and Rights at Work,' which was an affirmation of the eight Core Conventions. These Conventions are seen as representing core labour standards, which are fundamental to the implementation of other standards. These fundamental principles and rights at work are (1) Right to Organise and Collective Bargaining (Conventions 87 and 98), (2) Abolition of Child Labour (Conventions 138 and 182), (3) Elimination of Discrimination (Conventions 100 and 111) and (4)

Against Forced Labour (Conventions 29 and 105). The follow-up mechanism envisaged in the Declaration makes it binding on member states, irrespective of whether the concerned state has ratified the Conventions or not, to submit annual reports to the ILO on the observance of the respective Conventions.

7.395 It is, therefore, necessary to ensure that the proposed Umbrella Legislation for Workers in the Unorganised Sector incorporates the core rights that have been enshrined in the Constitution of India, UN Covenants and ILO Conventions.

7.396 Let us recapitulate the reasons that lead us to the conclusion that a new and separate umbrella legislation is imperative to protect the rights and welfare of workers in the unorganised sector:

- a) The existing labour laws do not offer protection and welfare to workers in the unorganised sector. Whatever exists is inadequate.
- b) Our Constitution and the international agreements we have entered into give us the mandate to do so.

c) The Unorganised Sector including the agricultural sector account for more than 92% of the total workforce in the country, i.e. around one-third of India's population. Nine-tenth of India's population is surviving on employments in the Unorganised Sector. The 'informal' or 'unorganised' sector (interchangeable terms) has been criticised as a low productivity area where the earnings are meagre. But in absolute terms, this sector contributes more to the economy and employment in India. The National Accounts Statistics Report of 1995 confirms that nearly 65% of the national income is contributed by the Unorganised Sector. Thus, in spite of their considerable contribution, the unorganised sector lacks adequate protection through labour legislation. Workers in this sector do not get social security and other benefits as their counterparts in the organised sector do. There is no trade union or any other institutional structure to fight for the workers in this sector. Collective bargaining is a far cry

for them. These workers, particularly women, have not been able to organise themselves and are further discriminated against. Let us look at who they are. They are contract workers, home-based workers semi-skilled and unskilled, home-based skilled artisans, and a section of the self-employed involved in jobs such as vending, rag picking, *rickshaw* pulling. Then come the agricultural workers, rural non-agricultural labour, Khadi and village industries workers, construction workers, migrant labour and those in manual and helper jobs. The existing labour laws do not define most of them as workers because a principal employer is not easy to identify in these kinds of work. To be brief, a specific employer-employee relationship is missing (or ambiguous) in the unorganised sector. The draft of the Study Team has analysed and discussed at length, each existing labour law and social security legislation and scheme and fund, and shown the very limited applicability or non-applicability of most of these to

the vast working population engaged in the unorganised sector.

- d) If properly conceived and effectively implemented, a law for unorganised sector workers will make a definite contribution to the eradication of poverty from the country. Poverty has so far been addressed as a question linked, on the one hand, with economic growth and on the other, with Government inputs. However, the real cause of poverty is the lack of opportunity to work and adequate good quality work, income earning opportunities and lack of organised will and strength. Employment is one of the surest links between economic growth and the abolition of poverty, and the means to achieve distributive justice.
- e) The umbrella legislation which we propose should be viewed in a holistic way. The unorganised sector is in no way an independent and exclusive sector. It is dependent on and linked to the organised sector and the rest of the economy.

Such interdependence has to be recognised. It has to be understood that the unorganised sector cannot be wished away. Therefore, the nature of the work which is informal, seasonal, and characterised by the absence of fixed employers and workplaces, will have to be thoroughly understood and recognised.

- f) The national 'divide' between the Organised Sector (Formal) and the Unorganised Sector (Informal) of the country's economy, and the workers/labour engaged in them, is unreal because these sectors are interdependent. In the Umbrella Legislation, the basic approach is to provide recognition and protection to all types of socially useful work and workers.
- g) The unorganised sector workers are literally everywhere, in fields, in homes, on streets, in small workshops, in forests – everywhere. So, it needs to be recognised that the umbrella legislation cannot be effective unless it integrates their needs

for protection and welfare with those of the rest of our society and economy.

- h) The Umbrella Legislation should be seen as a legislation that will lead to the growth of the economy, improve the quality of employment, provide a decent life to workers, and integrate them with the growing opportunities in the country.

7.397 In specific terms, the objectives of the legislation will have to be:

- a) To obtain recognition for all workers in the unorganised sector.
- b) To ensure a minimum level of economic security to these workers.
- c) To ensure a minimum level of social security to these workers.
- d) To facilitate the removal of the poverty of these workers.
- e) To ensure future opportunities for children by eliminating child labour.

- f) To encourage formation of membership based organisations of workers including Trade Unions.

- g) To ensure representation of the workers through their organisations in local and national economic decision making.

7.398 Most workers in the Unorganised Sector are not recognised as workers and so they have no identity. In most surveys they are not counted and so their reality is not reflected in the policies or the law. The first objective of recognition of these workers is to include them in official surveys. This can be done every five years, either by the NSS or by the labour department. (Note: In 1999, the NSS conducted an informal sector survey as part of its regular labour force survey. This can be made a regular feature.)

7.399 In order to achieve recognition as a worker each person who is actually working should be given an official identity card. At present, there are many types of identity cards which are given such as cards issued by employers, Cards

issued by EPF, cards issued by Welfare Funds, cards issued by trade unions or co-operatives, cards issued by municipal authorities etc. The identity card gives the worker a definite legal identity and recognition.

7.400 It is sometimes argued that the sheer magnitude of numbers in India, would make the identification of workers an impossible task. However, in a country where voters lists are prepared, taking into account every adult over the age of 18 years, voters identity cards are issued, and ration cards are issued for every family, listing all family members, and a census covering 100 crore people is conducted every ten years, it should not be too formidable a task to identify every worker.

7.401 Such an approach will help all those petty but productive activities undertaken by the poor, particularly by poor women, to be counted as part of GNP/national income.

7.402 The role of the unorganised sector in the national economy, its need for social security systems as well as its own positive ability to build its own viable integrative system, needs to be understood and

recognised. Today, all policies are aimed at the public sector and the organised private sector. Statistics are collected about them, and they are projected as the engines of growth of the economy. However, the truth is that these two powerful sectors put together contribute only 8% of the employment, 35% of the income and 33% of the savings of the country (despite the possibility that the official statistics overestimate the contribution of these sectors). The rest of the country's economy depends on the unorganised labour and the self-employed producers.

7.403 The element of income security and social protection – food, water, healthcare, childcare, shelter and education – need to be treated as basic entitlements of the workers and producers of the economy. They are entitled not only because they are citizens, but also because they are the main contributors to the wealth of the nation. Today, even without these entitlements they contribute their labour, skill and entrepreneurship to the economy. When provided with these entitlements, their productivity as well as their purchasing power will grow. They will add to the country's gross national product, strengthen

the economy and help fight economic crises. On the other hand, if their economic contribution is not recognised and enhanced, if they continue to be treated as the recipients of safety net policies, they will continue to be poor beneficiaries, living constantly on welfare and subsidies.

7.404 As structural adjustment proceeds, the entitlements of the organised sector are getting eroded, and the need for social security systems is becoming more urgent and central to the success of structural adjustment programmes. The concept of social safety nets may not be feasible in the economic situation that prevails in India. Difficulties may deepen with the increasing marginalisation of labour. Social safety nets would be viable if the number of people who 'fall' into them constitutes a small percentage of the workforce. But no 'net' is capable of supporting over 96% of the labour force of a country, and certainly not a country where this 96% is over 300 million workers.

7.405 This can be achieved only if social security is work-linked. This also means that the right to work would

have to be viewed as a necessary concomitant of the right to social security. According to us, social security must contain at least healthcare (including maternity, injury) childcare, shelter and old age support that strengthen productivity and the economic security of the current workforce.

7.406 We have a long, and perhaps impressive record of recommendations for labour legislation by various committees, commissions, conferences of ministers, study groups, advisory boards, tripartite agreements and court judgments. Some of the suggestions that have exercised considerable influence on the criteria for calculating minimum wages have come from the Committee on Fair Wages, the sessions of the Indian Labour Conference, the Central Pay Commissions, ILO Conventions, Reports of the National Commissions on Rural Labour and Agricultural Labour, the Committee on Wage Policy, the Committee of Secretaries, the Study Group on Wages, Incomes and Prices, and the Minimum Wages Advisory Boards. It is not possible for us here to go into each recommendation. However, we would

like to recall some of the major reports and their recommendations, as they are concerned with unorganised, low-paid and sweated labour. The paragraphs that follow refer to recommendations of (1) the National Commission on Labour 1969, (2) The National Commission on Self-employed Women and Women in the Informal Sector (Shramshakti) 1988, (3) The National Commission on Rural Labour 1991, and (4) The Thirty Fourth Session of the Indian Labour Conference.

7.407 REPORT OF THE NATIONAL COMMISSION ON LABOUR, 1969: The first National Commission on Labour under the Chairmanship of Justice P. B. Gajendragadkar submitted its report in 1969. It was set up to study and review the conditions of labour since 1947, the then existing labour legislation and the living conditions of workers. To keep up continuity with the Whitley Commission (1929-1931), the period of 1931-47 was also considered whenever necessary by the Commission. The Report of the Commission is a comprehensive document that touches, among other things, the issues of industrial relations, labour welfare, social

security, minimum wage, wage fixation machinery, and employment of women and children. The Commission expressed its concern about child labour, and considered it as a serious economic problem. However, it did not suggest the complete elimination of child labour. The Commission recommended that by fixing limited hours of employment for children, their education and employment should be combined (p. 387).

7.408 The Report of the Commission devotes attention to labour in the unorganised sector. The main recommendations of the Commission included:

- a) First hand detailed surveys from time to time to understand the problems of the different categories of unorganised labour.
- b) Legislative protection by the state for unorganised/unprotected labour.
- c) Simplification of legislative and administrative procedures applicable to small establishments.

- d) Expediting education and organisation in the field of unorganised labour.
- e) As there is no alternative to the existing implementation machinery, what exists should be reinforced, and the inspection system should be strengthened. The Commission felt that the difficulties faced by small employers were genuine, and they should be encouraged to form associations and give training to their staff.
- f) Steps for the protection of workers against middlemen, and development of self-help through co-operatives. Co-operatives should pay adequate wages and bonus, and give employment opportunities to the under-employed and unemployed among them (pp.434-35).

7.409 REPORT OF THE NATIONAL COMMISSION ON SELF-EMPLOYED WOMEN AND WOMEN IN THE INFORMAL SECTOR, 1988 (SHRAMSHAKTI REPORT): The National Commission on Self-employed Women was set up in 1987. Smt. Ela Bhatt was the Chairperson.

The Commission enlarged its scope to include women workers in the unorganised sector. It submitted its report (*Shramshakti: Report of the National Commission on Self-employed Women and Women in the Informal Sector*) in 1988. The main objectives of the Commission were:

- a) to examine the status of self-employed women with special reference to their employment, health, education and social status, and constraints that affect productivity,
- b) to assess the impact of various labour laws, especially those on maternity benefits and health insurance, on self-employed women,
- c) to identify gaps in training, credit, upgradation of skills and marketing,
- d) to survey employment patterns including production relations and their impact on wages, and
- e) to study the effect of macro level policies on the health, and productive and reproductive role of self-employed women.

7.410 The Commission decided to cover poor women too as both self-employed and poor women shared important characteristics relating to: fewer and poorer opportunities to work, greater impact of unemployment/underemployment, casual nature of work, greater vulnerability due to lack of skills and education, heavy responsibilities, systematic social practice of underrating women's work, and lack of access to better technologies, tools and productive assets. To a large extent, poor women kept moving among the categories of the self-employed, casual labour and the unemployed.

7.411 The Commission recommended enlarging the definition of work done by women to include all paid and unpaid activities performed within the home or outside as an employee or on 'own account.'

7.412 In the view of the Commission the single most important intervention towards improving the economic status of poor women working in the informal sector of the economy would be to devise strategies which would enhance their ownership and control over productive assets. These could be a plot of land, housing,

tree *pattas*, joint ownership of all assets transferred by the state to the family, license, bank accounts, membership of organisations and identity cards.

7.413 The Commission noted the unquestionable evidence from all available studies about the flagrant violation of statutory provisions regarding payment of wages, safety regulations, provision of housing and medical facilities, accident compensation and so on. It felt the need for more stringent observance of existing labour laws and the introduction of deterrent penalty clauses. In the context of non-observance of these laws, the Commission recommended simplification of judicial procedures, particularly to enable unorganised workers to obtain legal redress without undue harassment.

7.414 For domestic workers, the Commission recommended the introduction of a system of registration. It felt that, in view of the existing trends of exploitation, it was extremely important to fix a minimum wage, and to pass legislation to regulate conditions of employment, social security and security of employment.

7.415 Though 51% of the working women are engaged in farm labour, their contribution is unrecognised. Women's access to land ownership is extremely limited and women have no say in decision-making, and in the use of credit, technology and marketing. The Commission observed that in certain areas, for the same kind of work, women got Rs. 3 to 4 per day, while men got Rs. 10 as wages. It recommended that the contribution of women to agriculture should be recognized by policy makers and reflected in the country's agricultural policy and programmes, with adequate resource allocation and orientation for women producers. Women involved in seasonal agriculture should be helped to diversify into horticulture, fruit processing, vegetable growing, animal husbandry and dairying. The Commission also noticed that the number of women cultivators was declining.

7.416 The Commission observed that the rates of minimum wage are low and have to be increased keeping in view the requirements of the woman worker and her family. Piece-rates must be so fixed as to enable women workers to earn for 8 hours of work a wage equal to the time-rated

minimum wage. Where work is carried out at home due to which the employer saves on installation cost and equipment, an additional amount at 25% of the minimum wage should be paid. There should also be a national or regional minimum wage. Despite the Equal Remuneration Act 1976, wage discrimination is widely prevalent. This must be corrected through better enforcement and wider dissemination of the law. There is a tendency to classify the tasks generally done by women as those of a slightly inferior nature. This has to be corrected, and one way of doing this is to broad base into a single category the activities requiring work of a similar nature.

7.417 The Commission further recommended that the Right to Work, already a Directive Principle, should be made a Fundamental Right.

7.418 The Commission recommended the setting up of an Equal Opportunities Commission under a central law, and also recommended that such a Commission should have wide powers of investigation, direction, advice and monitoring.

7.419 It recommended the establishment of Tripartite Boards, as no law, however well conceived, would benefit women workers unless they had a major hand in the implementation of the laws. The Tripartite Boards have to be constituted in such a manner that workers have as many representatives as the government and the employers. The Tripartite Boards will regulate implementation of legislation and also contribute to making women workers visible, and empower them to be equal partners and participants in the production process.

7.420 The Commission recommended setting up of a Central Fund from which welfare and social security measures for women workers should be financed. Apart from a levy on individual employers, it is desirable to impose a levy on major industries for the benefit of small activities that home-based workers carry out.

7.421 Another recommendation of the Commission was that a separate wing should be set up in the Labour Department for unorganised workers with adequate number of women employees at various places.

7.422 The Commission also felt that no solution to the problems of women at work would be complete without taking into account their reproductive functions, which can be effectively facilitated through maternity benefit and childcare. Maternity benefits, on the scale provided under the Maternity Benefit Act, should be universally available to all women. The responsibility for this should be borne by all employers, irrespective of whether or not they employed women, through a levy calculated as a percentage of the wage bill, and placed in a separate fund from which maternity benefit could be provided. In the case of a large number of women like home-based workers and others, where the employer is not identifiable, the responsibility for providing maternity benefits must lie with the State governments.

7.423 The Commission noted with distress that though childcare facilities were provided in various labour laws, these were not being implemented, and had in fact led to the retrenchment of women workers since the employers wanted to avoid the statutory responsibilities that the law imposed. Hence, it was

necessary to introduce an extended system of childcare throughout the country to reduce the burden on women and to facilitate the all round development of the child.

7.424 The Commission laid stress on the need for an integrated perspective on health as most of the health problems that women faced, related to their general life situation, which aggravated the problems they faced as workers. These problems included inadequate nutrition, non-accessibility to healthcare, water, housing, sanitation, maternity benefits and childcare among others. A package of health services for women in the informal sector would be inadequate, if it does not simultaneously address their standard of living, including a living wage, improved conditions of work, a safe and hazard free workplace with protective equipment, controlled work hours, benefits for health, maternity, crèches and old age, housing, and potable water near their homes in quantities necessary for family health.

7.425 The Commission emphasised the need for regulating working hours in the informal sector where there is considerable

exploitation of the poor. It recommended that piece-rates be converted into daily wages based on the normal quantum of work completed at a healthy pace, and that health insurance including compensation for accidents should be available to women workers. Health cards should be distributed to them. Every workplace had to assure safety to the workers. Preventive health education was to be initiated through Worker Education Board. The Commission recommended that a comprehensive law on health and safety be formulated and enacted.

7.426 NATIONAL COMMISSION ON RURAL LABOUR (1987-91): The first ever Commission on Rural Labour had its genesis in the Budget Speech of 1987, when the then Prime Minister, Rajiv Gandhi, announced that 'the Government would appoint a National Commission on Rural Labour to look into the working conditions of this vulnerable section of our society and the implementation of social legislation for their protection.' The terms of reference of the Commission were very comprehensive, and the Commission made recommendations on a wide

spectrum of issues, aimed at eliminating poverty, improving the quality of life and increasing productive opportunities for rural labour. The Commission submitted its report in 1991.

7.427 The National Commission on Rural Labour estimated Agricultural labour to be around 110 million or 73% of the total rural labour with nearly half belonging to the Scheduled Castes and Scheduled Tribes. According to the Commission, a multi-dimensional strategy was needed to lift agricultural workers from the vortex of poverty. First, an infrastructure had to be created for irrigation, drainage, flood control and rural electric supply, without which it would be impossible to increase agricultural productivity and employment. Second, it was essential to enforce minimum wages and social security. Third, it was necessary to introduce central legislation for agricultural labour providing security of employment, prescribed hours of work, payment of prescribed wages and machinery for dispute settlement. It was essential to introduce a system of registration and to provide identity cards to these workers. Fourth, the Commission

was of the opinion that a Welfare Fund should be set up with employers' contribution in the form of a cess on land, and a nominal contribution from agricultural labour. This Fund would make provisions for

(a) maternity leave for women agricultural labour, (b) old age pension at a minimum of Rs. 100 per month to every agricultural worker above the age of 60, and (c) compensation for death or injuries due to accidents.

7.428 According to the Commission's estimates, non-agricultural labour accounted for 40 million or 27% of rural labour.

7.429 The Commission made recommendations for various categories of workers which are as follows:

a) Handloom Workers: The Commission endorsed the proposal to place Handloom (Reservation of Articles for Production) Act 1985, in the Ninth Schedule of the Constitution. Weavers were to be trained in new methods of weaving technology, adequate

- financial assistance was to be provided and marketing for handloom products was to be improved. The Commission recommended Legislation on the lines of the Tamil Nadu Handloom Workers Act 1981.
- b) *Beedi* Workers: All workers engaged in *beedi* making, either at their homes or elsewhere should be provided with identity cards. The contract system should be abolished, and initiatives to form the workers' own cooperatives should be encouraged. A change in the *Beedi* Cigar Workers Act 1966 was suggested, in order to establish unambiguously the employer-employee relationship in the case of home workers.
- c) Construction Workers: The Commission recommended that the recruitment of workers through middlemen should be checked to enable construction workers to get their wages in full.
- d) The Commission also suggested measures aimed at improving the lot of brick kiln workers, toddy tappers, fishermen, leather workers and sweepers.
- e) Bonded Labour: The National Commission on Rural Labour suggested a countrywide census of bonded labourers, and periodic sample surveys in districts with concentration of bonded labourers. In the view of the Commission it was necessary to ensure the effective enforcement of the Bonded Labour (Abolition) Act. The process of identification, and release of bonded labour and the criminal prosecution of the employer of bonded labour should be done simultaneously.
- f) Migrant Labour: As more than 10 million inter-State rural migrant workers were involved in various activities, the Commission suggested some changes in the existing Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW):
- The definition of migrant workmen should be expanded to cover all migrants, whether they

come on their own or through contractors, or change contractors after entering a recipient State.

- Amendments should be made to allow third parties to file complaints.
 - The liability of the principal employer should be defined more clearly to prevent him from escaping liability.
 - The contractor should be made liable for the breach of the Act either by him or by the subcontractor.
- g) Recommendation on Minimum Wage: According to the Commission, Rs. 20 per day at 1990 prices was the subsistence wage level and no employment should be allowed at less than this level.

7.430 INDIAN LABOUR CONFERENCES: The 34th session of the Indian Labour Conference (ILC) held in December 1997 recommended that the Government should issue identity cards to all workers both in the organised and unorganised

sectors in a phased manner. This was recommended to improve the visibility of the workers and also to improve accountability in terms of the enforcement of labour laws.

7.431 Yet another recommendation was that all the State governments and Union Territories emulate the example of the Government of Kerala and a few others, who had set up welfare funds for various categories and sub-categories of unorganised labour. These Welfare Funds would go a long way in meeting the bare minimum welfare needs, like allotment of home sites, providing drinking water, medical aid, and scholarship for workers' children. The Conference wanted that the ambit of the Welfare Funds should be progressively enlarged.

7.432 The 34th session of the ILC expressed its concern over the predicament of inter-district, inter-State and inter-country migrant workers. It recommended that the provisions of the existing laws should be rigorously enforced.

7.433 We have now to address the question, what is the minimum that

the Umbrella legislation for workers in the Unorganised Sector should ensure. It is obvious that it should provide them protection and welfare. Measures for protection have to include a policy framework that ensures the generation and protection of jobs, and access to jobs; protection against the exploitation of their poverty and lack of organisation: protection against arbitrary or whimsical dismissals; denial of minimum wages; and delay in the payment of wages; protection against unauthorised deductions; and safety and dignity at places of work. The system of Welfare should include access to compensation for injuries sustained while engaged in work; provident fund; medical care; pensionary benefits and; maternity benefits and childcare in the case of women workers.

7.434 In the case of legal rights, the law should be capable of being implemented and monitored easily. It should be such that the worker can understand his rights, and obtain expeditious redress in cases of violation or non-fulfilment of rights. It should, therefore, include machinery for the disposal of claims and complaints at a place that is not too distant from his place of work, with

expedition, and without putting unbearable strains on the complainants.

7.435 The system for Social Security must be such that the worker can make a commensurate contribution to the cost, consistent with his financial capacity (resources). It ought to cover as many of his needs as possible, and deliver the services as near his place of residence or work as possible. The machinery should not be cumbersome, costly, centralised, and burdened with many administrative layers and overheads.

7.436 It is with these objectives that we have looked at the kind of Umbrella legislation that workers in the unorganised sector need. But before we outline the scheme of the legislation and the welfare system that we are proposing there are two other matters which we have to address.

7.437 One is the kind and extent of welfare systems (or Social Security systems) that exist in the unorganised sector today. (We have already recounted the work of the Welfare Boards etc. in the earlier

paragraphs and also discussed the protective legislation that exists in the field.) The other is the question of minimum wages. We have dealt with the importance of defining and ensuring the payment of minimum wages in another section of our report.

7.438 POLICY ON SOCIAL SECURITY IN INDIA'S FIVE-YEAR PLANS: The labour policy set out in the five-year plans since Independence was based on the belief that the basic needs of workers for food, clothing and shelter must be satisfied. The First Plan (Part-III, Chapter XXXIV) recommended many measures like the granting of occupancy rights for house-sites, support for the *Bhoodan* movement (land-gift movement), labour cooperatives, financial assistance, educational stipends, minimum wages, etc. for the welfare of agricultural workers.

7.439 The Second Five-Year Plan (Chapter XXVII) continued the policy laid down in the First Plan with modifications that became necessary with the adoption of the goal of a socialist pattern of society. There were new proposals for development

programmes under labour and labour welfare. The Plan policies recommended what flowed from the ideal of a Welfare State. It made provision for industrial housing. The Third Five-Year Plan made no specific reference to labour welfare, but stressed that for improving work efficiency, welfare within the establishment should be ensured. As a part of the reoriented policy, cooperative activity was identified as a labour welfare measure. The Draft Fourth Five-Year Plan made a significant allotment of Rs. 145 crores for schemes for training and other programmes oriented to the welfare of workers. The draft Fifth Five-Year Plan made a provision of Rs. 57 crores for the training of craftsmen, employment service and labour welfare.

7.440 The thrust of the programmes in the Sixth Plan (Chapter XXIV) was on the effective implementation of different legislative enactments regarding labour and special programmes for agricultural labour, artisans, handloom weavers, fishermen, leather workers and other organised workers in the rural and urban areas. The Plan also

emphasised vocational rehabilitation of the physically handicapped, apprenticeship and training schemes, organisation of rural workers, and problems of bonded-labour, child labour, women labour, contract labour, construction labour, inter-state migrant labour, migrant shepherds, and dairy cattle owners.

7.441 The thrust of the Seventh Plan (Chapter V) was the improvement of capacity utilisation, efficiency and productivity. An important aspect of labour policy outlined in the Seventh Plan relate to the formulation of an appropriate wage policy, and provisions for the welfare and working and living conditions of unorganised labour not only in the rural sector but also in urban areas. The Eighth Plan (Chapter VII) said that improvement in the quality of labour, productivity, skills and working conditions and provision of welfare and social security measures, especially of those working in the unorganised sector, were crucial elements in the strategy for quantitative and qualitative enhancement of the status of labour. The Plan also laid emphasis on the enforcement of labour laws especially laws relating to unorganised labour and women and child labour.

7.442 However, it has to be admitted that the Five-Year Plans did not formulate an integrated and comprehensive scheme of social security for unorganised labour.

7.443 We shall not attempt here to enter into a discussion on the ingredients of social security. We will do so in the chapter that we are devoting to the subject of social security. Here, we will limit ourselves to some important aspects of social security in the unorganised sector.

7.444 As we have pointed out earlier, the sector is diverse, and the problems in formulating and enforcing a social security scheme for the unorganised sector arise from the specifics of the sector. In looking at the need for social security in the unorganised sector and the demands on a system of social security in the unorganised sector, we have to keep certain characteristics of the sector in mind. First, the unorganised sector is not a homogeneous category. Employment relations vary considerably, and are very different from those in the organised sector. The sector comprises the following categories:

- a) Those who are employed on a more or less regular basis, in establishments which are outside the scope of the existing social security legislation.
- b) Those who are employed as casual labour, intermittently on contracts, with uncertain employment and income.
- c) Those who are own-account workers and producers, including small and marginal farmers, who may occasionally hire the labour of others.
- d) Those who do a variety of jobs from day to day, from season to season, and often even within the same day.
- e) Those who are seeking work as migrant labour.
- f) Those who worked but can no longer work.

7.445 Second, a major obstacle in introducing contributory social insurance schemes for the unorganised sector is the difficulty in identifying the employer. Third, unlike the organised sector where steady and regular employment is more or less a given fact, unorganised sector workers need employment security, income security and social

security simultaneously. Fourth, the needs of these workers often vary from those of workers in the organised sector. For example, since a large proportion of the unorganised sector comprises of women, child-oriented needs become increasingly important.

7.446 Specific limitations and difficulties that one encounters in the sector: Social Security measures for the unorganised sector labour are constrained by factors such as (a) lack of permanent or stable linkage between employer and employee that precludes schemes based on employer's contributions, (ii) low and unstable wages and lack of round-the-year employment which precludes schemes based on employee's contribution, and (iii) purely casual nature of employment which precludes benefits like sick leave, maternity leave, etc.

7.447 We have to see how these constraining factors can be eliminated or mitigated to extend the benefits of social security to workers in the unorganised sector. While doing so, let us not lose sight of the fact that in this sector social security should have promotional and preventive aspects addressing employment security and

income security, covering healthcare, childcare and old age.

7.448 We believe that the Social Security measures for the Unorganised Workers should include:

- a. Health Care
- b. Maternity and early Child Care
- c. Provident Fund Benefits
- d. Family Benefits
- e. Amenities Benefits including Housing, Drinking Water, Sanitation, etc.
- f. Compensation or Employment Injury benefits (including invalidity benefits and survivor's or dependent's benefits)
- g. Retirement and post-retirement benefits (Gratuity, Pension and Family Pension)
- h. Some cover in cases of loss of earning or the capacity to earn
- i. Besides these, there should be schemes, either independent or in association with the Government, Welfare Bodies, NGOs and Social Organisations, for the upgradation of skills and the education of workers, and for the elimination of child labour, forced labour, and unfair labour relations and practices.

7.449 Healthcare should include medical care and sickness benefits such as leave and allowance. It is better to leave the actual medical care in the hands of specialised agencies. But, an apex Board that is set up will have to take care of the expenses involved. This can be paid as medical allowance. Schemes of medical insurance should be thought of in support of healthcare. In the case of regular workers in the Unorganised Sector, contributions from the workers and employers should be collected by the Fund/s to be set up under the Board/s. Contributions can be collected from the self-employed as well. In the occupations declared as hazardous there should be special health schemes. The alternative is to prohibit such processes in the unorganised sector.

7.450 Maternity benefits and provision of early childcare facilities are two related and important issues that need serious attention. At present, maternity benefit is available only in the organised sector, and very rarely in the Unorganised Sector. The provision for crèches has not been enforced with strictness. As women need special attention, apex Board/s should see that the scheme of social security includes maternity and early childcare, and are made a compulsory

element in security measures in the Unorganised Sector.

7.451 Provident Fund benefits form the only range of financial support that workers enjoy on retirement. In the Unorganised Sector too, workers do need such a source of support. It is not that this facility is absent in the whole sector. Public Provident Fund for the self-employed and Employees Provident Fund for the workers should be made universal in the Unorganised Sector. The Board that we are recommending at the central level should take steps in this regard for workers registered with it.

7.452 Family benefits should mainly take the form of educational assistance to the children and dependants of the worker's family. Promotional measures like 'food for education' schemes should also be introduced. For this, the Board/s can work in tandem with other bodies.

7.453 Amenity benefits include schemes for housing and basic amenities such as drinking water, sanitation, electricity, etc. Here, there is space to work in alliance with other bodies.

7.454 Compensation or employment injury benefits (including invalidity benefits and survivors or dependant's benefits) should be

provided to unorganised workers. The Umbrella legislation should introduce provisions for this without leaving the subject to be covered by the existing Workmen's Compensation Act of 1923 that has proved dilatory, especially where the employer-employee relation is disputed.

7.455 Retirement and post-retirement benefits include gratuity payment in case of superannuation, or additional lump sum compensation in case of voluntary retirement, and family pension. In the unorganised sector, where there are schemes of de-casualisation, or in rare cases of regular workers, retirement benefits are given. We suggest that the Board should make provision for paying retirement-related benefits for the registered workers, if they do not get such benefits from individual managements.

7.456 Some cover for under-employment and loss of jobs should be introduced, as the sector has many occupations of a seasonal nature, incidence of loss of jobs, etc. In Kerala, group insurance schemes have been introduced for fish-workers. Such schemes can be formulated with such improvements as the Board may find necessary.

Classification of occupations

7.457 Before going into the modalities of setting up an Unorganised Sector Workers Board, it is necessary to classify the occupations in the unorganised sector.

7.458 The Minimum Wages legislation has listed occupations under two parts – Industry (Part – I) and Agriculture including forestry (Part – II). The National Industrial Classification (NIC) of 1987 followed by the CSO (Central Statistical Organisation) contained ten primary groups with many divisions within each group (CSO, 1987). The CSO has revised the National Industrial Classification in 1998. The number of primary sectors now has gone up to 17 (from A to Q) with a total of 99 divisions (CSO, 1998). The coding of the primary sectors according to the NIC 1998 is as follows:

- A. Agriculture, Hunting and Forestry
- B. Fishing
- C. Mining and Quarrying
- D. Manufacturing
- E. Electricity, Gas and Water Supply
- F. Construction
- G. Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods

- H. Hotels and Restaurants
- I. Transport, Storage and Communications
- J. Financial Intermediation
- K. Real Estate, Renting and Business Activities
- L. Public Administration and Defence; Compulsory Social Security
- M. Education
- N. Health and Social Work
- O. Other Community, Social and Personal Service Activities
- P. Private Households with Employed Persons; and
- Q. Extra-Territorial Organisations and Bodies.

7.459 However, the industrial classification of economic activities has not been found helpful in arriving at the kind of distinct groups/classes of occupations and processes existing in the unorganised sector. Therefore, with the intention of seeking common parameters and patterns for arriving at a broader clubbing of jobs and processes in the unorganised sector, 106 jobs were taken at a random basis for analysis, based on available secondary sources. The data sheet and the list of jobs are attached as an Appendix. We thought that this exercise would be useful in classifying the organised economic activities into groups with similarities.

7.460 Factors considered for classification are as follows. Recruitment, payment, unionisation, casual nature, relation to child labour, family labour and migrant labour, wage and earning levels, skill level, home-based activity, source of raw materials, access to capital, debt bondage, nature of output (product or service), and occupational hazards and diseases. Samples from both self-employed and employed groups have been considered.

7.461 The classes that we have identified on this basis are:

1. Workers dependent on open access and common property resources.
2. Workers engaged in putting-out system of work such as weavers.
3. Non-motorised transport workers (rickshaw pullers, boatmen, etc.).
4. Motorised transport workers.
5. Contract workers.
6. Work-contracted home-based workers.
7. Traditional service workers.
8. Pastoral toilers.
9. Workers in child labour-prevalent occupations.
10. Migrant workers.
11. Small credit dependent traders such as hawkers and vendors.
12. Construction workers.
13. Manual workers of unspecified jobs.
14. Service sector workers (excluding traditional services).
15. Agricultural labourers.
16. Small farmers.
17. Mining and quarrying workers.
18. Food processing workers.
19. Workers in timber, fibre and pulp based activities.
20. Engineering industry workers.
21. Electrical and electronic industry workers.
22. Village and khadi industry workers.
23. Other miscellaneous workers including crafts persons.

7.462 These classes were arrived at on the basis of various factors at various levels. For instance, class-1 is based on the source of raw materials, and class-2 on the basis of mode/organisation of production. Contract workers (class-5) are those employed through contractors (mode of

recruitment). Class-6 is also based on a similar factor where work is contracted for home-based workers. There are child labour prevalent occupations and migrant labour prevalent occupations (classes 9 and 10). Small vendors are credit dependent (class-11). Construction workers (12) and Agriculture workers (15) follow partly, industrial classification and partly, their sheer numerical strength.

7.463 Let us now give some thought to the logic of classification. National Industrial Classification (NIC) of economic activities (of both 1987 and 1998) is on the basis of 'the nature of economic activity carried out in an establishment' (CSO, 1998:99). The NCO (National Classification of Occupations – 1968) bases itself on the nature of occupations. In the unorganised sector, both these principles can be used but combined with other elements. Some purpose-based classification such as one meant for social security legislation can also be thought of. For instance, as earlier mentioned, Subrahmanya and Jhabvala (2000) point out six categories. They are (a) the regular unorganised sector employees outside the scope of the existing social

security legislation, (ii) casual labour, (iii) own-account workers and producers, including small and marginal farmers, who may occasionally hire the labour of others, (iv) those who do a variety of jobs from day to day, from season to season, and often even within the same day, (v) job seekers like the migrant labour, (vi) and those who worked but can no longer work. This classification is definitely useful for the purpose of devising social security schemes. However, this will not be useful for the purpose of fixing minimum wages (or minimum prices for products as, for instance, in the case of small farmers).

7.464 Can the classification then, be based on a distinction between worker and producer? This would be more or less equivalent to the distinction between the employed and self-employed sections. In our analysis, no substantial group emerged to be denoted as merely self-employed. In almost all the occupations, we can find both self-employed and employed workers. Even among hawkers and vendors, one can find employed workers, though a vast majority of them are self-employed and own-account

workers. And as such, we have considered them as a self-employed group. The unorganised sector has generated jobs handled by both the self-employed and employed workers, and it is meaningless to distinguish and separate them as distinct groups either within the same occupation or in general. This is not to deny the difference between the two.

7.465 We can consider whether a division is possible on the basis of the nature of the product of labour. Product based and service based industries can be differentiated. However, this does not serve any specific purpose here. Consideration on the basis of primary, secondary and tertiary sectors would not also be useful as it results only into three bigger and broader categories.

7.466 Another factor is that one finds the same person engaged in different occupations. Take the case of a marginal farmer for instance. He or she is a working producer, own-account worker and also self-employed. At the same time, he/she is not the kind of own-account worker in the strict sense, because he/she employs some agricultural labourers at times of need. The same person

gets employed as agricultural worker or construction worker at other times. Here, he/she is self-employed, and sometimes employed. Whichever sector he/she is spending more time in, can be considered his/her main occupation on the lines of the norms followed by the National Sample Survey Organisation (NSSO) and the Census.

7.467 Now the question is where do this classification and these classes take us. Our reading of the National Industrial Classification (NIC) of economic activities (of both 1987 and 1998) and the present classification exercise point out that single-method approaches are not helpful in differentiating groups in a substantial way. Mixed approaches are to be tried wherein empirical studies and surveys, NIC and NCO (National Classification of Occupations) structures of classification, skill levels, modes of production, occupation status, nature of resources involved, unique distinguishing factors, etc. can be applied. Thus, different groups are formed on different considerations of logic. We feel that this eclectic is more a problem of the sector than one of rationality. If the logic is fragmented, it is only a reflection of

the diversity of the unorganised sector itself.

7.468 We believe that classification should be an on-going process. For instance, if a child labour prone group exists under the board, after some period the group can be removed when sufficient improvement is reported in the sector on the incidence of child labour. Thus, options should always be kept open and flexible to accommodate newer classes and eliminate existing classes. And there should be provision for such a set-up in the Board to be constituted.

7.469 However, given the limitations of classification, we are suggesting a tentative but comprehensive list of groups that can be useful in wage fixation and in undertaking studies to assess the undergoing changes in the respective group of industry and occupation. For the purpose of social security measures and cess collection, separate group-based consideration would be necessary. However, we are suggesting the following subgroups to be set up under the main umbrella board for unorganised workers:

a) Agriculture and animal husbandry workers: This excludes cultivators and includes

all workers of horticulture, sericulture, bee-keeping etc. Bee-keeping is otherwise considered part of the group of Khadi and cottage industries that is distributed among different divisions in our classification. Numerically, this is the biggest group.

- b) Cultivators: This consists of those involved in small and marginal farming including the forest and wasteland cultivators and the sharecroppers. Those, who rent out the land, or the owners of lands in case of sharecropping, will not be the beneficiaries of the legislation.
- c) Fish workers: Fish-workers of inland, backwater, estuarine, marine and aquaculture fisheries and related workers constitute this group. As against the common perception, they have to be treated as skilled workers.
- d) Forest workers: This also includes the forest produce gatherers.
- e) Manual workers: Generally, manual workers are considered unskilled workers. But all of

them are found engaged in some skilled work or the other. In our classification exercise, we have treated them as semiskilled. All manual workers who are not coming within the purview of other groups and the head load workers come under this group. Domestic workers are included in this group.

- f) Construction workers: Though a new central legislation has come up for these workers, a majority of them are still outside the purview of this legislation. Unorganised construction workers constitute a numerically bigger group.
- g) Transport workers: As far as the work organisation is concerned, these workers have to report to the employer. This is a service-based industry, and the group includes both the motorised and non-motorised transport workers, together with own-account workers among them.
- h) Workers in the putting-out system: All weavers come under this class. Cotton, silk, and carpet weaving are included here. This group is classified on the basis of work organisation. The loan and raw materials provided to the weavers bond them practically to the master weaver or the trader. At the same time, all weavers are considered self-employed. However, a major process in the textile industry comes under this group that includes handlooms, powerlooms and carpet weaving.
- i) Work-contracted home-based workers: Home-based work has come up on a large scale in the unorganised sector. A number of non-factory based activities, factory related small level ancillary activities such as assembling, etc. are done at home where family labour is engaged. These are mostly piece-rated contract jobs. Those involved in this contracted home-based work except the putting-out system of work come under this class.
- j) Unregistered factory based workers: Ancillarisation and liberalisation have transferred more components of the organised sector activities to the unorganised sector and

- generated new activities as well. This class would comprise of a large number and variety of industries and occupations.
- k) Non-factory based industrial workers: Workers belonging to service and information-based industries, small establishments such as eateries, shops and manufacturing enterprises etc., are included here. Food processing workers, for instance, are distributed among this class and class-10 (unregistered factory based workers).
- l) Mining and quarrying workers: Workers who do not come in the purview of Mines Act, the contract and casual workers of the registered mines, and the workers of the informal mining sector, are considered here.
- m) Hawkers and vendors: This is a group of small traders both mobile and fixed. Small vendors of cooked food, vegetable and fruit vendors, door-to-door salespersons, etc. can come under this class.
- n) Freelance workers: This class includes a type of own account workers. They may be home-based or otherwise. They can be contract workers or otherwise. Similar to home-based workers, freelancers of various hues are getting into new occupations that are unorganised. These include medical transcriptionists and call centre workers who are called tele-workers (information based freelance workers). Some sections of these tele-workers also work on a regular basis while some of the data entry operators are on freelance basis.
- o) Miscellaneous workers: This class includes the workers not classified elsewhere in the 14 classes listed.
- This classification that we support is based on the principles of organisation of work, nature of resources, or space of work or even on the basis of sheer numerical strength. Thus, multiple factors have been taken into consideration, and used.
 - It is possible to consider forest workers and fishery workers together as a single class of

workers dependent on open access and common property resources, where those dependent on village commons can also be included. Then the classes can come down to a total of 14.

- But the need is to keep the process of classification continuous and flexible.

Unorganised Sector Workers Bill

7.470 In conclusion, and before setting out our specific proposals for an umbrella legislation to cover workers in the Unorganised Sector, we will once again recapitulate the objectives of the legislation.

7.471 The unorganised sector accounts for over 90% of our workforce. Their percentage is likely to increase. They are as entitled to protection and welfare/security as workers in the organized sector, who are often described today as the privileged sector of the workforce. The laws that exist today hardly touch the workforce in the Unorganised Sector. It is therefore necessary to enact new legislation to cover workers in this sector. There is a wide variety

of employments in this sector. Conditions vary, levels of organisation vary. The nature of the relations with employers vary. There is an expanding sector of those who are self-employed, or are on contract, and work from homes. It is difficult, to have separate laws for each employment. This will only result in endless multiplication of laws, and oversight of one or the other of the employments. The answer therefore lies in one umbrella legislation that covers whatever is basic and common, and leaves room for supplementary legislation or rules where specific areas demand special attention. But we cannot overlook the fact that all such legislation is enacted with the twin purposes of extending protection, and welfare/security. Protection includes security of employment, identification of minimum wages or fair wages, making the minimum known to workers, ensuring the full payment of these wages without unauthorized deductions, and a machinery at the threshold of his/her workplace to enforce the law on minimum wages and working conditions. Welfare/security has to include medical services, compensation for injury, insurance, provident fund and

pensionary benefit etc. We have also tried to keep in view the need to ensure that the machinery proposed for enforcement of laws or disbursement of benefits is not vitiated by distance, centralization, top heavy structure, inaccessibility, multiplication of administrative set-ups etc.

7.472 It is clear to us that the crucial guarantees of justice lie in minimum wages and security including job security or safety, and social security. In an ideal situation, the agricultural sector will need not only the fixation of minimum wages for agricultural labour, but also minimum prices for agricultural products that would enable producers or farmers to pay minimum wages. The report of the Study Team has laid emphasis on this connection. But, we are not going into the question of prices in this enquiring, since it may take us beyond our terms of reference.

7.473 To meet these crucial requirements, we propose the Constitution/establishment of an Unorganised Sector Workers (Employment And Welfare) Board with constituent bodies that will extend to the level of the Panchayat.

7.474 We recommend that all those who work should be entitled to avail of the facility and register themselves and procure identify cards. As we have stated elsewhere, employers in establishment employing 5 workers or more will have the duty to register the workers in their employment and ensure that they receive their identity cards. Self-employed workers as well as workers in establishment employing less than 5 will also be encouraged and enabled to register themselves and obtain identity cards. The necessary forms may be made available at the Facilitation centers or post offices, and Facilitation centers may issue identity cards to such workers.

CHAPTER-VIII

SOCIAL SECURITY

Very early, in its deliberations on social security, the Commission had to make up its mind on a somewhat ticklish issue. One view was that the Commission should confine itself strictly to matters that related to the security of workers, and that it should therefore, exclude matters that related to issues and policies that fell within the realm of general or overall social security. But we came up against a problem very soon. Our terms of reference ask us to study and recommend measures for assuring protection and welfare to workers. Consequently, protection, safety at workplaces, and measures that offered social security to workers fall within our terms of reference. We have been asked to review legislation for workers in the organised sector (this includes laws on social security for workers in the organised sector). We have also been urged to recommend an umbrella legislation that assures protection and welfare to workers in the unorganised or informal sector. We have to consider what is required to assure at least a minimum

of social security in both these sectors. Moreover, when we put together the workforce in the organised sector and that in the unorganised or informal sector, we cover the entire workforce in the country. The workforce includes those who are currently in employment, those who are temporarily un-employed as a result of adjustments or change of jobs, and those who are entering the workforce. And the needs of social security to these include at least penumbral and 'collateral' responsibilities for dependents. Thus, it becomes difficult to categorise those who are unconnected with the social security that workers need. We have, therefore, had to look at areas and groups and services that others are also looking at, maybe from similar or different angles or points of view.

THE PARAMETERS

8.2 We are well aware that many others have made their proposals for building some kind of social security systems for different segments of

the population, like the elderly, the retrenched workers, and so on.

8.3 We also realise that these schemes have been proposed, established and administered by different Ministries or Departments or autonomous bodies. This has not deterred us from making our own comprehensive proposals for reasons that we have stated in the earlier sections of this paragraph. We have to make our proposals so that they may be assessed and integrated into the overall vision of social security that the Government and non-governmental agencies evolve.

8.4 No one can say that the concept of social security is new to India. We have had an effective network for economic and emotional security in the joint family, in the institutions of the craft community and guilds, and in the customs, rights and responsibilities of individuals and occupational groups associated with the Panchayat System. The undermining and emasculation of the Panchayat System that British rule brought about, as well as the new conditions created by the emergence of the nuclear family in the post industrialisation society, have made it necessary for us to look for new

frameworks' systems and institutions of social security.

8.5 In this Chapter therefore, we will try to identify and outline (a) the goals and objectives that we have to pursue in the field of social security, (b) the definition and ingredients of social security in the present context, (c) the coverage that we have to achieve, (d) the means that can enable us to achieve the coverage, (e) the services that we have to offer, (f) the structures that we will need to offer these services, (g) the sources from which we can raise the requisite resources, (h) the channels for delivering services and monitoring the functioning of structures, and related questions.

8.6 The Constitution of India was drafted to uphold and paraphrase the ideals that inspired the struggle for freedom. As we have stated in an earlier chapter, the paramount and declared goal of the struggle was not mere independence from imperialist rule but the achievement of 'human freedom in all its majesty.' This meant evolving and protecting a social and political order that guaranteed freedom. It also meant creating the material conditions (including the material requisites) that the citizen

needed to enjoy the richness of freedom. Those who drafted the Constitution were aware of their duty to reaffirm the ideals in terms of rights and duties, and the need to match ends and means, goals and resources, and to provide practical guidelines for graded progress towards ideals that were imperative and unabandonable.

8.7 The Constitution therefore, characterised the state as democratic and socialist, enshrined the Fundamental Rights of the People, and outlined Directive Principles for governance and delineation of policies.

8.8 Thus, we have certain commitments and conventions or covenants that we have pledged to achieve in the field of social security. The commitments include the Fundamental Rights and Directive Principles and the conventions or covenants that we have accepted as members of inter-governmental organisations. Before embarking on a detailed study of the responsibilities that have come with these provisions of the Constitution (Fundamental Rights and Directive Principles) and the covenants and conventions that our country has signed, it is

appropriate and necessary to remind ourselves of the specifics of the responsibilities that these provisions and covenants vest on the state and society.

8.9 We have to start with the words that the Constitution has used for our State. The State has been defined or described as a democratic and socialist state. A democratic state is a state that is based on the concept of equality and accountability. A socialist state is one that accepts responsibility for providing and ensuring 'social security' to all its citizens without any discrimination.

8.10 The Fundamental Rights that our Constitution guarantees to every citizen include the right to life, and as the Supreme Court has pointed out, the right to livelihood is inherent in the right to life. The ultimate object of social security is to ensure that everyone has the means of livelihood. It follows, therefore, that the right to social security is also inherent in the right to life according to the Supreme Court of India, India is Constitutionally a socialist state. The principal aim of socialism is to eliminate inequality of income and status and to provide a decent standard of living to the working people.

8.11 The Directive Principles of State Policy that form part of our Constitution (Part IV) direct that:

- (i) The State under Article 38, shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The State shall, in particular, strive to minimise inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations.
- ii) The State shall, in particular, direct its policy towards securing:
 - a) that the citizens, men and women equally, have the right to an adequate means to livelihood.
 - b) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity, to enter avocations

unsuited to their age and strength

- c) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- (iii) The State shall make within the limits of its economic capacity and development effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want under Article 41.
- iv) Under Article 43, the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

8.12 In the light of these Principles,

no one can argue that the Indian Constitution does not visualise, a regime of social security for the citizens in general, and the workforce in particular. In fact, as long as these Principles and Fundamental Rights remain in the Constitution, the Indian State, and the policies of any government that may be in power, will be judged by their commitment to these Principles and Rights. Changes in policy cannot abrogate the responsibility of the state in this area. Moreover, it does not seem likely that any proposal to amend the Constitution to abridge or dilute these Rights and Principles will get the requisite popular or parliamentary mandate. We have, therefore, to formulate our recommendations on the basis of these Rights and Principles. As long as these are part of the Constitution, we cannot overlook them or depart from them. No political party or responsible thinker has suggested the deletion or dilution of these commitments in the Constitution. Nor can we hold the view that since Governments have not been adhering to many of the Directive Principles, we have the right to select and respect the sanctity of some, and question the sanctity of others.

8.13 It has been rightly pointed out

that the Directive Principles are not justiceable, as such do not have the same force as the Fundamental Rights. It has also been pointed out that the difference in the status that has been accorded in the Constitution to Fundamental Rights and Directive Principles was not the result of difference in degrees of faith or commitment, but of the belief that the financial implications of making the Directive Principles justiceable could not be laid on the state all of a sudden, that the responsibility for implementation had to be matched with the accrual or acquisition of the requisite financial resources, and that there was, therefore, an inevitable need to provide for gradualness. It does seem that this is a highly plausible explanation.

8.14 We are aware that another consideration has been presented forcefully in the World Development Report of 1997. This view holds that social security is an essential ingredient in the protection, development and full utilisation of human resources, and should, therefore, be looked upon as an 'investment in the development of human resources.' It further distinguishes between the develop-

ment of human resources and human development, and argues that the expenditure that a society or state incurs to provide basic social security is essential both for the development of human resources and 'human development.'

8.15 There are theories of human 'formation' and human resource development that view human beings primarily as means rather than as ends. They are concerned only with the supply side – with human beings as instruments for the production of commodities or the provision of services. It cannot be gainsaid that there is a connection. Human beings are the active agents of all production. But human beings are more important than the capital goods that are necessary for the production of commodities. They are also the ultimate ends and beneficiaries of this process. Thus, the concept of human capital formation (or human resource development) reflects only one side of human development, not the whole.

8.16 Human welfare approaches look at human beings more as beneficiaries of the development process than as participants in it. They therefore, emphasise distributive policies rather than production

structures.

8.17 The basic needs approach usually concentrates on bundles of goods and services that deprived population groups need: food, shelter, clothing, health care and water. It focuses on the provision of these goods and services rather than on the issue of human choices.

8.18 Human development, by contrast, brings together the production and distribution of commodities and the expansion and use of human capabilities. It also focuses on choices – on what people should have or want to have, what they want to be, and what they have to do to be able to ensure their own livelihood. Human development thus, is concerned not only with the satisfaction of basic needs, but also with human development as a participatory and dynamic process. It therefore, applies equally to less developed countries and highly developed countries.

8.19 The World Human Development Report of 1990 has also pointed out emerging changes in the concept of security. It says 'Millions of people in developing countries live on the

edge of disaster. And even in industrial countries people are constantly at risk from crime or violence or unemployment. Joblessness is a major source of insecurity, undermining people's entitlement to income and other benefits.

"For too long the ideal of security has referred to military security or the security of states. One of the most basic needs is security of livelihood, but people also want to be free from chronic threats, such as disease or repression, as well as from sudden and hurtful disruptions in their daily lives. Human development insists that everyone should enjoy a minimum level of security."

8.20 There is a school of thought which holds and expounds the view that social security is not one of the primary functions of the Government that it should not, therefore, be a charge on the public exchequer; that it should be left open to the citizen to 'buy' whatever services or 'provisions' he can to equip himself with security. The exponents of this view believe in 'downsizing' the state, and confining it to its 'essential' functions. This raises the question of

what the essential functions of the state are, and what is the protection that the common citizen or the people can legitimately expect from the state or the Government. It is obvious that we cannot enter here into a comprehensive discussion on the state. Without entering into a detailed discussion, it must be pointed out that:

- (a) There is perhaps no country in the world where the State has washed its hands of the responsibility of providing any of the social services that are looked upon as ingredients of social security, like the supply of water, elementary medical services, sanitation, elementary education and so on. On the other hand, it can be seen that most states take up and run schemes for area based social security.
- (b) If the State withdraws totally, and leaves social security to be bought, a large percentage, perhaps an overwhelming percentage, of the people of our country will not have access to even elementary social security because they do not

have adequate incomes to buy these services. This may lead to an explosive situation that will affect the security, or law and order that is essential for economic activities, including investment and production. It may also lead to failure in the elimination of crippling communicable diseases, and to insecure health conditions for all. This in, turn, may lead to the deterioration of the quality of 'human resources' available to society.

- (c) It is more likely that private agencies that arrange and offer social security services as a business enterprise, will not be attracted to fields where the room for profits is marginal or where estimated profits do not offer incentives. In fact, this estimate or apprehension has been strengthened by the response that we encountered in the discussion that our study group on social security had with doyens in the field of private insurance. In view of these considerations, the Commission does not find it possible to recommend that the State

should divest itself of all responsibility in the field of social security. Nor does the Commission subscribe to the view that the entire burden of all forms of social security should be placed on the State. It believes that the burden should be lightened to the maximum extent possible through contributions from beneficiaries. Nor can the Commission endorse the view that the functions of the state should be confined to policing and maintaining law and order.

- (d) The contention that only 'welfare states' or socialist states accept 'social responsibility' for social security is not borne out by the beliefs and practices of many, if not most states. The states that are members of the European Community are not generally described as 'welfare states' or 'socialist states.' Yet, the European Union ratified a Convention for the Protection of Human Rights and Fundamental Freedoms and adopted it as the European Social Charter – 1965 (revised in 1996).

8.21 This Convention accepts the responsibility of the State in the field of social security, and specifies:

"Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms... to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action,... the attainment of conditions in which the following rights and principles may be effectively realised.

- All workers and their dependents have the right to social security
- Anyone without adequate resources has the right to social and medical assistance
- Everyone has the right to benefit from social welfare services

- Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.

- The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development."

8.22 The convention includes:

- The right to work
- The right to just conditions of work
- The right to safe and healthy working conditions
- The right to a fair remuneration
- The right to organise
- The right to bargain collectively
- The right of children and young persons to protection
- The right of employed women to protection
- The right to vocational guidance
- The right to vocational training
- The right to protection of health
- The right to social security
- The right to social and medical

assistance

- The right to benefit from social welfare services
- The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement.
- The right of the family to social, legal and economic protection
- The right of mothers and children to social and economic protection
- The right to engage in a gainful occupation in the territory of other Contracting Parties.
- The right of migrant workers and their families to protection and assistance.'

8.23 Article 12 – The right to social security says the Contracting Parties will undertake (1) to establish or maintain a system of social security (2) to maintain the social security system at a satisfactory level at least equal to that required for the ratification of the International Labour Convention (No. 102) concerning Minimum Standards of Social Security (3) to endeavour to raise progressively the system of social security to a higher level.

8.24 The right to social and medical assistance as defined in Article 13 also requires the Contracting Parties to undertake, inter alia:

- (i) To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.
- (ii) To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- (iii) To provide that everyone may receive, by appropriate public or private services, such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- (iv) To apply the provisions referred to in paragraphs I, II and III of this article on equal footing with their nationals to nationals of

other parties lawfully within their territories, in accordance with their obligations under the European Convention of Social and Medical Assistance, signed at Paris on 11 December 1953.

8.25 The Conventions of the ILO that the Government of India has ratified include Workmen's Compensation, (Occupational Diseases) – (No. 18 and revised Convention No. 42 of 1934); Equality of Treatment (Accident Compensation) – No. 19 of 1925; and Equality of Treatment (Social Security) – No. 118 of 1962.

8.26 Another important international commitment that the Government of India has accepted arises from the ratification of the Covenant of Social, Economic and Cultural Rights of the United Nations. This Covenant, inter alia, recognises the right of everyone to social security including social insurance.

8.27 We have cited all these only to remind ourselves that we have a specific constitutional mandate and international commitments in the field of social security. As long as the mandates are not altered or

terminated, and the international commitments are not repudiated, they will have to be accorded the sanctity that is traditional, customary and legitimate.

8.28 However, this does not mean that we are oblivious of the tremendous demand on financial resources that the fulfilment of all these mandates and commitments will generate. We do not, therefore, want to recommend a system that will only remain in the statute book and seem impractical. At the same time, we have also to remember that the Commission has not been constituted to make recommendations that are limited in their relevance to the immediate present. The Commission cannot fulfil its responsibility unless it takes into account a fairly extended period of time. We have, therefore, to think of the kind of structure or system that can enable us to fulfil our mandate and commitments while taking into account the need to match our programmes and commitments with the resources that we can muster, through contributions from the exchequer and contributions from both sides, the employers as well as the beneficiaries. In a sense, it can

also be argued that both the employers and the employees are beneficiaries since the sense of security that the measures may provide to the worker or the employee will enhance his ability to concentrate on his work, to give his best, and to increase efficiency and productivity.

8.29 Thus, while the words 'social security' do not find explicit mention in our Constitution, the clauses that define Fundamental Rights and formulate the Directive Principles of State Policy (and Governance) leave no doubt about the concern and commitment of the Constitution to the right of citizens to enjoy social security: that the security that is envisaged is not only against aggression and violation of sovereignty by other countries, but also security against deprivation. The concept of social security and the commitment to social security are thus implicit in the Constitution. As we have stated earlier, the judgements of the Supreme Court that clearly declare that the right to life includes the right to livelihood should remove any doubt about the commitment to social security. The right to livelihood includes the right to work, and the right to education that equips us with

the skills that we need for employment as well as the ability to fulfil one's civic and social responsibilities.

SOCIAL SECURITY : A FUNDAMENTAL RIGHT

8.30 It is this integral relationship between employment, education and livelihood that has generated a considerable public opinion in favour of amending the Constitution to include the right to work and the right to primary education as fundamental rights. Others, who have submitted reports before our Commission was appointed, have also endorsed the idea. If one is to go by reports that appear in the press, it seems highly likely that the proposal to include these (education and work) as fundamental rights will be placed before the Parliament in the near future. As we have stated earlier, some Commissions have recommended that the right to social security too, should be included in the Fundamental Rights. There are countries that regard social security as the inalienable right of the citizen. There are International and Inter-Governmental declarations like the Universal Declaration of Human Rights

and the Covenant on Social Economic and Cultural Rights which define social security as a 'human right' or a fundamental right of the human being. Our Government is a signatory to many of these Conventions or Declarations. We have therefore, indicated that we accept the right in principle, even though it is not specifically mentioned in our Constitution. Our Commission too accepts the need to consider social security as a fundamental human right.

8.31 There is a view that the inclusion of the right to social security as a fundamental right will attract justiciability, and that that they may result in creating financial and institutional burdens that we are not ready to bear at this point of time. Taking this view too into consideration, we recommend that as a prelude to making social security a fundamental right, we should immediately incorporate it in the Directive Principles.

8.32 Whether it is accepted as a Fundamental Right or a Directive Principle, or even if the status quo is maintained, the State cannot abdicate the responsibility to provide the

minimum of social security that is necessary to maintain the regime of law and order and to protect society from the chaos and disintegration that will follow if there is a widespread feeling that the State and the system it represents are incapable of, and unconcerned with, providing elementary security to the citizen. The State cannot wash its hands off this responsibility and hope to survive for long. We therefore, believe that even if the State is not in a position to provide social security in all its amplitude as it may have to do when it becomes a Fundamental Right, it must provide at least the basic minimum necessary for the survival of its citizens. We therefore, recommend a system in which the State bears the responsibility for providing and ensuring an elementary or basic level of security, and leaves room for partly or wholly contributory schemes. This will mean that the responsibility to provide a floor will be primarily that of the State, and it will be left to individual citizens to acquire higher levels of security through assumption of responsibility and contributory participation. Such a system will temper and minimise the responsibility of the state, and maximise the role and share of

individual and group responsibility. Thus, there will be three levels in the system:

- a) A basic level where the State or government (including lower levels of governmental authority e.g. local governments) will bear the primary responsibility for providing a minimum level of social security, meeting the cost from subventions from the Exchequer. Of late, this has been described as 'social assistance' that forms part of the social responsibility for social security.
- b) A level where the beneficiary makes a contribution to the cost of social security. The remaining portion of the cost is met by contributions from the employer or the state or both.

Tripartite schemes will provide for the participation of the employer as well as the State, in addition to the contribution of the beneficiary, i.e. the employee. There can be variations in the proportions of the contributions of these three partners, according to increased

paying capacities of the employee and the employer.

Where there is no employer who can be identified, as in the case of the self-employed, or those whose income is too low to permit them to make adequate contributions, the State will substitute the employer, or the employees as the case may be, and assume responsibility to supplement the contributions of the beneficiary workers.

- c) Schemes that confer additional benefits beyond the basic levels of security that those who have the means can subscribe to, as subscribers of policies of insurance.

8.33 The contributions of employees as well as employers can be graded according to their paying capacity. Where the income of the employee is too low or inadequate, the state will take over the responsibility for the remainder. The contribution of the employer too can be graded, the state taking over the responsibility for the remainder of the contribution, where the scale of

operations of the employer is too low and marginal, or where the employer cannot be identified.

8.34 The area in which the state takes the sole responsibility and provides the 'floor' security that every citizen receives, is termed the area of social assistance, the State discharges its responsibility in this area through 'area-based' schemes – as distinct from individual or group-based schemes, since all residents of the concerned area are beneficiaries, and there is no need to identify or include or exclude.

8.35 Thus, there are two zones that can be identified, the zone of social assistance where all citizens are beneficiaries, and the zone of social insurance where beneficiaries make a contribution, in part, or in toto. The cover of social security is extended to all through a combination of the area of social assistance and the area of social insurance. We will discuss our proposals in detail in the succeeding paragraphs of this Chapter.

THE CONCEPT

8.36 The social security situation in India is characterised by ambiguity in

policy and responsibility. There is a variety of schemes but these have been framed at various points of time and, therefore, do not conform to any overall design reflecting a comprehensive and consistent policy or direction. Indeed, till the 9th Five Year Plan, Plans made no mention of social security. The Working Group on Labour Policy set up by the Planning Commission also pointed out that 'the schemes of social security, types of benefits or protection provided thereunder do not conform to any overall plan or design. There is, as a matter of fact, no policy on social security, no plan for social security and the Five Year Plans are practically silent about this important aspect.' However, in the light of what has been said about the Directive Principles and so on, earlier in the chapter, no one can argue that the Indian Constitution (State) does not visualise a regime of social security.

8.37 The concept of social security has evolved in the course of the last few decades. A sense of insecurity seems to be inherent in humans who are exposed to various kinds of risks and dangers. According to the United Nations Development Programme (UNDP), for most

people, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event. Will they and their families have enough to eat? Will they lose their jobs? Will their streets and neighbourhoods be safe from crime? Will they be tortured by a repressive state? Will they become victims of violence because of their gender? Will their religion or ethnic origin target them for persecution?

'Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or in communities. Such threats can exist at all levels of national income and development.'

8.38 The term social security has been defined differently by various authorities and thus, there is no commonly accepted definition of the term. There are two streams of thought on this issue, one represented by the ILO that limits the scope of social security to maintenance of one's income against

loss or diminution. (This has been described as the protective form of social security). Another view perceives social security in a broader sense. It is a basket of policies and institutions fashioned to enable a person to attain and maintain a decent standard of life. This may be described as a preventive or promotional form of social security.

8.39 According to Dreze and Sen (1991) 'Economic Growth alone cannot be relied upon to deal either with the promotion, or with the protection of living standards. The strategy of public action for social security has to take adequate note of the problems that limit what aggregate expansion can do in enhancing living conditions.' The 'public action' includes measures taken at the level of the State, the community or the family. While Guy Standing (1999) considers the promotion of seven forms of labour security as the essence of social and development policy, Amartya Sen views social security as a system of proper distribution of income and also a right mechanism of wage fixation. Poverty reduction, in this case, is not a separate welfare issue but a question of industrial relations, of

production relations or ultimately, the question of social relations.

8.40 Recently, some new concepts of social safety nets, social protection and, social funds relating to social security have emerged. Social safety nets are measures to mitigate the negative effects of structural adjustments, mostly in the form of cash payments. The Working Group on Labour Policy has distinguished social security from the social safety net, social security being seen as the universal need of all workers while social safety net is seen as that which is necessary for those who are temporarily or permanently thrown out of the system. Social funds are the brainchild of the World Bank for building up local level capacity in local governance. Social protection provides guarantees of basic social support for citizens, based on their needs rather than on their rights (ILO). The World Bank has defined the term as human oriented, capital-oriented interventions. This definition integrates labour market intervention, social insurance programmes and social safety nets. Some analysts like Chatterjee and Vyas have held that social security needs to be viewed as a basic right rather than a charity oriented intervention.

8.41 What kind of social security do we require in the Indian context? For a proper appreciation of this, it is necessary to have a look at the demographic profile of the country. India is a vast country in terms of area as well as population. It has a total area of 3288 thousand Sq. Km. and a population of over a billion that is growing at just under 2% per annum. Dependency is high, with the ratio of the working population to non-workers being 38:62 (1991 census). Out of the nearly 400 million workers, only a third are women. Almost one fourth of the total labour force is estimated to be unemployed or underemployed.

8.42 The occupation wise distribution of employment indicates that 62% of the workers are engaged in agriculture, 11% in industry and 27% in the services sector. A characteristic feature of the employment situation in the country is that the percentage of workers employed on regular salaried employment (16%) is small. The bulk of the workforce is either self-employed (53%) or employed in casual wage employment (31%).

8.43 Even though official estimates

indicate a decline in poverty over time, a large number of people in India still live in acute poverty. The consumer expenditure data of the 55th Round of National Sample Survey Organisation (NSSO) (on a 30 day recall basis) yields a poverty ratio for 1999-2000 of 27.09 % in rural areas, 23.62% in urban areas and 26.1 % for the country as a whole.

8.44 The child population (0-14 years) as per the 1991 Census accounts for 319 million (37.8%), which include 154.00 million female children. Of the total child population, 18.9 million (5.9%) are below 1 year (infants), 38 .1 million (11.9%) are in the age group 1-2 years (toddlers), 73 million (22.8 %) are in the age group 3-5 years (pre-school), and another 189.6 million (59.4 %) are in the age group 6-14 years.¹

8.45 According to the 1981 Census, the estimated figure of working children was 13.6 million. This figure rose to 17.02 million according to the estimates of the 43rd round of the

NSSO conducted in 1987-88. According to the 1991 Census the number of working children in the country was of the order of 11.28 million². The results of the 55th round of NSSO (1999-2000) indicate a reduction in this number.

8.46 The Human Development in South Asia Report 1998 puts the figure of working children in South Asia at 100 million in 1994.

8.47 According to the 1991 Census, India had an elderly (60+1) population of 56 million, of whom the old-old numbered 20 million. It was expected to go up to 71 million by 2001, 96.30 million by 2011, 133.31 million by 2021, 236.01 million by 2041 and 300.96 million by 2051. In terms of the percentage of the total population it was 6.58 in 1991, and is expected to go up to 7.1 % in 2001, 8.2 % in 2011, 9.9.in 2021, 11.39 in 2031, 14.5 % in 2041, and 17.3 % in 2051.³

8.48 According to the National

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¹ Ninth five Year Plan

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² Annual Report Ministry of Labor, 1999- 2000

³ Demography of Aging by Dr. S. Irudaya Rajan (2000).

Sample Surveys conducted in 1981 and 1991, there were 13.68 million disabled persons in 1981 and 16.30 million persons in 1991 who had at least one or other of the four types of disabilities, viz. locomotive, visual, hearing and speech.

8.49 A sample survey conducted in 1991 showed that 3% of the child population were victims of mental retardation. Among the adults, 1% was suffering from various forms of mental disorders; 10 to 15% were suffering from various mental health problems.⁴

8.50 The number of leprosy affected disabled persons was estimated to be about 4 million, of whom about one fifth were children, and above 15 to 20% were persons with deformities. The prevalence of leprosy was more than 5 per thousand in the 196 highly endemic districts in the country⁵.

APPROACH TO SOCIAL SECURITY

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⁴ ibid

⁵ ibid

8.51 Considering all the conceptual issues as well as the demographic profile of the country we feel that no single approach to provide social security to the exclusion of others, will be adequate. The problem has to be addressed by a multi-pronged approach (as stated earlier) that would be relevant in the Indian context. We feel that the term 'social security' should be used in its broadest sense and, it may consist of all types of measures, preventive, promotional and protective as the case may be. The measures may be statutory, public or private. The term encompasses social insurance, social assistance, social protection, social safety net and other such terms in vogue.

8.52 It will not be out of place to mention that the economically developed countries have established social and safety nets on which they are spending up to 40% of their GDP. Developing countries generally, and India in particular, are lagging behind in this area. According to the World Labour Report, 2000, the public expenditure on social security in India is 1.8% of the GDP against 4.7% in Sri Lanka and 3.6% in China. This is a measure of the human

development that these countries have achieved, and the distance we have yet to travel. This report is designed to provide a guide map for better progress on the journey. In the light of the inadequate expenditure on social security in India, it is necessary that plans and programmes be devised to address the needs of diverse vulnerable sections of the people, comprising the total population of India.

8.53 Social Security needs vary in accordance with the definition of the term. Lord Beveridge (1942) listed eight kinds of primary conditions which demand social security. These are:

- a) Unemployment: that is to say, inability to obtain employment by a person dependent on it and physically fit for it, met by unemployment benefit with removal and lodging grants;
- b) Disability: that is to say, inability of a person of working age, through illness or accident, to pursue a gainful occupation, met by disability benefit and industrial pension;

- c) Loss of livelihood by a person not dependent on paid employment, met by training benefit;
- d) Retirement from occupation, paid or unpaid, through age, met by retirement pension;
- e) Marriage needs of a woman met by Housewife's Policy;
- f) Funeral expenses of self or any person for whom one is responsible, met by a funeral grant;
- g) Childhood provided for by children's allowances if in full time education, till sixteen;
- h) Physical disease or incapacity met by medical treatment, domiciliary and institutional, for self and dependants by comprehensive health service and by post medical rehabilitation⁶.

8.54 According to Recommendation No. 67 of the ILO concerning Income

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⁶ Social Insurance and Allied Services: Report by Sir William Beveridge presented to Parliament, Nov. 1942

Security, social security is required for meeting the following types of contingencies:

- a) Unemployment
- b) Sickness
- c) Employment Injury
- d) Maternity
- e) Invalidity
- f) Old-age
- g) Death
- h) Emergency expenses

8.55 The Social Security (Minimum Standards) Convention 102 of the ILO added medical care and family benefits to the foregoing list and dropped Emergency Expenses.

8.56 The World Bank has adopted a typology of risks which consists of:

- a) Natural Disasters
- b) Health
- c) Social
- d) Gender
- e) Economic
- f) Political and

.....
7 Social Protection Sector Strategy: from Safety Net to Springboard: the World Bank Group: the Human Development Network

Environmental ⁷

8.57 The root cause of social insecurity in India is poverty and that is largely due to lack of adequate or productive employment opportunities. It is described as 'chronic or structural social insecurity, a 'first-order' type of social insecurity arising from insufficient degree of overall economic development.' It is associated with other insecurities 'emanating from conventional contingencies such as the loss of employment, disability, old age, death, etc.' which are called the 'second-order' type of insecurities or conventional social insecurity. We have to address both.

8.58 The provision of adequate and stable incomes will enable the poor to satisfy their basic needs and thereby, their other social security needs as well. Till then, the State has to assume the basic responsibility of providing social security, especially in respect of those contingencies, which would be difficult for individuals to cover without assistance from the State. The State also has the responsibility to provide the means of livelihood to those who cannot work and earn their living due to childhood,

old age or other infirmities.

8.59 In order to identify the needs of the diverse sections of the population for social security, it is necessary that we classify the total population in various groups. Lord Beveridge classified the population into four classes of working age, and two others below and above the working age. In the same way, the population of India may be classified into a working population, (including the workers) and a non-working population. The working population may again be categorised as wage earners, self-employed, and unemployed. Wage earners can again be divided under the following categories.

- a) Those who are employed in the government sector.
- b) Those who are employed in the organised sector, public or private, excluding government.
- c) Those who are employed in the unorganised sector.
- d) The non-working population that consists of the old, the infirm and the young who are unemployed and unemployable.

8.60 From the point of view of social security the first priority has to be given to people of the last category, namely the old, the infirm and the young persons who are destitute, and constitute the liability of society and the State, and the first charge on the resources of the State. Admittedly, for this class of people social security has necessarily to be provided by means of social assistance.

8.61 Above this class, in terms of priority, are the unemployed. The priority need of this class of people is employment and a source of income. The entire development plan should be geared to meet this need by means of expanded economic activity and growth. This is, however, a long-term goal. One cannot wait until this goal is reached. In the short term or immediate period therefore, in order to prevent starvation for want of purchasing power, it will be necessary to undertake employment schemes, in the nature of public works and the like to provide employment and income to the unemployed.

8.62 Above this class of people are the people who are employed on a casual, temporary or intermittent

basis. They need continuity of employment. Various de-casualisation measures will be relevant in this context. Selfemployed persons also belong to the same class. They too need protection of their employment against the vagaries of nature and of the market.

8.63 Above all these classes are the people who are in regular employment with assured incomes. They only need protection of their incomes against loss or diminution due to the occurrence of contingencies. All people, irrespective of the class to which they belong, need food security, health security, old age security, and the provision of clothing and shelter, if they are below the poverty line and cannot provide for these through their own efforts.

8.64 Women need maternity protection; they also need protection against widowhood, desertion and divorce. Special measures will have to be taken to increase their participation in gainful employment and to raise their economic status. Children need special attention, care and nutrition. Old people also need care and emotional support especially when they are ill.

8.65 Broadly speaking social insurance types of schemes will be appropriate for those who can make contributions, and social security will have to be provided under social assistance schemes to those who are not in a position to make contributions themselves.

8.66 The social insurance schemes may be occupational or area based. While occupational schemes may be appropriate in the case of well-organised occupations, it may be necessary to adopt area based schemes in other cases, particularly for schemes of social assistance.

8.67 As there are numerous occupations in the unorganised sector for which neither the conventional types of social insurance schemes can be applied, nor can welfare funds be set up, the most appropriate strategy to provide social security appears to be through area based schemes. The idea of area based insurance schemes appears to be analogous to the plan recommended by Lord Beveridge in the U.K in 1942. The main feature of this plan was a scheme of social insurance against

interruption and destruction of earning power and for special expenditure arising at birth, marriage or death. The scheme embodied six fundamental principles: flat rate of subsistence benefit; flat rate of contribution; unification of administrative responsibility; adequacy of benefit; comprehensiveness and classification. Based on these, and in combination with national assistance and voluntary insurance as subsidiary methods, the aim of the Beveridge Plan was to make 'want' avoidable. The Plan was applicable to the whole nation on the basis of citizenship.

8.68 In the current Indian context it seems necessary to design similar area specific schemes applicable to the entire population of an area which may be a State, a District or a smaller formation which may, if necessary, be supplemented by special occupation based schemes.

8.69 The Study Group constituted by our Commission has suggested that a Social Security Policy/Plan for India may be based on the following principles:

- a) Classification
- b) Participation
- c) Equity and efficiency

- d) Occupation specific or area specific and need specific
- e) Gender
- f) Adequacy and
- g) Unified administration

8.70 As has been stated in earlier paragraphs, the State has to bear the responsibility of assuring a basic minimum of security to all citizens. This may be supplemented by other institutions through contributory insurance schemes, welfare funds etc.

8.71 In his opening speech to the 27th General Assembly of the International Social Security Association (ISSA), Shri Johan Verstraeten, President of the ISSA said that our ultimate goal should be to move from basic minimal protection of some residents to a much more ambitious promise of benefits, adequate and universal coverage for all residents; because the objective of social protection is not only subsistence, but social inclusion and the preservation of human dignity.

8.72 'In principle, everyone has the right to be covered by a social security scheme regardless of

nationality, race, gender or religion. As many workers as possible should be brought within the scope of social security schemes based on the solidarity principles of compulsory membership and uniform treatment.

8.73 'We, therefore, need to shift from residual and crisis-related safety nets to the development of permanent, sustainable and redistributive social security systems. But more rapid attainment of universal access to basic social services will require both a relaxation of resource constraints and a reallocation of available resources to higher social priority uses, though the appropriate balance of these often financially conflicting requirements will depend on

national circumstances.'

Before we go into the details of the social security system and schemes that will be suitable for our country, it will be in order to review the existing legislations, programmes and schemes that provide social security to different categories of workers.

8.74 In this discussion, the organised sector includes the government sector, the public sector (other than government) and the private organised sector. The government sector can further be divided into the Central Government, State Governments and local and other autonomous bodies. The public

	sector includes the organisations controlled by the Central Government as well as by the State Governments. The size of the organised sector can be seen from the following:	
1.	Total workforce (1999-2000)	393.21 million
2.	Estimated total number of persons employed on 31.3.99	
a)	Public sector	19.42 million
b)	Private sector	8.70 million
3.	Estimated number of persons employed in:	
a)	Central Government	3.31 million
b)	State Government	7.50 million

- c) Quasi Government bodies
6.40 million
- d) Local bodies
2.26 million

(Source: NSSO 55th Round for (1) and Employment Review DGET 1999)

8.75 The estimated number of persons employed in the private sector includes 5,40,000 persons employed in agriculture, hunting, forestry and fishing, and plantations.

8.76 Our report deals primarily with social security in the non-governmental sector as employees in the government sector are covered under schemes that are framed by rules issued under Article 309 of the Constitution in accordance with the recommendations of Pay Commissions, Pay Committees, etc.

8.77 Employees in the organised sector are generally covered under the benefits provided under employer's liability schemes which include the Employer's Liability Act, Fatal Accident Act (1855), Workmen's Compensation Act 1923, Industrial Disputes Act 1947, The Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972. In addition, the Employees State

Insurance Act 1948 provides for medical care and income security benefits for health-related contingencies on a contributory basis. Thus, it is a social insurance scheme. The Employees Provident Funds and Miscellaneous Provisions Act 1952 is a saving scheme in which benefits are in the nature of old age, invalidity and survival benefits. All these Acts will be discussed in detail in later paragraphs.

8.78 A number of Conventions and recommendations of the ILO relate to social security (A list of these appears in the annexure). The laws enacted in India are on the lines of the Conventions and Recommendations of the ILO, although all the Conventions have not been ratified by India. The Study Group on Social Security constituted by our Commission felt that it might not be possible to ratify all the Conventions immediately, but it is desirable to plan for their eventual ratification by upgrading laws and practices gradually, beginning with the Minimum Standard Convention which may be ratified within a reasonable period of time. The Commission endorses the view of the Study Group.

8.79 Employment injury benefits are covered by the Workmen's Compensation Act and Employees State Insurance Act. In India, the concept of social security may be traced to the pre-independence era when the Workmen's Compensation Act 1923 was enacted. The Act covers persons employed in factories, mines, plantations, railways and other establishments mentioned in Schedule 2 of the Act, and is meant to compensate them in case of industrial accident/occupational diseases resulting in disablement or death. The workers and dependants not covered under the ESI Act are eligible for compensation under this Act for work-related injuries. The Act is administered by Commissioners appointed by the State Governments. Detailed regulatory provisions have been made in the Act and the rules have been framed accordingly. It is the employers' liability to pay the compensation. They may insure against this liability with a private insurance company. However, there is no provision for medical treatment or rehabilitation for disability under the Act.

**SOCIAL SECURITY:
MAIN LEGISLATION**

8.80 The Employees State Insurance (ESI) Act 1948 is the first legislation relating to social security which was adopted by the country after Independence. The Adarkar Plan and the suggestions made by the ILO experts were incorporated in the Workmen's Insurance Bill of 1946 which was passed by the Central Legislative Assembly in April 1948 as the Employees State Insurance Act. The ESI Scheme aims at providing health care and cash benefits in case of sickness, maternity and employment injury. It is applicable to employees drawing wages not exceeding Rs.6500/- per month. It covers employees of factories and other establishments having a minimum of 10 workers using power, and 20 not using power. The Scheme is primarily a social insurance scheme. The ESI Act has so far been implemented in 20 States and 2 Union Territories, but even in them, all areas have not been covered by the Act. At present, it covers areas with a concentration of 500 or more insurable population. The coverage also depends upon the ability of the State Government to make arrangements for providing medical benefits. There are several areas

with more than 1000 employees where the Act is yet to be implemented. Seasonal factories, mines, and plantations have not been covered under the Act. It also does not cover the unorganised labour or self-employed workers. Out of the labour force of 393.21 million (2001), about 8.00 million workers have been covered under the ESI Act.

8.81 The ESI Scheme is a contributory scheme, and the contributions are made by employers, employees and the government. The rates are prescribed by the Central Government. From 1.1.1997, employers have to pay 4.75% of the wages and employees have to pay 1.75%. Employees whose average daily wages are below a specified amount (Rs.40) are exempted from contributions.

8.82 The cash benefits under this scheme are 70% of the wages as monthly pension for death or permanent total disability, and the same amount is paid for temporary disability for the disability period.

8.83 The ESI Scheme is administered by the Employees State Insurance Corporation which is a multipartite body consisting of

nominees of Central and State Governments and representatives of employers and employees. There is also representation from medical personnel. The Corporation has a three-tier set-up that includes the headquarters, regional offices and primary unit local offices. The administration of medical benefit is the responsibility of the respective State Governments except in Delhi where it has been taken over by the Corporation itself. The State Insurance hospitals, dispensaries and panel doctors are under the control of the respective State Governments.

8.84 India is one of the first countries to enact laws for maternity protection. Article 42 of the Constitution of India requires that the States should make provision, inter alia, for maternity relief. The Maternity Benefit Act enacted in 1961 applies to all factories, establishments, plantations, mines, and shops where 10 or more persons are employed. Maternity benefits are also provided under the ESI Act, and an insured woman is entitled to maternity benefit in the form of periodical payments in case of confinement, miscarriage or sickness arising out of pregnancy. They are also entitled to

medical care under the ESI Scheme for maternity, and where medical facilities are not available they are paid a sum of Rs.250 for the purpose. The factories or the establishments to which the provisions of the ESI schemes apply are excluded from the purview of the Maternity Benefit Act. However, women drawing wages above the wage ceiling under the ESI Act are entitled to be benefited under this Act. There is no wage limit for coverage under the maternity Benefit Act. Payments are made for actual absence upto 12 weeks on average daily wages, minimum wage or Rs.10. The Act is administered by State Governments. There are comprehensive regulatory provisions in the Act. Women employees who complete 80 days of work prior to delivery are entitled to maternity benefits. The provisions in the ESI Act for medical benefit are more comprehensive than those under the Maternity Benefit Act, in so far as they include medical care, and pre and post-natal care.

8.85 Maternity protection in India is provided by some other schemes too such as Beedi and Cigar Workers (Conditions of Employment) Act,

Beedi And Cigar Workers Welfare Fund, Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955, etc. A National Maternity Benefit Scheme (1995) has also been introduced under National Social Assistance Programme (NSAP) to provide financial assistance to women who are below the poverty line. Many State Governments too have their own maternity assistance schemes.

8.86 The Employees' Provident Funds, and Miscellaneous Provisions Act, 1952 was enacted with the object of providing old age invalidity and survivorship benefits to the workforce in the organised sector. The Act covers factories and establishments employing 20 or more employees in scheduled industries and other establishments notified by the Central Government. The employees drawing pay upto Rs.6500/- per month are covered under the Act. There is a provision for voluntary coverage and also for continuance of coverage of a person even after he crosses the ceiling. During 1952, the Act covered 1.2 million workers employed in about 1400 establishments in six major industries namely cement, cigarettes,

electrical, mechanical or general engineering goods, iron and steel, paper and textiles including jute. By March 1998, the Act covered 21.2 million workers in 2,99,000 establishments covering 177 industries/business. The Family Pension Scheme was introduced in 1971 which was substituted by the Old Age Invalidity And Survivorship Pension Scheme 1995. The Employees Deposit-linked Insurance was also introduced in 1976 under the Act. Employers and employees contribute 10 or 12% of the wages to the Fund. Generally, the Act does not cover the unorganised sector workers and the self-employed. It is administered by the Government of India through the Employees Provident Fund Organisation (EPFO) with its 17 regional offices, 82 sub-regional offices and sub-accounts offices, 162 inspectorate offices, 12 service centres and 6 training centres. Apart from the terminal disbursement, the EPF permits withdrawal for purposes of life insurance policies, house building, medical treatment, marriage, higher education, etc.

8.87 The PF scheme is being amended to enable the workers to get their claims settled within 2-3

days. A new comprehensive EPF Scheme based on information technology is on the cards. The modified scheme titled 'Reinventing EPF India' is to establish a system in which a worker can get the information from 267 outlets across the country. A National Registration Identity Number will be given to each member of the Fund along with a smart card carrying the employee's profile. This registration number will remain the same regardless of any change in employment. Casual and migrant labourers too will be benefited. The first phase of the revised scheme has been implemented with effect from Oct. 2001 in six clusters in Indore, Kota, Gurgaon, Patna, Mangalore and Hyderabad. Besides the EPFO Act, the following enactments provide for the establishment of provident funds:

- a) The Coal Mines Provident Funds Act, 1948
- b) Seamen's Provident Fund Act, 1966
- c) The Assam Tea Plantations Provident Fund Act, 1955
- d) The Jammu and Kashmir Employees Provident Fund Act, 1961.

8.88 Besides, there are many provident funds under the P.F. Act of 1925.

8.89 The Government of West Bengal has recently started a State Assisted Scheme of Provident Fund for Unorganised Workers (SASPFUW). All workers employed in any industry in the unorganised sector and in any of the self-employed occupations listed in the annexure to the scheme are covered under this programme. All wage employed and self-employed workers between the age of 18 and 55 years in the unorganised sector in the State of West Bengal having an average family income of not more than Rs. 3,500 per month are eligible under this Scheme. However, workers already covered under the EPF Act, are not eligible. This is a contributory scheme, and the subscriber worker has to contribute a sum of Rs.20 per month, and the State Government will contribute an equal matching amount. Collections may be at the local levels, and passbooks have to be issued to all workers. The State Government will bear all administrative expenditure.

8.90 As we have pointed out earlier, government employees are covered by separate rules framed under

Article 309 of the Constitution. There is also a Public Provident Fund and other such funds recognised under the Income Tax Act in respect of persons who are not covered by the law.

The Payment of Gratuity Act 1972 applies to factories, mines, oilfields, plantations, ports and railway companies and to shops and establishments employing 10 or more persons. Some other establishments are also included by notification, i.e. motor transport, clubs, chamber of commerce and industry, inland water transport, local bodies and solicitors' offices. Gratuity is in the nature of a terminal benefit, paid lump sum, complementary to periodical pension payments. Five years' continuous service is required for entitlement to gratuity. The gratuity is paid at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months, subject to the maximum of Rs.3.50 lakhs. In case of seasonal industries it is the rate of 7 days wages for every completed year of service. The wage ceiling for coverage under the Act has been removed from May 1994. The Act was amended in October 1997 requiring an employer

to obtain insurance for his liability for payment of gratuity under the Act from the LIC. To ensure effective implementation of the Act, employers are required to get the establishment registered with the controlling authority, which the appropriate government may appoint. The Act also provides for penalties on the employers who fail to comply with the provisions of the Act.

8.91 The legislative provisions for lay off and retrenchment compensation are contained in the Industrial Dispute Act of 1947. Retrenchment covers all separation of workers other than through voluntary retirement, superannuation, termination of the service of the workman, after an expiry of an employment contract and termination of service on the basis of continued illness of a workman. According to Section 25-C, the laid off workers are entitled to a compensation (equal to 50% of the total of the basic wages and dearness allowance) for the laid off period in case they have completed one year of continuous service, subject to certain conditions contained in Section 25-E. In case of retrenchment, workers have to be paid fifteen days' wages for every completed year of

continuous service or any part thereof in excess of the six months.

8.92 The Government of West Bengal has recently introduced a scheme named 'Financial Assistance to the Workers in Lockout Industrial Units (FAWLIU).' The basic objective of the scheme is to for reopen closed units. For this purpose, a sum of Rs.50 crores has been earmarked in the State budget. It is also envisaged that some kind of financial relief may be given to workers who are out of employment due to closure in the State. A separate provision of Rs 50 crores has been made for this purpose. The workers are entitled to a cash assistance of Rs.500 per month with effect from 1.4.98. Units which have been in operation for more than 5 years prior closure and which are registered under the Factories Act, 1948 or the Plantation Labour Act of 1951 are covered under this scheme. The scheme is basically intended not for providing compensation for the loss of income but to provide some relief to the workers. A separate cell under the Labour Directorate is to operate the scheme and the State Government is expected to review it from time to time.

8.93 While reviewing the existing legislation, we find that although there are several social security schemes in force in India, their coverage is limited in several respects. It should also be pointed out that there is no uniformity in the coverage of various schemes. The EPF Act is applicable to certain specified classes of industries and establishments while the ESI Act is applicable in specified areas of factories and some specified classes of establishments. The Payment of Gratuity Act restricts its coverage in terms of the number of persons employed, and the Workmen's Compensation Act (WC Act) has a specific definition of 'workman.' ESI and EPF Acts are not applicable to establishments employing less than 20 persons except in the case of factories using power for which minimum number of workers is 10 for coverage under the Employees State Insurance Act. The application of some of the laws is also subject to a wage ceiling. This wage ceiling too does not have uniformity. The ESI Act and the EPF Act are applicable to employees drawing wages not exceeding Rs.6500/-. The ceilings have been removed for coverage in case of the P.G. Act and the W.C.

Act. For purposes of benefits, there is a ceiling of Rs.4000/- under the W.C. Act.

The Task Force on Social Security recommended that 'wage ceiling and employment threshold can and should be uniform with a provision for raising the wage ceiling and its eventual removal and lowering employment threshold and its ultimate removal.' Our Study Group endorsed this recommendation. The Commission also agrees with it.

8.94 The W.C. Act contains a list of persons who are included in the definition of 'workmen' that has been given in Schedule II of the Act. The definition of 'workmen' given in the Act restricts its applicability. The Royal Commission on Labour 1929, The National Commission on Labour 1969, the Law Commission of 1974, the Economic Administration Reforms Commission, 1984, the Law Commission of India 1989, and others have recommended widening of the coverage of the Act. But this has not yet been acted upon. The Royal Commission did not favour the adoption of an all embracing definition of 'workmen' on the ground that the law giving all employees the right to

claim compensation would fail to prove effective unless some form of compulsory insurance was adopted, but it did not discourage a substantial enlargement of the number of persons covered by the Act. The Commission held that the method of advance should be to include first workers in the organised branches of industry, whether these are hazardous or not, and secondly, to gradually extend the Act to workers in less organised employment, beginning with those who are subjected to most risk.'

8.95 The National Commission on Labour (1969) considered that all workmen including supervisors employed in the occupation covered under the Act should be eligible without any wage limit for compensation for worker injury (this recommendation was implemented in 1984). The Commission suggested that 'A scheme of a Central Fund for workmen's compensation should be evolved. All employers should pay to this Fund a percentage of total wages as monthly contribution to cover the cost of the benefit and administration. The Fund should be controlled by the ESIC. Periodic cash payments may be made to injured workers and their dependants by the Corporation

through its local offices in the same way as payments are made at present for various benefits under the ESI Scheme.'

8.96 This Commission agrees with the suggestions made by our Study Group on Social Security that

- a) 'the term 'workman' may be replaced by the term 'employee' so as to make the Act applicable to all categories of employees doing away with the distinction between clerical staff, supervisory and managerial staff and others on the one hand, and between persons employed on a casual basis or otherwise on the other.
- b) The term 'employee' may be defined to mean any person employed in any employment specified in Schedule II.
- c) The entries in Schedule II may be revised as per the National Industrial Classification so as to make it applicable to all classes of employees progressively within a time frame, if not immediately, with an omnibus provision as contemplated

earlier, and referred to by the Economic Administration Reforms Commission.

- d) The following types of restrictive clauses where-ever they occur in the schedule may be omitted:

'Otherwise than in clerical capacity'

'in which on any one day of the preceding twelve months ten/ twenty/twenty-five/ fifty or more persons have been so employed'

'whose depth from the highest to the lowest point exceeds twelve feet' etc.

8.97 The provisions under the ESI Act and the W.C. Act relating to occupational injury are not similar. There seems to be no justification in making a distinction between the two laws as to what constitutes an occupational injury. It is therefore, suggested that provisions in the W.C. Act may be made similar to those under the ESI Act. The W.C. Act should be converted from an employers' liability scheme to a social

insurance scheme, its coverage should be progressively extended to more employments and classes of employees, and the restrictive clauses in Schedule II of the Act should be removed.

8.98 The ESI Scheme was introduced with high expectations. The then Minister of Labour, while moving the ESI Bill in the Parliament, had declared that every citizen would be covered by the scheme. But this has not happened, and the coverage has remained more or less static for a decade or more.

8.99 Several committees and commissions have made recommendations for providing maternity benefits. The ESIC Review Committee, 1966, recommended enhancement of the rate of maternity benefits from half the average wage to full average wage of the insured woman. The National Commission on Labour 1969 recommended that a central fund should be established for maternity benefits but this recommendation has not been implemented. The Economic Administration Reforms Commission observed that 'while the coverage itself is not sufficiently wide, effective

access is further limited due to lack of awareness, and on account of evasion and avoidance by employers. Moreover, the liability for maternity benefit induces a tendency not to employ women or having employed them, to discharge them when pregnant.' The National Commission on Self Employed Women also recommended the establishment of a Central Fund for the purpose. The Forum for Crèches and Child Care Services (FORCES) has observed that a more comprehensive legislation is required for giving maternity benefits which should 'cover all women and not only women workers; should provide not only maternity leave and cash benefits but should also cover the nutritional and health needs of women, and provide wage and employment security.'

SOCIAL SECURITY AND WOMAN

8.100 So far as the organised sector is concerned, the existing provisions for maternity benefit should be extended so as to be applicable to all women workers. There are three ways of doing so: one is to extend the application of the Maternity Benefit Act, the other is to extend the application of the ESI Act, and the

third is to extend the scope of the Welfare Fund and other special employment schemes. Since the ESI Scheme is a composite scheme, its extension is conditioned by many factors. Suggestions have therefore been made elsewhere that it should be restructured in such a way as to make it possible to extend the provisions of the Act so far as employment injury and maternity benefits are concerned throughout the country, to all classes of establishments, subject to such limits as may be necessary with respect to the number of persons employed. In the meantime, the application of the Maternity Benefit Act may be extended to all classes of establishments where women are employed in large numbers.

8.101 As we have stated above, the Maternity Benefit Act is presently applicable to all factories, mines, plantations, shops and establishments and a few other classes of establishments. There are many other classes of establishments where women are being employed increasingly, to which the Maternity Benefit Act is not applicable. We recommend that those classes may be brought within the scope of the

Act on priority basis by following the National Industrial Classification. Some of these are mentioned below:

- a) Aviation
- b) Building and construction industry
- c) Transport and communications
- d) Trade and commerce
- e) The Services Sector, namely
 - Educational and scientific services
 - Medical and health services
 - Religious and welfare services
 - Legal services
 - Business services
 - Community services and trade and labour associations
 - Recreation services
 - Personnel services
 - Other services etc.

8.102 Maternity benefits being based on the principle of employer's liability, the financial feasibility for the extension of the Act depends upon the capacity of the employers to pay the benefit. This capacity varies according to several factors and cannot be generalised with reference

to the nature of the industry or occupation. According to Convention 103 of the ILO, in no case should the employer be individually liable for the cost of the benefits. It is, therefore, very essential that the scheme of the Act should be converted into social insurance. This object can be achieved if the Maternity Benefit Act

is integrated with the ESI Act. If that is not feasible, the question of introducing a separate social insurance scheme exclusively for maternity benefit or in combination with the employment injury benefit may be considered. A number of studies have indicated general dissatisfaction with the working of the various legislative measures. The evidence submitted before the Commission in various States also pointed out some of the drawbacks in the legislation. To quote a few: in the case of the ESI Act, the complaints are about the inadequacy of the hospital and dispensary facilities, delays in payment, and payment of cash in lieu of hospitalisation facilities. In the case of the Maternity Benefit Act, the complaints relate to alleged bias against women in employment, lack of awareness on the part of women about their entitlements, etc.

Appropriate measures should be taken to remedy these defects. So far as women in the unorganised sector are concerned, there is undoubtedly a need for a separate legislation for providing maternity benefits. Its implementation is possible through Welfare Funds or area-based schemes.

HEALTH INSURANCE

8.103 A more fundamental policy question which concerns us, is the scope of health insurance in India. Whether it is necessary or feasible to develop health insurance under social security, parallel to public health and medical service for the entire population. If not, how will the systems be integrated or coordinated? The National Health Policy assigns a minor role to health insurance to supplement the public services. The running of the medical services by the ESIC, parallel to the National Health Service might have been a historical necessity at the time when the ESI Scheme was introduced. The object and scope of the Scheme needs to be reviewed in the current context when public as well as private medical services have increased.

8.104 It does not seem possible to extend the existing composite scheme of the ESIC to all sections of the workforce and all parts of the country in the near future. The Corporation has, therefore, to take a decision to delink the employment injury and maternity benefits from the medical benefits, and to extend the application of the ESI Scheme for the purposes of these benefits throughout the country. Alternatively, separate social insurance schemes confining to these benefits will have to be evolved.

8.105 A High Power Committee has recommended that 'the Act may suitably be amended to empower the Corporation to formulate and introduce new schemes of benefits and contributions, to modify any of the existing schemes including duration of contribution and benefit periods as well as of qualifying conditions for eligibility to benefits for seasonal and agricultural wage earners and for any other employees or class of employees.' The ESIS Review Committee, 1982, also made a similar recommendation. This Committee specifically recommended that casual, temporary and badli workers should be insured only for maternity, medical

and employment injury benefits, and should be exempted from payment of any contribution.

8.106 The Working Group on Social Security of the Economic Administrative Reforms Commission recommended a basic reform of separating the medical benefits from the cash benefits, and felt that the pre-eminent position given to medical benefits in kind should be reconsidered. The ESI Scheme is basically an insurance scheme which is a finance function. Medical services can be provided directly or indirectly. It is not necessary that direct provision of medical services should be an essential part of the scheme. The service may be provided by anyone who has the facilities, and the Corporation may pay for it under an appropriate arrangement. Indeed, there is a trend in the direction of market-based methods of providing health care. The ESIC itself has taken certain steps in that direction. That being so, the argument that since the provision of medical benefits is the primary function of the ESIC, it cannot be extended merely to provide cash benefits without the medical benefits is no longer valid. Our Study Group

on Social Security therefore, has strongly urged that the benefit structure of the ESI Scheme be unpacked, and provision be made for extension of the scheme for one or more benefits separately or in groups. The Study Group further suggests that immediate steps be taken to extend the scope of the Act for purposes of employment injury benefit and maternity benefit throughout the country without waiting for the corresponding provision for medical benefits. This Commission agrees with the views of the Study Group.

8.107 There is a view that the cash benefit component of the scheme cannot be separated from the medical benefits because the title to cash benefits is based on the medical certificates issued by the Authorised Medical Officers. However, considering that the WC Act and the Maternity Benefit Act are being implemented without any provision for medical care, and also the fact that arrangements can be made to accept certificates issued by Government and other qualified Medical Officers, we feel that arrangements for own-medical-care set up is desirable, but not essential for administration of

cash benefits.

8.108 When the constraints on extension of the ESI Scheme are removed as suggested in preceding paragraphs, there would be no justification for retaining the other restrictions on the application of the Act, namely, the number of persons employed, the areas and sectors of employments to be covered and the wage ceiling. They may all go. If necessary there may be a ceiling on wages for purposes of contributions and benefits only as in the Payment of Bonus Act and the Workmen's Compensation Act.

8.109 Casual and contract workers may be covered for limited benefits at reduced rates of contribution as recommended by various committees and the ILO.

8.110 The existing medical facilities available with the Corporation, along with the purchase of services from other agencies with whom the Corporation can enter into agreements, may be used for providing services to all classes of workers who wish to join the scheme.

8.111 There is a provision in the ESI

Act for grant of exemption to establishments with arrangements to provide similar or superior benefits. The Commission endorses the view of the Study Group that such exemption may be granted in cases where establishments satisfy the prescribed conditions. Moreover, the schemes need restructuring. One way could be to divest the States of their responsibility for medical benefits and transfer the functions to the Corporation. Another way is to create a separate organisation for administration of medical benefits, the ESIC being responsible only for cash benefits. The Study Group favoured the second alternative. Since the ESI Scheme is a contributory scheme, the rates of contribution should be fixed on an actuarial basis, and be free from collective bargaining. Unless the rates of contribution are so fixed as to compensate for the loss of the revenue due to exemption by recovering additional amounts from other insured persons, the Corporation would have to be subsidised by the Government. This would be true in the case of weaker sections of people with low incomes.

8.112 The State Governments make a contribution to the Scheme to the

extent of 1/8th (12½%) of the cost of medical benefits. In addition, they are required to bear expenditure in excess of the ceiling fixed by the Corporation for purposes of reimbursement. Imposition of the ceiling appears to be unrealistic, and has been resented by the State Governments who are demanding its withdrawal. Further, the ceiling appears to be one of the reasons for the unsatisfactory service provided by the State Governments in the ESI hospitals and dispensaries run by them. The Study Group, therefore, has suggested a review of the decision to impose a ceiling, and the level of the ceiling, and to consider the desirability of its withdrawal. The Commission agrees with this suggestion.

8.113 It is said that the real issue and indeed the real challenge in the administration of a health insurance scheme is for the executive to understand the multi disciplinary character of the tasks involved in both health insurance and the delivery of healthcare. The managers will have 'to develop a strong professional cadre within the system.' In other words, the management of the scheme should

be professionalised. While a tripartite body may continue to remain the general body, day-to-day administration may be entrusted to a body of experts who should constitute the governing body.

8.90 8.114 The ESI Scheme has provision for payment for funeral expenses. It is suggested that it should be substituted by the term emergency expenses so as to include care of the sick and the elderly members.

PROVIDENT FUND

8.115 In earlier paragraphs, we have discussed the Provident Fund Act and other provident fund Schemes. There is an obvious multiplicity of provident funds in the country. In a similar situation, Sri Lanka is reported to have enacted a law as early as in 1975 to consolidate all the provident funds into the Employees Provident Fund. A similar law to place all the provident funds under a common regime seems to be called for in India too.

8.116 After the introduction of the Employees Pension Scheme in 1995, it has become necessary to redefine

the object of the EPF Act. It is particularly necessary in the context of the suggestions from various quarters to deliberalise the provisions in the EPF Scheme permitting premature withdrawal from the provident fund which tend to reduce the amounts available for old-age. Several suggestions have also been made from time to time for further extension of the coverage of the Act.

8.117 The Old Age Security and Income Security (OASIS) Committee has suggested that the existing restriction limiting provident fund contribution to 177 (now 180) industries/classes of establishments should be abolished. All establishments should be covered by provident funds. The Task Force on Social Security has also suggested that the Schedule of industries for extension of coverage should be dropped. There is now no reason to delay the implementation of these recommendations. The Commission agrees with these recommendations and suggests that the Act be made applicable to all classes of establishments, subject to such exceptions as may be considered necessary for specified reasons.

8.118 There are also suggestions regarding the applicability of the Act as per the number of persons employed. The OASIS Committee has made a recommendation that the minimum number of employees in an establishment (to be eligible for provident funds) should be lowered from 20 to ten and eventually to 5. Recently, the Task Force has reiterated this recommendation and urged that the employment threshold should be brought down to 10 immediately, to 5 during the next 3-5 years, and to 1 within a short time frame thereafter. The Commission agrees with these suggestions.

8.119 Section 16 of the Act provides that the Act will not apply to co-operative societies employing less than 50 persons and working without the aid of power. The rationale of excluding co-operative societies on this ground has not been spelt out. The Ramanujam Committee recommended withdrawal of the exemption in favour of co-operatives employing less than 50 persons so that they might be covered like other establishments if they employed 10 or more persons and had completed the infancy period of three years. This recommendation has not,

however, been implemented so far. The Task Force has also recommended removal of this restriction.

8.120 Our Study Group has also suggested that the special dispensation granted to co-operatives is not warranted, and should be removed. We endorse this view.

8.121 According to Para 26(a) of the E.P.F. Scheme, every employee employed in, or in connection with the work of a factory or any other establishment to which the scheme applies, shall be entitled, and is required to become a member of the fund from the very first day of his employment. This paragraph has brought within the scope of the Act, workers employed on casual or temporary basis. One of the main sections employed as casual labour as well as contract labour, consists of construction labour. Employment in this industry is characterised by discontinuity and large-scale mobility. The P.F. accounts are maintained by the E.P.F. organisation establishment wise. When a worker changes his employer, his account will have to be transferred from one establishment to another establishment. If it is not

transferred, it will remain ineffective or inoperative and the subscriber may not get the benefit of the contribution. Recovery of contributions in respect of contract labour has therefore, created many administrative problems. While legally, there is no doubt about the liability for payment of contributions in respect of contract labour, it is extremely doubtful if practically it has been possible to enforce the provisions of the law in this regard and to ensure that they benefit workers. It has also been pointed out that workers in the construction industry are averse to deductions being made from their wages towards provident fund because there is no guarantee that the deductions would be credited to their accounts.

8.122 The Study Group constituted by us, commissioned a quick study to see whether the coverage of casual and contract labour has served the purpose for which it was intended. The study revealed that the provisions to cover persons employed on casual or on contract basis were operating largely to the disadvantage of the workers. Firstly, in many cases, although the

workers are not registered with the EPFO the employers deduct contributions from their wages but do not remit them to the EPFO. Thus, the deduction of the contributions operates as an unauthorised deduction.

Secondly, as the persons change their employer frequently, their accounts would have to be transferred from one code number to another, which does not happen. Many accounts opened in their names remain frozen and become inoperative. The EPFO does not keep the addresses of the subscribers and is therefore, not able to track them from employer to employer or from place to place. Thus, the amounts in these accounts remain unclaimed and are transferred to the Unclaimed Deposit account. There is a large amount lying in the unclaimed deposit account of the EPFO, and there is reason to believe that this amount belongs largely to such members. Although the EPF Scheme requires that every employee should be provided with a passbook, the Organisation has failed to supply the passbooks. But, as stated in earlier paragraphs, with the introduction of computerisation such problems can be tackled.

8.123 The OASIS Committee has also recommended that each provident fund member should be allotted a unique identification/account number spanning across all Provident Funds for comprehensive portability of accounts during job changes and temporary unemployment. The 37th Session of the Indian Labour Conference has also made a similar recommendation.

8.124 We further suggest that appropriate provisions be made in the Act to enable the Organisation to frame different schemes with different contributory and benefit packages for application to different classes of establishments employees and persons. This is particularly necessary to make the Act applicable to self-employed people.

8.125 Section 17 of the Act provides that the appropriate Government may, by notification in the official gazette, and subject to such conditions as may be specified, exempt from the operation of all or any of the provisions of any scheme any establishment to which the Act applies. As per the Annual Report for the year 1999-2000, the exempted establishments were in arrears of

contribution to the extent Rs.469 crores as on 31-3-2000, as against the total arrears of Rs.589 crores in respect of unexempted establishments. The representatives of the workers on the Central Board of Trustees have been generally opposed to the exemption. On the other hand, the representatives of the employers favour the continuance/extension of the exemption. The argument against the exemption is that the employers of the exempted establishments tend to misuse the funds. The protagonists of exemption, on the other hand, say that the exempted establishments render better services to the workers than the EPF organisation which has tended to be ineffective.

8.126 Having regard to these facts, the Commission suggests that the EPFO organise an inquiry into the working of all exempted funds by an independent agency and review the entire scheme of granting exemptions from the provisions of the Act.

8.127 The E.P.F. Act has been amended recently to the effect that the Central Government may, on application made to it by the employer and the majority of the

e m p l o y e e s in relation to an establishment employing 100 or more persons, authorise the employer to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in the Scheme. This amendment is yet to be given effect. The Commission understands that there is a proposal to delete this provision

8.128 Considering the likely expansion of the coverage of the Schemes under the EPF Act, there seems to be a greater need for decentralising the administration of the schemes. One way to decentralise the administration is to authorise more and more employers to administer their own Provident Funds, the EPFO acting as a regulatory authority. But this should be done without prejudice to the interests of the subscribers.

8.129 Section 6 of the Act provides that the rate of contribution should be 10% of the basic wages and dearness allowance. The Act further provides that in its application to any establishment or class of establishments, which the Central

Government may by notification specify after due enquiry, prescribe a higher rate of contribution of 12% may be prescribed. The Act does not lay down the criteria for enhancing the rate of contribution. It is suggested that the Act be amended so as to do away with the distinction between different classes of establishments for purposes of the rate of contribution. This is, however, without prejudice to the suggestions made elsewhere to provide for different packages of contributions and benefits for different classes of employees.

8.130 As mentioned earlier, the amount of contributions in arrears under the Scheme as on 31.3.2000, was Rs. 1058 crores, including Rs. 469 crores shown in respect of the exempted establishments. Considering the ever-increasing arrears, our Study Group felt that foolproof methods should be evolved to minimise arrears. The Study Group has suggested that the EPFO streamline the procedure for tackling the default employers speedily and to recover the arrears promptly. We agree with the proposal.

8.131 The contributions recovered after deduction of the payments on account of the E.P.F. Scheme are to

be invested according to a pattern laid down by the Government of India from time to time. The National Commission on Labour (1969) had suggested that the PF accumulations should be invested in securities yielding higher returns, as far as possible consistent with the security and safety of the fund, to enable the members to get higher rates of interest. Subsequently, there have been many changes in the money market and many suggestions have been made for engaging professional experts for managing investments. The OASIS Committee has pointed out that inefficient asset management with low rates of return is one of the flaws of the EPF.

8.132 We suggest that:

- (a) The EPFO should have its own mechanism for investment of its balances as the LIC and the GIC have; and, for this purpose, financial experts should be inducted into the organisation at various levels.
- (b) Investment patterns should be further liberalised
- (c) Government may consider issuing of indexed bonds for

investment of PF balances assuring a fixed real rate of return.

8.133 The average rate of interest earned on the investments has not been disclosed in the report of EPF. It is suggested that the investors in these schemes should be assured of a minimum real rate of interest above the rate of inflation.

8.134 The EPF Scheme provides for non-refundable withdrawals from the P.F. accounts of the members for a variety of purposes:

- a) Financing of life insurance policies
- b) Purchase or construction of houses
- c) Illness
- d) Repayment of loans
- e) Marriages
- f) Education of children
- g) Abnormal conditions
- h) Cut in supply of electricity
- i) Purchase of equipment by the physically handicapped
- j) Lock out or closure of establishments

8.135 The advances are non-

refundable and, therefore are in the nature of part final payments. During the year 1999-2000 there were 3.94 lakh part final withdrawals amounting to Rs.782 crores.

8.136 All the expert committees which have gone into the working of the EPF are of the opinion that the liberal provisions for partial withdrawal of balances in the fund, are working against the basic purpose of the fund, namely to make provision for old age. They should therefore be deliberalised. The EARC recommended that withdrawal provisions should be tightened. The task force has expressed the opinion that provision for withdrawals from the fund, negates the objective of the provident fund as an old age protection, and has recommended that this provision be dropped from the Act. The Commission is also of the opinion that the provision for premature withdrawal of funds should be restricted. The bulk of the withdrawal is due to resignation. As the EPFO permits transfer of accounts when a person leaves a job and takes up another, the large number of withdrawals due to resignation indicates that members prefer to withdraw the amount

instead of having them transferred. The reasons for this need to be investigated.

8.137 While there may be some justification for partial withdrawal for specified purposes, there can be no justification for permitting premature final withdrawals in case of resignation. We suggest that appropriate measures should be taken to discourage, if not to stop, such withdrawals.

8.138 As regards the Employees Deposit Linked Insurance (EDLI) Scheme, with the same amount of contributions by the employers and without any amount of contributions by the employees or the Government, the LIC is able to provide better benefit through its Group Insurance Scheme than is admissible under the EDLI Scheme. The continuance of the Scheme should, therefore, be reviewed and revised if necessary. It is understood that there were proposals to integrate the Payment of Gratuity Act with the Scheme and also to introduce an Unemployment Insurance Scheme as part of the Scheme. We welcome these proposals and hope that it will be possible to implement them soon.

8.139 The Employees Pension Scheme was introduced with effect from 16.11.1995 for the members of the Employees Provident Fund by partial diversion of the employers' contribution to the Fund. It substitutes the Employees Family Pension Scheme which stands merged in the new scheme with all its assets and liabilities. The new scheme is an enlargement of the erstwhile Employees' Family Pension Scheme, 1971. Although ordinarily, a pension scheme is preferred to a provident fund scheme, the Employees Pension Scheme has come in for criticism. We will refer to some of these criticisms.

8.140 An ILO Technical Assistance Appraisal Mission (November, 1996) is reported to have commented on certain aspects of the scheme and to have made the following recommendations:

- a) Withdrawal option should be abolished or modified.
- b) Pensions should be adjusted to inflation.
- c) Provision regarding return of capital should be withdrawn.
- d) The option to commute part of the pension should be withdrawn.
- e) The minimum pension age should be raised to 50, and the

reduction factor should be modified.

- f) The financial sustainability of the current standard age of 58 should be assessed actuarially.
- g) Pension should be calculated on the basis of the earnings for a longer period instead of last year's earnings.
- h) Provision should be made to see that no insured person would receive more than one benefit for the same category.
- i) Provision to pay pension to a non-relative nominee should be reviewed.

8.141 As regards the financial system of the scheme, the Mission has observed that the objectives of guaranteeing the actuarial soundness of the schemes, an acceptable stable contribution rate and adequate protection of pensioners against inflation can be achieved with partial funding.

8.142 In another study, an ILO team has observed that:

"In 1995, India partially converted its Employees provident Fund into a social insurance pension scheme. Only the employers' contribution is

used to finance the pension, which is a percentage of covered earnings in the final year of employment (50% for those with 33 years of insured employment, rising to a maximum of 60% for those with more years of service) This scheme has the potential to provide significant income protection for retired employees and, thanks to transitional provisions, is already paying pensions to a certain number. The workers' own contributions continue to be paid into individual savings accounts.

"While acknowledging that there is room for improving the new pension scheme in India, one cannot deny that the 1995 reform constitutes a considerable step forward in terms of retirement income security. The fact that a number of compromises had to be made is eloquent testimony to the political difficulties involved in moving from provident fund to a pension scheme. Many workers are not only keen to get their hands on the money as soon as possible they also tend very often to be suspicious of the intentions of Governments proposing such reforms and to believe that they are better able than a pension fund to manage their savings. Overcoming these attitudes

is not easy. If the Indian reform was successfully carried to completion, it is in no small measure due to the support which it received from knowledgeable workers' representatives in whom the majority of workers placed their trust.⁸"

8.143 The Project OASIS Committee has summarised its concerns about the EPS as follows:

- (a) 'The fund management that is presently in use with EPS is highly inefficient. Using superior fund management, participants could obtain much higher benefits at the same level of contributions.
- (b) There are persistent concerns about the extent to which the benefits that are promised by EPS 1995 are in line with the contribution rate required. There are also questions about the extent to which future benefits are inflation indexed.
- (c) The Government presently contributes 1.16% towards pension accruals. The subsidy

has no reason to exist.

- (d) The contribution rates and benefits for various establishments participating in EPS 1995 and similar pension plans (e.g. by nationalised banks) are different.

8.144 The Committee has, therefore, recommended, inter alia, that the:

- (a) EPS 1995 should standardise on a single set of benefits for all establishments based on an employer contribution rate of 10%.
- (b) Every year, an actuarial evaluation of EPS 1995 should be conducted and the report should be publicly released. Benefits and contributions should be adjusted so as to ensure that EPS 1995 makes no claim on the government, now or in the future⁹.

8.145 In another paper certain members of the International

.....
⁸ An operational Framework for pension reform by Roger Beattie, Social Security Department, ILO, Geneva, 1997

.....
⁹ Final Report of the project OASIS Expert Committee, 1999

"The 1995 pension scheme with defined benefits appears to be a retrograde step in terms of financial viability of the scheme."

8.146 Our Study Group also received some comments on the implementation of the Scheme, for instance, that the paragraphs 12 and 16 of the Scheme were liable to different interpretations and it was leading to overpayments in certain cases. In certain circumstances, the persons who contributed less could get more pension, and this was an anomaly inherent in the scheme.

8.147 Our Study group has considered various comments on the scheme and the replies of the EPFO and the Actuary. Some of the comments are of a serious nature and need to be addressed by the government. Ordinarily, insurance schemes are periodically subject to valuation by independent valuers. The EPS is also subject to valuation annually for the purpose of adjusting the rates of pension to inflation. This valuation is done by the same Actuary who designed the scheme. It is desirable that an independent valuer does three yearly or five yearly valuations.

8.148 We further suggest that all the ambiguities in the interpretation of the Scheme be referred to the Actuary and the Scheme be amended suitably as per his advice.

GRATUITY: INTEGRATION WITH THE EPF ACT.

8.149 The Task Force on Social Security set up by the Ministry of Labour has recommended, inter alia, that the Payment of Gratuity Act may be integrated with the Employees Provident Fund Act and converted into a social insurance scheme.

8.150 Integration of the Payment of Gratuity Act with the EPFO will have an added advantage in that its coverage will automatically be extended to all classes of establishments to which the EPF Act is currently applicable and may, in future, be made applicable in terms of the suggestions made by the Study Group.

8.151 It has been recommended elsewhere that the minimum number of employees in an establishment to be eligible for coverage under the Employees Provident Fund Act should

be progressively reduced. It follows that in the event of integration of the Payment of Gratuity Act with the E.P.F Act, the minimum number of employees in an establishment for coverage under the Payment of Gratuity Act should also be reduced correspondingly.

8.152 If this suggestion is not found acceptable for any reason, the Study Group has suggested that further extension of the Act may be examined with reference to the National Classification of Industries or Occupations and extended to all those classes of establishments to which it can be extended having regard to the capacity to pay and other relevant considerations. The least that could be done is to make the scope of the Act co-extensive with that of the EPF Act so that it may be regarded as complementary to the Employees Pension Scheme. The Commission supports this view.

UNEMPLOYMENT INSURANCE

8.153 The National Commission on Labour (1969) reviewed the legal provisions for lay off and retrenchment compensation and observed as follows:

'While provisions relating to retrenchment and lay off compensation afford some relief and act as a deterrent to hasty retrenchment, certain unsatisfactory features have come to light in the course of their working. A permanent remedy may be in the form of unemployment benefit. On the other hand, if its incidence is distributed over the whole industry, it might under certain conditions imply subsidising of inefficient management. With due safeguards against such contingency, the long term solution lies in adopting a scheme of unemployment insurance for all employed persons. The present schemes of benefit against retrenchment and lay off must continue during the transition.'

8.154 In the context of the Structural Adjustment Programmes, several undertakings in the public as well as the private sector have been reducing their workforce by resorting to voluntary retirement schemes which offer more attractive terms than those the law provides for with retrenchment. Suggestions have, therefore, been made to make the provisions for retrenchment compensation more liberal to make retrenchment easier.

8.155 The National Labour Law Association has suggested that the rate of lay off compensation be raised to 75% and retrenchment compensation be raised to two months wages for every completed year of service, doing away with the need for permission of the government which is now required in case of establishments employing 100 or more workers.

8.156 The Supreme Court in its landmark judgement on the relocation of hazardous industries in Delhi has directed that industries which do not opt for relocation and restarting of operations should pay six years' wages as additional compensation to the respective affected workmen.

8.157 In another order relating to child labour, the Supreme Court has directed that the employers should pay Rs.20,000/- as compensation for every child employed, on its withdrawal from work.

8.158 While proposing to increase the prior permission cut-off from 100 workers to 1000 workers, the Union Finance Minister announced in his budget speech for 2001-02 that separation compensation would be increased from 15 days wages to 45

days wages. There are some ambiguities in this announcement. It is not clear whether the increase would be general in its application or whether it would apply only to those establishments employing not less than 1000 persons.

8.159 It would thus, appear that new concepts of retrenchment compensation are coming in for consideration calling for a fresh look at the existing legislation. We feel that a uniform rational policy needs to be evolved by integrating the payment of lay off and retrenchment compensation with the payment of gratuity on the one hand, and unemployment insurance on the other, to avoid duplication and to minimise the burden on the employers. Details on this issue have been stated in the chapter on review of legislation.

8.160 An integrated insurance scheme providing for gratuity, unemployment benefits, lay off and retrenchment compensation may be evolved, and entrusted to the EPFO for its implementation either in lieu of, or in addition to the existing EDLI Scheme, as stated elsewhere.

8.161 There is no provision in Indian Law for unemployment benefit {as distinguished from retrenchment compensation, family allowances and emergency expenses (except funeral expenses) in the ESI Act}. The following types of unemployment can be identified:

- a) Persons who have just entered the job market and have not found a job yet.
- b) Persons who are in seasonal employment for part of the year and remain unemployed for the remaining short periods.
- c) Persons who are employed on very low income and need to supplement the same (this category would technically be called under-employed).
- d) Persons who are thrown out of employment due to retrenchment or closure of establishments.
- e) Persons who have lost jobs due to nation wide or global recession.

8.162 According to the ILO, the best way to tackle unemployment is to provide alternative employment. If

that is not possible, the unemployed may be given assistance for their subsistence, either through an unemployment insurance scheme, or through a social assistance programmes whereby the unemployed may be given relief directly by way of an allowance. 'The first protection against unemployment is a solid policy towards full employment.'

8.163 Unemployment benefits in the form of Unemployment Insurance is prevalent mainly in industrialised countries and rarely in developing countries.

8.164 As of 1988, only four South East Asian countries (China, Mongolia, the Republic of Korea and Hong Kong) had any form of unemployment benefit scheme. Where formal benefits are available they appear to be generally modest.

8.165 The Republic of Korea has introduced an employer financed unemployment allowance which took effect in July 1995. According to the new legislation, every enterprise with more than 30 employees must provide an unemployment allowance. Companies with fewer workers are

required to provide the allowance if more than 50% of the workers so request.

8.166 "The State Council of China issued a regulation in January 1999 requiring the local governments to establish an unemployment security system to cover all of their own enterprises. It is a contributory system under which the enterprises contribute 2% and the employee contributes 1% of his wages. The benefit admissible under the system would be more than that of social assistance and lower than that of local average wage which is determined by the provincial government. (According to one report, persons who have worked for more than 5 years can get 50 to 75% of their salary upto 24 months).

"The Government of China has introduced a three-tiered programmes for dealing with the problem of unemployment.

(a) The unemployed persons may report themselves to reemployment centres for retraining and for re-employment.

(b) If they are unable to get alternative jobs, they will be put on unemployment subsidy.

(c) After two years they will be handed over to the third line of urban poverty alleviation programmes.

"Nearly 10 million persons were covered by the State Unemployment Scheme at the end of 1999. In 1997 878,836 persons were under the poverty alleviation programmes.¹⁰"

8.167 The question of introducing unemployment insurance in India has been coming up often, and several proposals have been submitted to the Government of India. The issue came up first at the Labour Ministers' Conference in 1981 in the context of the spate of closures of textile mills. A committee was set up to draw up a scheme. The committee recommended the establishment of a multipurpose fund known as Gratuity and Miscellaneous Payments Guarantee fund, to ensure that all

.....
¹⁰ Social Security Legislation in China Prof. Dr. Yang Yansui; Social Security system in China by Jiang Zhengua, Professor, Vice-Chairman of Standing Committee of National People's Congress of China

statutory payments namely gratuity, retrenchment compensation as well as P.F. and other dues to workers are paid to the workers in case of default by the employers.

8.168 Federation of Indian Chambers of Commerce and Industry (FICCI) and The Associated Chambers of Commerce and Industry (Assocham) also proposed the introduction of a privately run industry-specific contributory insurance scheme for protection against risks of unemployment.

8.169 The Social Security Association of India organised a Seminar in 1992 to consider the changes to be made in the system of social security in the wake of the introduction of the New Economic Policy. The Seminar recommended, inter alia, the introduction of an Unemployment Insurance Scheme and a Wage Guarantee Scheme. The Seminar also worked out the outline of the Schemes and presented them to the then Finance Minister.

8.170 Subsequently, the Union Ministry of Labour appointed a Committee to consider the feasibility of introducing an Unemployment

Insurance Scheme. The committee also recommended the introduction of such a Scheme¹¹.

8.171 In spite of all these recommendations, no unemployment insurance scheme has so far been introduced. Attempts, on the other hand, have been made to generate supplemental employment opportunities mainly in rural areas, so as to offer a sort of employment guarantee. The Maharashtra Employment Guarantee Scheme and the subsequent Employment Assurance Scheme at the national level may be viewed in this light

8.172 The World Labour Report says:

“The large majority of under-employed workers in the low income and middle income developing countries could in principle be assisted by labour infrastructure programmes. Infrastructural works are undertaken mainly during the lean season when small farmers and landless workers are not engaged in agricultural operations and have no

.....
¹¹ Social Security: A critical Survey by R.K.A. Subrahmanya, B.R. Publishing Corporation

alternative sources of employment. However, in an urban setting they could also be undertaken during periods of recession or crises. These programmes can generate employment and significantly reduce poverty by applying labour based construction techniques to mainstream investment programmes and by orienting investments increasingly towards the productive and social needs of the poor and low-income groups. The provision of limited employment guarantees can be achieved through a reorientation of existing and planned investments, and, therefore, does not have to be financed through government deficit spending.¹²

8.173 The Report further says:

“Employment provided under an ELP (Employment Labour Programmes) can be organised so that workers can obtain an employment guarantee for a certain number of days per year. An employment guarantee may, therefore, be seen as a form of unemployment insurance in which employment security is provided and

.....

¹² World Labour Report 2000

thereby income security. The guarantee is most extensive when employment is provided on demand of workers and a government meets that demand by organising the ELP.”

8.174 India has had vast experience in planning and implementing Rural Employment Guarantee Schemes. These are mainly aimed at providing off-season rural unskilled employment. Whether such schemes can be run to provide relief against unemployment of all forms, particularly those arising out of job losses due to structural reforms or otherwise, is a question that needs further study. The alternative to the provision of employment through such works is to give the unemployed a cash allowance whereby they may be assured of the basic needs of livelihood.

8.175 In the light of these facts, we feel that an unemployment insurance scheme could play a substantial role in coping with unacceptable levels of unemployment resulting from the implementation of the structural adjustment programmes and other economic reforms. Urgent measures should, therefore, be taken to

introduce an Unemployment Insurance Scheme.

8.176 The scheme should preferably be implemented through the EPFO organisation and be applicable to all establishments and employees to which the EPF Act is currently applicable, and to which it may be extended in the near future, with no wage ceiling for coverage but with a ceiling of Rs.10,000/- for contributions and benefits. The rate of benefit should be 50% of last pay/wages drawn. The benefit should be payable for a period of one year or till re-employment whichever is shorter.

8.177 The scheme should be financed by a tripartite contribution to be determined actuarially. To begin with, however, the rates of contribution may be fixed at 0.5% to be contributed by the employees, 1.5% by the employers, the deficit if any being met by the Central Government from the NRF.

8.178 The Study Group noted that the EPFO had worked out a scheme of unemployment insurance which would be part of the EDLI and would require an additional contribution by the employer of less than 1%. The

full details of the proposal need to be studied.

8.179 The National Labour Law Association and the Social Security Association of India recommended the establishment of a fund to ensure payment of all dues to workers in the event of failure by the employers to pay them due to permanent closure of their establishments or insolvency. The National Renewal Fund was established in February 1992 to provide a form of a wage guarantee which had to be used for re-training, re-deployment, counselling, placement services for employment and to pay compensation to employees in enterprises where rationalisation of the workforce is taking place. But in practice, NRF has mostly been utilised for implementing the VRS. There is need to restructure this fund to serve as a wage guarantee fund.

8.180 The Government of India is reported to have decided to set up an Insolvency fund to arrange finances for interim payment of wages to workers of sick companies and for possible revival of units. The fund will be made up through contributions at the rate of 0.005%

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¹³ The Hindu , August 18, 2001

of the annual turnover of the companies¹³.

FAMILY ALLOWNCES

8.181 Family allowances programmes are of two kinds: universal, and employment related. Under the first category, allowances are paid to all resident families with a specified number of children. In the second category, the allowance is paid to the wage earning persons by the respective employers.

8.182 The Study Group has suggested that a provision be made for payment of educational allowance to all employees by amending the existing laws regulating employment and conditions of service of employees. We endorse this recommendation.

WELFARE FUNDS

8.183 The Unorganised Sector is equated with the unprotected segment of the labour market where entry is free, labour turnover is high, wages are significantly lower, and the workers, generally, lack legal protection. This sector includes the self-employed, home-based workers,

workers in small and tiny industries, agricultural labour etc. (The concept and status have been discussed in detail in the chapter on Unorganised Sector workers.) But the basic point that one has to remember here is that this sector is not homogeneous. As we have pointed out earlier, the National Commission on Labour (1969) stated that unorganised labour was a 'group of workers who cannot be identified by a definition but could be described as those who have not been able to organise in pursuit of a common objective because of constraints such as (a) casual nature of employment; (b) ignorance and illiteracy, (c) small size of establishments with low capital investment per person employed; (d) scattered nature of establishments; and (e) superior strength of the employer operating singly or in combination.¹⁴

8.184 The size of the unorganised sector labour has been growing because of shrinkage of employment in the organised sector as well as authority. According to the latest assessment, it constitutes more than

.....
¹⁴ Report of the first National Commission on Labour

90% of the labour force consisting mainly of agricultural labour, construction labour, beedi workers, weavers, fishermen etc.

8.185 Welfare Funds represent one of the models developed in India for providing social security protection to workers in the unorganised sector.

8.186 A study team appointed by the Government of India in 1959 to examine labour welfare activities then existing, divided the entire range of these activities into three groups:

- (a) Welfare within the precincts of an establishment: medical aid and crèches, canteens, supply of drinking water, etc.
- (b) Welfare outside the establishment: provision for indoor and outdoor recreation, housing, adult education, visual instructions, etc., and
- (c) Social security.

8.187 The National Commission on Labour (1969) has stated: "The concept of welfare is necessarily dynamic, bearing different interpretation from country to country and from time to time and even in the

same country according to its value systems, social institutions, degree of industrialisation, and general level of social and economic development. According to pre-Independence notions, it could cover, apart from known amenities, items like housing, medical and educational facilities, co-operative societies, holidays with pay and social insurance measures."

8.188 The Government of India has set up welfare funds as Central Funds administered through the Ministry of Labour for the workers employed in beedi manufacture (1976), for cine workers (1991) and for mining workers. Besides, there is a Central Law for construction workers vide which State Governments have to set up welfare funds for these workers. These funds are constituted from the cess collected from the employers and manufacturers from the industry concerned. They mainly provide medical care, assistance for education of children, housing, water supply and recreation facilities. There is a proposal to set up one or more welfare funds for agricultural workers under the Agricultural Workers Bill presently under consideration.

8.189 The Union Finance Minister in

his budget speech for the year 2001-02 announced the proposal to set up a Journalists Welfare Fund with a contribution of Rs.1 crore from the grants of the Ministry of Information and Broadcasting.

8.190 There is also a proposal to set up a welfare fund for advocates under a Central legislation. 20% of the enrolment fee collected by the bar councils from advocates, will be remitted to the fund. In addition, money will be collected by the sale of welfare stamps to be affixed on all vakalatanamas filed by the advocates for handling cases.

8.191 Among the States, Kerala has set up more than 20 Welfare Funds for the benefit of workers in the unorganised sector. Many of these are statutory. A statutory fund was also created for financing measures for plantation workers in Assam. Similar funds have been set up in Gujarat, Maharashtra, Karnataka and Punjab. The funds set up by the Government of Kerala are mostly contributory.

8.192 The National Commission on Rural Labour suggested the establishment of welfare funds for the

following classes of workers:

- (a) Agricultural Workers
- (b) Toddy tappers
- (c) Handloom workers
- (d) Fishermen and others

8.193 In a paper submitted to the recently concluded Indian Labour Conference, Government had proposed the extension of the welfare fund mechanism, wherever feasible, to hitherto uncovered sections and, in particular, to set up new welfare funds for fish processing workers, carpet workers, salt workers, leather workers and others.

8.194 The question whether welfare funds could be set up in respect of all classes of workers in the unorganised sector, was examined by our Study Group which came to the following conclusions:

- (a) Welfare funds could be a model for providing social security to the workers in the unorganised sector.
- (b) A welfare fund may be set up for each of the major employments with a sufficiently large number of persons

employed such as:

- (i) agriculture,
- (ii) Building and construction industry including brick kiln industry,
- (iii) Beedi industry
- (iv) Handlooms and powerlooms
- (v) Fishing and fish processing,
- (vi) Toddy tapping
- (vii) Head load workers
- (viii) Railway porters
- (ix) Agarbatti workers
- (x) Rag pickers and scavengers
- (xi) Rickshaw pullers
- (xii) Salt workers
- (xiii) Carpet weavers
- (xiv) Leather workers, etc.

- (c) As regards the other minor employments it might not be practical to set up a welfare fund for each such employment. It would be necessary to bring them under an umbrella type of legislation with a common welfare fund.

8.195 Welfare Funds fall broadly in two groups – tax based and

contributory. In our opinion, the welfare funds should be contributory but the contributions that workers can make to such Funds would necessarily be small and would not, by themselves, without a matching contribution by either the employers or the Government, be adequate to provide them any meaningful social security. The employers would therefore, have to make a meaningful contribution to the Welfare Funds.

8.196 It would, however, not be easy to collect contributions from the employers except where they are required to obtain a permit or a licence or where they are required compulsorily to register themselves. In other cases, collection of contributions would require effective administrative machinery which might not be cost effective.

8.197 Another option is that the Government provides the supplementary finance to the funds by levying a tax in the form of a cess or surcharge at a rate which would yield sufficient revenue. Where a separate Welfare Fund is set up for a particular employment it might be easy to identify the source of the tax revenue. But in the case of a

Common Fund the source of revenue would have to be of general nature.

8.198 If a tax of a general nature was to be levied for financing social security of the large majority of workers in the unorganised sector, it might be more appropriate to adopt the area based approach recommended by the ILO which is akin to the system obtaining in Australia or New Zealand or the system that was recommended for the U.K by Lord Beveridge.

8.199 In the unorganised sector, the State will have to take the place of the employer if the employer cannot be identified or made to pay his share of the contributions. It is even more so in the case of self-employed persons for whom there are no employers.

8.200 The existing laws provide for welfare funds for workers in six classes of mines, namely, mica, iron ore, manganese ore, chrome ore, limestone and dolomite. It seems that these workers have received more favourable treatment while the workers of other mines have been denied the facility. In this context, it may be noted that the Employees' State Insurance Act is not presently

applicable to mines. Nor is there any legal provision requiring the employers to provide the facilities which the welfare funds provide to their workers. The existing arrangements seem, therefore, to be discriminatory.

8.201 It is also not clear why three separate funds have been constituted one for mica, one for limestone and dolomite, and another for iron ore, manganese ore and chrome ore mines. It would have been more advantageous and economical if they could have been further unified into one fund with uniform rates of cesses/contributions and benefits.

8.202 As we have stated earlier, the welfare funds set up by the Central Government are financed by levying a cess on specified goods. A noticeable feature of this provision is the wide variation in the rate structure of the cesses. The duty on mica is on ad valorem basis whereas the duties on other commodities are at specific rates which too range from Re.0.50 to Rs.4 per metric tonne. The rationale behind the different rate structure is not clear.

8.203 The Central Welfare Funds for mine workers and beedi workers may be used, inter alia, for:

- a) The improvement of public health and sanitation, prevention of diseases.
- b) Provision and improvement of medical facilities.
- c) The provision and improvement of water supplies and facilities for washing.
- d) The provision and improvement of educational facilities.
- e) The improvement of standards of living, including housing and nutrition.
- f) Amelioration of social conditions and provision of recreational facilities.
- g) The provision of family welfare, including family planning education and services.
- h) The provision and improvement of such other welfare measures and facilities as may be prescribed.

8.204 In actual practice, the bulk of the expenditure from the welfare funds has been on health, education and housing.

8.205 It may be seen that barring medical care, the welfare funds set up by the Central Government for mine

and beedi workers, do not provide for meeting the expenditure on any of the well recognised branches of social security, such as sickness benefit, occupational injury benefit, maternity benefit, invalidity benefit, old age benefit, survivor benefit or unemployment benefit. In a strict sense, therefore, these welfare funds cannot be deemed to be providing social security, but they have the scope and the potential to become instruments of social security if suitable amendments are made to the laws.

8.206 The Kerala Welfare Fund schemes provide a much wider range of benefits, including many of the branches of social security required to be provided under the ILO Convention concerning Minimum Standards of Social Security.

8.207 The two models, namely, the Central and the Kerala models represent the two extremes, one representing the minimalist approach, and the other a maximalist approach. Neither can be adopted as a model for future development of welfare funds in India in so far as the benefit structure is concerned. What needs

to be done is to prepare a standardised list of benefits which may be provided from the welfare funds and to prioritise them somewhat on the following lines:

- a) Health care,
- b) Invalidity, old age and survivor benefits,
- c) Maternity and Child care,
- d) Educational assistance, and
- e) Housing.

8.208 There are broadly three ways of organising medical care under social security:

- a) Reimbursement to the patients of the costs of medical care incurred by them at standard rates or at actuals.
- b) Providing service indirectly by entering into contract with hospitals, dispensaries and doctors.
- c) Providing the service directly under an integrated arrangement in which the financing and providing of the service is with the same organisation.

8.209 Some of the Kerala Welfare Funds have adopted the first model of reimbursing the cost of medical care subject to certain ceilings. Some of the public sector establishment have the adopted the second model.

The Employees State Insurance Scheme is based on the third model.

8.210 The Central Welfare Funds have also adopted the integrated model, and have undertaken to provide the services directly. Each fund has created its own hospitals, dispensaries and other facilities for providing medical care. The Labour Welfare Organisation is directly running 13 hospitals with 525 beds and 229 dispensaries, but it is doubtful whether they can provide medical care of the requisite standard.

8.211 The per capita expenditure on medical care fixed by the Employees' State Insurance Corporation for purposes of reimbursement to the State Governments, is Rs.500 per insured person. Out of this, an amount of Rs.150 is earmarked for drugs and dressings. The actual expenditure on

medical care incurred by the State Government under the ESI Scheme during 1994-95 ranges from Rs.315 to Rs. 1035. It may be seen that the expenditure incurred on medical care from the welfare funds is comparatively low. It is noteworthy that the prescribed financial norm for purchase of medicines in the dispensaries under the welfare funds is only Rs.4 per patient per visit. (Rs. 3 for Ayurvedic medicines). At the current prices, few medicines can be purchased for this amount. If the per capita expenditure is taken as a measure of the standard, the standard of medical care under the welfare funds would appear to be very low.

8.212 Administration of medical care is a function for specialists. It may be pointed out that the experience of the ESI Scheme in running an integrated model, has not been found popular. Given the option, the insured persons would opt out of the ESI Scheme unless they are given the choice of doctors and hospitals for consultation and treatment. In the circumstances the welfare funds will also do well to adopt models of reimbursing the expenditure, subject to such

conditions as might be considered necessary for providing the services indirectly by entering into agreement with the providers of the service, confining the function of the Fund to the financing of the services.

8.213 The beedi workers are insured under the Weaker Sections Group Insurance Scheme of the LIC, for which 50% of the premium is paid by the welfare fund, the balance, being subsidised by the LIC itself. If GIC can also develop appropriate group insurance schemes for accident and other benefits, the welfare funds might be able to provide a wider range of benefits economically.

8.214 As far as old age benefits are concerned, many of the Kerala Welfare Funds pay a basic minimum pension at a flat rate. For instance, under the Coir Workers Welfare Scheme, the coir workers are paid an old age pension of Rs.75 per month. In the case of Toddy Workers Welfare Fund, however, a provident fund cum gratuity scheme is operated. In the case of coal mine workers there is a separate Coal Mines Employees Provident fund. An important question concerning old age

pension is whether welfare funds should provide only a basic minimum pension, leaving it to the individuals to make their own arrangement for supplementing it as under the Kerala Schemes or whether they should provide income related pensions as under the Employees' Pension Scheme. The current world trend appears to be to pay a basic minimum pension under social security, leaving it to the employers and the individuals themselves to provide for a higher pension. Such an arrangement would also be administratively more convenient as the payment of income related pension would require arrangements for maintenance of service and income records and it would be difficult for the Welfare funds to maintain or obtain such records.

8.215 Most of the welfare funds, Central and State, provide assistance to the beneficiaries for the education of children. This assistance is in the nature of family benefits that indirectly augment the incomes of the workers with family responsibilities. In Kerala, educational assistance is given mainly for higher education.

8.216 Shelter is one of the basic

needs of the people. The convention of the ILO concerning Minimum Standards of Social Security does not, however, recognise housing as part of social security. But the broadened concepts of social security currently being advocated, attach equal if not greater importance to housing in the schemes of social security. There are several schemes for providing such assistance in the form of loans, subsidy, etc. The amount of assistance provided under each of these schemes or the number of houses constructed has not been reported. Considering the present level of costs of construction, it is doubtful if the scale of assistance provided under various schemes is adequate for a meaningful achievement in the construction programme.

8.217 The Central Welfare Funds are administered departmentally by the Ministry of Labour through Welfare Commissioners appointed by the Government with the help of advisory committees which have no financial or administrative powers.

8.218 The Acts under which the Central Welfare Funds have been set up, do not limit their coverage with any wage ceiling. In practical

application, however, a ceiling has been prescribed. Till recently, the wage ceiling was Rs.1, 000 that was raised to Rs.3,500 in 1991. For the Payment of Gratuity Act the ceiling has r been removed altogether but the ceilings for the application of the welfare fund schemes have remained at Rs.3,500. This is indicative of the lack of a positive approach to the administration of the funds.

8.219 One of the major problems of administration of the Central Welfare Funds concerns identification of the beneficiaries. The welfare funds do not have a system of registration. Instead, they have introduced the system of identity cards. Identity cards are required to be issued by the employers and they have not been responsive to this idea. The Ministry of Labour has reported that in the case of beedi workers, identity cards have been issued in respect of about 43 lakhs. The workers cannot get the benefit of the welfare funds unless they have the identity cards. Thus, nearly 16 lakh workers have been denied the benefit because of non-issue of identity cards. On the other hand, in Kerala, the system of registration exists but the schemes being optional, the number of workers

who have registered themselves varies according to the scheme, and in some cases, the coverage has been very low.

8.220 Another problem of administration concerns cost. The cost of administration of Central Welfare Funds during 1992-93 varied from 7.9% of the total benefit expenditure in the case of Beedi Workers Welfare fund to 19.4% of the benefit expenditure in the case of Limestone and Dolomite Labour Welfare fund. There can be no doubt that if the welfare funds can be integrated, there would be large savings on overheads. This point has been emphasised by the expert committee which reviewed the working of the Kerala Schemes.

8.221 Periodic evaluation is a modern management technique which is built into all development schemes. It has three-fold objectives:

- a) An evaluation of the policies with reference to their objectives;
- b) An evaluation of the programmes with reference to

the policies and objectives;

- c) An evaluation of the implementation of the programmes with reference to the effectiveness and the efficiency of the administrative apparatus, and an assessment of the impact of the schemes on the people, which they seek to improve.

8.222 The Government of India appointed a task force to review the working of the welfare funds in 1991. The task force observed that the working of the welfare funds had suffered due to apathy on the part of the management, want of infrastructure, inadequate resources, cumbersome procedures and unimaginative administration.

8.223 The only social security provision in the conventional sense made in the welfare fund laws is health care. The Welfare funds can, however, be transformed into instruments of social security if they can be restructured suitably as indicated below:

- a) The coverage of the funds should be expanded,
- b) The range of benefits provided under the welfare funds should

be broadened,

- c) The financial arrangements for providing those benefits should be modified; and
- d) Finally the administration of the funds should be decentralised and made participatory.

8.224 Apart from the welfare funds some of the States have established Welfare Boards to regulate welfare schemes for workers in the unorganised sector.

8.225 Tamil Nadu is one of the pioneer States in spearheading social welfare measures for workers in the unorganised sector. The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme was started in 1994. The Government has constituted the Tamil Nadu Construction Welfare Board to administer this scheme. The Scheme was extended throughout Tamil Nadu in 1997. To implement this scheme a Manual Workers General Welfare Fund has been constituted. As per Section 8A of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act 1982, any person who undertakes any construction work within Tamil Nadu shall be liable to pay 0.3 % of the total cost of construction to the Fund.

The Government and Government Departments should also pay the contribution to the Fund directly. As and when other persons undertake any construction work, the local bodies collect the 0.3 % of the total cost of construction and remit the amount to the Manual Workers General Welfare Fund. As at December end 1999, the Welfare Board had received Rs.16,74,52,803 as contribution and 1,93,601 construction workers were registered. Rs.48, 40,025 have been collected as Registration Fee at the rate of Rs.25 per worker. Every Manual Worker, whose name has been registered, shall, after two years, renew his/her initial registration or the subsequent renewal of his/her registration, by paying Rs.10 per annum to the Board as Renewal Fee. Identity Cards have been issued to all registered construction workers free of cost. This board is implementing the Group Personal Accident Insurance Scheme, Educational Assistance Scheme, Marriage Assistance Scheme, Maternity/Abortion Assistance Scheme, Natural Death Assistance Scheme and Funeral Expenses Assistance Scheme.

8.226 The Tamil Nadu Manual Workers Security and Welfare Board

was working as a mother board, which was tripartite in nature. Initially, 60 employments were included. At present, some employments have been taken out of the list while some have been included. The Scheme is for both wage employed and self-employed.

8.227 The Kerala Fishermen Welfare Fund Act 1985 provided for the setting up of a Board and a Contributory Scheme under it. The fishery worker has to contribute Rs.30/- per year for the initial three years, and then on 3% of the price of his catch or of the wage. The trader has to contribute 1% of the annual turnover or an amount fixed by the Board. The owner of the fishing vessel, owner of the fishing net and prawn and pisciculture owners are also bound to contribute. There are a number of schemes under this Board for the welfare of the fish workers.

8.228 Recently, the Kerala State Labour Authority Ordinance 2000 was promulgated by the Government of Kerala to establish a Labour Authority in the State to serve as an apex body to co-ordinate, regulate, streamline, monitor and control the

activities the labour welfare schemes of welfare boards. Now, the ordinance has lapsed.

8.229 Tripartite boards have also been set up for regulating employment and the conditions of service of workers in the unorganised sector where there is no employer-employee relationship and the income of the workers is insecure. The Mathadi Board of Maharashtra is one such example. The Maharashtra Mathadi Hamals and other Manual Workers (Regulation of Employment and Welfare) Act came into force in 1974. The Act is applicable to 14 employments under the Schedule to the Act in Mumbai and a few other districts of Maharashtra. Under the Act, employers and workers have to register themselves with the Board. Wage rates are fixed by the Board, and employers have to deposit the wages earned by the workers together with the prescribed amount for social security. The wages are distributed to the workers by the Board. The rates of premium vary from 25% to 40%. The administrative cost of the Board is 5%. There is no provision for pension. The Government does not contribute to this fund. Another such

Act is the Kerala Head Load Workers Act 1978, which regulates employment and which was brought into force during 1981.

8.230 It can be seen that Kerala has a multiplicity of Welfare Boards while Tamil Nadu, has one Mother board for all employments. Presently, Kerala is trying to integrate various enactments on Social Security while in Tamil Nadu the latest trend is towards dismantling. However, there are proposals for having a Mother board for Social Security Legislation. The experience of these boards shows that some sort of linkage among the various welfare boards is necessary, and both commonality and variety should be provided for while finalising the social security schemes.

8.231 A tripartite committee has, therefore, unanimously recommended the establishment of tripartite boards for regulating the employment and conditions of service of brick kiln workers to assure them payment of reasonable wages and other social security benefits.

8.232 The National Commission of Self Employed Women and Women in the Informal Sector had

recommended the establishment of Tripartite Boards for home based workers for the reason that no law, however well conceived, will be of benefit to women workers unless they have a major hand in the implementation of these laws, and that can be achieved only in a Tripartite Board in which workers have as many representatives as the Government and the employers. Women workers will be adequately represented, proportionate to their numerical strength. The National Commission on Rural Labour also recommended the setting up of such tripartite boards for regulating agricultural labour. The board could include experts, social activists, non-governmental voluntary organisations, Scheduled Castes and Scheduled Tribes and women members. Such Boards should be constituted at the State, the District and also, at the panchayat levels. One of the objections to these proposals has been that tripartite boards would add to the cost of production and the entire process would become bureaucratised.

8.233 Employers are not averse to contributing to a welfare fund which would provide all the benefits including

social security to workers through a tripartite board; What they do not seem to want is regulating employment through registration of employers and workers, and allotment of workers to the employers by the tripartite board.

8.234 The Study Group appointed by us met officials administering these boards, and the representatives of workers as well as employers, and was informed that these boards were working well. The Study Group has suggested that the welfare Board model be extended to:

- (a) Head load workers
- (b) Security guards
- (c) Beedi workers
- (d) Building workers
- (e) Fish processing workers
- (f) Rag pickers

8.235 There is a demand for such a Board for the building industry as well. This may be set up on an experimental basis in some States like Tamil Nadu, where the demand is very strong, before extending it to other States.

8.236 One of the models for

providing a measure of Social Security started by the Central, or State Governments for weaker sections of people, is subsidised insurance. Some such schemes have been introduced through the LIC and the GIC. The Janshree Bima Yojna and Jeevan Suraksha are under the aegis of the LIC, and Jan Arogya, Public Liability Insurance Act 1991, Comprehensive Crop Insurance Schemes are fielded by the GIC.

8.237 Shiksha Sahyog Yojana is for the children of parents living below the poverty line. A sum of Rs.100/- p.m. is paid to such children who are studying in the 9th to the 12th standard. This is available to subscribers of Janshree Bima Yojna.

8.238 Khetihar Mazdoor Bima Yojna, May 2001 is an insurance scheme for the benefit of agricultural workers. This has to be implemented from July 1, 2001 in clusters of 5 to 6 villages. Fifty districts have been chosen for the purpose. Lump sum payments are to be made for various purposes. Project societies are to be set up for implementation of the Yojana.

8.239 In his Budget speech

2001-02, the Union Finance Minister asked the Insurance Regulatory Development Authority to prepare a road map for pension reform for workers in the Unorganised Sector. The Integrated Rural Development Agency (IRDA) has been asked to work out a scheme to provide insurance cover for a minimum of Rs.40,000/- and monthly subsistence pension to these workers. The workers opting for the scheme are required to pay a premium ranging from Rs.10/- to Rs.25/- p.m. The Government has also announced a national scheme for agricultural workers, namely, Khetihar Bima Yojna. All these schemes are subsidised insurance schemes, and the premium is shared between the Government and the beneficiary, or the nodal agency sponsoring the beneficiary. In the case of Janashree Bima Yojana the premium is Rs.200 per member of which, 50% is paid by the insured person or the nodal agency, and the balance is met out of the Social Security Fund with the LIC. Assuming that one million persons are covered under the Scheme the cost to the Government will be Rs.10 crores per annum.

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8.240 In the case of the agricultural workers insurance Scheme, the worker has to pay a premium of Rs. 365 per annum, Re. 1 per day, the Government will pay Rs.730 per worker per annum. The total estimated cost of the Scheme to the Government is Rs.152.39 crores.

8.241 There are thus two different schemes. Yet another scheme is contemplated for target groups that belong to the same class. Our Study Group was not able to appreciate the reasons for the differences in the nature and quantum of benefits provided; the rates of premiums charged and the rates of subsidy involved among these schemes. It is, needless to say, that unless it can be demonstrated that the differences are based on a reasonable classification, they may be construed as discriminatory. Moreover, most of these schemes are yet to be implemented in their full form. The Jan Shree Bima Yojna had only 450,000 policies during the period of one year, a number which is too meagre considering the size of the Unorganised Sector. Contributory insurance schemes were generally not popular due to the high rate of the premium. There is another point of view which says that people are prepared to pay contributions if they are convinced that it will be to their advantage to do so.

INSURANCE

8.242 The Study Group has therefore, suggested that the

Insurance Companies be required to develop two or more plans providing coverage for the major risks faced by people, namely health, life, widowhood, accident, loss of assets, etc., with a uniform rate of subsidy, leaving it to individuals to choose from among them according to their capacity.

8.243 We feel that since the LIC and the GIC are commercial organisations, they have not been able to give adequate attention to Social Security schemes that are rated unprofitable. The Malhotra Committee has suggested that the subsidised insurance schemes being run by the LIC and GIC should be entrusted to a separate exclusive organisation to which the insurance industry, both public and private, could be asked to contribute.

8.244 The Insurance Regulatory and Development Authority (IRDA) has, exercising the powers vested in it under the amended Insurance Act, through the regulations that it has issued, decreed that every insurance organisation licensed by it to do insurance business, life or general, must provide social insurance cover to a prescribed number of persons

belonging to the weaker sections in the unorganised sector every year. This provision is likely to lead to a variety of schemes providing dissimilar benefits to the weaker sections. Our Study Group, therefore, has suggested that a separate organisation be set up to administer these schemes, and the insurance companies licensed by the IRDA be asked to make appropriate contributions to this organisation, instead of trying to fulfil the obligations laid down in the regulations directly.

8.245 We find that the Economic Survey 2000 says that the Government has decided to set up an exclusive organisation for implementing the National Agricultural Insurance Scheme. The Study Group suggests that this organisation, or another similar organisation may be entrusted with the administration of all subsidised insurance schemes.

8.246 In the course of its meeting with the representatives of Insurance Companies, the Study Group was informed that the amount available in the Social Security Fund with the LIC, may not be adequate to meet the cost of subsidy if large numbers of

persons were to avail of it. A suggestion was therefore, made that it should be augmented by earmarking a part of the service tax being levied on insurance business. The Study Group has welcomed the idea, and commended it for the consideration of the government.

AREA BASED SCHEMES

8.247 A reasonable alternative to the various occupation-based schemes that we have today, would be to design a scheme on an area basis, 'which would move away from the vertically organised employment spheres towards a person centred approach with the aim of covering all workers within a compact geographical area.' According to the ILO, the area-based scheme envisages open membership to all adult workers in a defined geographical area, irrespective of the nature and the duration of employment or the place of work. Generally, when the coverage is on the family unit basis, women workers are left out. Area-based schemes have a special focus for inclusion of eligible women. The coverage may be in the individual capacities of the workers, and not on the basis of

family units where women workers are usually left out. In fact, a special focus is intended to be built for the inclusion of eligible women.

8.248 The basic benefits may include (a) insurance against death or disability, (b) health insurance and (c) old age benefits.

8.249 The coverage under death and disability (a) may be comprehensive, the sum assured for life being uniform irrespective of the cause of death since it is unrelated to the needs of the surviving family. In the case of disability, the compensatory payments may be made periodically, this being a higher form of security, rather than in a lump sum as provided under the Workmen's Compensation Act.

8.250 There are indications that workers from the unorganised sector prefer contributing to outpatient costs (including maternity and childcare) rather than to an insurance against hospitalisation costs.

8.251 Under the old age benefits mentioned in (c), a pension based on a savings-linked scheme may be proposed, perhaps with additional amounts for those who do not avail of

(a) or (b) on the lines of a no claim bonus.

8.252 The funding of the scheme under the pilot project is envisaged to be from contributions from members and from other sources. Contributions would have to be mandatory for obtaining benefits, but may be prescribed as flat rates (avoiding any linkage with wages as in the case of organised sector schemes).

8.253 The project is conceived as a state level one, the overall responsibility for its formulation and administration resting with the state governments.

8.254 The proposal concerning area-based schemes appears to be eminently suitable for application to the workers in the unorganised sector who are too numerous to be covered under occupation-based schemes. We suggest that it may be tried out on experimental basis in some States before extending it to other States.

SELF HELP GROUPS

8.255 One of the surest ways of

providing employment to workers in the unorganised sector is by promoting small business for purposes of self-employment. Many voluntary organisations help self-employment by providing credit, training and marketing facilities etc.

8.256 Micro credit involves the grant of very small loans with a view to helping the poor to start their own ventures. It has also been recognised as one of the effective means of poverty eradication, promotion of self-sufficiency and stimulation of economic activity in some of the world's most destitute and disadvantaged communities.

8.257 At a conference held in Mexico in 1975, the International Year of the Woman, Ms. Ela Bhatt mooted the idea of credit financing as a means for uplifting women. She pointed out that the doors leading to institutionalised money were closed to poor, illiterate women and if these were opened, it could make a big difference. It led, eventually, to the formation of the Women's World Bank (WWB), an organisation dedicated to improving women's access to finance, with its headquarters in New York and affiliates in 40 other countries. The

Indian affiliate of this Bank is Friends of WWB (India). This institution helps women help themselves. Over the years, it has helped organise a large number of savings and credit groups among rural women across the country. These groups encourage their members to save money and to put it into a common fund. These savings are used for giving loans to those who are in need, at varying rates of interest. The profits are retained in the fund. In effect these are mini banks. But, for rural women who are their members, they offer an alternative to the usurious moneylender.

8.258 The Government of India has set up a fund called the Rashtriya Mahila Kosh (RMK) for providing credit to poor and needy women in the informal sector mainly for productive purposes. Assistance from this fund is routed through NGOs. It has been reported that uptill 31st January 1999 the RMK had sanctioned credit limits upto Rs.57.09 crores through 367 NGOs to benefit 2,77,662 women. In addition, the RMK has also supported the formation of women's thrift and credit societies popularly known as Self Help Groups (SHGs)

through its partner NGOs.

8.259 The credit needs of rural people are determined in the complex socio-economic milieu, where it becomes difficult to adopt the project lending approach followed by banks, since the dividing line between credit for consumption and that for productive purposes gets blurred. In this situation, a non-formal agency providing credit facilities to the poor in the form of Self Help Groups emerged as a promising partner of the formal agencies. The democratic functioning of the SHGs, their skill in assessing and appraising the credit needs of members, their business-like approach and efficiency in recycling the funds with a high rate of recovery, are welcome features which banks can utilise in meeting the credit needs of the poor.

8.260 The Government of India as well as some of the State governments are therefore, encouraging the formation of SHGs.

8.261 In his budget speech for 2001-02, the Finance Minister said: "NABARD and SIDBI were asked to link one lakh Self Help Groups during the current year. NABARD by itself is

well poised to exceed this target by the end of next month. I expect NABARD to link 1 lakh additional Self Help Groups during 2001-02, which would help in providing access to credit to an additional 20 lakh families. Sharecroppers and tenant farmers will also become eligible for this scheme and special attention will be given to SC/ST groups. A micro finance development fund has also been set up in NABARD with contribution of Rs.40 crore each by NABARD and RBI."

8.262 The Government has introduced a novel credit card scheme for farmers, kisans. The Union Finance Minister in his budget speech for 2001-02 claimed that the innovative KISAN CREDIT CARDS (KCCs) had proved to be very successful. Since the year of its introduction in 1998-99, almost 110 lakhs of KCCs had been issued. He said that he was 'asking our banks to accelerate this programme and cover all eligible agricultural farmers within the next 3 years.' The Union Finance Minister also said that he was 'asking the banks to provide a personal insurance package to the KCC holders, as is often done with other credit cards, to cover them against

accidental death or permanent disability, up to maximum amount of Rs.50,000 and Rs.25,000 respectively. The premium burden will be shared by the card issuing institutions.'

8.263 In recent years, Micro Insurance Schemes have been initiated in the four corners of the world as a complementary financing method for existing formal social protection services provided by the State¹⁵.

8.264 Insurance refers to systems in which individuals themselves make contributions (that is, pay premium) into a risk-pooling group, in the expectation of future benefits to cover stipulated risks, like illness, maternity, asset loss, or death. The term micro insurance has been coined in recent years, to refer either to insurance schemes targeted at the poor without state management or, more specifically, to insurance products offered by micro finance institutions¹⁶. Micro Insurance is also called Self-

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¹⁵ A compendium of Micro Insurance Schemes by Shookpul Lee; ILO/STEP – WIEGO Workshop on Social protection for women in the Informal Economy; ILO. Geneva, 1999

¹⁶ Social Protection for Women in the Informal Economy ILO-STEP and WIEGO, 1999

Financed Social Insurance.

8.265 We feel that the current trend towards poverty eradication through social mobilisation, i.e., organising the unorganised workers, needs to be encouraged and expanded.

8.266 Unorganised workers may be mobilised and organised to form –

- a) Self help groups: these may focus on savings and credit, and/or producing goods like handicrafts, salt, minor forest produce processing agricultural produce etc.
- b) Local workers economic organisations: these are organisations at taluk level or preferably district level associations and federation of self help groups.
- c) District level cooperatives producing goods and services; e.g. milk cooperatives land and agro-forestry based cooperatives, childcare and midwives cooperatives, etc.
- d) Village based mahila mandals or yuvak mandals or kisan sanghs.

8.267 Once organised into small, medium or large workers organisations they could be actively involved in:

- (a) Provision of credit
- (b) Micro insurance by linking with savings and credit supplying groups or organisations and
- (c) Social security services through the area based approach.

8.268 These local decentralised organisations would be involved in district level goal-setting for social security, the implementation of all social security programmes (both work based and area based) and in the monitoring of these programmes.

8.269 In this way, suitable mechanisms can be developed to reach much needed social security to geographically scattered unorganised sector workers. Provision of services will then, encourage the invisible unorganised workers to organise and build their own organisations.

NATIONAL SOCIAL ASSISTANCE PROGRAMMES

8.270 The National Social Assistance

Programmes (NSAP) was started in 1995 to fulfil the aims of the Directive Principles of State Policy. This aims at ensuring a minimum national standard of social assistance. Under this Programme, different States are providing help in terms of monthly pensions to various categories of destitutes who are without subsistence or family support which include the aged, widows and disabled. The NSAP consists of 3 component schemes, namely, National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (Survivor Benefit) (NFBS) and National Maternity Benefit Scheme (NMBS). The Scheme is a centrally sponsored programmes with 100% Central assistance to States and UTs. The Programme links the social assistance package to schemes for poverty alleviation and the provisions of basic needs. The Programme is implemented by the Panchyats and Municipalities. Under NOAPS a pension of Rs.75 per month per person is provided. Rs.10,000 in case of death are provided under NFBS. A sum of Rs.500 is given under NMBS for each pregnancy, upto the first two live births. The age of eligibility for old age pension is 65 years or more. In Gujarat additional

amounts per child are payable to widows for the care of two children. The widow pension is admissible for one year. During this time, widows are expected to take up skill training for self-employment. In Andhra Pradesh and in Gujarat, landless workers above the age of 60 years are given monthly pensions. However, the number of beneficiaries is restricted by the availability of allocation in the budget of the State. Several States supplement the amount provided by the Central Government as old age pension from their own budgets.

8.271 The NSAP has undoubtedly served the long felt need for uniform national minimum standards for providing social assistance to the weaker sections of society. But the programme provides only a few benefits, namely, old age pension, maternity benefit and family benefit. It is, however, envisaged that more benefits may be added in due course of time. There is an obvious need for expansion of the Programmes.

8.272 Article 41 of the Constitution requires the State to make effective provisions, inter alia, for 'public assistance in cases of unemployment, old age, sickness and disablement and

in other cases of undeserved want.' It is said that the NSAP introduces a national policy for such public assistance. However, it falls short of the expectations of this Article since it does not provide for assistance in case of unemployment, sickness, disablement and other cases of undeserved want. The programme needs to be expanded for fulfilling the Directive Principles enshrined in Article 41.

8.273 The need to provide some form of public assistance to meet the distressing consequences of unemployment has become more urgent after globalisation. Policies of downsizing and liberalisation of laws to facilitate easy lay-offs, retrenchment and retirement schemes through the VRS, the Golden Hand Shake and the like, have created a situation in which large numbers of workers have lost their employment. In some cases, the termination takes place almost instantly, or with nominal notice, instantly altering the employed status of the worker, and throwing him or her and the family into uncertainty and want, or penury. Large-scale terminations of this kind not only cause acute distress to large sections of the population, but also

create threats to law and order, the order on which industry and investment depends. They may even work as a time bomb that may explode and affect the very framework of the order and social acceptance on which the economy or industry prospers. The only way to mitigate such stress or insure against such exposures, will be to provide at least a modicum of support that will enable the victim to face the rigours of unemployment during the period of transition. This may be termed as unemployment insurance or a safety net. The Human Development Report of 1993 therefore, talks of the need to design an effective safety net 'to catch the victims of competitive struggling such as the temporarily unemployed and to protect the lowest income group, the young, the old and the disabled.'

8.274 Hence, we feel that the need to fulfil the directive of Article 41 was never more urgent than today.

8.275 Apart from the NSAP there are several schemes under which social assistance is being provided. These include:

(a) The PDS including Annapurna

and Antyodaya Anna Yojana Schemes.

- (b) Schemes under which supplementary nutrition is provided to women and children including ICDS and the Midday Meal Schemes.
- (c) Housing schemes for economically weaker sections, including schemes for old age homes, orphanages, and homes for deserted women, beggars, etc.
- (d) Schemes under which assistance is provided for self-employment.
- (e) Schemes under which cash assistance is given to the unemployed.
- (f) Schemes under which old age, disability and death benefits are provided under subsidised insurance schemes.

8.276 The Commission is of the opinion that all such programmes should be integrated to maximise coverage, avoid overlapping, and ensure a basic minimum to all. The integrated NSAP should be placed on a statutory footing so that the Government bears the responsibility

for its implementation.

PENSION SCHEMES

8.277 There are a number of pension schemes in our country.

- a) Old age pension: The current rate of pension, under the NOAPS, which is Rs.75 per month, is not sufficient. To maintain the real value of the pension, it should be revised and linked to the C.P.I. The income criteria for the eligibility of the pension should be reviewed and revised on a uniform basis. All old persons having incomes less than Rs.8000 per annum at the current level of prices should be entitled to old age pensions. Since the old age pension is a national scheme, there is no justification to exclude any person from the benefit on the ground of domicile. When the benefits are subject to a means test, financial ceilings become unnecessary. Since the population of the elderly has been rising, the budget provision for this scheme also needs to be increased, corresponding to the increase in the population of the elderly. Local authorities should make the selection of beneficiaries.
- b) Widow's Pension: The Gujarat Scheme of Widow Pension should be adopted as a national scheme. It needs the following modifications:
 - Widows may be entitled to old age pension at the age of 60 and above.
 - Widows between the age of 18 and 60 may be paid pension for a limited period of two years during which period they may be given training to enable them to take up employment.
 - During this period they may also be paid a supplementary pension of Rs.80 per child for the maintenance of two children.
 - At the end of the training they may be paid an equipment grant of Rs.5000.
- c) Pension for Physically Handicapped: The degree of disability should be the criterion for pension to the physically handicapped. The Commission suggests that a national scheme may be drawn up for the

- payment of a pension to all physically disabled persons who are, ab initio, incapable of doing any work and earning their livelihood or who have lost their earning capacity by more than 70% due to accident or disease. The rate of pension should be the same as suggested for the elderly. The lack or loss of earning capacity may be assessed by the same procedure as is prescribed for workmen's compensation under the Workmen's compensation Act or disability benefit under the ESI Act.
- d) Other Pension Schemes: Some States have special pension schemes for journalists, artists, agricultural workers, cine workers and others. All such schemes may be integrated into a National Pension Scheme with standardised components comprising of an old age pension, invalidity pension or disability pension and a family pension including a widow's pension, and a children's allowance.
- e) National Pension Scheme: If the recommendations concerning the integration of all pension schemes are accepted, we would suggest that the National Old age Pension Scheme be renamed as the National Pension Scheme. This Scheme may provide for payment of pension at a uniform rate of Rs.200 per person linked to the cost of living index as follows:
- i) All men and women of and above the age of 65 years and all widows of, and above the age of 60 and all disabled persons with loss of 70% earning capacity above the age of 18 (on the assumption that up to the age of 18 they will be looked after by their parents/guardians), subject to an income test related to the poverty line
 - ii) All widows between the ages 18 and 60 for a period of two years, during which time they are given training to enable them to earn their livelihood; financial assistance for maintenance of minor children and an equipment grant of Rs.5000 each.
 - iii) Other indigent persons who cannot earn their livelihood as may be identified by the

Government/s.

8.278 The Goa Employment (Conditions of Service) and Retirement Benefit Act, 2001 has been enacted to provide certain retirement benefits to the workers in the unorganised sector. The proposal is to create a fund for this purpose, and employers have to contribute a certain percentage of their salary or wage to this fund. The Employee may change from one employment to another but he will be provided with an identity card with a code number. This will also ensure benefits to those workers who are not able to complete 240 days work in a year.

MATERNITY BENEFITS

8.279 In a memorandum submitted to the Commission, the Forum for Crèche and Child Care Services (FORCES), has suggested that:

- (a) The Government of India should ratify the ILO Convention No.183 and Recommendation No.191 concerning Maternity Protection.
- (b) A six months leave period should be provided to enable exclusive breast-feeding in view of the WHO recommendation on

the subject.

- (c) The concept of maternity entitlement should be enlarged to include childcare and the two should be given the same status in law and policy. The health and well being of mother and the infant require cash support as well as crèches and childcare services on work sites and labour camps etc., for the protection and survival of infants while women work.

8.280 The Commission agrees with the suggestion that the quantum of benefits should be raised. According to ILO Conventions, the rate of maternity benefits should not be less than 75% of the wages last drawn. Assuming the woman qualifying for maternity benefit under the National Maternity Benefit Scheme is employed on minimum wages, for which the Central Government has fixed a floor level of Rs.45, the maternity benefits should not be less than Rs.30 per day or Rs.900 per month. The period for which maternity benefit is normally paid is 12 weeks or three months. The total amount of maternity benefit will, thus, come to Rs.2700. To this, may be added an additional

provision of Rs.300 for supplementary nutrition etc. Thus, the total amount of cash benefit to be paid will come to Rs. 3000 per childbirth. The Commission recommends that the quantum of benefits may be raised to a minimum of Rs. 2000/-.

8.281 The Commission endorses the suggestion that crèches must be provided to enable all working women to leave their children under proper care in a safe environment removing the burden from the shoulders of their siblings. We have made more specific recommendations on this issue in the chapter on women and child labour.

FOOD SECURITY

8.282 Food Security is one of the major components of social security. It consists of ensuring that 'food is available at all times, that all persons have means of and access to it, that it is nutritionally adequate in terms of quantity, quality and variety, and that it is acceptable within the given culture' There are three elements in this definition, availability, access and suitability. In recent years, nutrition has been considered as part of food security, and is therefore, referred to as 'Food and Nutrition Security.'

8.283 There is enough food available in the world. Even in developing countries, the per capita food production has increased by 8% on an average in the 1980s. Everybody can get 2500 calories from the available food which is 200 calorie more than the basic minimum. What is required is a well-organised public distribution system. Efforts have been made to streamline the PDS through the introduction of the Targeted Public Distribution System in June 1997. This system follows a two tier subsidised pricing structure for families Below Poverty Line (BPL) and for those Above Poverty Line. BPL population receive rice and wheat at a much lower price (hence highly subsidised) whereas APL population is supplied at a price which is much higher and closer to the economic cost. The identification of the poor under the scheme is done by the States.

8.284 A National Sample Survey has pointed out that about 5% of the total population in the country sleeps without two squares meals a day. Antyodaya Anna Yojna launched in December 2000 aims at identifying 10 million poor families and providing them with 25 kgs of foodgrains per family per month, at a price of Rs.2

per Kg. for wheat and for Rs.3 Kg. for rice, amounting to an annual allocation of foodgrains of about 30 lakhs tonnes. Similarly, the Anna Purna Scheme (2000) is for senior citizens eligible for old age pension but not receiving the pension, and whose children are not residing with them. Under this scheme 10Kg. of foodgrains is provided per person, per month, free of cost. The estimated cost of this scheme is Rs.330 crores per annum.

8.285 The overall subsidy on foodgrains has been rising from year to year. It was Rs.4960 crores in 1995-96 and became Rs.12075 crores in 1999-2000. But it has been found that 'PDS has failed in large parts of the country, and that it needs to be re-structured to be an effective tool of food security' .

8.286 The off-take from the PDS appears to be poor especially in some States like Bihar. It could be due to the fact that the economic cost has been going up, the prices at which foodgrains are supplied to people below the poverty line are also going up, and have become unaffordable to the poor in the category. It could also be due to the poor quality of the

foodgrains supplied through the PDS. Besides, the quantities supplied at subsidised prices are not adequate for the sustenance of the whole family, and people have to supplement them by purchase from the open market. Thus, the implementation of the PDS does not seem to be serving the purpose of making foodgrains available to people at affordable prices. The Commission agrees with the Study Group that the food security policy calls for a review and rationalisation.

8.287 We are of the view that the Central Government should devise a scheme similar to the targeted PDS for foodgrains, to supply cloth free to destitutes, at subsidised prices to the people below the poverty line. The Study Group has also suggested that the Janata Cloth scheme may be revived. The Commission endorses both these recommendation of the Study Group.

SHELTER

8.288 Shelter is one of the basic needs of the people. Indira Awas Yojna is the most important rural housing scheme which is subsidised. Houses are constructed by the

Government and given free of cost to people who are below the poverty line. The Scheme for Economically Weaker Sections is designed to provide housing assistance to the urban poor. This is a loan scheme with no element of subsidy. It is difficult to appreciate the discrimination between rural and urban poor on the one hand, and between members of different occupational groups on the other in the matter of housing subsidy. The Study group has suggested that a uniform policy be adopted in providing subsidy for housing.

ECONOMIC SECURITY & NATIONAL EMPLOYMENT ASSURANCE SCHEME

8.289 Economic Security is one of the main components of human security. It constitutes the crux of social security in the conventional sense. Economic security requires employment and an assured source of a basic income adequate for meeting one's basic needs. As emphasised in our development Plans.

8.290 "A primary objective of state policy should be to generate greater productive work opportunities in the growth process itself, by concentrating

on sectors, sub-sectors and technologies which are more labour-oriented, in regions characterised by higher rates of unemployment and underemployment.

"Recognising the high incidence of underemployment and increasing casualisation of labour, there is need to enhance employment opportunities for the poor, particularly for those who are in seasonal occupation. In this context, the effort to implement a National Employment Assurance Scheme is of considerable significance."

8.291 In pursuance of this policy, the Government has been implementing a number of national wage and self employment schemes in the rural and urban areas, which are at present designated as Swarnajayanti Gram Swarozgar Yojana, Jawahar Gram Samridhhi Yojana, The Employment Assurance Scheme, Prime Minister's Rozgar Yojna and Swarnajayanti Shahri Rozgar Yojna. In spite of all these programmes, the employment situation seems to have worsened in recent years. Some features of the emerging situation are:

- a) The structural adjustment programme, which has encouraged multinational companies using sophisticated technology to enter the country freely, has been displacing people engaged in traditional sectors. The recent reports of a large number of suicides by weavers in Andhra Pradesh, Tamil Nadu, and perhaps elsewhere, also bear witness to this phenomenon.
- b) The rate of growth in rural non-farm employment has slowed down,
- c) There is a growing casualisation of labour, especially among the educated workforce,
- d) The share of the organised sector in total employment levels in urban areas has been either declining or is, at best, stagnant, particularly among females,
- e) Rural real wages are declining.

8.292 It is evident that the existing employment schemes have not been able to cope with these problems and the conditions of the unemployed and

the underemployed people are deteriorating. There can, however, be no doubt that special employment programmes have a crucial role to play in providing short-term employment and preventing starvation. The Maharashtra Employment Guarantee Scheme is a prime example of such programmes. The Scheme aims at providing employment to the unemployed, and providing an unemployment allowance to those who cannot get employed. There are already several programmes designed to provide employment to the unemployed, and the Government is already committed to incur the bulk of the expenditure involved in such schemes. The only additional feature of the guarantee scheme is to pay an unemployment allowance when the State is not able to provide jobs. Assuming that such an allowance will have to be paid only to unemployed persons who are below the poverty line, the burden of such an allowance may not exceed Rs.420 crores as pointed out in the section on Unemployment Relief. Our Study Group, therefore, argued that this is the kind of safety net that the country needs in these days of globalisation. It appears that this was also the view

of the Planning Commission when they said that 'the effort to implement a National Employment Assurance Scheme is of considerable importance.' The Study Group is also of the opinion that such a scheme would not be unfeasible, and should be given a fair trial. We agree with these views.

8.293 An attendant problem concerning wage employment relates to the quantum of wages. A recent study has revealed that in many States the rates of minimum wages fixed are very low, and do not take into consideration the minimum amount required for the subsistence of an average worker's family. The methodology adopted for fixing the rates of minimum wages vary, and do not conform to any scientific basis. The wages actually paid are much lower than even the notified wages. The Supreme Court has laid down certain guidelines for fixing minimum wages at a subsistence plus level. The Study group felt that these norms should be enforced, and the level of minimum wages should be raised and more effective measures should be taken to ensure that no one pays wages below the minimum wages as that will constitute forced labour. While promoting wage employment,

the States should adopt and enforce a rational minimum wage policy (this issue has been discussed in greater detail in the section on wage policy).

8.294 We feel that it is the responsibility of the State to provide a basic level of subsistence by an appropriate social security measure to those who have no employment and no source of income. The Central Government should consider introducing a National Scheme of Unemployment Relief to the unemployed persons subject to a means test. As stated earlier, there have been suicides in several States due to unemployment. In February 1998, the National Human Rights Commission (NHRC) is reported to have taken cognisance of such deaths and made a series of interim recommendations to be implemented by the Central and State Governments within a period of two years. These included old age pension, disability pensions, employment generation, ecological security, soil conservation etc. The NHRC issued specific directions to the Central Government to release funds for an emergency programme of providing one meal a day to the starving people until its final

recommendations were made. The Supreme Court directed the Governments to comply with the directions of the NHRC.

8.295 Assuming that the total number of unemployed is 7 million, and 25% of them belong to families below the poverty line about 1.75 million people will require such relief. The estimated cost for such a scheme will therefore, be approximately Rs.420 crores if one bases oneself on the provision of a monthly allowance of Rs.200 per person.

8.296 Land is critical for rural people, and three-quarters of the poor depend on agriculture for their livelihood. About a quarter of the rural labour in developing countries are landless or do not have adequate security of tenure or title. And even those who have land, often have holdings too small or unproductive to provide a secure livelihood. Institutions and policy reforms are needed to give better access and secure rights to all the critical assets that are unevenly distributed.

8.297 The National Commission on Rural Labour has stated that there is

an immediate need to strengthen the land base of the rural poor for raising their incomes as well as for improving their status and strengthening their bargaining power. The measures they have suggested include tenancy reforms, distribution of land, development of common property resources, access of land to women, updating land records and vigorous implementation of agrarian reform laws. Land reforms have, therefore, been regarded as an important means of social protection. Providing the poor with access to assets is a basic form of social security. In an agricultural economy, land is the primary asset from a subsistence point of view.

8.298 Generating greater access to land for the landless rural poor is considered an important component of the effort aimed at poverty alleviation. It is therefore, necessary to ensure better implementation of the programmes. However, we realise that land reforms is a State Subject, and the Central Government can only advise and monitor the progress. But we feel that the Central Government also has a duty to expedite progress in this direction.

HEALTH SECURITY

8.299 Health security is one of the major components of human development. Good health is not only an end product of development but also a necessary condition for economic development. Improved health contributes to economic growth by reducing production losses due to illness of workers. There is a significant relation between income growth and health.

8.300 Health care is one of the functions of the State. According to the Directive Principles of State Policy laid down in the Constitution, 'raising the level of nutrition, and the standard of living and the improvement of public health are among the primary duties of the State.' Improvement in the health status of the population has been one of the major thrust areas for the social development programmes of the country.

8.301 The World Health Assembly held in 1977 adopted a resolution which said that the main social target in the coming decades should be the attainment by every citizen of the world of a level of health that will permit him to lead a socially and

economically productive life. The Assembly had set the year 2000 as the target date for achieving the objective. Subsequently, the Conference on Primary Health Care held at Alma Ata declared that primary health care is the key to attaining this target as part of development, and in the spirit of social justice. Since then, many countries have adopted primary health care as the strategy for social security. India has also adopted primary health care as the main instrument for achieving the goal of 'health for all.' A vast network of institutions at primary, secondary and tertiary levels have been established for this purpose. The provision of primary health care services constitutes one of the seven Basic Minimum Services included in the national agenda.

8.302 The primary health care infrastructure is intended to provide integrated promotive, curative and rehabilitative services to the population close to their residence. It is estimated that over 80% of the health care needs of the population can be met by the primary health care infrastructure; only the rest may require referral to the secondary or

tertiary health care institutions.

8.303 Nearly 30% of India's population live in urban areas. Due to the massive inflow of population to the towns and cities, the health status of urban slum dwellers is, at times, worse than that of the rural population. There has been a dearth of well planned and organised effort to provide primary health care services to the urban population within 2-3 kms of their residence and to link primary, secondary and tertiary care institutions in geographically defined areas. While an elaborate network of health services based on population norms has been established in the rural areas through group centres, primary health centres and community health centres, the services provided in these centres have, however, not been satisfactory.

8.304 The Planning Commission itself has admitted that the Primary Health Care System is facing the following problems:

- a) Persistent gaps in manpower and infrastructure especially at the primary health care level.
- b) Sub-optimal functioning of the infrastructure; poor referral

services.

- c) Plethora of hospitals not having appropriate manpower, diagnostic and therapeutic services and drugs in Government, voluntary and private sector.
- d) Massive inter-state/inter-district differences in performance, as assessed by health and demographic indices; availability and utilisation of services are poorest in the most needy states/districts.
- e) Sub-optimal inter-sectoral coordination.
- f) Increasing dual disease burden of communicable and non-communicable diseases because of ongoing transitions in demographic composition, lifestyle and environmental conditions.
- g) Technological advances which widen the spectrum of possible interventions.
- h) Increasing awareness and expectations of the population regarding health care services.
- i) Escalating costs of health care, ever widening gaps between

what is possible and what the individual or the country can afford.

8.305 In spite of these deficiencies, primary health care is regarded as the most appropriate strategy for attaining the goal of health for all, within a reasonable time frame.

8.306 As we have pointed out earlier, health care is also an important component of social security. Indeed medical care is widely regarded as the primary branch of social security since health is of concern to all age groups and all categories of employees. All comprehensive social security programmes, therefore, make provision for medical care. The ILO Convention No. 130 and Recommendation No. 69 contain guidelines for the provision of medical care under social security.

8.307 In this connection the following question arises: When the State is committed to a policy of health for all,

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¹⁷Final Report of the Second Regional Consultation on Strategies for the Development of Social Security Health Programmes (medellin, Columbia, 1985); Primary health care and Health Strategies in Latin American Social Security 1986, ILO in collaboration with the Pan American Health Organisation and the Permanent Inter American Committee on Social Security, p.256

and has built up, or is building up a huge health infrastructure to achieve that objective, is it necessary or desirable to set up a parallel system of health care under social security? If not, what is the role of social security in the field of health care? .

8.308 Mr. Carlyle de Macedo,¹⁷ the head of the Pan American Health Organisation, recognised that social security and public health had historically developed independently. This had led to the existence of different operational practices and models, centres of interest and pressure groups. To overcome the obstacles that might be created by vested interests, a consensus should be achieved on two fundamental principles applicable to health policy; the principle of equity and that of efficiency.

8.309 The need for equity is based on the fact that health could not be considered exclusively as an individual phenomenon, but has to be treated as a social problem.

8.310 As regards the principle of efficiency, Mr.Macedo recalled that everybody was aware of the alarming inadequacy of resources in the health field in the face of growing unsatisfied

needs. But many forgot that at the same time, there was enormous waste in the use of the resources that were available.

8.311 These observations are as relevant in the Indian context as elsewhere. It should be obvious that if a separate system of health care were to be established for providing medical care to the unorganised sector, which covers practically the whole population except for the small number of persons in the organised sector, it will be more or less parallel to the existing system of public medical service and will amount to complete duplication. There is hardly any justification for it. Considering, however, that the public medical service has not been satisfactory, it is equally obvious that there cannot be a total reliance on that system. It has to be supplemented by other measures. This is the rationale for a variety of health insurance schemes that have come up, or are coming up. The ESI Scheme, the CGHS and the Mediclaim policies of the GIC are the most well known among the health insurance schemes.

8.312 It is evident that there is

need as well as scope for extension of health insurance both for raising additional finances necessary to increase access to medical services and for enhancing quality. The need is for optimal utilisation of private and public resources and facilities. Although the 1983 National Health Policy reform encouraged health insurance services, there has been only a limited extension of such insurance through GIC-sponsored schemes since that time.

8.313 The available evidence is not clear on the health insurance priorities for workers in the unorganised sector. Hsiao and Sen (1995) claim that most of them are more interested in ensuring the provision of primary, and some secondary health services, than to insure themselves against much less frequently occurring hospitalisation costs.

8.314 If workers prefer to contribute to primary and some secondary health services, one could use the new concept of managing and

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¹⁸ Community Health Centre: the basic infrastructure of primary health care for rural areas was evolved during the sixth plan to consist of sub centres, primary health centre and Community health Centres (CHCs)

financing of health care, particularly in rural areas, as recently developed and proposed by Hsiao and Sen (1995). Under this (CHC)¹⁸ scheme, the provision and financing of health care will be undertaken by communities characterised by strong social bonds and mutual trust. The CHC would provide preventive services, immunisation, health promotion, family planning, maternal and childcare, and outpatient services to all its members, including drugs, for which a co-payment (part-payment) would be levied. Each community of about 1,000 people would have a health post serviced by one health worker paid by CHC, and a stock of generic drugs specified in the WHO essential drug list. The CHC would also establish a primary health centre for a population of about 15,000 people, staffed by a doctor, a mid-wife, a clinical nurse, a primary care practitioner, a pharmacist, and an assistant. These centres would refer patients to the regional centres for tertiary care, possibly on the basis of a packaged fee or a capitation payment. Patients have the choice of obtaining free

health services at the health posts and primary health centres or from private practitioners. When the service is obtained from a private practitioner, the CHC will only reimburse the patient 50% of its costs. This new organisation would mean a significant improvement over services currently provided by the government, which finances one sub-centre for a minimum of only 5,000 people and one primary health centre for 30,000 people.' If the preference of workers is for insurance to counter the cost of hospitalisation, then it may be advisable to follow the model developed by SEWA. It appears from their experience that the extension of worthwhile health coverage should be possible at affordable premium levels. In SEWA'S reckoning a satisfaction level of 50% could be achieved towards reimbursement of a member's health expenses against a small annual premium of Rs.15." ¹⁹

8.316 On the basis of these considerations and recommendations, our Study Group has come to the conclusion that while basic health security has to be provided by the primary health care infrastructure, it

¹⁹ Social Protection for the Unorganised Sector, ILO – ILO/India/R36 p.25

may be supplemented by one or more of the various options indicated above. Considering the size and diversity of the population in India no one model would be adequate. **It** may be necessary to have a combination of schemes. As most of these schemes will be voluntary, development of such schemes may be left to the initiative of the people to form groups and to organise them according to their felt needs. The Study Group, however, felt that the health insurance scheme of the ESI has an important role to play in supplementing the public medical service. It is, therefore, necessary to take all possible measures to improve its working and its expansion. The Commission endorses the views of the Study Group.

8.317 Nutrition Support is one of the Basic Minimum Services included in the National Agenda. There are two major programmes which provide food supplements to the vulnerable segments of the population; these are the Supplementary Nutrition Programme and the Midday Meal Programme.

8.318 Special Nutrition Programme is

one of the important components of the Integrated Child Development Services programmes. The target group receiving food supplementation is children between the age of 6 months and 6 years and pregnant and lactating mothers. The beneficiaries receive supplements through the ICDS infrastructure, which is funded by the Department of Women and Child Development.

8.319 The cost of food supplements is met by the State Governments and UTs through the State plan budgets. As of 1996, there were 4200 ICDS blocks with 5,92,571 anganwadis in the country; 426.65 lakh beneficiaries were covered. We are informed that by 2002, ICDS programmes will be put into operation in 5614 blocks with 8,04,671 anganwadis covering 579.36 lakhs of beneficiaries. Funds required for covering all these beneficiaries under the SNP in the period 1997-2002 is Rs. 6792.29 crores.

8.320 The Programme of Nutritional Support to Primary Education, popularly known as Midday Meal Scheme, was launched in 1995 as a fully funded Centrally Sponsored Scheme. Under this scheme, all

school children in the primary schools in government and Government-aided schools are to be covered. Ideally, a hot meal is provided to the children at school for 10 months in the year. The foodgrains are delivered directly at the district level by the Food Corporation of India, under instructions from the Department of Education in the Government of India. So far, the Scheme has not been universalised, but once it is, the annual expenditure would be of the order of Rs.2226 crores (in 1997-98) going up each year on account of the increase in cost. The Study Group has also heard some complaints about the working of the Midday Meal Scheme. It has suggested that these complaints be looked into and the programme made more effective. The Commission agrees with the views of the Study Group.

8.321 The population of India can be broadly divided into two groups i.e. the working population and the non-working population. The non-working population generally depends on the working population. The non-working population includes a preponderance of women, children, handicapped, etc., who constitute the vulnerable sections of

society. Society has a responsibility to protect the interests of these vulnerable sections of people.

WOMAN

8.322 Women, though they make up half the world's population, constitute the largest group which is excluded from the benefits of development. In India, the work participation rate of women is less than half that of men. The multiple roles of women and their meagre ability to access resources and available assets have been discussed in detail in the Chapter on Women and Child Labour. But it is important to emphasise that women require adequate security and protection to be self-reliant.

8.323 The Working Group on Labour Policy for the Ninth Five Year Plan has stated in its report: 'Notwithstanding laudable pronouncements in the Constitution backed by several laws of the land such as the Protection of Civil Rights Act, the Equal Remuneration Act, etc., women of all ages, and classes, and individuals in general and those belonging to the SC community in particular have for generations been subjected to

varying degrees of exploitation at home as well as at the place of work. The stratified structure of society, the sexual division of labour and control over women's sexuality, has all combined to assign women the traditional role of mother and wife, and have also made women as receivers of these roles for generations. The culture of acquiescence has led to a state of helplessness vis a vis women and is responsible for many of the aberrations which afflict society such as child marriage, unlimited family size, absence of leisure, freedom and relaxation, leading to a life of drudgery, and the denial of the basic dignity, equality and respect to which every woman is entitled. The twin problems of invisibility (of poor women in rural areas) and insensitivity (of bureaucracy at all levels) have been tellingly brought out by the National Commission on Self Employed Women and women in the informal sector.'

8.324 The National Commission investigated reasons for the disparities vis a vis Self-Employed Women, and their findings are as valid today as they were, when they submitted their report.

8.325 The following recommendations of the Commission need re-iteration: 'The Commission strongly recommends that if we are serious about substantially improving the economic status of poor women working in the informal sector of the economy, we have to devise concrete strategies which can help to enhance the ownership of and control over productive assets of these women. Perhaps it will be the single most important intervention towards both their empowerment and economic well-being. Some of the assets that women can be given are a plot of land, housing, tree pattas, joint ownership of all assets transferred by the State to the family, livestock license, bank accounts, membership of organisations and identity cards.'

8.326 Similar views were expressed at a workshop on widows held in 1994 at Bangalore where the following demands were put forward:

- a) Housing: including automatic transfer of the conjugal house to the widow's name upon the death of her husband or allotment of house site and housing by the Government.

- b) Law: including automatic transfer of land and other property to the widow's name upon the death of her husband.
- c) Jobs: including automatic transfer of the husband's job to the widow (or her son) and training plus subsidies for self-employment.
- d) Children's education: including scholarships, stipends to cover the cost of books, uniforms, transport and boarding facilities.

8.327 It would appear from the foregoing recommendations and demands that the improvement in the social and economic condition of women calls for fundamental changes in the law regarding the right to property of women generally, and widows in particular.

8.328 Among women, widows are the most vulnerable sections of the Society. There are about 33 million widows in India representing 8% of the total female population (as per the 1991 census). The proportion of widows in the female population

rises sharply with age reaching over 60% among women aged 60 and above and close to 80% among women aged 70 and above.

8.329 Several studies have pointed out that female widowhood in India tends to be associated with economic deprivation.

8.330 Martha Chen has described the plight of widows in India as follows: 'In rural India, even today, most social groups follow customary norms rather than modern statutory laws. In regard to property, there is a widespread tradition of joint patrimonial ownership under which widows are entitled to use rights (if they have no adult sons) or maintenance rights (if they have adult sons) over their husbands' share of ancestral land. Once her sons (if any) grow up, a widow may have to forfeit her use rights to her husband's land in exchange for a right to maintenance by one or more of her sons. Even maintenance rights are often uncertain.'²⁰

²⁰ Social Security for Widows in India by Martha Alter Chen (Mimeo) 1997.

²¹ See Social Assistance programmes p.37.

8.331 Yet, the amelioration of the socio-economic condition of widows in India has not been given due consideration at the level of the Central Government. Some State Governments have introduced special pension schemes for widows, but the rates of pension are low and the actual coverage is also low. The eligibility criteria are restrictive and the bureaucratic hurdles are difficult to overcome. It is doubtful whether the pension schemes, as they exist today, can be said to be an effective instrument of social security to women.

8.332 Our Study Group has, therefore, suggested the introduction of a National Widow Pension Scheme coupled with a training programme to help the younger ones to be self-sufficient.²¹

8.333 The maternity benefit and family benefit schemes have already been discussed in this chapter as well as in the Chapter on Women and Child Labour. In particular, priority should be given to extend maternity benefits, childcare, widow pension etc. to all women living below the poverty line.

CHILDREN

8.334 The report on Human Development in South Asia for 1997 describes the plight of children in South Asian countries as follows:

8.335 'To be a child in South Asia is to suffer a life of constant denial. Children are often born without their mothers being attended by trained health personnel. In fact, nearly 70% of the mothers struggle alone, surrounded by untrained though anxious relatives, at the time of their greatest need.

8.336 'In their survival and development, these children face even more formidable hurdles than those they face at birth. Half of the world's malnourished children (83 million) are to be found in just three countries: Bangladesh, Pakistan and India.

8.337 About 85 million children in South Asia have never seen the inside of a school. Only half of the total number of school-age children enrol in schools. Of these, 42% drop out before reaching Grade 5. (In India the percentage of primary enrolment went up to 102 in 1992, but the percentage of children who drop out

of schools before grade 5 was as high as 34). While many children are forced to leave school due to family circumstances and the compulsion to provide economic support to the household at a tender age, one of the main reasons for the high rates of school dropout in South Asia is that both parents and children realise the poor quality of education they receive. Dramatic improvements are required in teacher training and supervision, in learning materials and school facilities.

8.338 Even more worrying than the state of education is the fact that there are an estimated 134 million children in South Asia, employed as child labour, sometimes in inhuman conditions and for paltry wage.

8.339 Many children have to work over fifteen hours a day and are often physically abused. Rape and beatings are frequent. Once bonded, these children are traded like livestock and sometimes shipped to distant areas. 70% of South Asia's children are employed in agriculture, mainly victims of an entrenched system of bonded labour, where whole families are enslaved in order to pay off debts.

8.340 Pressures are now emerging,

both from governments and from civil society organisations within these countries, to stop the use of child labour. The plight of children, the existing legislation and the schemes of the Government of India have been discussed in detail in the Chapter on Women and Child Labour. Here, we would like to emphasise that a National Scheme may be designed for the payment of children's allowance on a universal basis, subject to a means test, to persons below the poverty line. This would be one way of integrating social security schemes with poverty alleviation programmes. Special measures should be taken to prevent sickness and promote the overall well being of children, specially the girl child.

8.341 The Government of South Africa is reported to have introduced a Scheme of State Support of Children of Poor Families. There are similar schemes in India for members of Scheduled Castes and Tribes who are given monetary incentives for sending their children to school. The Study Group has suggested that the scope of these schemes may be extended to cover all families below the poverty line whereby the parents may be given a cash allowance for

the maintenance of children.

8.342 According to the 1991 Census, the total population of children was about 320 million. Assuming that this number has gone up to 350 million by the year 2001 and that 25% of them are below the poverty line, the number of children for whom such assistance would have to be given, would be about 90 million per month. Assuming again, that the rate of children's allowance to be paid would be Rs.50 per child per month, the total cost of the scheme would be about Rs.5400 crores per annum.

NATIONAL POLICY FOR OLDER PERSONS

8.343 The aging of population is a global phenomenon. In 1950, there were about 200 million persons aged 60 and over in the world, constituting 8.1% of the total global population. It is projected that by the year 2050, there will be a nine fold increase in the population of the aged to 1.8 billion representing about 20% of the total population.

8.344 India is no exception to this trend. According to the 1991 census, the proportion of the elderly persons

has risen from 5.3% in 1961 to 6.58% in 1991 and is expected to be 9.08% in 2001 and 9.875 in 2021. More than four-fifths of the elderly persons live in rural areas, and the female elderly outnumber the male elderly.

8.345 According to the 42nd round of the NSSO, 34% of the rural elderly were financially independent as against 28.94% in urban areas, 12% of the male elderly were staying alone, and this percentage was a little above 1% for females.

8.346 There are three ways in which social protection is provided to the elderly, namely, social assistance, social security and provident funds. These schemes have already been discussed in this chapter earlier.

8.347 We will reiterate the need for a national policy for older persons. Moreover, assuming that at least 1% of the aged require institutional care, facilities would have to be created for providing institutional care to about fifteen lakh persons. It is difficult to believe that an adequate number of voluntary organisations will come forward to set up so many old age homes. There is, therefore, no alternative to the Central and State

Governments taking the initiative to set up their own homes in sufficient numbers.

8.348 One cannot be content with the setting up of homes. The quality of service provided in these homes needs to be monitored. The existing arrangements in this regard are less than adequate. It is, therefore, necessary to establish a well-organised regulatory system to ensure that standards are maintained, and exploitation avoided.

8.349 With the growth in the population of the aged, the associated problem of caring for the aged is becoming increasingly important. Lately, long term care of the elderly in some of the developed countries has been systematised in the form of social care insurance as a part of social security. It has been reported that in 1991, in Germany, approximately one-third of the social security expenditure was devoted to care provision. The concept of care dependency is distinct from treatment for illness, and it covers help with daily tasks that do not fall under any medical treatment plan, e.g., personal hygiene, feeding, mobility or housework.

8.350 The normal and preferred arrangement for taking care of the aged is to encourage them to live with their families. This would also be consistent with our national tradition. Where there are either no families, or where the families cannot look after them, they would have to be provided with institutional care.

8.351 Appropriate schemes would need to be designed for the health care as well as long term care of the elderly. It may be mentioned here that the health insurance schemes of the GIC do not cover persons who are above the age of 70 who require greater attention, for reasons that are obvious.

8.352 Maintenance is a civil right that enables needy persons to receive economic support from those who are liable to protect and maintain their spouse, children, parents, etc. By law, parents are bound to maintain minor children, major children their parents, the husband his wife, and vice versa. The quantum of maintenance varies depending on the economic status of the parties. The various personal laws such as the Hindu Marriage Act, 1955, the Hindu Adoption and Maintenance Act, 1955,

the Indian Divorce Act, 1859, the Parsi Marriage Act, 1954, the Shariat Laws, etc., provide for maintenance, also known as alimony or allowance. Civil courts take a long time to dispose off cases. Even if a competent civil court passes a judgement and decree, execution takes months and even years due to cumbersome legal procedures. Even before the maintenance is realised the decree holder may die of starvation.

8.353 Realising the above, the right to maintenance has been incorporated in Chapter IX of the Criminal Procedure Code (Cr.P.C). It is an entitled 'order for maintenance of Wives, Children and Parents.' Under Section 125 of the Cr.P.C., 'if any person having sufficient means neglects to maintain (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being married) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a magistrate, of the first class, may

upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees on the whole, as the magistrate thinks fit, and to pay the same to such person as the magistrate may from time to time direct.' A ceiling of Rs.500 per month towards maintenance will not prevent vagrancy though that is the object of the provision. Various women's and civil rights organisations and other activists have raised their voice against this ceiling. In West Bengal the amount was raised to Rs. 1500.

8.354 In Tamil Nadu, after a long debate with various sections of society and women's organisations and the Tamil Nadu Women's Commission, it was decided to amend the Cr.P.C. and remove the ceiling, and to vest in the magistrate, the power to grant maintenance in his discretion, taking into account the capacity of the person to pay, and the need of the person seeking maintenance. The Legislative Assembly unanimously passed a bill to amend the Cr.P.C. accordingly, and it was sent to the Central

government for obtaining Presidential assent. In the meantime, the Government changed, and the Bill has been withdrawn on the ground that the Central Government itself is contemplating a similar amendment.

8.355 In sum, the Union Law Minister announced that the Government of India is planning to enhance the interim maintenance limit for an estranged wife from the existing Rs.500 to Rs.5000 on the recommendation of the Law Commission. We are glad to learn that this has now been done through an amendment to Section 125 of the Cr.P.C.

8.356 We welcome this move and suggest that the ceiling on the amount to be paid for maintenance of dependants may be removed as was proposed by Tamil Nadu, and it may be left to the courts to decide the amount depending on the facts of the case.

8.357 In order to ensure that the elderly keep healthy, it is necessary that they remain gainfully active. Their service can, therefore, be utilised in various activities of the community such as manning child care centres,

cultural clubs, vocational training centres, etc., for which they may be paid appropriate remuneration.

NATIONAL SCHEME FOR PENSION FOR PHYSICALLY HANDICAPPED

8.358 The Human Development Report 1993 has observed that despite the necessary demand for greater participation, large numbers of people continue to be excluded from the benefits of development. Disabled persons represent one such excluded group.

8.359 The disabled represent at least 10% of the world population. They include all those who have experienced injury, trauma or disease that results in long term physical or mental changes.

8.360 There is no systematic, scientific and precise information available on the prevalence, degree and kinds of disabilities in India. Only a few sample surveys at discrete points of time are available, and the information collected through these

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²² Annual Report, Ministry of social justice and Empowerment 1999-2000

may not be strictly comparable due to differences in scope, coverage and even concepts. According to the NSSO sample survey of 1991 in the field of visual, hearing, speech and locomotive disabilities, it has been estimated that about 1.9% of the population of the country is disabled. As regards mental retardation, a sample survey conducted by the NSSO in 1991 estimated that about 3% suffer from delayed mental development. The number of leprosy-affected persons is estimated to be about 4 million, of whom a fifth are children. Fresh cases of disability every year have been estimated to be 7.5 lakhs as per the 1991 sample survey. Hence, on average, 5% of population is estimated to be suffering from some kind of disability. In terms of absolute numbers the estimated number of people having disabilities is about 50 million.²²

8.361 Disability, even in industrial countries is closely linked with poverty. It is more common in rural areas and among the poor. The disabled face many barriers to participation. Lack of education is one. Discrimination in employment is another.

8.362 Some countries have taken measures to give greater opportunities to the disabled. Germany, for instance, has a quota of 6% for employment of the disabled, in both government and private businesses. The United States has far-reaching legislation: The Americans with Disabilities Act, 1992, sets a large number of standards to be achieved in working life.

8.363 In India, a National Policy for the Handicapped has been under preparation for several years. It has not yet seen the light of day. The Ministry of Social Justice admits that all the measures initiated by the government/s have reached hardly 5% of the population with disabilities. What is more disturbing is the fact that even the scant services available, are highly skewed in favour of the large urban metropolises. There is hardly any networking of services available outside the cities.

8.364 Since the Ministry has itself recognised the deficiencies in the existing arrangements for social protection of the disabled, there is not much that we need say in the matter. We, however, feel that it is necessary to prepare a

comprehensive plan of action covering, inter alia, the following aspects:

- a) Removal of the disabilities, whenever possible, should be the basic objective of any such plan. Where the disabilities cannot be removed, measures should be taken to bring the disabled persons into the mainstream by providing them appropriate education and skill training.
- b) The People With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 already provides for a 3% reservation in identified posts in all government and public sector offices for disabled persons. Steps should be taken to enforce this provision strictly. The feasibility of extending this requirement to employment in private establishments as in Germany, and Japan, may be considered.
- c) The provision of adequate employment opportunities should be the second priority in any scheme for the welfare of the disabled.
- d) It may not be possible to

provide employment to all the disabled as their capacity to work will not be uniform. Yet, the attempt should be made and the avenues explored to provide access to such work as within the ability of the disabled person. In cases of persons who cannot work, the State should provide a safety net by providing them food, clothing and shelter at its own expense.

- e) There should be a proper assessment of the numbers involved and schemes prepared to cover them.

8.365 The Study Group has suggested the introduction of a National Scheme of Pensions for the Physically handicapped. The Commission endorse the views of the Study Group.

8.366 The Central, as well as the State Governments have undoubtedly introduced several schemes for the welfare of the Disabled. On a review of these schemes, one cannot help forming the impression that they are, at best, ad hoc in nature and do not conform to any overall plan or blueprint. While many of the schemes

are laudable, their adequacy and effectiveness are open to question.

8.367 For example, District Rehabilitation Centres have been set up to provide comprehensive rehabilitation services to the rural disabled in 11 districts. There is no information about the number of persons who have availed of the services provided through these centres. It has not been explained why similar centres cannot be opened in all the districts and urban areas.

8.368 We suggest that the feasibility of opening such centres in all the districts and in all the States and U.T.s. may be considered. It would be desirable to route all social assistance for disabled persons through such centres.

KHETIHAR MAJDOOR BIMA YOJNA

8.369 Agriculture is still the largest occupation in India. It provides employment to over 200 million people. The persons employed in agriculture are broadly of two classes - cultivators and agricultural workers. According to the 1991 Census, the total number of cultivators was 107

million and the total number of agricultural labourers was 74 million.

8.370 The following schemes are designed for promoting or protecting the interests of cultivators:

- a) Crop and Livestock Insurance Schemes
- b) Minimum Support Price
- c) Fertiliser Subsidy
- d) Subsidy on Sale of Electricity
- e) Drought Area Development Programmes
- f) Desert Development Programmes
- g) Other forms of assistance

8.371 The Union Finance Minister, in his budget speech for the year 2001-02, announced a proposal to introduce a new Social Security Scheme for agricultural workers called the Khetihar Mazdoor Bima Yojana. The Scheme is reported to have been launched on the 18th of May 2001. It was expected to come into operation from July 1. It has been described as the first ever scheme for the welfare of the farm workers and a step towards meeting the social security needs of agricultural workers.

8.372 We welcome the initiative taken by the Government in introducing the Scheme. It seems, however, to be a departure from the original proposal to establish an employment board and a welfare fund for the workers. We suggest that these proposals may also be revived and implemented early.

8.373 In the past, contributory schemes of this kind have not been successful. Much depends upon the kind of extension work that is done to promote the Scheme. As the Scheme is yet to be put into operation, it is premature to say what the result of the Scheme will be.

8.374 There are several occupational groups sharing the socio-economic conditions of agricultural workers. To target a single group for such a scheme may be discriminatory. Extension of the scheme to other workers in the unorganised sector would be more beneficial.

PENSION TO LEPROSY PATIENTS

8.375 Leprosy is a scourge. India has a large number of leprosy-affected persons, estimated at 4.50 lakhs. 58% of the global recorded

caseload is from India. About 15-20% of the patients are children. The proportion of multi-bacillary cases ranges from 10-30% in different regions. The deformity rate is approximately 6-8% among the total number of cases. The incidence of leprosy is high in the south eastern and eastern regions comprising Tamil Nadu, A.P., Orissa, Bihar, M.P., U.P., Maharashtra, Karnataka and West Bengal. Bihar, U.P., West Bengal, M.P. have the highest number of cases representing 15.5%, 16%, 11%, and 10.5% of the total country load respectively.

8.376 The National Leprosy Control Programme was introduced in 1955. Initially, it started as a Centrally aided scheme with focus on rural areas of high and moderate endemicity. It was converted into a 100% Centrally Sponsored Scheme in 1969. The object of the scheme is to control leprosy through Domiciliary Dapsone Monotherapy. In view of the scientific advancement and availability of highly effective treatment of leprosy, the programme was re-designated as National Leprosy Eradication Programme in 1987 with the initial aim of arresting the disease activity in all the known leprosy cases in the

country by the year 2000 A.D. It was stated that the ultimate objective was to eliminate leprosy. The present approach is based on early detection of cases and their prompt and regular domiciliary treatment with Multi Drug Therapy (MDT). The education of the patient and the community about the curability of the disease, training of staff and medical rehabilitation are the other key components of the programme.

8.377 With the implementation of the MDT services under the programme, a large number of leprosy cases are being discharged as the disease is cured. For the first time in 1987, the number of cured cases exceeded the number of new cases. Since then, with the rapid extension of MDT services to other endemic areas, the percentage of discharged cases is rapidly increasing each year. During the year 1995-96, the number of discharged cases was over 6.17 lakhs as against new detection of 4.25 lakhs.

8.378 So far, the programme has been able to treat and discharge about 9 million cases from the registers out of which 6.57 million cases are due to cure with MDT. The

leprosy case load at the end of 1995-96 was reported to be 5.4 lakhs.

8.379 The Central Government has a scheme of providing financial assistance to N.G.O.s for the rehabilitation of the leprosy-cured persons both in rural and urban areas. Assistance is given up to 90% of the project cost. Programmes like awareness generation, early intervention, education and vocational training, economic rehabilitation, social integration, etc. are undertaken under the scheme.

8.380 It is satisfying to note that a large number of leprosy-affected persons have been cured but the number of persons yet to be cured is by no means small. They need not merely treatment for the disease, but also assistance for their living as they may not be able to work and earn their livelihood except through begging. Even in the case of patients who are cured, it is doubtful whether they can be totally self-reliant. The Government of Kerala has therefore, introduced a pension scheme for such patients. Our Study Group has suggested that a national scheme be drawn up for payment of pension to leprosy affected persons on the same lines as the pension for

the physically handicapped persons, with the rate of pension being raised to Rs.200 per month.

8.381 Mentally ill persons form another category of vulnerable group that requires attention. The inhuman conditions in which the mental asylums are maintained was the subject of a recent report of the National Human Rights Commission and an incident in a Tamil Nadu institution. The Commission has said that there is an urgent need to transform mental hospitals into genuine centres of care and treatment, and to see that they do not remain custodial institutions. Factors contributing to chronicity and disability are: (i) delay in seeking treatment; (ii) irregularity and incomplete treatment; (iii) lack of support from the family and (iv) inadequate rehabilitation support. All of these are areas suitable for intervention by public health authorities. For a large majority of the mentally ill, lifelong illness or disability is totally avoidable.

MENTALLY ILL

8.382 The Mental Health Act 1987 places the responsibility for planning and monitoring of the care of the

mentally ill persons on the State. Unfortunately, not all States have formed a State level Mental Health Authority. The State should support the families of the mentally ill by providing them community based services and where absolutely necessary, financial aid.

8.383 A National Scheme should be drawn up for providing institutional care and means of livelihood to mentally sick people who are unemployable, and their dependants, treating them on par with the physically handicapped.

BEGGARS AND OTHER DISADVANTAGED GROUPS

8.384 The problem of beggary has become a cause for serious concern. There is no Central Law applicable in the whole country for prevention and control of beggary. However, the various Anti-Beggary Acts require setting up of institutions for the detention, treatment, training and rehabilitation of beggars.

8.385 In 1992-93, a new Central Sector Scheme for the prevention of beggary was introduced with the objective of developing facilities for

education and vocational training of beggars with a view to training them to engage in productive work.

8.386 While able-bodied beggars should be given training and helped to get employment so that they might give up beggary, there may be many persons who may not be able to work and earn their living because of their physical condition. In such cases the State would have to provide them the basic means of livelihood. This can be done either by maintaining them in beggar homes, or by giving them a pension on which they may subsist. A National Scheme may be drawn up for the purpose.

8.387 The National Scheme of Liberation and Rehabilitation of Scavengers and their dependents was launched by the Government of India in March, 1992, with the following three components:

- a) A periodical survey to identify scavengers and their dependents and their aptitude for alternative trades and professions.
- b) The training of scavengers and their dependents

- c) The rehabilitation of scavengers through projects with a prescribed funding pattern.

8.388 There is a prescribed financial package for the rehabilitation of scavengers in alternative trades through the provision of financial assistance upto Rs. 50,000/- per beneficiary. In addition to the funds released by the Government of India, the NSFDC also earmarks 10% of its disbursable funds for the welfare of persons engaged in 'unclean' occupations including scavenging.

8.389 While commending the initiatives taken by the Central Government to eliminate the obnoxious practice of manual handling of night soil and filth, our Study Group suggested that effective measures be taken after discussion with the representatives of the States for weaning people engaged in that profession and for rehabilitating them in other employments. We endorse these views.

8.390 There is a proposal to establish one or more welfare funds for rag pickers. It is suggested that the feasibility of setting up similar welfare funds for other scavengers also may be considered.

DISASTER MANAGEMENT

8.391 Social security schemes are designed to provide relief against economic and social distress caused by a variety of contingencies. One such contingency is the occurrence of natural disasters which affect a large number of people at the same time. It is said that in 1943, when the Great Bengal Famine occurred, over 5 million people died. It is common knowledge that in India, natural calamities in the form of drought, famine, cyclone, floods, earthquakes etc. have been occurring every year, in one part of the country or the other. Every such disaster attracts every form of social security, namely, medical care, invalidity benefit, survivors benefit, maternity protection, child care etc. It is therefore, necessary to design an appropriate National Scheme for providing relief and rehabilitation assistance to the affected people.

8.392 An appropriate organisation is required to handle the crisis situations, and adequate funds should be allocated for this purpose.

8.393 In this connection the following suggestions have been made:

- (a) It would be worthwhile to think in terms of creating an auxiliary task force specially trained to handle such situations. The Army could provide the necessary training for the task force. Retired army personnel could be of immense help in such agencies. Units of this task force must be in a state of continuous preparedness, ready to swing into action as soon as a disaster strikes.
- (b) It is also necessary to have a computerised data base which would be available to the bureaucracy as well as to the task force. The database would contain information about where the members of the local task force are located, the means of getting in touch with them and the instructions that are to be issued to them. An inventory of the various types of transport available in each district as well as the kind of assistance that could be provided by the railways, the air force, and the navy would be a vital part of the database.
- (c) Special equipment would be necessary to rescue people. Lists of the equipment required

and its location must be prepared. Building and highway contractors could post a list of their equipment and its locations electronically. Exercises could also be done to find quick ways of transferring this equipment. Large industrial houses and computer professionals can get together to evolve this system in collaboration with government institutions

- (d) Estimates of the kinds of drugs and equipment needed for different types of disasters per 100 persons need to be kept ready with disaster research centres. Such information is now available. All decision makers should be aware that it exists, and where it can be accessed. Large hospitals need to have lists of private doctors and individuals in their neighbourhood who would be willing to volunteer professional and nursing help and equipment. Regional consortia can be set up for outdoor wards and operational facilities with the help of tent houses etc. There is a great deal of medical expertise internationally available on

dealing with these exigencies and issues, and we must set up systems that can meet our needs.

- (e) The all-important question of where the money for all this work will come from will also have to be addressed at the outset.
- (f) The role of the NGOs would be very crucial in this context. The data base should also list all the NGOs in each region and the kind of help they would be able to render in a crisis situation, be it in terms of human resources, materials or money, or all three.
- (g) Blueprints for dealing with disasters have been evolved. Institutes for disaster management have also been set up. But most of this work remains at a sub critical level, and is not given importance. Not enough has been done to involve all sectors of society, and the arrangements have not been rehearsed from time to time.
- (h) Detailed scientific post hoc analyses need to be undertaken after every disaster to

understand what worked and what did not work, and why. The results of such exercises will have to be shared with the departments and groups concerned so that responsibilities can be assigned by each agency. If this were done periodically, people would know how to act constructively when a natural or man-made disaster strikes.

- (i) A permanent commission for disaster management should be set up on the lines of the Election Commission. It should be responsible for the management of relief and rehabilitation after every drought, loss of crops, floods, cyclones, earthquakes and other disasters. This body could study how disasters are managed in other countries and suggest the equipment to be purchased. It should also be empowered to seek help from the Army, Police and other personnel in times of acute distress due to calamities.

8.394 In the UK, a set of guidelines have been issued by the Home Office for dealing with disaster. These

guidelines identify the agencies responsible for handling situations arising out of disasters, and how they should function. The guidelines also set out the command and control mechanism to be set up for handling disasters. Similar arrangements need to be made in India.

8.395 The enormity and complexity of the problem would suggest the need for initiating action on many fronts. The starting point for such action would be to develop a comprehensive disaster response and mitigation policy, and a legal and administrative framework to implement it.

SOCIAL SECURITY - A VISION

8.396 Keeping in view the need for providing social security to workers both in the organised and unorganised sectors and other vulnerable groups, and the need for simplification and cost effectiveness, the Ninth Plan Working Group recommended the following initiatives in the field of social security during the Five Year Plan:

- a) A National Policy on Social Security should be announced

with a view to ensuring compulsion and direction. For this purpose the concept of social security should be clearly defined.

- b) The ILO Convention on Social Security (Minimum) Standards, 1952 should be examined, and efforts should be made to ratify it during the 9th Five Year Plan.
- c) Social Security should be firmly and comprehensively integrated with the economic development and planning process, and if necessary, the Central and State Governments should provide extra budgetary support for social security.
- d) It should be the endeavour of the Government to evolve an integrated comprehensive scheme of social security by combining, in a single legislation, the provisions of all existing social security schemes. This would definitely result in increased coverage, reduced overhead costs and improvement in the content and quality of the programme. A separate department of social security should be set up within

the Ministry of Labour. It should be set up with a strong Research and Development wing to facilitate and accelerate the development process and to achieve extension of social protection to all sections of the working population. This should also provide for the introduction of contributory unemployment insurance schemes in the organised sector since the restructuring of the economy in the wake of liberalisation, may result in many workers having either to change jobs or to remain unemployed for some time.

8.397 A Task force on Social Security was constituted by the Government of India in December 1997 headed by Mr. S.K.Wadhawan to study the working of the ESI Corporation, Employees Provident Fund and Employees Pension Schemes and other Central social security schemes, to recommend modifications or changes in the structure and organisation of ESIC and EPFO, and to work out modalities for integration and unification to evolve an integrated Comprehensive Scheme of Social Security covering all

existing schemes.

8.398 The Task Force submitted its report in 1999 recommending, inter alia, the administrative merger of the ESIC and the EPFO as a first step towards the introduction of a single comprehensive legislation. The Task Force has also recommended the integration of the Workmen's Compensation Act and the Maternity Benefit Act in the ESI component, and the Payment of Gratuity Act in the EPF component of the integrated scheme.

8.399 The Task Force has further recommended:

- (a) Ensuring uniformity of coverage of all the laws
- (b) Uniformity in the definition of common terms
- (c) Collection of a single contribution for all the schemes
- (d) Integration of the funds of the ESIC and the EPFO
- (e) Establishment of a single Social Security Board for the administration of the integrated scheme, with a Managing Committee and a Medical Benefit

Council; and

- (f) Establishment of Regional Boards in each State.

8.400 The Study Group appointed by our Commission considered the question of the Integration of social security in the light of these developments and came to the view that the integration of social security can be thought of at several levels:

- (a) Integration of the existing employers' liability schemes with the corresponding social insurance scheme: integration of Workmen's Compensation and Maternity Benefit Acts with the ESI Act; integration of the Payment of Gratuity Act with the EPF Act.
- (b) Integration of ESIC and the EPFO.
- (c) Integration of all Social Security organisations at the central level, namely, the ESIC, EPFO, the CMPF and the Seamen's Provident Fund.
- (d) Integration of all the social security schemes being administered by different Ministries of the Central

Government such as the National Social Assistance programme being administered by the Ministry of Rural Development, programmes for the elderly, the disabled, and other vulnerable sections being administered by the Ministry of Social Justice; programmes for women and children being implemented by the Department of Women and Child Development, etc., Midday Meal Schemes being implemented by the Department of Education, PDS being administered by the Ministry of Food, housing schemes being administered by the Ministry of Urban Development, etc.

- (e) Integration of all social security schemes being administered by the Central as well as State governments.

8.401 The administrative arrangements for the integration of the various social security schemes are discussed in the section on Administration of Social Security. The Commission has come to the view that, to begin with, there should be a functional integration of the schemes. That issue is discussed in later

paragraphs.

8.402 The current trend throughout the world is to have multi-tiered systems of social security. The Director General, ILO, in his report to the 80th session of the International Labour Conference, has observed:

"Although social protection systems should be designed in the light of specific socio-economic contexts, there are some basic themes which are common to all systems. Responsibility is ordinarily shared between the individual, the employer, the family and the State. Fulfilling this responsibility implies some reallocation of resources to support measures aimed at ensuring the continuity of an acceptable standard of living. This reallocation may involve resources controlled by the individual (savings or the purchase of medical insurance or a pension plan), the employer (wages, benefits and conditions of service), the family (income and savings), or the State. The extent of the reallocation will depend on both the resource capacity and perspective of all concerned, but should nevertheless include provision to ensure a basic standard of living, with such supplements as may be needed to minimise the

consequences of adverse contingencies.

8.403 "One of the basic requirements of social protection policy is to preserve the delicate balance implied by this notion of shared responsibility. Thus, attention should also be paid to the encouragement of individual thrift and initiative, the traditional strength of family or community support, as well as the development of institutionalised schemes based on national or group solidarity. Similarly, private pension funds and insurance schemes may have an important supplementary role to play which should be recognised in a partnership with the public sector.

"Given the need for each country to find the appropriate blend of responsibility, and to match it with available resources in order to produce a social protection strategy which complements economic policy and human resource development, it is not possible to prescribe detailed structures which are applicable everywhere. Nevertheless, several aspects emerge from this notion of shared responsibility which, with due allowance for considerable flexibility, could result in the following tiers of

protection:

"A basic universal support system, financed from taxation and administered by government, would aim at providing services to meet basic needs, as well as a guaranteed minimum income, related to subsistence levels, on a means-tested basis. While this tier should be regarded as a basic component of social protection strategies, for most developing countries the provision of a realistic guaranteed minimum income would have to be a long-term objective, owing to their limited resources.

"A compulsory defined benefit tier, financed from a public fund made up of contributions paid by employers and insured persons (or conceivably from taxation), would provide benefit, subject to qualifying conditions, in the form of periodic payments in respect of prescribed contingencies, at least to the minimum level envisaged by ILO Conventions. The tier might consist solely of an earnings-related scheme with benefits and contributions based on a prescribed percentage of earnings.

"Alternatively, there might also be

provision for a minimum benefit or a separate flat-rate component which would have the effect of enhancing the solidarity base of the tier, and thus offset its otherwise regressive effect. The flat-rate component could cover long-term contingencies such as old age, invalidity, disablement and bereavement. By virtue of its simplicity and uniformity, it would facilitate coverage beyond the formal sector labour force.

“The method of financing would require a flexible approach. Between the basic choices of pay-as-you-go or full funding there are a range of options based on partial funding, which would enable the financial system to be tailored to the circumstances, and to take into account such factors as the scope of the available capital market for investment, the capacity for the payment of contributions and the desired level of resource transfers between generations.

“The desired division between public and individual responsibility would be reflected in the range of benefits not provided under the solidarity tier, thereby determining the need of complementary initiatives to be taken either by the individual, whether alone

or in association with others, or by employers on behalf of employees, whether directly or through private pension funds or commercial insurance. The essence of this tier should always be to provide a supplementary component, tuned to the needs of the individual, which would build on the cornerstone of social protection based on solidarity without, however, detracting from it. Although such initiatives would essentially be open to individuals and/or their employers, it would be necessary to provide statutory controls to ensure that schemes comply with acceptable standards as regards investment practice, portability of rights, accountability and administration. In many developing countries, however, low incomes offer little scope for voluntary social protection; moreover, the history of public schemes does not inspire public confidence. Transparency, and the incentives associated with individual pension accounts may be needed to give this tier any chance of success. “The importance of flexibility cannot be emphasised enough: indeed, the

.....
²³ Social Insurance and Social Protection ILO Geneva

scope of these tiers and their articulation within a national social protection strategy should respond to national needs, constraints and possibilities. Nevertheless, the concept of solidarity should be a basic foundation of any such strategy.

“While it can be reasonably portrayed as the responsibility of government to provide access to adequate basic medical care from general taxation, the capacity to do so will depend on available resources relative to need. In many countries, it will be necessary for this responsibility to be shared with individuals and their employers. Cost-recovery at the point of delivery is one option, but it offers limited scope since it imposes a potentially heavy burden on a beneficiary who has made no advance provision or is unable to do so. Compulsory health insurance offers better prospects of raising additional finance while also providing guaranteed entitlement to adequate medical care; such schemes are based on social insurance principles and depend heavily on the same requirements of administrative

efficiency and access to a section of the population which can provide sufficient contributions. Particular attention must be given to controlling expenditure, for in this field neither those providing the medical care nor those receiving it have much incentive to do so themselves.”²³

8.404 The ILO undertook a study of Social Protection of the Unorganised Sector in India under the Technical Support Services I of the UNDP in 1996. A report of the study was submitted to the Government in 1999.

8.405 The report said:

“Since about 10% of the working population and their dependents are covered by formal sector social insurance, extension and reform of the formal social insurance system could reach roughly another 5% of the working population, i.e., most regular and some casual wage workers in the unorganised sector. At the other side of the income scale are the 30% of poor households who can only be helped by tax financed social assistance. This leaves about 60% of the working population- above the poverty line but not eligible or not interested in formal insurance- who

²⁴ Social Protection for the Unorganised Sector –India; ILO Geneva.

has some contributory power and is interested to contribute to social insurance programmes that are tailored to their needs. So the main challenge of a comprehensive social security policy is to reach this majority of the working population."²⁴

8.406 In the light of these views the Study Group of this Commission felt that in evolving an integrated and comprehensive system of social security in India, one should have a broad vision and one should develop a structure which will encompass the whole population with its diverse needs, It cannot be a single scheme but has to be a combination of schemes catering to the needs of different target groups with different needs and different paying capacities. The Study Group has expressed the view that, in India, there already exists a three-tier system which can be expanded and consolidated. At the first tier, there are the National Social Assistance Programmes and other social assistance programmes. At the second tier, there are the social insurance schemes namely the ESI Scheme, the Schemes framed under the EPF Act, the employers' liability schemes and such others. At the next level are the numerous voluntary

health insurance and old age pension schemes which are being run by the LIC, the GIC, the UTI and other financial institutions. Lately, a new set of schemes has appeared on the scene, comprising the welfare funds, subsidised insurance schemes, self help groups and micro credit, micro insurance, and the like. Each of these tiers needs to be expanded so that together, they cover the whole population.

8.407 The system envisaged by the Commission comprises of four tiers, namely:

- a) Social assistance programmes, financed from the exchequer and wholly based on tax revenue.
- b) Schemes which are partly contributory and partly subsidised by the State.
- c) Wholly contributory social insurance schemes; and
- d) Voluntary Schemes.

8.408 Destitute and people below the poverty line, who cannot make any contribution for their security, may be covered under the tax-based schemes in the first tier. Workers in the unorganised sector, who have

some contributory power but cannot be self-sufficient, may be covered under the subsidised schemes in the second tier. Those who either by themselves, or jointly with their employers, can make adequate contribution to the schemes so as to be self sufficient may be covered under the social insurance schemes in the third tier. Others who are comparatively affluent and can make their own provisions for meeting contingencies or risks as and when they arise, may be covered under voluntary schemes which the new insurance companies can provide.

8.409 The Commission accepts the suggestions of the Study Group and recommends that a comprehensive scheme for social security should be organised in our country through a four-tier system of the kind described in the earlier paragraphs.

8.410 India is a federal State. The Constitution of India assigns the responsibility for social security concurrently to the Union and the States. The subject is, therefore, placed in the Concurrent List (List III of the Seventh Schedule) of the Constitution. The items on List III relevant to social security are: Social

security and social insurance, employment and unemployment; Welfare of labour, including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

8.411 The entries seem to make a distinction between social security and social insurance on the one hand, and between social security and welfare of labour, including aspects of social security like workmen's compensation, provident funds, employers' liability, old age pensions and maternity benefits, on the other. They make a further distinction between employers' liability on the one hand, and workmen's compensation and maternity benefits (which are also employers' liability schemes) on the other. The rationale of these distinctions is not clear. There is also no mention of gratuity, lay off and retrenchment compensation and the newer concepts of social protection and social safety nets.

8.412 The Commission, therefore, feels that the two items on List III of the Seventh Schedule could be rationalised to keep in line with current day concepts of social security. Item

23 may be reworded as 'Right to work, employment, unemployment including unemployment relief, and welfare of labour including wages, safety, health, work environment and other conditions of work.' Item 24 may be modified to read 'social security including social insurance, social safety nets and other forms of social assistance, employers' liability, medical care, sickness, workmen's compensation, invalidity or disability, maternity, mother and child care, family allowances, old age and survivors' benefits.

8.413 The 'concurrent' nature of the subject of social security implies that the Union and the individual States have their own policies, priorities and programmes. Even within the Union Government, the subject is not the responsibility of one Ministry. 'Social security and social insurance, save to the extent allotted to any other department,' is the responsibility of the Ministry of Social Welfare, while the Ministry of Labour is concerned with social security legislation as part of labour welfare. Unemployment insurance is also a subject assigned to the Ministry of Labour. Policy initiatives in the field of life and general insurance are the

responsibility of the Ministry of Finance. On various other aspects of social security, the Ministry of Health, a number of production Ministries dealing with industries, mines, plantations, etc., are involved. Rural and urban employment generation programmes are handled by the Ministries of Rural and Urban Development respectively. The situation in individual States is a replica of this fragmented responsibility between different departments and agencies. The result of these arrangements has been that social security programmes have evolved over time, in an environment that lacked long-term policy and well co-ordinated programmes. As pointed out by the Working Group on Labour Policy set up by the Planning Commission in connection with the Ninth Plan 'The schemes of social security, types of benefits or protection provided thereunder do not conform to any overall plan or design. There is, as a matter of fact, no policy on social security, no plan for social security and the Five Year Plans are practically silent about this important aspect.' Similar views have been expressed by several other experts.

8.414 The Commission is of the opinion that it is high time that a national policy on social security is formulated and a national plan to achieve the objectives set out in this policy. There is also a need for continuous planning and co-ordination and monitoring at the federal level. The system of social security outlined in this report is more comprehensive, and accordingly requires a much higher degree of co-ordination than now. There is no focal point from which this is done at present. We, therefore, feel that it is necessary to create a small but strong agency in the Central Government which will be concerned with the horizontal (i.e. between interrelated aspects) and vertical (i.e. between the Centre and the States) coordination of social security planning, monitoring and review. This agency should not interfere with, but should supplement and reinforce the administrative Ministries which may continue to deal with aspects of social security as at present assigned to them.

8.415 The Commission has studied the proposals put forward by various bodies in this regard, like the Committee of Experts in the India Labour Code (1994) and The Ninth

Plan Working Group on Labour Policy. We strongly recommend the constitution of a high-powered National Social Security Authority, preferably under the chairmanship of the Prime Minister of India, with Ministers and Secretaries of all the concerned Ministries and Departments of Government of India and representatives of all the State Governments as members. The functions of the Authority will be mainly to formulate the National Policy on Social Security and to co-ordinate the Central and State level programmes and to ensure that the objectives of the Policy are achieved within the time frame prescribed.

8.416 At the administrative level, it is necessary to have a separate Ministry/Department dealing with various aspects of the subject of social security. It could be an entirely separate Ministry of Social Security or a Department of Social Security within either the Ministry of Labour or the Ministry of Social Justice. Practices vary in different countries. We would suggest a Department of Social Security within the Ministry of Labour. This Department would provide policy inputs and secretarial services to the National Authority, coordinate,

monitor and review specific programmes between various Ministries and the States. Similar arrangements can be made in the States under the charge of a senior Minister.

8.417 The Working group on Labour Policy for the Ninth Plan had recommended, inter alia, that it should be the endeavour of the Government of India to evolve an integrated Comprehensive Scheme of Social Security by combining, in a single legislation, the provisions of all existing social security schemes in order to achieve increased coverage, reduced overhead cost and improvement in the content and quality of the programmes. The recommendation was considered by the Planning Commission and The National Development Council and was subsequently included in the Approach Paper to the Ninth Five Year Plan. A Task Force on Social Security (headed by Shri S.K.Wadhawan) constituted by the Government of India to work out modalities for such integration and unification of ESI scheme, EPF and pension schemes and other Central social security schemes recommended the constitution of single Social Welfare Board to replace

the existing ESI Corporation and the Central Board of Trustees of the EPF organisation with representatives from the Central and state governments, organisations of workers and employers, the medical profession and the Parliament. A similar recommendation has also been made in the draft India Labour Code (1994). We feel that unification of administrative responsibility is both necessary and desirable. It was one of the fundamental principles underlying the social security plan evolved by Lord Beveridge in U.K., who considered that such unification was necessary in the interests of efficiency and economy. According to his plan, 'There will be in each locality a security office able to deal with the claims of every kind and all sides of security. The methods of paying different kinds of cash benefits will be different and will take into account the circumstances of insured persons, providing for payment at the home or elsewhere as is necessary. All contributions will be paid into a single Social Insurance Fund and all benefits and other insurance payments will be paid from the fund.'

8.418 Having regard to these facts,

the Commission recommends the establishment of a comprehensive social security system covering various existing programmes of different Ministries/Departments. However, to begin with, functional integration of all social security programmes in the organised sector could be attempted, pending a review of the need for administrative integration. This functional integration could be made operational by establishing a Central Social Security Board with separate divisions dealing with:

- Medical benefits
- Sickness, maternity and employment injury benefits.
- Old age, invalidity, survivors benefits including gratuity and funeral expenses.
- Unemployment insurance and other related services.
- Common services, namely, registration, collection of contributions, inspections, penalties, etc.

8.419 The Central Social Security Board would combine the functions not only of the existing ESI Corporation, EPF Organisation but

other organisations like the Coal Mines Provident Fund Organisation, the Welfare Funds for beedi, cine and mine workers, and Seamen's Provident Fund. Integration of other schemes administered by various Ministries of the Central Government such as the National Social Assistance Programmes, provision of subsidised food through public distribution, programmes for the elderly, the disabled and for women and children, the Midday Meal Scheme, etc. also may be desirable but does not appear to be practicable at this stage. The Central Social Security Board will have the responsibility for the administration of schemes of social security for which the Central Government is the appropriate government. Its functions would also include framing or approving supplementary schemes for application, in respect of the activities for which the Central Government is the appropriate government. The Board would need to be an autonomous body comprising members of high professional calibre in the fields of social security, finance and insurance, and run on purely professional lines, without governmental interference in the administration so that their

accountability to Government and Parliament is not compromised.

8.420 Similar arrangements can be thought of at the State level with a State Social Security Board in each State. The State Boards could look after programmes for which the State governments are the appropriate governments. It may be mentioned, in this connection, that the Government of Kerala has set up the Kerala State Labour Authority under an Ordinance promulgated in March 2001 (which had lapsed but may be renewed) for administration of the Kerala State Labour Authority Fund meant for the implementation of common welfare schemes and the Kerala Labour Welfare Fund, meant for manpower development and training. The Karnataka government has also planned to set up a Social Security Authority through a Bill which is presently before the State Legislature. The main objective of the proposed authority is 'to facilitate medical insurance, health care, housing, maternity facility, recreational facility and proper implementation of the statutory benefits including payment of minimum wages to the unorganised workers in the State.'

8.421 As far as the delivery of the

social security services and benefits to the beneficiaries is concerned, the Commission agrees with the Study Group on Social security that the mechanism of delivery should be based on two key principles:

- a) It should be as decentralised and as close to the beneficiaries as possible; and
- b) It should be tripartite or multipartite involving workers, employers, governments and other stakeholders.

8.422 For this purpose, we recommend constitution of District/ Area Level Committees, which may be tripartite or multi-partite as the need demands with necessary secretarial assistance. These Committees will have the following functions:

- a) Identification of the beneficiaries and the issue of identity cards to them.
- b) Collection of contributions.
- c) Dispensing the benefits.
- d) Maintenance of records.

8.423 Services should be delivered

at the doorstep of the beneficiaries, if necessary through local bodies (Panchayats and Municipalities), post office and banks, micro-credit institutions and Self Help Groups and NGOs.

8.424 It is reported that many public social security institutions, in their effort to match their services with those of the private sector agencies, are experimenting with outsourcing the services. Some governments like those of U.K. and Australia have established semi-autonomous agencies to deliver direct services to social security clients. Although India has established such agencies, they have not been given the necessary autonomy or authority. The administrative arrangements with these agencies need to be reviewed and reformed. They could also be permitted to subcontract their services to voluntary organisations.

8.425 Many poor and illiterate beneficiaries of social security shy away from approaching the social security institutions for fear or ignorance. A sympathetic public relations network should be built into the system. One of the functions of this PR network would be to educate

the people about various schemes and the manner in which the benefits of the schemes can be availed of and to create awareness of their rights.

8.426 The system of social security envisaged in this report comprises social assistance programmes for people at the bottom of the income-based hierarchy, social insurance programmes for those at the top of the hierarchy and a combination of the two for those in between. In addition, there would be employers' liability schemes, schemes run by voluntary organisations and voluntary private insurance schemes supplementing those run, controlled or managed by the State.

8.427 Social insurance schemes are contributory, and their viability depends upon the rate/s of contributions received and the quanta of benefits paid out. The rates of contributions and benefits are ordinarily determined actuarially and are expected to be self-financing. A point has, however, been made in this connection that the uniform rates of contributions fixed for ESI and the schemes framed under the EPF Act are somewhat onerous for small employers, and more so for workers employed on a casual basis. It has,

therefore, been suggested that different packages of benefits with different rates of contributions should be designed to suit the capacity of the contributors to pay. We feel that there is merit in this suggestion and commend it for consideration.

8.428 Social assistance programmes are ordinarily financed by means of taxation. Welfare funds set up for beedi workers and mining workers are financed by levying a cess on the production, sale or export of certain specified products. A question may arise about the adequacy of the amounts collected by means of the cesses. In the course of our discussion, a point was made that the amount collected for the Beedi Workers Welfare Fund was inadequate and it had to be supplemented by contributions from the employers and the workers and from the general revenues of the Government.

8.429 A scheme may be contribution-defined or benefit-defined. In relation to the pension schemes, there is a demand that they should be contribution- defined so that the burden on the employers who have to make the contributions does not become heavy.

8.430 The Commission feels that the Schemes should be benefit-defined. We should first determine the nature and quanta of benefits to be provided and the estimated cost. The rate of contributions or cesses to be levied should be fixed keeping in view the amounts they are likely to yield in relation to the amounts required.

8.431 Having regard to the foregoing assessment and the modifications to the existing schemes and introduction of new schemes proposed in the previous chapters, the estimated cost of the proposed system of social security will be as follows:

- a) Old age pension: The qualifying age for old age pension will remain 65 years. The total number of persons aged 65 or above estimated on the basis of 2001 census is 46 million. If one-fourth of these are taken to be those below the poverty line, the number of old persons qualifying for old age pension may be taken as 11.5 million. At present NSAP covers 5.3 million people.

If the rate of pension is enhanced to Rs.200 per month as recommended elsewhere in this report, the total amount of pension payable per annum may be estimated at Rs.3000 crores.

- b) Widows Pension: This has two components. Firstly, widows aged 60 will get pension at Rs.200 per month subject to their income being below the poverty line. The estimated number of widows of age 60-65 is 4.9 million in 2001, one-fourth of whom would be below the poverty line i.e. 1.25 million with the rate of pension Rs.200 per month, the estimated amount of pension payable to widows between the ages of 60-65 in a year would be Rs.300 crores. Secondly, according to the recommendation that we have made earlier, all widows between the ages of 18 and 60 will get pension for two years at Rs 200 per month a supplement of Rs.50 each for two children and an equipment grant of Rs.5000 each for self employment. The number of women who get widowed in this age group annually, and for whom pension may have to be paid for two

years, cannot be estimated. The total amount of pension payable to them is therefore assumed as Rs.50 crores per annum.

Thus, the total annual liability on account of widow pension would be Rs.350 crores.

- c) Pension for the Handicapped: All physically handicapped persons with loss or lack of earning capacity of 70 per cent or more will be entitled to pension at Rs.200 per month. According to National Sample Survey the estimated number of physically handicapped people is about 5% of the total population, which comes to about 50 million. Information about the number of persons who have no earning capacity or have lost it to the extent of 70% is not available. It is, therefore, assumed that 10% of the total number of disabled persons which comes to 5 million would qualify for pension. On this assumption, the estimated amount of pension payable to the disabled will be Rs.1,200 crores annually.
- d) Maternity Benefit: The quantum of maternity benefit is proposed to be increased to Rs.2000 per

childbirth. Estimated number of childbirths per annum is 20 million. The number of child births below the poverty line (25%) qualifying for maternity benefit under social assistance programmes will be 5 million and the estimated amount of maternity benefit payable would be Rs.1000 crores per annum.

e)	Unemployment Relief: The Ninth Five Year Plan estimated the number of unemployed persons at 7 million. Assuming that one-fourth of them (1.75 million) would qualify on means test. The estimated amount payable as unemployment relief @ Rs. 200 per month will be Rs. 420 crores annually.	
f)	Distribution of Cloth:	

- | | | |
|-----|--|-------------------------|
| (i) | Estimated number of Destitute | 6 million ²⁵ |
| | Estimated cost per head | Rs. 150 per annum |
| | Total estimated cost of supplying cloth free of cost | Rs. 90 crores |

(ii)	Estimated number of people below poverty line	250 million
	Proposed rate of subsidy per head	Rs. 50
	Total Cost of subsidy	Rs. 1,250 crores
g)	Family Benefit (Survivors' Benefit)	
	Estimated number qualifying for the benefit	3,50,000 ²⁶

²⁵ As per the ceiling in the guidelines for the NSAP

²⁶ As per the ceilings in the guidelines for the NSAP

Rate of benefit	Rs. 2,500 (Reduced from the existing rate of Rs. 10,000 in consideration of the introduction of a
	National Widow Pension Scheme)
Amount required	Rs. 87.50 crores
h) State support to children of poor families:	

Estimated population of children 350 million

Number of children below poverty line (25%) 90 million

Rate of children's allowance Rs. 50 per child per month

Estimated total cost of the scheme Rs. 5,400 crores

i) Insurance schemes:	
It is assumed that one member in each family in the unorganised sector will be covered under the agricultural workers insurance scheme or any other	

analogous scheme.

divided by 5)

Estimated number of families 70 million (350 million

Rate of subsidy
Rs. 750 per policy/family

Rs. 5,250 crores

Total amount of subsidy

- j) **Welfare funds:** It is assumed that the welfare funds will be mostly contributory and self-financing. Where they are to be financed from the exchequer it is assumed that special specific purpose levies will be levied. In

either case it is difficult to estimate the amount required. Therefore, a token provision of Rs.1000 crores is made for the purpose. A summary of the above assessment is given in the following table below:

Estimate of cost of the proposals made in the foregoing report		
Nature of Benefits		Per Annum (Rs. In crores)
1.	National Pension	
	a) Old age pension	3,000
	b) Widows	350
	c) Disabled persons	1200
2.	Equipment grant for 1,00,000 widows	50
3.	Maternity Benefit	1,000
4.	(a) Family Benefit	90
	b) Children's allowance	5,400
5.	Distribution of cloths	1,340
6.	Unemployment Relief	420

7.	Insurance Schemes	
		5,250
8.	Welfare funds and are schemes	1,000
	Total	17,912

8.432 The foregoing table excludes the estimated cost of ongoing schemes in respect of which no change is proposed in money terms, such as the PDS or which are expected to be self-financing such as the ESI.

8.433 A Social Security Fund of India and a Social Security Fund of each State may be set up. The funds should be vested in and be administered by the Central Board of Social Security or the State Board of Social Security as the case may be. Financing of the social security fund should be through contribution and or by levying a tax or cess.

8.434 There will be three kinds of social security schemes: social insurance type of contributory schemes, subsidised insurance/welfare fund type of partly contributory and partly socially assisted schemes and social assistance schemes which will be

wholly non contributory.

8.435 Social Insurance Schemes: In the case of social insurance schemes, every employer of an establishment to which a social security scheme applies, should make a consolidated contribution for the various social security benefits to the employees of the establishment, at the prescribed rate not exceeding 30% of the wage bill or any other amount which may be specified in the law or the scheme as the case may be every month; and every employee to whom the scheme applies, should make a consolidated contribution to be eligible for the social security benefits at the prescribed rate, not exceeding 20% of his wage or any other amount which may be specified in the law or scheme as the case may be. These would be exclusive of existing contributions.

8.436 In the case of persons employed on a casual basis, the following options may be considered:

- (a) Differential rates of contributions may be prescribed.
- (b) Contributions by the workers may be optional while the

contributions by the employers will be compulsory.

- (c) They may be exempted from making any contribution.

8.437 The employees whose actual wages do not exceed the amount prescribed by the appropriate government may be exempted from making any contribution. The loss to the Board due to such exemptions may be made good by the appropriate Government.

8.438 The appropriate Government may, after due appropriation by Parliament or Legislature as the case may be, make such further contributions to the Social Security Fund as it may determine.

Social Assistance Schemes

8.439 In the case of the last two categories of schemes, the rates of contributions and assistance will be determined by making an assessment in each case of the funds required and the resources available.

8.440 The expenditure on social assistance should be shared between the Central Government and the State government at agreed rates.

8.441 For providing social assistance wherever necessary, the appropriate Government may impose a social security surcharge on all or any of the taxes and duties levied by it, and the proceeds of the surcharge after deducting, the proportionate collection charges may be credited to the Social Security Fund.

8.442 When the new economic policy was announced in 1991, the then Union Finance Minister had given an assurance that the new policy would not be implemented on the backs of the poor people and that a social safety net would be created to protect those who would be affected by the new policy. No such social safety net has been created yet. In the meantime, as a result of the globalisation and liberalisation programmes being implemented, lakhs of people have lost their jobs. Quite a few of them have committed suicide not being able to bear the burden of life. Indeed, it is said that the lack of a social safety net is coming in the way of the rapid

implementation of economic reforms. The social security system as suggested above, which is by no means ambitious, and provides for a minimum level of protection required by the people by way of economic support in times of need, also provides valuable services to enable them to organise themselves and to make their presence felt and their voice heard, and generally to empower the poor and the vulnerable to manage their own affairs. We agree with the recommendations made by the Study Group. We are conscious of the fact that the country

can ill-afford a very ambitious plan of social security. Therefore, our recommendations are modest. It may also be kept in mind that the country is spending a sum of 2.4% of the GDP on defence, 0.81% of the GDP on public order and safety, etc. and only 1.8% of the GDP on social security. It has also been stated elsewhere that other developing countries are spending much higher amounts on providing social security. There seems to be no reason why our country cannot spend a little more today.

<p>8.443 To summarise, the social security system envisaged by us is a moderate one. Still, due to the current resource crunch, it may not be possible to implement it immediately in its entirety. Therefore, we suggest that to be more practical and realistic it is desirable that it is implemented in three phases.</p>	
<p>1st Phase</p>	<p>The Bare Minimum which may include retirement and</p>

health security.
 2nd Phase This may include unemployment related security.
 3rd Phase Other welfare measures may be implemented.
 8.444 We will now like to summarise

the recommendations that we have made in the chapter:
 a) In order to give a better focus to social security, a more direct approach is called for, especially in the context of the commitments made to the United Nations by ratifying the

Covenant of Social, Economic and Cultural Rights.

- b) A national policy on social security should be formulated with a view to ensuring direction. While evolving the policy, the Constitutional obligations outlined in the Directive Principles of State Policy of the Constitution concerning social security should be kept in view.
- c) We felt that in the Indian context, the term social security should be used in its broadest sense. It may, therefore, be defined as consisting of all types of measures, preventive, promotional or protective, as the case may be, designed to (a) prevent deprivation (preventive measures) (b) assure everyone of a basic minimum income which would be adequate for meeting the basic needs of oneself and one's family or dependents (promotional measures) (c) protect income against loss or diminution due to the occurrences of any contingency including sickness (protective measures). The measures may be statutory or non-statutory, public or private.

The term encompasses social insurance, social assistance, social protection, social safety net and other such terms, as are currently in vogue.

- d) We feel that no single approach, to the exclusion of others, will be adequate to assure Social Security, and the problem will have to be addressed by a multi-pronged approach.
- e) Social Security policy, plans and programmes should be tailored to the needs of the diverse sections of the people, especially those who are vulnerable.
- f) The root cause of social insecurity in India is poverty, and that is largely due to the lack of adequate, or productive and remunerative employment opportunities. The provision of adequate and stable income will enable the poor to satisfy their basic needs and, thereby, their other security needs as well. The State has to assume the responsibility for providing basic social security, especially in respect of those contingencies which will be difficult for individuals to cover without assistance from the State. The

State also has the responsibility to underwrite the means of livelihood to those who cannot work and earn their living due to childhood, old age, or other infirmities.

- g) From the point of view of social security, the first priority has to be given to people of the last category, namely the old, the infirm and the young persons who are destitute and constitute a charge on the State. Admittedly, social security for this class of people has necessarily to be provided by means of social assistance. The unemployed come above this class. The priority need of this class of people is employment and a source of income. The entire process of development planning has to be geared to meet this need by means of expanded economic activity and employment-oriented growth. This is, however, a long-term goal. One cannot wait until this goal is reached. In the short term therefore, in order to prevent starvation for want of purchasing power, it will be necessary to undertake employment schemes, in the

nature of public works, to provide productive employment and income to the unemployed. Next above this class, are the people who are employed on casual, temporary or intermittent basis. They need continuity of employment. Various de-casualisation measures would be relevant in this context. The self-employed persons also belong to the same class. They too need protection of their employment against the vagaries of nature and the market. Above all these classes are the people who are in regular employment with assured incomes. They only need protection of their income against loss or diminution due to the occurrence of contingencies.

- h) All people, irrespective of the class to which they belong, need food security, health security, old age security, provision of clothing and shelter, if they are below the poverty line and cannot, therefore, make their own provision.
- i) Women need maternity protection: They also need protection against widowhood,

desertion and divorce. Special measures would have to be taken to increase their participation in gainful employment and to raise their economic status. Children need care and nutrition. Old people also need care especially when they are ill, and in need of emotional support.

- j) The social security policy/plan for India may be based on principles of: i) classification ii) participation iii) equity and efficiency iv) occupation – specific, area-specific or need-specific nature v) gender vi) adequacy and vii) unified administration.
- k) On the question of evolving an integrated and comprehensive system of social security in India, one needs to have a broad vision and develop a structure which will encompass the whole population with diverse needs. It cannot be a single scheme but a combination of schemes catering to the needs of different target groups with different needs and different

paying capacities.

- l) The system envisaged by us comprises of four tiers, namely: i) Social assistance programmes financed wholly by taxes and from the exchequer. These will mostly have to be area-based schemes. ii) Schemes which are partly contributory and partly subsidised by the State iii) Wholly contributory social insurance schemes, and iv) Voluntary Schemes. Destitutes and people below the poverty line who cannot make any contribution for their security may be covered under the tax based schemes in the first tier. Workers in the unorganised sector who have some contributory power but cannot be self-sufficient may be covered under the subsidised schemes in the second tier. Those, who either by themselves, or jointly with their employers, can make adequate contribution to the schemes so as to be self-sufficient, may be covered under social schemes in the third tier. Others who are comparatively affluent and can make their own provision for

meeting the contingencies or risks as they arise, may be covered under voluntary schemes which the new insurance companies can provide.

Social Security for workers in the Organised Sector

- a) We feel that while it may not be possible to ratify all the ILO conventions relating to social security immediately, it is desirable to plan for their eventual ratification by upgrading laws and practices gradually. It is suggested that, at the minimum, steps should be taken to ratify the social Security (Minimum Standards) Convention (No. 102 of 1952) within a reasonable time frame.
- b) Social Security is included in the Concurrent List of the Constitution. (List III of the Seventh Schedule). The existing entries at Items 23 and 24 of the List appear to make a distinction between Social Security and Social Insurance on the one hand, and between Social Security and Labour Welfare Measures including Provident Funds, Employees' liability, workmen's compensation, old age pensions and maternity benefits on the other. It would be more rational to modify these entries as follows:
 - c) Item 23 may be re-worded as 'Right to work, employment, unemployment including unemployment benefits and welfare of labour including wages safety, health, work environment and other conditions of work.
 - d) Item 24 may be re-worded as ' Social Security including social insurance, employers liability, social safety nets and other forms of social assistance; medical care, sickness, workmen's compensation; invalidity, maternity, mother and child care, family allowances, old age, and survivors' benefits.
 - e) There is a need for a strong agency at the Centre which will be concerned with horizontal and vertical coordination of social security planning, review of policy and implementation of

- programmes. We recommend that a separate Ministry of Social Security or a Department of Social Security should be set up preferably within the Ministry of Labour.
- f) A high-powered National Social Security Authority of India should be created for formulating a policy on social security and coordinating various programmes at the Central and State levels. We have recommended that the Ministry of Social Security or the Department of Social Security should provide secretarial support to the Authority.
- g) A Central Board of Social Security at the Centre and a State Board of Social Security in each State should be set up as autonomous bodies with professional experts. These Boards would have the responsibility for the administration of social security in respect of the establishments for which they are the appropriate government. Alternatively, the Central Board could be responsible for the administration of schemes in the organised sector while the State Boards would be responsible for the schemes in the unorganised sector including those outside the labour market.
- h) To begin with, a functional integration of the various organisations administering social security schemes (ESIC, EPFO, etc) in the organised sector should be attempted by constituting the following divisions in the Central Board of Social Security:
- Medical benefits,
 - Sickness, maternity and employment injury benefits,
 - Old age, invalidity, survivors' benefits including provident fund, gratuity, family benefits and emergency expenses,
 - Unemployment Insurance and related services,
 - Common services, namely registration, collection of contribution, inspection, penalties etc.
- i) An administrative merger may be attempted later, if considered necessary, after review.

- j) The mechanism for implementation of social security programmes should be based on two key principles.
- It should be as decentralised, and as close to the beneficiaries as possible; and
 - It should be a tripartite or multipartite mechanism, involving workers, employers, Governments, and other stakeholders.
- k) Area Level Committees should also be constituted on a tripartite or multipartite basis as the case may be. Their functions will include;
- Identification of the beneficiaries and issuing identity cards to them;
 - Collection of contributions.
- l) For functional integration, we need to adopt uniform definitions of common terms such as employer, employee, establishment, wages etc. This issue has been dealt with in detail in the Chapter on Review of Laws.
- m) The Social Security System in India should ultimately aim at providing social security protection to all workers against all risks or contingencies within a specified time frame (say ten years), so that at the end of the period, the coverage will be universal and comprehensive.
- n) To be comprehensive in terms of benefits, such a system should provide unemployment benefits, children's allowances and emergency expenses which are not provided at present.
- o) To make the system universal, it will be necessary (a) to make it applicable to all classes of industries and establishments without any distinction, (b) to remove wage ceilings, and (c) to remove the threshold limit (on the number of workers) for coverage. The removal of the threshold limit may be achieved progressively within the time frame that has been specified.
- p) All employers' liability schemes (under Workmen's Compensation Act, Maternity Benefit Act and Payment of Gratuity Act) may be converted into contributory social insurance

- schemes so that the employers may be able to discharge their liability by payment of nominal contributions.
- q) After functional integration of various schemes as recommended earlier, every employer may be required to maintain only one set of records and submit only one return in respect of all social security schemes. It would enable one inspector to inspect on all the schemes. There should not be harassment by inspectors or the imposition of extra-administrative burdens to file returns.
- r) Every employer and employee may be required to make a single contribution for the provision of all the benefits. A ceiling may be prescribed in law for such contributions in terms of percentages of gross wages. The actual rates may be determined from time to time actuarially.
- s) As the capacity to pay contributions varies, different plans providing for different rates of contributions and different packages of benefits may be drawn up to suit different classes of establishments / employees. In particular, the liability of small and tiny industries may be minimised. Similarly, persons employed on a contract or temporary basis may be covered for limited benefits such as health care and old age benefit at less cost.
- t) Every worker covered under the system may be provided with a card with a unique social security number containing details of wages, employment, employer, contributions and entitlement to benefits. The card will enable the employee to avail of the benefits wherever employed or living – at post office bank counters or other bank counters or Government treasuries.
- u) An integrated, single window approach may be devised for the delivery of services through area committees. The service of trade unions, self help groups, NGO's and other people's organisations may also be utilised for the delivery of services and for overseeing the performance of the service agencies.
- v) The administration of medical

- benefit may be taken over by the Central Board of Social Security. It may set up State level organisations for the management of hospital dispensaries and diagnostic centres.
- w) The facilities available in the government and in the private sector should be utilised for extension of the benefit.
- x) The extension of the schemes for employment injury and maternity benefits may be delinked from the arrangements for providing medical benefits.
- y) The establishments that have, or wish to make their own arrangements for providing social security benefits to their employees may be granted exemptions subject to control and regulation by the Central Board of social Security so that the facilities available with the Board may be better utilised to extend the benefits to those establishments which do not and cannot have such arrangements.
- z) All provident funds, whether established under the Provident Fund Act, 1925 or through other laws, may be brought under the control and regulation of the Board.
- aa) All the existing pension schemes may be integrated in the Employees Pension Scheme with a fixed mandatory contribution by all employers so as to assure every employee a minimum basic pension subject to adjustment against inflation. For those who can make higher contributions the Board may offer different pension plans on a defined contribution basis.
- bb) In view of the current trend for premature withdrawal of the balances in the provident fund for a variety of purposes, the contribution to the provident fund scheme may be made in two parts consisting of a fixed mandatory rate of contribution, with no provision for premature withdrawal and a variable optional rate of contribution so as to reduce the transaction cost. The tax concession available on contributions to the provident funds may be withdrawn in respect of the amounts withdrawn

- prematurely.
- cc) In an integrated system of social security, there would be no need or justification for distinguishing between employment injury benefit and invalidity benefit, incapacity to work and to earn one's livelihood being the common factor and the sole criterion for the benefits, the cause or source of the incapacity, where and how the incapacity occurred, may not be relevant. All injuries or deaths arising due to the involvement in work occurring in the course of employment or otherwise, may be covered with a uniform rate of benefit, doing away with the existing duplication of the benefits being paid in case of employment injury under both the ESI or WC Schemes and the Employees pension schemes.
- dd) A social Security Fund may be established. It will be vested in the Board. All contributions and other receipts on account of social security may be credited to the Fund, and all payments on account of social security paid out of it. The Board will be fully responsible for the administration of the Fund subject to such guidelines as the Government may lay down. The Board may engage financial experts for the management of the Fund and the investments. Alternatively, the entire surplus balances in the Fund may be made over to the Government as and when they arise, against index bonds with a minimum real rate of return protecting the corpus against inflation.
- ee) The expenditure on social assistance should be shared between the Central Government and the State Government at agreed rates.
- ff) For providing social assistance wherever necessary, the appropriate government may impose a social security surcharge on all, or any of the taxes and duties levied by it, and the proceeds of the surcharge after deducting the proportionate collection charges may be credited to the Social Security Fund.
- gg) The total estimated cost for the proposals made in the chapter would be around 18,412 crores.

This includes the cost of ongoing schemes.

hh) Social security institutions around the world are engaged continually in improving the delivery of services and reducing their administrative costs by adopting modern technological tools to ameliorate their management practices in the face of mounting pressures. Many of them have also undertaken to re-engineer their services. Similar exercises are necessary in India too where complaints on the working of the ESI and EPF schemes abound.

ii) It is reported that many social security institutions, in their effort to match their services with those of private sector agencies are experimenting with outsourcing the services. Some Governments like those of Australia and U.K have established semi-autonomous agencies to deliver direct services to social security clients. Although India has established such agencies, they have not been given the necessary autonomy or authority. The Administrative arrangements of

these agencies need to be reviewed and reformed. They could also be permitted to subcontract their services to voluntary organisations.

jj) Many poor and illiterate beneficiaries of social security shy away from approaching the social security institutions due to fear and ignorance. A sympathetic Public Relations Network should be built into the system. One of the functions of this Network would be to educate people about the schemes and how they can avail of the benefits, and to create awareness of their rights.

THE UNORGANISED SECTOR

a) Workers in the unorganised sector comprise of:

- Those employed in small establishments outside the purview of the current social security legislation,
- Those who are employed on a casual or intermittent basis without any security of employment or income and
- The self-employed.

In addition, the unemployed and the

unemployable (the aged, the handicapped etc) also need social security. The needs of each of these categories are different.

b) Once the integrated, comprehensive and universal system of social security recommended by us for the organised sector comes into existence, workers in the small establishments will also be covered progressively by lowering the employment thresholds for coverage.

c) Pending that, coverage may be extended, by amending or acting on each existing Act

- Establishing institutions similar to the ESIC or the State level to cover smaller establishments.
- Decentralising the administration of the EPF Scheme and establishing State Level Boards with the mandate to extend the application of the scheme to all establishments.
- Converting the employment injuries benefits under the WC Act into social insurance schemes and injuries extending the benefits to all types of work.

- Converting the maternity benefits under the MB Act into a social insurance scheme and extending the benefits to all classes of establishments

- Making the payment of gratuity a compulsory insurance scheme covering all establishments.

d) In the case of persons employed on a casual or intermittent basis, the need is for employment security and continuity of employment through appropriate decasualisation measures. The most successful decasualisation measure is that of Dock Labour Boards, Mathadi Boards and Security Guards Board in Maharashtra and the Head-load Workers Welfare Fund Board in Kerala. Similar boards may be constituted for head-load workers, railway porters, security guards, beedi workers, building workers (including brick kiln workers) fish processing workers, and other classes of home based workers, rag pickers, and so on).

e) Welfare funds can be an important model for providing

social security of the workers in the unorganised sector. Welfare funds may be set up for each of the major employments with large number of persons employed, such as:

- Agriculture
- Building and construction industry, including the brick kiln industry;
- Beedi industry;
- Handlooms and power looms;
- Fishing and fish processing;
- Toddy tapping;
- Head load workers;
- Railway porters;
- Agarbatti workers;
- Rag pickers and other scavengers;
- Rickshaw pullers;
- Salt workers;
- Carpet weavers; and
- Leather workers;

f) As regards other minor employments, it might not be practical to set up a Welfare Fund for each such employment. It would be necessary to bring them under

an umbrella type of legislation with a common Welfare Fund.

g) The Welfare funds should be contributory but the contributions that workers can make to such funds will necessarily be small, and will not, by themselves, without a contribution from either the employers or the Government, be adequate to provide any meaningful social security. The employers will therefore, have to make more significant contributions to the Welfare Funds. (Collection of these contributions will require effective machinery). If welfare activities are combined with the regulation of employment through Welfare Boards, whereby the employers as well as workers would be required to register themselves compulsorily and also to obtain licence and permits, it would be possible;

- To collect contributions;
- To ensure regularity of employment;
- To fix and revise wages on a rational basis compensating the workers for increase in the cost

- of living and also giving them the benefit of higher productivity and profitability;
- To provide for all the essential welfare benefits.
- h) Alternatively, fund financing may be done by levying a tax in the form of a cess or surcharge at a rate which would yield sufficient revenue. Where a separate Welfare Fund is set up for a particular employment, it might be easy to identify the source of the tax revenue, but in the case of a common fund, the source of revenue would have to be of a general nature.
- i) If a tax of a general nature were to be levied for financing social security of the large majority of workers in the unorganised sector, it might be more appropriate to adopt the area based approach recommended by the ILO which is akin to the system obtaining in Australia or New Zealand, or the system that was recommended for the U.K. by Lord Beveridge.
- j) The only social security provision in the conventional sense made in the welfare fund laws is health care. The Welfare Funds can, however, be transformed into instruments of social security if they can be restructured suitably as indicated below:
- The coverage of the funds should be expanded,
 - The range of benefits provided under the welfare funds should be broadened,
 - The financial arrangements for providing benefits should be modified, and
 - The administration of the funds should be decentralised and made participatory.
- k) Area-based schemes appear to be eminently suitable for application to the workers in the unorganised sector, who are too numerous to be covered under occupation based schemes. We suggest that it may be tried out on an experimental basis in some States before extending it to other States.
- l) Another model for providing a measure of social security for workers in the unorganised sector is subsidised insurance. A number of such insurance schemes have been initiated

through the LIC/GIC, and some by the State Governments. To make these schemes popular, the Insurance Companies may be required to develop two or more plans providing coverage for the major risks faced by the people namely health, life, widowhood, accident, and loss of assets, etc. with a uniform rate of subsidy. The services of peoples' organisation and NGOs may be used to promote these schemes.

m) A separate organisation/facility may be set up to administer all social insurance schemes, and the insurance companies licensed by the IRDA which may be asked to make appropriate contributions to this organisation instead of directly trying to fulfil their obligations on social insurance contained in the IRDA regulations.

n) The current trend towards poverty eradication through social mobilisation, i.e., organising the unorganised workers, needs to be encouraged and expanded. Unorganised workers may be mobilised and organised to form:

- Self help groups focussing on

savings and credit and/or producing goods, crafts based, salt, minor forest produce, processing agricultural produce, etc.

- Local workers' economic organisations which are *taluk* or preferably, district level associations and federations of self help groups;

- District level cooperatives producing goods and services; e.g. milk cooperatives, land and agro-forestry based cooperatives, childcare and midwives cooperatives, etc.

- Village based mahila mandals or yuvak mandals or kisan sanghs.

o) Once organised into small, medium or large workers' organisations they could be actively involved in:

- The Provision of credit,
- Micro insurance by linking with savings and credit supplying groups or organisations and
- Social security through the area based approach.

These local decentralised organisations would be involved in district level goal setting for social

security, the implementation of all social security programmes (both work based and area based) and monitoring of these programmes.

- p) In the cases of self-employed persons, the primary need is protection of their productive functions against natural calamities. The Crop Insurance Scheme introduced by the Central Government has to be put on a firm footing to cover all farmers and all crops against all contingencies. It is also necessary to design appropriate social insurance schemes with adequate benefits to give protection to self employed workers like milk producers, boatmen and fishermen.
- q) It is necessary to provide health care, old age and disability protection to the self-employed. Either the existing ESI and EPF/ EPS schemes may be suitably amended to provide such protection against a composite contribution, or separate insurance schemes may, as appropriate, be devised for the self-employed on an occupational or area basis. As in the case of the unorganised

sector workers, an area based approach may be tried out for the self-employed.

- r) Micro-insurance schemes, self-help groups and mutual benefit associations have a role to play in providing social security cover to the self-employed. However, in order that the participants in such schemes are not cheated by unscrupulous elements, they would have to be placed under a regulatory mechanism.
- s) For the unemployed, the basic need is employment on a continuing basis. Globalisation has brought in new problems of lay off, retrenchment, unemployment and shrinkage of employment opportunities. The Sampoorna Grameen Rozgar Yojna, introduced to provide additional employment and food security in the rural areas, is a step that is described as the precursor to a National Employment Assurance Scheme. We feel that a National Scheme guaranteeing employment will not be unfeasible, and should be given a fair trial.
- t) While promoting wage

employment, the States should adopt and effectively implement a rational minimum wage policy.

u) It is the responsibility of the state to provide subsistence by an appropriate social security measure to those who have no source of income. The Central Government should consider introducing a National Scheme of Unemployment Relief to the unemployed subject to a means test. The rate of relief may be fixed at half the floor level minimum wage fixed by the Ministry of Labour. At the current rate this would yield a relief of Rs.200 per month.

v) The National Social Assistance Programme started in 1995, provides only a few benefits, namely, old age pension, maternity benefit and family benefit. The programme should ensure that all people who are not able to work and earn their living, have the necessary means of livelihood and that their basic needs such as food, clothing and shelter are met adequately.

w) The assistance provided under

NSAP should be linked to other social assistance packages for poverty alleviation and provision of basic needs so as to supplement the assistance provided. Apart from NSAP, there are several schemes under which social assistance is provided, for various purposes such as:

- PDS including Annapurna and Antyodaya Anna Yojana Schemes,
- Schemes under which supplementary nutrition is provided to women and children including the Midday Meal Scheme.
- Housing schemes for economically weaker sections, including schemes for old age homes, orphanages, homes for deserted women, beggars, etc.,
- Schemes under which assistance is provided for self employment,
- Schemes under which cash assistance is given to the unemployed,
- Schemes under which old age

disability and death benefits are provided under subsidised insurance schemes,

It is desirable to integrate all such programmes so as to assure everyone a minimum range of benefits and to avoid an overlapping of the benefits provided under different programmes. The integrated National Social Assistance Programme should be placed on a statutory footing so as to make it binding on the Government/s.

- x) The National Old Age Pension Scheme may be redesignated as the National Pension Scheme and extended to (i) all men and women of age 65 or above (ii) physically handicapped people with specified degrees of incapacity, (iii) mentally sick people, (iv) those suffering from leprosy (v) beggars (vi) widows and (vii) other indigent people. The scheme would be subject to a means test. The old age pensions in many States cover some of these categories but there is no uniformity in the eligibility criteria or the quantum of benefits. A national standard needs to be established for such benefits too.
- y) The rate of old age pension under the National Old Age Pension Scheme is Rs.75 per month. Considering that the floor level minimum wages fixed by the Central Government meant for three consumption units is around Rs.45 per day the cost of subsistence of one consumption unit comes to Rs.15 per day or Rs.450 per month. Granting that a pension may not exceed 50% of a wage, the minimum pension should not be less than Rs.200 at current prices. The current rate of pension is far below this level and needs to be enhanced.
- z) The rate of pension was fixed in 1995. As there has been a considerable rise in the consumer prices since then, the real value of the pension has been eroded. There is, however, no mechanism to adjust the pension to the rise in the consumer price index. It should either be linked to the index or revised periodically so as to maintain its real value.
- aa) The income criteria for eligibility for pensions should be reviewed

- and revised on a uniform basis. As the old age pension is now admissible under a national scheme there is no justification to exclude any person from the benefit on grounds of domicile.
- bb) When the benefits are subject to a means test, imposition of numerical and financial ceilings would appear to be discriminatory as they exclude from the benefits, those who are eligible for the benefits but are denied the same for the reason that they are above the ceilings. The ceilings should therefore, be removed. The benefits should be paid to all persons who qualify for them under the Scheme.
- cc) The population of the elderly has been rising. The budget provision for the old age pension scheme should be increased from time to time, corresponding to the increase in the population of the elderly. The selection of persons should be made by local authorities, and all eligible persons should be paid pension as due by the local authorities.
- dd) A national scheme may be drawn up for providing pensions to widows on the following lines:
- Widows may be entitled to old age pension at the age 60 and above,
 - Widows between the age of 18 and 60 may be paid pension for a limited period of two years during which period they may be given training to enable them to take up employment.
 - During this period they may also be paid a supplementary pension for two children for their maintenance.
 - ∅ At the end of the training, they may be paid an equipment grant.
- ff) A national scheme may be drawn up for the payment of a pension to all the physically disabled persons who are, *ab initio* incapable of doing any work and earning their livelihood or who have lost their earning capacity by more than 70 % due to any accident or disease. The rate of pension should be the same as suggested above for the elderly. The lack or loss of earning capacity may be

- assessed by the same procedure as prescribed for workmen's compensation under the Workmen's compensation Act or disability benefit under the ESI Act.
- gg) Some States have special pension schemes for journalists, artists, agricultural workers and others. It is suggested that all such schemes be integrated with the National Pension Scheme with standardised components comprising of an old age pension, invalidity pension or disability pension and a family pension including a widows' pension, and a children's pension or allowance.
- hh) The National Maternity Benefit Scheme may continue to be applicable to persons below the poverty line. The scheme should, however, be extended to cover all women within the age group 18-50, whether employed or not, other than those covered under the ESI or Maternity Benefit Act.
- ii) The amount of benefit provided now (Rs.500 per child birth) is inadequate, and should be raised to Rs.2000 per child.
- jj) Adequate arrangements may be made by the Governments at the Central and State levels to provide day care services for children in the age group 0-5 in the form of crèches or otherwise, complementary to the National Maternity Benefit Scheme, to enable all working women to leave their children under proper care in a safe environment removing the burden from the shoulders of their siblings. There should be arrangements for nutritional support for lactating mothers and nursing children.
- kk) A national housing scheme may be introduced, integrating various housing subsidy schemes.
- ll) A uniform policy should be adopted in providing subsidy for housing.
- mm) A National Cloth Supply Scheme may be introduced for the supply of cloth free of cost or at a subsidised price to the destitute.

- nn) Survivors' benefits are provided under the National Family Benefit Scheme and other schemes like the Jan Shree Bima Yojna. We recommend that the National Family Benefit Scheme should be linked to the National Pension Scheme (suggested above) and the Jan Shree Bima Yojna, rationalising the quantum of benefits.
- oo) Every person below the poverty line, whether employed or not, may be paid an allowance for the maintenance of children and to enable them to send children to school and not to work.
- pp) A national disaster relief scheme may be drawn up as a part of the NSAP to provide assistance to persons affected by national calamities on a rational basis.
- qq) Land Reforms are important social protection measures. The ongoing programmes should be implemented speedily.
- rr) Basic health security has to be provided by the primary health care infrastructure. It may be supplemented by one or more of the various other options such as health insurance.
- ss) In order that the elderly people keep healthy, it is necessary that they should remain gainfully active. Their services should therefore, be utilised in various activities of the community, such as manning childcare centres cultural clubs, vocational training centres, etc., for which they may be paid appropriate remuneration, or allowances or honorarium.
- tt) For the disabled, it is necessary to prepare a comprehensive plan of action covering, *inter alia*, the following aspects :
- Removal of the disabilities, whenever possible, should be the basic objective of any such plan. Where disabilities cannot be removed, measures should be taken to bring disabled persons into the mainstream by providing them appropriate education and skill training.
 - Provision of adequate employment opportunities should be the second priority in any scheme for the welfare of the disabled.
 - The Peoples With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 already provides for a

3% reservation in identified posts in all government and public sector offices for disabled persons. Steps should be taken to enforce this provision strictly. The feasibility of extending this requirement to employment in private establishments, as in Germany may be considered.

- But it may not be possible to provide employment to all the disabled as their capacity to work would not be uniform. In cases of persons who cannot work, the State should provide a safety net by providing them food, clothing and shelter at its own expense.
- uu) The feasibility of opening District Rehabilitation Centres in all the districts and in all the States and Union Territories may be considered. It would be desirable to route all social assistance for disabled persons through such centres.
- vv) It is necessary to develop appropriate social health insurance schemes for the elderly and these may be linked to pension insurance.

With the growth of the population of

the aged, the associated problem of caring for the aged is becoming increasingly important. Lately, it has been systematised in the form of social care insurance as a part of social security. It has been reported that in 1991, in Germany, approximately one-third of the social security expenditure was devoted to care provision. The concept of care dependency is distinct from treatment for illness and covers help with daily tasks that do not fall under any medical treatment plan, e.g. personal hygiene, feeding, and mobility of housework.

xx) The normal and preferred arrangement for taking care of the aged is to encourage them to live with their families. Where there are either no families, or the families cannot look after them, they would have to be provided with institutional care. It would be necessary to design appropriate schemes for the purpose.

yy) One cannot be content with the setting up of 'homes.' The quality of service provided in these homes needs to be monitored. The existing arrangements in this regard are less than adequate. It is, therefore, necessary to establish a well-organised regulatory system to

ensure that standards are maintained and exploitation avoided.

zz) In spite of several schemes having been designed for promoting and protecting the interests of cultivators, reports of suicides by several agriculturists due to their inability to cope with the loss of income for various reasons including crop failures and the after-effects of globalisation, are appearing in the press. It is, therefore, obvious that the various protective schemes drawn up by the Government need to be strengthened and enlarged to cover those who are outside their umbrella.

aaa) The Union Finance Minister, in his budget speech for the year 2000-2001, announced a proposal to introduce a new Social Security Scheme for agricultural workers called the Khetihar Mazdoor Bima Yojana. We welcome the initiative taken by the Government in introducing the Scheme

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(Khetihar Mazdoor Yojana). It seems, however, to be a departure from the original proposal to establish an employment board and a welfare fund for the workers. We suggest that the proposal to set up a welfare fund may not be given up.

bbb) There are several occupational groups sharing the socio-economic conditions of agricultural workers. To target a single group for such a scheme may be discriminatory. We, therefore, suggest the extension of the scheme to other workers too in the unorganised sector.

ccc) The initiatives taken by the Central Government to eliminate the loathsome practice of manual handling of night soil and filth are commendable. We recommend that effective measures be taken after discussion with the representatives of the States to wean the people engaged in that profession and to rehabilitate them in other employments. There is a proposal to establish one or more welfare funds for rag pickers. We suggest that the feasibility of setting up similar welfare funds for those engaged in scavenging may be considered.

CHAPTER-IX

WOMEN AND CHILDREN

The Terms of Reference of our Commission ask us, *inter alia*, to give attention to the need for "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."

9.2 Approximately half the population of our country and, therefore, of the potential workforce is of the female gender. Any social, economic or industrial system that ignores the potential, talents and special aptitudes of this half will be flawed on many counts. It will be guilty of gross underutilisation of the human resources or human potential available to the nation. It will be guilty of denying equal opportunities, and thus creating conditions that cause or perpetuate exploitation and disparities. It may even result in conditions of near slavery for a large section of our population. It is,

therefore, necessary to ensure equal opportunities for employment; equal remuneration for equal work; equal opportunities for the acquisition and upgradation of skills; equal opportunities for promotions; equal opportunities for access to positions of responsibility; equal respect, and protection from indignities, harassment and humiliation at place of work; equal opportunities for the redressal of grievances; and equal access to the by-lanes and highways and summits of entrepreneurship, and all the requirements of entrepreneurship including credit. These must be backed by equal rights to property and inheritance. But the Commission does not propose to make detailed observations on the question of equal rights to property and inheritance, since this does not fall within our terms of reference.

9.3 While all the opportunities and rights that we have mentioned in the earlier paragraph are vital, and are corollaries of the perceptions and fundamental principles enshrined in

our Constitution, the full development and deployment of the potential of the female workforce cannot be ensured merely by making these opportunities available. The system and the laws have also to take cognisance of, and provide for, the special responsibilities that women bear to society and the species. While it has been proved that women can do any job that men can do, there are some social responsibilities that men cannot discharge. While men can, and should share the responsibility for child caring, women alone can bear the responsibility of child bearing. A society that is mindful of the value of human resources cannot be unconcerned about the pre-natal and post-natal care of its mothers, and the care and attention that are essential at childbirth. It is obvious that women workers cannot be loaded with the normal load of work during these days. It is also evident that women workers have to attend to the needs and care of the infant. The demands of all these on the nutritional requirements, health and physical well being of the mother and infant child have to receive full attention from society.

9.4 All these have their own impact

on the conditions under which women can be expected to work. Yet, one often sees that these special conditions are made excuses for denying women full and equal status as workers, for reducing them to the status of casual employees, or employing them only on casual and contract-based jobs, for creating conditions in which they are compelled to accept jobs that carry lower wages, often with discriminatory practices and attitudes. The Human Development Report 1995 points out that "in no society women enjoy the same opportunities as men." The Human Development Report 1996 says that "in all countries the gender-related development index is lower than the human development index, reflecting lower achievements in human development for women, compared to men. Gender gaps in education and health are closing, but opportunities for economic and political participation are severely limited for women. Women occupy only 12% of seats in Parliament, and only 14% of administrative and managerial positions. With the average gender empowerment measure at 0.391, all countries have a long way to go before reaching equality."

9.5 The Commission is strongly of the opinion that our laws and systems of social security should prevent and eliminate such discriminatory attitudes and practices.

The laws that relate to the workforce and the systems that are set up to provide safety and security, should therefore, be examined with a view to eliminating discriminatory impacts, and providing full protection and welfare to women workers. The Commission has examined the existing laws relating to the workforce, from this point of view, particularly the:

- a) Minimum Wages Act, 1948
- b) Industrial Disputes Act, 1947
- c) Workmen's Compensation Act, 1923
- d) Maternity Benefit Act, 1961
- e) Inter-State Migrant Workmen (R.E.C.S.) Act, 1979
- f) Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- g) Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

- h) Contract Labour (Regulation and Abolition) Act, 1970
- i) Trade Unions Act, 1926
- j) Factories Act, 1948
- k) Unprotected Manual Workers (Regulation of Employment and Welfare) Act, 1979

9.6 The detailed recommendations that the Commission proposes to make to amend and improve these laws are included in the Chapter on 'Review of Laws.'

9.7 The Study Group appointed by our Commission to study the problems and needs of 'Women Workers and Child Labour,' has made a comprehensive study of the needs of women workers in the realm of social security. They have studied the special concerns of women workers as well as their general needs. They have looked at the potential and adequacy of the citizen-based approach as well as the work-based entitlements that should supplement the citizen-based entitlements. They have also examined the relative merits of different statutes and institutions that can assure

comprehensive and universal coverage as well as ensure speedy and efficient delivery of services in the field of social security. They have pointed out that the present laws and statutes cater mainly, if not solely, to the organised sector that accounts only for less than 10% of the workforce; that the remaining 90% or 93% that is today outside the pale of social security systems, is more vulnerable, and therefore, more in need of social security entitlements; that the vast majority of women workers are in the unorganised or informal sector; and that any attempt to reach social security to women workers should take into account the conditions of the workforce in the unorganised or informal sector. The Commission has given full consideration to the suggestions that the Study Group has made.

9.8 Our detailed recommendations on aspects of social security that are of special relevance to women workers, can be found in the Chapter on 'Social Security,' along with our recommendation for a comprehensive social security system for the entire workforce.

WOMEN WORKERS IN INDIA: A MACRO PICTURE

9.9 The Commission shares the view that the contribution of women as a category of workers, is grossly underestimated. This under-valuation manifests itself in disparities in wages, in access to and control over resources, in lack of infrastructural support, and above all, in great disparity in the work burden.

9.10 The Census of India and the National Sample Survey Organisation (NSSO) are two main sources of data on women's employment. But they have not followed identical definitions of work. The Census of India, 1991 defined work as participation in any economically productive activity, irrespective of whether the participation is physical or mental. In addition to this, activities like cultivation for 'self-consumption' and unpaid work for family enterprise were also included in the definition of work. The Census of India, 1991 divided the working population into three broad categories: Main workers; Marginal workers and Non-workers. A person involved in any work for more than six months of the year preceding the survey, has been termed a main

worker. Anyone whose work participation has been for less than six months in the year under reference has been termed a marginal worker. Those who have not worked at all during the previous year have been counted as non-workers.

9.11 The NSSO has a broader definition of work. It encompasses all activities pursued for pay, profit or family gain. While both market and non-market activities for the agricultural sector are included in the definition of work, only market activities are included for the non-agricultural sector. The production of food grains or any other crop for self-consumption has also been regarded as 'gainful activity.' The NSSO employment surveys, conducted every five years, define three different levels of employment: usual status, current weekly status, and current daily status. The corresponding reference time periods are: one year, one week, and each day of the week.

9.12 None of these definitions has fully captured the extent and degree of women's participation in the workforce. The Census criteria are quite insensitive to most of the kinds

of work performed by women. Upto the 1981 census there has been gross under-enumeration of the participation level of women workers. Work was defined as 'participation in any economically productive activity.' It thus, excluded a wide range of activities performed by women who produced a variety of goods and services for self or family consumption. The 1991 Census examined the periodicity of work in agriculture, work in the informal sector, unpaid work, and work in the farm or family enterprises. It produced genderwise data on household heads. However, it still remained an inadequate source to realistically assess the economic and social value of the work contributed by women. As we have observed earlier, the NSSO has a broader definition of work and, therefore, shows a higher participation of women in the labour force. It includes activities for self-consumption (except the processing of primary commodities for self-consumption), and the work of unpaid helpers in the farm, domestic workers etc.

9.13 The Human Development Report of 1990 also says "Much of the work that women do is 'invisible' in

national accounting and censuses, despite its obvious productive and social worth. The reason is that women are heavily involved in small-scale agriculture, the informal sector and household activities, – areas where data are notoriously deficient.

9.14 “But there is another aspect. Women’s work, especially their household work, often is unpaid and therefore unaccounted for – processing food, carrying water, collecting fuel, growing subsistence crops and providing childcare. For example, women in Nepalese villages contribute 22% to household money incomes, but when non-marketed subsistence production is included, their contribution rises to 53%. It is estimated that unpaid household work by women, if properly evaluated, would add a third to global production.

9.15 “Even when women are remunerated for their work, their contribution is often undervalued. In formal employment, women earn significantly less than men in every country having data. In the informal sector, where most women work, their earnings at times reach only a third (Malaysia) to a half (Latin America) of those of men.

9.16 “Do women remain invisible in statistics because little value is attached to what they do? Apparently, yes.

9.17 “Women have shouldered a large part of the adjustment burden of developing countries in the 1980s. To make up for lost family income, they have increased production for home consumption, worked longer hours, slept less and often eaten less – substantial costs of structural adjustment that have gone largely unrecorded.

9.18 “The low value attached to women’s work requires a fundamental remedy: if women’s work was more fully accounted for, it would become clear how much women count in development. To do that requires much better gender-specific data on development. There is a need to redesign national censuses, particularly agricultural surveys.” We endorse these views.

9.19 Though the definition of work has been refined over time and the extent of women’s work which is not enumerated is less today than what it was in the past, the data on work participation of women still remains questionable. The problems arising

from inadequate definitions and inaccuracies and biases in enumeration, are compounded by the difficulties that are experienced in assigning economic value to the work of women especially when it is unrelated to the market.

9.20 A good example of the enumerator's perception is highlighted in a small survey commissioned by United Nations Development Fund for Women, India (UNIFEM), which found that 98 out of 100 enumerators did not even put questions regarding work to women: it was simply assumed that women did not work. Out of the 2002 women in the 1000 households covered, only 4 women were asked about any work they had done in the previous year. In other

cases, enumerators depended solely on answers or information supplied by male members of the family.

In this chapter, we have tried to examine trends in women's participation in work relying on data available with the NSSO.

TRENDS IN WOMEN'S PARTICIPATION IN THE LABOUR FORCE

9.21 The labour force includes both the employed and the unemployed, and, therefore, measures the total available supply of labour. The participation of women in the labour force has always been lower than that of men, in the rural as well as urban areas. The difference has been greater in urban areas.

Table 9.1
LABOUR FORCE PARTICIPATION RATES

(Percentage)

Category		NSS 50th Round (1993-94)	NSS 55th Round (1999-2000)
1.	Rural Males	56.1	54.0
2.	Rural Females	33.1	30.2
3.	Urban Males	54.2	54.2
4.	Urban Females	16.4	14.7

Source: NSS Report No. 455, Employment and Unemployment in India, 963. *-1999-2000. Rates are based on UPSS criterion.

9.22 Data from the 55th Round seem to suggest a slight decline in the labour force participation since 1993-94 in all categories except that of urban males.

9.23 WORKFORCE PARTICIPATION:
The picture is similar even if we

confine ourselves to the workforce (i.e. those classified as employed), instead of the labour force. The workforce participation rates for females are substantially lower than that for males, more so in the urban areas.

Table 9.2

S. No.	Category	38th Round (1983)	43rd Round (1987-88)	50th Round (1993-94)	55th Round (1999-2000)
1.	Rural Males	54.7	53.9	55.3	53.1
2.	Rural Females	34.0	32.3	32.8	29.9
3.	Urban Males	51.2	50.6	52.0	51.8
4.	Urban Females	15.1	15.2	15.4	13.9

Source: NSS Report No. 455 cited above. The rates are on the basis of UPSS criterion.

9. 24 The work participation rates have fallen between 1993-94 and 1999-2000 in all the four categories but more sharply in respect of

females. These trends can be confirmed only after we have access to the census data of 2001.

9.25 WORKFORCE ESTIMATES:
Estimates of the number of workers
in 1999-2000 (as per usual status)

based on the above participation
rates are as follows:

Table 9.3

(in Millions)

	Male	Female	Persons
Rural	198.6	105.7	304.3
Urban	75.4	18.2	93.6
All areas	274.0	123.9	397.9

Source: K. Sundaram, *EPW*, Volume 36, Number 34, August 2001

Female workers account only for less than one-third of all workers.

9.26 DISTRIBUTION OF MALE AND FEMALE WORKERS BY BROAD INDUSTRY GROUPS: The Primary Sector is the dominant sector so far as the employment of women in the rural areas is concerned. It accounts for nearly 85% of women's activity. A comparison of NSSO estimates between 1983 and 1999-2000 shows that the proportion of women employed in the primary sector has decreased.

9.27 In the urban areas, a large number of women are employed in the tertiary sector. Women's employment in the tertiary sector has increased over the period 1983-2000. The increase in the tertiary sector indicates that more and more women are joining the expanding service sector.

Table 9.4**Changes in the distribution of male and female workers in broad industry groups between 1983 and 1999-2000.****Rural**

(percent)

		Male			Female		
Year	NSS	Primary	Secondary	Tertiary	Primary	Secondary	Tertiary
1983	38th	77.5	10.0	12.2	87.5	7.4	4.8
1999-2000	55th	71.4	12.6	16.0	85.4	8.9	5.7

Urban

(percent)

		Male			Female		
Year	NSS	Primary	Secondary	Tertiary	Primary	Secondary	Tertiary
1983	38th	10.3	34.2	55.0	31.0	30.6	37.6
1999-2000	55th	6.6	32.8	60.6	17.7	29.3	52.9

Source: NSS Report No. 455 cited earlier.

9.28 A similar trend, with varying rates of change for all sectors is seen in the case of male workers too. The male-female gaps in the industrial distribution are narrowing down fast in urban areas, while the gap is increasing in rural areas.

9.29 DISTRIBUTION OF WOMEN WORKERS (Activitywise): Agriculture is the most important activity of the women workforce (84%) in the rural areas, with the highest number of women workers engaged as agricultural labourers. (see Table 9.5)

However, as we pointed out earlier the percentage of women workforce in agriculture is declining.

Manufacturing and services are the other two sectors where women are employed in large numbers.

Table 9.5

Percentage of Workers in various Industrial Categories (1999-00)

Activity	% of Female Workers	
	Rural	Urban
Agriculture	84.1	14.6
Mining and Quarrying	0.4	0.4
Manufacturing	7.7	23.2
Electricity, Water etc.	—	0.2
Construction	1.2	5.5
Trade, Hotels and Restaurant	2.3	16.4
Transport, storage	0.1	2.0
Services	4.3	37.8
Total	100.0	100.0

Source: NSSO, 55th round, Report No. 455.

9.30 The top ten manufacturing industries that employ women in large numbers are:

Employment Status Categories:

- a) Tobacco
- b) Cotton textiles
- c) Cashewnut Processing
- d) Machine tools and parts
- e) Matches, explosives and fireworks
- f) Clay, glass, cement, iron and steel
- g) Drugs and medicines
- h) Grain mill and bakery
- i) Garments

9.31 In the rural areas, the pattern of changes in the distribution of workers by employment, status categories during the last fifteen years has generally been similar for men and women workers. There has been a fall in self-employment and an increase in casual labour for both categories. In the urban sector, employment status distribution for women workers has undergone substantial change, with regular employment having recorded an increase, while casual labour has decreased correspondingly.

Table 9.6
Changes in the distribution of employment status
categories over time

Rural

		Male			Female		
Year	NSS round	Self-employed	Regular	Casual	Self-employed	Regular	Casual
1983	38 th	60.5	10.3	29.2	61.9	2.8	35.3
1987-88	43 rd	58.6	10.0	31.4	60.8	3.7	35.5
1993-94	50 th	57.9	8.3	33.8	58.5	2.8	38.7
1999-2000	55 th	55.0	8.8	36.2	57.3	3.1	39.6

Urban

Year	Round	Male			Female		
		Self-employed	Regular	Casual	Self-employed	Regular	Casual
1983	38 th	40.9	43.7	15.4	45.8	25.8	28.4
1987-88	43 rd	41.7	43.7	14.6	47.1	27.5	25.4
1993-94	50 th	41.7	42.1	16.2	45.4	28.6	26.2
1999-2000	55 th	41.5	41.7	16.8	45.3	33.3	21.4

Source: NSS Reports.

9.32 The trends show distinct signs of casualisation, i.e. increase in the number of casual workers, for both males and females. In rural areas, while women have been predominantly self-employed/family helpers, the proportion of casual employees is on the increase. The trends of casualisation, for both - females and males have been more pronounced in rural areas. It has been pointed out that a large proportion of semi-landless and marginal landholders work as casual wage labourers. The increase in landless households and precariously small holdings, in turn, accentuates

the pressure on the casual labour wage market. While men in landless households were able to find other kinds of work, women in such households were confined to wage work. Options of diversification to non-agricultural employment, which is more paying, are fewer for women.

9.33 THE ORGANISED SECTOR: A little more than 48 lakh women were employed in the organised sector in 1999¹. This constituted a mere 17%

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¹ Shrivastava, N in Papola and Sharma, Gender and Employment in India, 1999.

of all employees in the organised sector. The proportion of women was highest in what are possibly the most backward and low-paying segments of industry, agriculture, forestry, fisheries and plantations. It was lowest in electricity, gas and water. In terms of absolute numbers, the largest concentration was in community, social and personal services, like education services and medical services.

9.34 Out of the total women workforce in the organised sector, 58% were in the public, and 42% in the private sector. The corresponding

proportion for males was 71% and 29% respectively. Within the organised sector, during the nineties (1990-99), employment of women grew much faster (3.2% per annum) than the total employment (0.7% per annum). The organised tertiary sector, particularly, transport and banking, also registered growth of women's employment. However, the fact remains that women's share in employment in the organised private sector has remained extremely low, involving only low-paid assembly line work or tasks of repetitive detailing. Thus, they remain confined to the peripheries in this sector.

Table 9.7
Industry wise Women's Employment in the Organised Sector , 1999

Industry	% of Female Workers
Agriculture	10.4
Mining and Quarrying	1.6
Manufacturing	20.9
Electricity, gas, water	0.9
Construction	1.4
Trade, Hotels	1
Transport, storage and communications	3.6
Financing Insurance	4.7
Community, personal and social services	55.5
All Industries	100.0

Source: Ministry of labour, Employment Review, Jan-March, 1999

9.35 THE UNORGANISED SECTOR:

Globally, the unorganised sector has been growing in relation to the organised sector. In this sector, there are no defined or regulated conditions of work or employment. It includes a high percentage of agricultural workers and also workers who are not attached to any particular employer. It has been estimated that this sector contributes over 60% to the NDP and over 60% to household savings. The unorganised sector also contributes substantially to the exports of the country, accounting for Rs.46,000 crores, (1996-97) which approximates to 40% of the total export earnings.

9.36 Women workers and the

unorganised sector: As has been stated earlier, women constitute a large percentage of the workforce in the unorganised sector. Data from the 55th Round of NSS (1999-2000) show that in the non-agricultural sector, Own Account Enterprises (OAEs) have a higher concentration of women workers. OAEs provide women the freedom to organise their time in such a way that they can undertake activities along with their domestic chores. Even under OAEs, most women are not working as owners or hired workers, but are put in the residual category of 'other workers.' In rural areas, they account for 35% of all 'other workers.'

Table 9.8

Distribution of Workers by Gender, 1999-2000 (Percentage)				
	Gender	Rural	Urban	Combined
Male	OAE	72.18	81.28	75.76
	Estb.	83.75	91.1	89.32
Female	OAE	27.8	18.7	24.2
	Estb.	16.2	8.9	10.7

Source: NSS 55th round**Table 9.9****Percentage of female workers in different activities,
1999-2000**

Activities	Working owner		Hired worker		Other Worker/ helper	
	Full Time	Part Time	Full Time	Part Time	Full Time	Part Time
All Enterprises						
Rural	16.2	6.32	15.69	3.04	35.05	22.07
Urban	10.94	3.23	8.97	1.31	19.57	9.48
Estb						
Rural	6.93	2.06	16.6	2.37	23.11	6.84
Urban	4.73	1.21	9.04	1.18	7.28	3.73
OAEs						
Rural	16.77	6.58	7.33	9.16	35.73	22.93
Urban	12.79	3.84	7.63	3.92	23.11	11.13

Source: NSS 55th round

9.37 The percentage of self-employed women is higher in Own Account Enterprises (OAEs) as compared to those in Establishments. It can be seen that a slightly higher percentage of women are working as

owners in rural areas than in urban areas – in both establishments as well as in OAEs. But the most significant form of employment for women in rural as well as urban areas is as 'other workers,' i. e, unpaid family

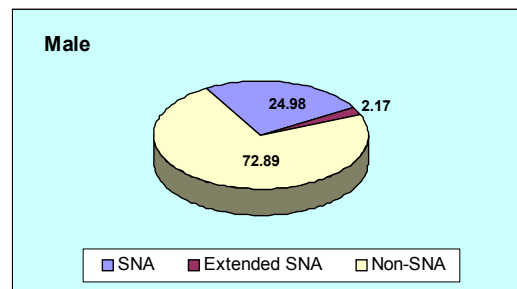
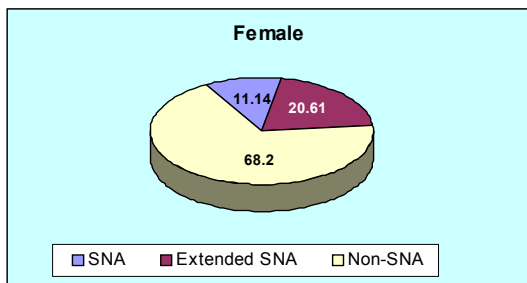
hands in OAEs.

9.38 Within the unorganised sector, women have an overwhelming presence in agriculture, forestry, fishing, plantation and allied activities with the highest proportion working as agricultural labourers and cultivators. They predominate in certain industries such as garments, textiles, food and electronics. The seasonality of work in the agricultural sector and the lack of other avenues of work, make them vulnerable to a range of exploitative practices including attempts to depress their wages or remunerations. Though they are economically active and contribute to the national economy, they remain invisible and poor. According to the Human Development Report of 1990, "Women typically work about 25% longer hours than men: up to 15 hours more a week in rural India, and 12 hours more in rural Nepal. But their total remuneration is less

because of their lower wage rate and their preponderance in agriculture and the urban informal sector, where pay tends to be less than in the rest of the economy. In urban Tanzania 50% of the women working are in the informal sector, in urban Indonesia 33%, and in Peru 33%.

9.39 "The persistence of female-male gaps in human development offers a challenge and an opportunity to the developing countries – to accelerate their economic and social progress in the 1990s by investing more in women."

9.40 TIME-USE ANALYSIS: The time-use analysis significantly, overcomes the lacunae of conventional methods of data collection which disfavour women. It captures the division of a day by men



and women in paid and unpaid work. Marketed activities are valued at their market price. Activities aimed towards self-consumption are valued either in terms of the opportunity cost of the labour time, or vis-à-vis the price of the close substitute. This analysis is free from any socio-cultural bias. It simply records the various activities undertaken by the respondents on a given day.

9.41 The time-use survey reveals that on an average, the time that men devote to unpaid family responsibilities and care labour is roughly one tenth of the time spent by women. Several studies show that the time women spend in unpaid work often varies through the course of life, expanding and contracting in accordance with their responsibility for others – working to fulfil their responsibilities as mothers, working for husbands, looking after children, in-laws, etc. On the other hand, regardless of their position in the course of their lives, the hours that men spend per week on unpaid household work tend to remain fixed, and low.

9.42 The inference is obvious.

Women have restricted opportunities for public participation because their family responsibilities are organised around homes. These affect their chances of employment. They often have interrupted labour force participation and consequently, suffer downward mobility and increased risk of poverty and vulnerability. The overall effect is lower lifetime earnings and less employment security which further increases their dependency on a male 'provider.' Women's work participation can increase substantially if the supportive services such as day care and maternity benefits are provided to them.

WOMEN WORKERS IN A LIBERALISING ECONOMY

9.43 WHAT DOES LIBERALISATION MEAN FOR THE ORDINARY PERSON? The main observations that the Commission wants to make on the processes of globalisation and their impact on the workforce, labour market, industry and industrial harmony, have already been made in the chapter on globalisation. However, while discussing the impact of liberalisation and globalisation on women workers,

we have to recapitulate some of the factors that we have already referred to. But we do so, in this chapter, with special reference to the impact on women workers.

9.44 It can be seen that the discussion on the subject often goes along two opposing lines. There are some who vehemently support globalisation and cite evidence to support the claim that it has 'unleashed' the productive forces in the country. On the other hand, many analysts and activists believe that globalisation has affected people negatively. They point to increasing inequalities, to large-scale unemployment, to deteriorating conditions of work, to a shrinkage of the formal sector, and to evidence and statistics that show that poverty has increased.

9.45 It can well be argued that these contradictory views reflect the different ways in which globalisation has affected different classes of people. For some sectors of the Indian middle class, and perhaps for some entrepreneurs, we find a positive story. The picture changes

when we look at the evidence in the lives of poor classes. The figures analysed for different income groups, show that on the one hand, absolute poverty has decreased but on the other, inequality has shown an increasing trend.

9.46 While liberalisation has led to job losses in the organised sector, particularly in the Public Sector, the emergence of new types of work in new markets, local and global, have led to new opportunities for some. At the lower end of the spectrum, some people who had no work, or whose work was extremely marginal in terms of security or income, have gained new employment opportunities, primarily in the unorganised sector. These newly created employment opportunities do not have upward mobility, and usually involve low skills. On the other hand, for some categories of the educated middle class such as those in Information Technology, liberalisation has brought substantial opportunities requiring higher skills and providing higher incomes.

9.47 This variation in opportunities

is more visible in the case of female workers. Women with degrees from good universities in metropolitan areas, from families that are well acquainted with English, have a large variety of possible job openings. Today, they have begun to work in a large number of non-traditional areas, from television to Information Technology. Women from rural areas and poor families have fewer opportunities. Even where opportunities exist, they are less appealing. For example, the new export markets in the fish processing industry have opened new job opportunities for young women. But the conditions at many places of work are appalling. Since these industries prefer young, unmarried women, the span for years of employment remains restricted.

9.48 Our Study Group on Women Workers and Child Labour commissioned studies of some sectors where there is concentration of women workers, and where there is some preliminary evidence of the effects of globalisation. Within the primary sector, the studies were on livestock, agriculture and forestry. In the secondary sector, women's employment and income were

examined in food processing, textiles and garments, *beedi* rolling, crafts, and home-based industrial subcontracting. Vendors, health workers and construction workers were examined under the tertiary sector.

9.49 The impact of globalisation in all these sectors, is visible in a variety of ways - through technological change, 'flexibilisation' of the workforce, opening of new markets, changing social norms, growing pressures on resources and so on. The paragraphs that follow give a brief sector-wise review as revealed by these studies

THE PRIMARY SECTOR

9.50 The forestry sector: The impact of globalisation on the forestry sector shows the effects of the environment movement as well as the opening of international markets. There is strong evidence to show that the new consciousness on environment has led to a growth of the tree cover in the last decade. There has also been an increase of imports of timber and pulp, leading to

further conservation of our forest resources. On the one hand, this has led to the closing down of some timber or wood-based industries, while on the other, the exports of minor forest produce seem to have increased. There is hardly any impact of liberalisation on the management of forests, since state control and state monopoly continue. If there are major policy changes in this sector, and if the state is willing to open up areas for nurseries, cultivation of fodder, afforestation and conservation, new job opportunities may be created for women in this sector.

9.51 Livestock: Rearing cattle is largely a women's activity. It is often combined with 'housework' or 'non productive' activity. But livestock products are both monetised and non-monetised, the milk that is produced at home, being partly used for home consumption and partly for sale. As a result, reliable statistics on women's contribution in the field of livestock are not available. About three-fourths of rural households own livestock. India's livestock population is the largest in the world, and the prospects for larger markets for milk and milk products, both in

India and abroad, seem bright. The main policy implication in this sector is the need to recognise the potential for women's contribution, to increase their skills and knowledge, and, to ensure their ownership of both the livestock assets as well as partnership in institutional set-ups such as co-operatives.

9.52 In spite of the fact that the maximum number of women work on land in the agricultural sector, they seldom own resources. The World Development Report 1996 also points out that "Women have fewer opportunities to secure livelihood because of constraints to land ownership and lack of access to credit." A majority of them work as agricultural labour or as unpaid workers on family-owned land. A very strict division of labour on the basis of gender, characterises agricultural activity. The tasks performed exclusively by women are usually the most back-breaking and low paying, e.g. transplanting, weeding, winnowing, threshing, harvesting and so on. These tasks are also monotonous and repetitive, and involve harmful postures, wet conditions and handling of toxic materials. Yet, there is wide disparity

between men's wages and women's wages, with women being paid far less than men in most States. Recent technological changes have eliminated many jobs traditionally performed by women while the exodus of men from villages has imposed further burdens on them. Increasing commercial and mechanised farming has often meant displacement of women workers from their villages and migration to urban areas in search of employment, leading to food insecurity and worse living and working conditions.

THE SECONDARY SECTOR

9.53 The Small-scale sector: From the '60s, the Government of India has been promoting small-scale industries by giving subsidies, tax exemptions and the like. With the emphasis now shifting to large industries, workers from the unorganised sector, who are employed in these industries, have experienced adverse effects on their employment. Small-scale industries have lost the tax advantage that they had, and there has been loss of employment due to cheaper imports as well.

9.54 Beedi rolling: It is a major area of employment for women, which,

however, remains low-paid, insecure and hazardous for health. The risks to health are not confined to those who work, but extend to children who play around tobacco and to others who often live in unventilated houses in which the work goes on. Globalisation has affected this industry in two ways. Firstly, the international anti-tobacco campaign is threatening to reduce the work in the industry, and secondly, *beedis* are finding new international markets. The main challenges here are, to implement the existing legislation for protection and welfare of *beedi* workers as well as to begin the search for new avenues of local employment, and training for new skills.

9.55 The Crafts sector: The crafts sector is closely linked with international markets. Today it earns over Rs.8000 crores through exports. Women are concentrated in certain crafts like embroidery, weaving, cane, bamboo and grass products, costume jewellery, pottery, coir products etc. However, in recent years they are entering male-dominated crafts like brassware. The market for craft products is expanding both in India and abroad, and artisans have

already begun blending traditional skills with new technologies and designs. For women artisans in particular, there is a need to promote skill upgradation along with a more market-oriented approach to production.

9.56 The study on industrial sub-contracting shows the extent to which major private sector and even public sector companies have resorted to outsourcing work, including home-based work, in recent years. Although this has increased work opportunities for women, it is unfortunate that the earnings are very low, sometimes well below the minimum wage. The average monthly earnings in technical trades like electricals are reportedly Rs. 450 per month; strangely, no different from *aggarbatti* making or leaf plate making. Nor do the workers engaged by sub-contractors, have access to social security systems. Due to the low piece rates in home-based work, women take the help of their children, thus leading to a situation where the incidence of child labour seems to be increasing in the home-based trades. The ILO adopted a Convention on Homework in 1996. The Commission recommends that the Government

formulate a National Policy on Home-based Work, in conformity with the provisions of the ILO Convention.

9.57 Food processing: Within the food-processing sector, the last decade has seen increasing marginalisation of the small scale and unorganised sector. Women, using traditional skills in many primary food-processing areas, carry out a large proportion of food processing in the unorganised sector. Extensive technological modernisation in the organised sector is also displacing not only large numbers of unskilled workers among women, but also many skilled workers, whose skills have become obsolete for handling new technologies. Whereas the Government is investing heavily in the organised food-processing sector, there is practically, no attention being paid to the unorganised sector. This is one area where upgrading skills and bringing in modern technologies of food processing, preservation and packing can create many employment opportunities, particularly for women.

9.58 The textiles and garments industry: It is a major employer of

women. In particular, the cotton textile, handloom and to some extent power loom industry and the growing garments sector, both factory and home-based, employ women. Unfortunately, employment in handlooms is declining (in spite of a growing market), because of lack of availability of cotton yarn, competition from power looms and lack of skill training. Linking of handloom weavers to market requirements and skill upgradation of the weavers, will improve their employment prospects.

9.59 The garment sector has become the fastest growing export sector in the country. Women are employed here, both in the export factories as well as in home-based work. In the factories they earn more than home-based workers, but require protection of the labour laws for social security. They also require continuous upgradation of skills for increased productivity and earnings. We have already referred to the need to formulate and implement a National Policy on Home-based Workers.

THE TERTIARY SECTOR

9.60 The Construction sector: In this sector, it is foreseen that the

requirements of the World Trade Organisation (WTO), will bring in major changes in technology through prefabrication and the induction of labour replacing machinery. This will lead to a major reduction in employment opportunities, especially for women, who now do most of the manual work. The present day construction industry does offer incomes that are higher than those in other unorganised employments, but the working conditions, health and safety risks and the strains are almost intolerable. The challenges in this sector are two-fold: first, to improve the working conditions and the social security support to women construction workers, and second, to undertake rapid skill upgradation and policy measures, to accelerate employment opportunities for women workers in the scenario of changing technologies.

9.61 Street vending and rag picking: These are other major areas of employment for women in both urban and rural areas. In the last five years, there has been considerable pressure on vendors, which can certainly be traced to globalisation. In the urban areas, there has been a

tremendous increase of vehicular traffic due to the opening of the automobile markets. Indian cities too, are now being planned and built with multi-storey complexes and separate commercial centres. This has placed great pressure on existing infrastructures, and necessitated large investments in rebuilding. The street vendor is now perceived as a 'nuisance' in the way of the new infrastructure, and is being removed wholesale. The Indian middle-class too now wants cities without street vendors. In the rural areas, there is an increasing pressure on the rural 'haats' as the space that was traditionally reserved for them is now being privatised and used for other purposes. In order to preserve and expand this employment, it is necessary to make provisions for vendors at the stage of town planning and laying infrastructures. A similar attitudinal change is needed in the case of rag pickers who derive their employment from collecting waste and at the same time provide a cleaning and recycling service to the city. They need to be recognised as contributors in the task of maintaining the environment of towns and cities.

THE SERVICE SECTOR

9.62 It is well known that the service sector is rapidly expanding in India. The informal or unorganised service sector is also expanding with the large scale opening of opportunities for women. The largest increase in employment opportunities comes from domestic service, education (including home-tuitions), childcare and health services. Unfortunately, women workers in this sector have received very little attention, with the result that their earnings remain low and their employment insecure. Domestic workers need protection of earnings and training for higher skills; there has been a long-standing demand for a Law on Domestic Workers. We will refer to this in a later paragraph. The Health sector is also expanding. There are between 2 to 3 million midwives (or traditional birth attendants) in the country, and most of the births in rural areas are still attended by them. Unfortunately, not enough attention has been paid to integrating these practitioners within the growing health system, increasing their skills and helping them to attain the status of professional health providers. Wherever this has been

done, it has been found that it has significantly increased the earnings of the midwives, and has resulted in better maternal and child health services.

9.63 There are approximately 5 lakh nurses of various categories in the country. Although there is a perceived shortage of nurses, the incomes received by qualified nurses remain low at an average of Rs. 60 per day in the rural areas, and Rs. 84 in the urban areas. At the same time, they have long working hours, run the risk of sexual exploitation, and lack upward career options. Many nurses are looking for opportunities to emigrate, particularly to western countries. There was considerable demand for Indian nurses in the Gulf countries, but now nurses from the Philippines seem to be in greater demand. Stringent visa rules and educational requirements have made it difficult for many nurses to go to the more attractive western countries. With more investment in career training for nurses and midwives, and better working and earning conditions, there is great potential for employment, both for fully qualified nurses and auxiliary nurses and other para-medicals.

9.64 An Approach to the Future: A number of socio-economic forces are causing rapid changes in people's lives. The main question that faces us is how to react to these forces. What are the forces that will improve the life of women workers and their work? What are the forces that harm them? What action should be taken to see that they, and their families, are set on the path to development? What needs to be done to increase their work capacities and work opportunities, and to enable them to make their voices audible?

9.65 The need for a minimum wage/income: The Study Group has found that the earnings of women workers in most sectors are much below the minimum wage. The Commission supports the view of the Study Group that this situation has to change. It is unjust that a worker spends many hours at difficult work, and yet does not earn enough to feed herself and her family. The studies conducted by the group show that many large companies are subcontracting work to small factories and to home-based workers. The women employed in these undertakings or activities are earning

barely Rs.500 per month, whereas the minimum wage is Rs.1500 or more and a worker in a private sector factory, doing the same work is earning at least Rs.3000. Similarly, women in fish export factories earn approximately Rs.800 per month.

9.66 The Commission is of the view that anyone who employs a worker directly or indirectly should be required to pay at least the minimum wage or assure a minimum income. Every worker needs basic inputs such as food, clothing, shelter, medical services, education, etc. to be able to maintain his or her efficiency. A minimum wage will ensure that he or she can afford these. An assured minimum income will go a long way for the worker, and will reduce the temptation to use minor family members to supplement the income and thus, to ensure survival. Exploitation of children could be effectively controlled if parents' wages are such that they can afford to keep their children in school.

9.67 Payment of Minimum Piece-rate: The purpose of minimum wage legislation can be defeated if employers fall back to the piece-rate

system and keep piece-rates depressed. Moreover, the Minimum Wages Act covers only workers who can be shown to have an employer-employee relationship.

9.68 Gatherers of forest produce are paid at piece-rates by the Forest Department. According to studies, they earn less than Rs.1000 per month (depending on the product). Wholesalers pay waste-pickers per kilo of paper or plastic collected, approximately Rs.25-30 per day. Sharecroppers are paid by a share of the crop, and get only a one-fourth share (if their contribution is confined to labour). These are all 'piece-rated' methods of payment to a worker, used by a person who has complete control over the worker and the product, but wants to keep the employer out of the ambit of the Minimum Wages Act. We endorse the view that minimum rates need to be fixed in all work situations even where there is no clear employer-employee relationship and a piece-rate system of payment is followed.

9.69 Employment at the Centre of Liberalisation Policies: Today, when liberalisation policies are being

formulated, their effect on employment is rarely calculated or taken into account by economists and policy makers. When severe negative effects are felt in certain areas or certain sectors, there is a great amount of social discontent and opposition, but often, it is too late for policy makers to take any remedial measures. Many organisations of workers such as trade unions, farmers' associations and other activist organisations have talked to us about the negative effects of liberalisation.

9.70 There is evidence to show that this fear is not unfounded. The studies conducted by our Study Group show that the effects include:

- a) Loss of existing employment without creation of alternative employment.
- b) Changes in employment due to mechanisation and new technologies.
- c) Changes due to Informalisation of Work.
- d) Creation of new employment opportunities.

9.71 (a) Loss of Existing Employment Without Creation of Alternative Employment: Our Study Group on Women & Child Labour has pointed out many cases where liberalisation has caused loss of employment without creation of alternative employment. The displacement of street vendors is one such example. After liberalisation, there have been large investments in urban infrastructure. City Governments have adopted a policy of removing street vendors with no thought of rehabilitation, thereby causing loss of employment. In Kolkata, for example, 'Operation Sunshine' of the Municipality caused a loss of nearly 50,000 jobs overnight.

9.72 Such loss of employment without creation of any alternative employment also happens when an Indian product is displaced by imports from the world market. Thousands of women silk spinners and twisters in Bihar, have lost their employment due to the import of 'China-Korea' silk yarn. Weavers and consumers prefer this yarn as it is relatively cheaper and has a better shine. Rag pickers in many cities have lost employment as a consequence of the

import of waste paper from developed countries. In Gujarat, women gum collectors, who were picking from the *prospis julifera* (*Baval*) trees, have lost their employment due to the import of cheaper gum from Sudan.

9.73 Similar displacement has come with the entry of large fishing vessels into Indian waters. These vessels take away the fish that could be collected by smaller Indian fishing boats, thereby destroying the employment of fishermen and women, fish sorters, dryers, vendors and net-makers.

9.74 Other indirect effects of globalisation are also visible. We do not minimise the need for consciousness about the evil effects of tobacco on health. But *beedi* manufacturers have told us during evidence that the anti-tobacco campaign is one of the factors affecting employment in the industry. Yet another indirect effect of liberalisation is the growth of concern about the environment. As part of this concern, employment and environment are often posed as alternatives to each other, and in recent years, there are instances

where environment issues have taken precedence over considerations of employment, and where industries have been shut down causing large scale loss of jobs. This has also happened as a consequence of the judgements of the Hon'ble Supreme Court and High Courts. Those who appeared before the Commission in many States, including the Himalayan States and Andamans, drew our attention to the closure and consequent loss of employment in wood-based small industries. In Delhi, thousands of workers lost their jobs with the closing of small and home-based industries.

9.75 (b) Changes in employment due to mechanisation and new technology: Women are the most affected by changes that are caused by mechanisation. The employment of manual workers is reduced and displaced by workers who can run machines. In these cases, the total number of jobs is reduced drastically with the introduction of new machines, although the income earned by the employed workers may actually increase. Moreover, various micro studies show that technical change has eliminated many

jobs traditionally performed by women. In the agricultural sector men have substituted women in activities in which machinery has displaced manual labour. All other labour intensive tasks are still left to women. Thus, the introduction of tractors, harvesters, insecticides, weedicides, hormone accelerators, high yielding variety seeds and mechanical cotton pickers has meant that tasks traditionally performed by women, and on which many women depended for their livelihood, have been lost to men or machines.

9.76 Weeding in paddy producing areas is done mainly by women. When chemical spraying replaces weeding, the spraying is performed by men. Similarly, the introduction of rice mills has displaced hand pounding done by rural women. Rice mills utilise husking equipment with the consequence that women who use traditional husking methods have lost their means of livelihood.

9.77 In construction, under the prevailing WTO regime, the essential requirements of global tendering have

facilitated the entry of many large companies in the Indian construction scene in a big way. The presence of some of these companies is increasingly visible in many infrastructure development projects being undertaken under government funding as well as under bilateral/multilateral assistance arrangements. With increased mechanisation, there will be massive displacement of labour in nearly all construction operations. Women labour may be affected most, and may be eliminated from the main operations in which they have been traditionally deployed, namely, soil digging and carrying inputs for concrete mixing, carrying bricks etc. It is estimated that the overall deployment of labour will become 1/20th to 1/5th of the current numbers. Obviously, manual labour will be increasingly eliminated from the construction sites, and women workers may turn out to be the worst affected by these changes.

Table 9.10

Major Construction Equipment/ Accessories being Factory- produced

Equipment/Accessories	Impact on Labour
Excavators	Reduction to 1/20th of present workforce
Ready-mix concrete (RMC) plants	Reduction to 1/20th of present workforce
Wall panels (made from fly ash-based cement)	Reduction to 1/10th of present workforce
Pre-fabricated segments workforce	Reduction to 1/10th to 1/5th of present workforce
Complete pre-fabricated steel structures	Reduction to 1/20th of present workforce
High-strength concrete ASC slabs of different sizes (made from fly ash based cement)	Reduction to 1/20th of present workforce
Auto-dov wall panels using fly ash cement (aerated, light weight—half of a mud brick weight, low cost and high heat isolation property; most useful in earthquake prone regions).	Reduction to 1/20th of present workforce.

9.78 On the other hand, there will be an increase in factory production as well as growth in the need for various construction skills for masons, tile fitters, painters, plumbers, cement finishers, glaziers, electricians etc. Unfortunately, there are few women with these skills today.

9.79 In the textile sector, handloom

spinners and weavers are being rapidly replaced by power looms, and power loom workers with lesser quality machines are being displaced by those with better quality machines. The spinners and winders, who are mainly women, are being completely displaced. Handloom

weavers, both men and women are losing work. Most power loom workers are men. At the same time, the power looms that are being displaced are those that are in small work sheds or homes, where women are engaged in greater numbers.

9.80 In the food-processing sector, the big domestic companies and multinationals with huge investments and state of the art technology are entering the processed food sector in a big way. They are pushing out small and unorganised units out of the market. Due to lack of finance, absence of access to latest technologies and modern quality control facilities, and measures of sales promotion, these units are not able to meet the required high quality standards. Neither are they able to take up production of new ranges of attractive products for a rapidly changing market. For instance, Pepsi that has entered in *bhujia namkeen* manufacturing, has not only captured part of the market of small units but is also endangering their existence, according to some surveys. Companies like *Brooke Bond* have started manufacturing and marketing chilli powder, *jeera* powder, powders of

other condiments, *sambar* powder and the like. Thus, the small scale and unorganised sector which dominated the country's food processing is in danger of being increasingly marginalised. This is already affecting employment avenues and opportunities for women.

9.81 In the screen-printing industry of Ahmedabad, mechanisation has reduced employment by nearly 50%.

9.82 Recent mechanisation in *zari* embroidery has displaced many home-based women who did *zari* embroidery by hand.

9.83 We have cited these instances from among the many that were brought to our notice, only to illustrate the way opportunities for employment are disappearing while new opportunities are not being created for those who lose their means of employment and livelihood.

9.84 (c) Changes due to informalisation of work: One of the

major concerns today is the casualisation of the workforce. Casualisation is resulting in increased employment opportunities for some and loss of jobs for others. On the whole, casualisation displaces the better-paid, more protected workers, and increases insecure and low-paid employment. Men lose jobs, and are substituted by women. Studies conducted by the Study Group showed that the largest employment change was in the industrial sub-contracting sector.

9.85 Many big companies, including multinational corporations (BPL, Johnson & Johnson Ltd., Elin Electronics, Hindustan Lever Ltd. etc.) have evolved a vendor system of subcontracting for their production. Depending on the nature of work, some of these vendors either employ women workers in large numbers, or give out work to home-based workers mostly through contractors.

9.86 Often, big corporates in the heavy industry sector have a very big inventory of plant accessories required in their plants on a regular basis. Some companies have set up

co-operatives of women living in the vicinity of their plants for production of such items. (Examples: Steel Authority of India Ltd. and Bharat Heavy Electricals Ltd.). Yet others have a subcontracting arrangement. Established companies give out work to small units in the organised/unorganised sector, which in turn outsource some simple operations to home-based workers. The company often deals with these units/workers through contractors who get the production work done and deliver the output to the company (Examples: Finishing and quality control, assembling, sorting, packaging and labelling). Many medium and small-scale industries in the organised sector, and production units in the unorganised sector subcontract work to home-based women workers. Generally, the manufacturers establish direct contact with these workers, and sometimes even act as contractors for bigger companies.

9.87 Sub-contracting of work given out to home-based workers has been found to be widespread in the unorganised manufacturing sector, and seems to have expanded considerably over the past decade.

In almost 90% of the households, in the resettlement colonies and slum areas surveyed, at least one woman was reported to be doing some kind of home-based work. However, the types of jobs created in this manner are irregular and low-paid. In the manufacturing trades (except garments), the work is extremely irregular; the average deployment time is less than four months in a year. In the home-based sector, the earnings of women workers in all trades in the sample were found to be extremely low, far below the minimum wage. The average monthly earnings in technical trades were Rs. 450.

9.88 (d) Creation of new employment opportunities: There are many areas where new employment opportunities have been created for women without loss for anyone else. Employment opportunities increase when new markets are opened, or existing markets expanded. These markets may be within the country or outside.

9.89 In the crafts sector, for example, employment has grown at a fast pace. This sector now directly links a big traditional rural economy with the far distant metropolitan and global markets, providing visibility to a large

number of artisans through their work. The sector witnessed a dramatic increase in number of craftspersons: from 48.25 lakhs persons during 1991-92 to 81.05 lakhs in 1997-98 (Annual Report Ministry of Textiles 1998-99). Trends continue to indicate that while male participation in crafts has been slowly decreasing over the years, female participation is on the rise, particularly in the rural home-based crafts sector.

9.90 The proportion of women employed in different handicrafts varies from a low 40% to a high of nearly 80 to 90%. Women artisans dominate in trades like decoration cloth (embroidery and lace making), coir work, cane and bamboo craft, dyeing and bleaching of textiles, earthenware, reed mat making, artistic leather ware, weaving and papier mache. Over the years, women have also started entering craft areas traditionally considered to be male preserves, namely, stone carving, metal work and wood work. The number of women handicrafts artisans getting recognition as master crafts-persons is also increasing.

9.91 The average daily earnings of women craft workers are as low as

nearly half those of men. Women engaged in hand printed textiles get the maximum rates followed by those in the cane-bamboo making industry and *zari* work. The wage rate in three women-dominated crafts - lace work, reed mat making and leatherwear - is extremely low. In fact, all crafts indicate a *status quo* in wages over the years. As in other industries in the unorganised sector, the payment of wages to artisans is on piece-rate basis. For the crafts-persons, the predominant channel for marketing their produce is the vast network of middlemen/traders. Nearly 93% of the artisans dispose of their products through this channel. Only 3% of the crafts-persons undertook direct export activities although 46% of the self-employed artisans were aware of the final destination of their products.

9.92 Another area of expanding opportunities is in services of all types. Personal services such as domestic work, cleaning and cooking services and care of children and the elderly, is increasing rapidly in the urban areas. Women provide most of these services. However, even in these areas, the earnings remain low in the unorganised sector, and work remains irregular. Health services are

another area of expansion. India has always had a very large private medical sector, especially for non-hospital care. The slowing down of state investment in the hospital sector was in itself a signal to the private sector, and the State supported this by giving subsidies, soft loans, duty and tax exemptions, etc. Secondly, the introduction of modern health care in the rural areas by the State through the setting up of Public Health Centres (PHCs) and cottage hospitals paved the way for the private sector, by creating a market for modern health care in the peripheral regions. The number of specialists being turned out has increased tremendously. Their demand in the West has gone down comparatively, and that too may have played a role in the growth of private hospitals, since most specialists prefer practice in hospitals. The livestock area is another sector where there is an increase in employment opportunities, especially for women. With globalisation, prospects of the export of milk and milk products seem to have brightened. Among the four major players in the international market - the European Union, New Zealand, Australia and United States - New Zealand is the only country that

does not offer any subsidy to milk producers. Since India too does not provide any subsidy to its milk producers, with the withdrawal of subsidies under WTO agreements, India will become price competitive. India's proximity to major dairy markets (Middle-East, South-East Asia, North Africa) is another advantage. Countries like Malaysia, Philippines and South Korea are importing more than 95% of the milk they consume. Even Thailand imports around four-fifths of its milk requirements. Given the low overhead cost and inexpensive family labour, India's dairy sector is quite competitive. Yet, it was pointed out to us that flavoured milk processed in China was being imported and sold in some colonies in Delhi. We have no direct information about other areas of the country. But, if it is available in one metropolitan area, there is no reason to believe that it is not sold elsewhere.

9.93 A study by the National Council for Applied Economic Research (NCAER) estimates the total work generated in the dairying sector as more than 56 million person years per annum. As has been stated earlier, women play the predominant role in

dairy operations mainly carried out within the household. These include milking, feeding and bathing of animals, processing of milk, and cleaning the cattle shed. Nearly 58% of the total labour in dairying is accounted for by these operations, including cleaning. The most important operation, in terms of time expended (around 30% of the total in dairying), is fodder collection, and in this, women play a predominant role. Unfortunately, women's role in this sector is not given due attention, and does not appear even in the censuses. In spite of being the main workers in this sector, they are rarely members of milk co-operatives, and they do not receive the training that is required for increasing the productivity of the animals. This situation must be corrected.

9.94 Another growing area of employment is the manufacture of garments and associated work. There is growth in both the domestic and export markets. The opportunities for employment of women workers are on the increase in this sector, but a large percentage of the new employment generated is sub-contractual, home-based work.

9.95 Access to micro-finance has also added to the growth of employment for women. When a woman joins a micro-finance programme, it also gears up the process of capitalisation in her life. The moment she starts saving, she builds up an asset over a period of time, and this ultimately helps her in starting a new enterprise, upgrading her existing work, or meeting future consumption expenditures. Studies show that micro-finance enhances women's employment and livelihood in a number of ways. She is able to take a loan to increase her working capital and thus add to her earnings. She is also able to take a loan to buy working tools. She is often able to diversify into new types of employments and reduce the risk she would have had to bear, if she had depended on one kind of work. She is able to finance growth of employment not only for herself but also for her family, specially her children.

In the light of these considerations, we recommend:

9.96 All economic policies of the Government have an impact on employment, especially for workers in the unorganised sector. Therefore,

the adoption of each policy that relates to finance, industry and agriculture must be preceded by an evaluation of its effect on employment as well.

9.97 The situation becomes serious when a policy results in large scale loss of employment. In such cases, policies will have to be examined to look for ways of reducing or preventing loss of employment. In the fishing sector for example, it has been suggested that foreign fishing vessels, should not be allowed into the shallow waters, where local people fish. To save jobs for the common people, it may also be necessary in some cases to restrict certain imports, either by imposing higher duties or by quantitative restrictions.

9.98 Another way of dealing with the loss of employment is to invest in rehabilitation. The question of rehabilitation has been addressed in some cases in the face of displacement by Dam-related projects. The same types of rehabilitation packages can be offered to those whose livelihood has been affected on a large scale. Some rehabilitation schemes may, in fact,

not even be costly, but may only need some modifications in policy. For example, the resettlement of street vendors may require only allocation of appropriate areas in the towns and cities.

9.99 To deal with the shrinkage of employment that results from mechanisation and the introduction of new technology, we recommend the following measures:

- a) Skill training and upgradation of skills for women on a widespread and continuous scale. (This issue has been dealt with in detail in the chapter of the report that deals with skills). In each sector, however, the required skills need to be identified, and a system for providing skills to the unorganised sector has to be set up. This must be the joint responsibility of the Government, Industry and local authorities.
- b) Identification and transmission of appropriate technology: Normally a number of different technologies are available for any specific task. We need to identify and promote technologies which increase the

productivity of workers, but which at the same time have the least negative effect on employment. Some viable examples are hand tillers as opposed to tractors; smaller powered and specialised stitching machines which can be used at home or in small workshops; home-based tile and block making machines, etc. In the food processing sector, many technologies such as cryogenic spice grinders, cryo-containers and refrigerators, quick fish freezing systems and controlled atmosphere food storage systems have already been developed by institutions like the Central Food Technological Research Institute, the Indian Institutes of Technology, the National Physical Laboratory etc. But they have yet not been made accessible to small producers. These technologies need to be fully exploited. Large-scale dissemination of these technologies will also give a boost to the equipment manufacturing industry in the country.

9.100 It is a cause for deep concern that workers with security of work, fair incomes and social security, should be deprived of their employment. However, the process of casualisation, or 'flexibilisation' as it is called, is widespread. Our concern is to assure a minimum level of income and security to all women workers regardless of where and under what employment relations they work. We, therefore, propose the following measures:

- a) Very strict implementation of the Minimum Wages Act and high penalties for breaches. All trades should be included in the Act, regardless of existing schedules.
- b) Expanding the Act to include workers under piece-rates, regardless of whether employer-employee relationships can be proved or not.
- c) Identification of all workers and issuing them identity cards.
- d) Ensuring social security to all workers (Rec. No. 3 and 4 are dealt with in detail in the Chapter on Social security)
- e) We have proposed laws and policies for certain categories of workers (dealt with in detail in the sector-wise recommendations). These include:
 - A National policy for Home-based Workers (in accordance with the ILO Convention. This policy has already been approved by the Tripartite conference)
 - An Agricultural Workers Act (A Bill has been drawn up and introduced in Parliament)
 - Measures to provide protection to domestic workers.
 - A Manual Workers Act (On the lines of the Gujarat or Tamil Nadu Act)
 - A National Policy on Vendors

9.101 We have seen that there are many areas where there has been real increase in employment opportunities for women. Though many of these employment opportunities yield less income and do not have many avenues for advancement, they can contribute to further increase in employment.

9.102 We have made some sector-wise recommendations. For example, forestry is a sector where women's employment can be increased many-fold. Reforestation is a priority for the country, and forests need to grow. Women's groups can be given priority in reforestation programmes of nursery growing, plantation and tending of plants. The collection, processing and sale of minor forest produce are another major area. For instance, one estimate shows that if the nursery growing for the Forest department in Gujarat is done through women's groups, it can lead to additional employment for one lakh women for six months. In the health sector, policies which would link 'informal' health providers especially midwives with the formal health system, will increase both employment and earnings of the health providers. (Detailed recommendations may be seen in the Annexure).

9.103 Other general recommendations for increasing employment opportunities are:

- a) Increasing micro-finance which would increase employment opportunities through livelihood development (Details may be

seen in the Chapter on Social Security).

- b) Direct access to markets which will increase employment opportunities as well as earnings. Recommendations for a number of sectors including crafts, livestock, garments, food processing, agriculture and forestry may be seen in the Annexure.
- c) Training and skill development will enhance productivity and earnings as well as opportunities (specific recommendations can be found in the chapter on skill development)

CHILD-CARE:

9.104 Childcare is a major investment in the protection and development of human resources. It has to be accepted that it is not the sole responsibility of the woman, but also of the other parent and the family and of society. The mechanisms of childcare should, therefore, be multi-dimensional. First, labour legislation should include provisions for crèches where there are 20 or more workers irrespective of the gender of the worker so that the worker, whether mother or father,

can leave the child in the crèche. Secondly, Childcare should find a place in the Integrated Child Development Services (ICDS) programme. Thirdly, it should be recognised as part of the policy on education. Fourthly, low-cost community based approaches should be encouraged and multiplied. Fifthly, the important role of the childcare worker should be recognised, and compensated.

9.105 Children are the future of the country and the nursery of its workforce. Early childcare or lack of it determines, in many ways, the future of the country. The 0-6 year period is crucial for the development of the child. From conception until the age of 6-8 years, children go through a crucial process of development. They learn to cope with increasingly complex forms of thinking, feeling, relating to others and moving. Inadequate care and nurturing can result in life long impairment of the child's faculties. In India, the early years continue to be a hazardous period for children. Over a third of Indian infants are born with low birth weight, and a staggering 53% of children under five are malnourished. In terms of absolute numbers, 73 million (or 40%) of the world's total of

190 million malnourished children live in India ². As we have said earlier today, the child is considered the sole responsibility of the mother. But the working mother is often bogged down by the burden of childcare, leading to decline in productivity as well as negative impacts on the health of both the mother and the child. Besides, the assumption that young children are taken care of in traditional family arrangements is no longer valid. The number of women forced to seek employment outside the house has increased. Today, there are over 15 crore women living below the poverty line and 5-6 crore children under 6 years belong to the group where mothers have to work for sheer survival. Most of them are in the unorganised sector.

9.106 These women workers have to walk long distances by foot or travel in crowded public transport to reach their places of work. On an average, a woman worker works for 10-12 hours a day, often 7 days a week. A working mother is

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² Gupta, Neelam (1999), Home Based Workers et al: in India, Study on Ready Made Garment, Aggarbatti and papad workers, SEWA Bharat. 2000

overworked and exhausted and often very anxious about her child's welfare. Childcare provisions relieve her of one of her multiple burdens, creates time and space and work opportunities for her and supports her empowerment. Studies show that the provision of childcare results in up to 50% enhancement in the productivity of the mother as well as in lower morbidity and better growth for the child. In the absence of adequate childcare facilities, a working mother has often no option but to leave the child with a slightly older sibling. A large part of sibling caregivers are girl-children - many of them not above the age in which they themselves need care and nurturing. Provisions of childcare facilities will release the girl child to attend school and to enjoy her own childhood, and grow.

9.107 The coverage of existing state-sponsored programmes for children is extremely limited, and do not reach even a fraction of the children in this age group³. Estimates show that only 12% of children in the age group of 0-6 benefit from some form of early childcare programme. In addition, such provisions as exist, cater largely to the 3-6 age group. The younger and more vulnerable 0-3 group remains largely untouched.

INTEGRATED CHILD DEVELOPMENT SERVICES (ICDS)

9.108 The best-known government programme in this field is the (ICDS), which aims at the total development of young children. It has been quite successful in developing an infrastructure for childcare services, covering about 62% of the children and reaching out to rural and tribal areas. It also has an impressive record in areas like improving health and nutritional status, immunisation, and enrolment of children from *anganwadis* to primary schools and reducing dropout rates. However, ICDS is not programmed to cater to the needs of working women, as it provides services mainly for the 3-6 age groups, and even these are available for only 3-4 hours per day when most mothers are at work and cannot access these services. Consequently, it is not of much help to the mother in lessening her burden. The rigid hierarchical implementation structure of the Government, negatively influences

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³ Kaul, Venita (1992), "Early Childhood Education in India", in, Gary A. Woodill, Judith Bernhard and Lawrence Prochner (eds), International handbook of Early Childhood Education, New York and London: Garland Publishing.

community participation, flexibility and efforts towards sustainability. Besides, its total dependence on the government for funds, further leads to lack of sustainability. These drawbacks of the ICDS have to be seen against the fact that it absorbs the bulk of the budget allocated by the Government for mother and childcare services.

9.109 There are several laws that make it obligatory for employers to provide crèches for the children of women workers:

- a) Factories Act 1948
- b) Plantation Labour Act 1951
- c) Mines Act 1952
- d) *Beedi and Cigar Workers' (Conditions of Employment) Act, 1966*
- e) Contract labour (Regulation and Abolition) Act, 1970
- f) Interstate Migrant Workmen (Regulation of Employment and condition of service) Act, 1979

9.110 These Acts specify the minimum number of women workers

necessary for applicability (except in mines where a crèche is obligatory even for a single woman employee), the quality of accommodation, type of childcare etc. However, the implementation of the laws is far from satisfactory. Existing laws that restrict the provision of crèches to undertakings that employ 20 working women or more, have worked against women's employment, and have provided employers with an excuse for avoiding the employment of women. Employers either employ a fewer number of women, to escape the applicability of the Act and in some cases employ only unmarried girls, or employ women on a temporary basis.

RECOMMENDATIONS

9.111 REGARD CHILDCARE AS AN INTEGRAL COMPONENT OF SOCIAL SECURITY: As we have pointed out earlier, Childcare is often represented as an exclusive concern of women. The burden of childcare must be shared equally between both the parents. The importance of a cooperative relationship between the genders in the care and nurture of young children has to be kept in mind. Childcare should, therefore, be

part of the perspective of the activity of welfare boards, and protective legislation. As we have stated earlier, there should be a provision for crèches where 20 or more workers are employed irrespective of the gender of the worker. This will enable the child to be brought to the crèche either by a mother or a father. If it is found that individual enterprises are not in a financial position to run their own crèches, enterprises may jointly establish and operate them. Another possibility is that *Panchayats* or local bodies or local tripartite groups run crèches, and employing units are asked to make a proportionate contribution to the costs.

9. 112 RECOGNIZE CHILDCARE AS PART OF EDUCATION POLICY: The proposed 83rd Amendment Bill will guarantee the right to education for children in the 6-14 age group. Only those who can afford to nurture their young children and provide them pre-school opportunities, will be able to take advantage of this right. The age group of 3+ must be included to ensure that children of disadvantaged groups have equality of opportunity in the school system.

9.113 CREATE A FLEXIBLE,

AUTONOMOUS CHILDCARE FUND: A flexible, autonomous Childcare Fund may be set up. This Fund can be drawn upon to provide childcare facilities to all women, regardless of income, number of children or other considerations. The Fund should be at the state, rather than the national level, for administrative convenience and adaptability. The Fund should be raised from multiple sources, and should have autonomy in action and in developing income. [According to the experience of the Self Employed Women's Association (SEWA) childcare for a single child from 9 a.m. –6 p.m. costs Rs 10/- per day. This includes nutrition (Rs 5), salary of childcare worker (Rs.3), travel (Rs.1.85), and fuel for cooking (Rs 0.15). On the basis of these figures, the total cost of providing day care for 60 million children below 6 who are in need of care, can be estimated as Rs. 2160 crores annually].

9.114 The best-known example of a designated childcare fund comes from Colombia. The government collects a 3% payroll tax for this purpose from public and private companies with more than fifty employees, or with sufficient capital to qualify as enterprises. This fund is

administered by the Colombian Institute for Family Welfare (CIFW) which runs a nation-wide programme of *hogares familiares* or day-care homes for children under six. This programme meets expenses on the care and developmental and nutritional needs of children.

9.115 USE MULTIPLE STRATEGIES:

A variety of strategies are required to meet the varied needs of different groups. No unitary, centrally controlled childcare scheme or programme can provide solutions for all the varied scenarios. For example, the needs of mothers selling vegetables in a market will not be the same as those of factory or construction workers. Similarly, families living in remote rural communities will need to be supported in a manner different from those living in urban slums. The needs of caregivers will also vary. Mothers looking after their children at home will need information about pregnancy, breast-feeding, healthy nutritional practices, and the value of early stimulation, while community workers running a day care centre will require training in child development and growth monitoring. An altogether different approach is required when

the caregivers are themselves children. Their right to education and to healthy development must take priority.

9.116 The NGO sector in India is a good source of innovative, effective and low - cost approaches. In addition, creative responses have also been developed by families that live outside the ambit of governmental or centralised services. While small in scale, they nevertheless offer a wealth of approaches that could be successfully incorporated into the practice of the mainstream Government sector.

9.117 The global experience can also have a few lessons for us. The Accra Market Women's Association in Ghana developed a childcare programme that kept children safe while mothers conducted business. The Accra City Council provided funds while the Department of Social Welfare, Ministry of Health and Ministry of Water and Sewage, collaborated in refurbishing an old building near the market. At this centre, infants are provided full day care, and a meal, and mothers are encouraged to come to the centre to breast feed their children.

9.118 PROMOTE AND VALIDATE LOW-COST COMMUNITY BASED APPROACHES: Special efforts should be made to identify, develop and investigate low-cost, community-based approaches; to analyse their impact on the overall development of children, and to validate and legitimise them on the basis of evaluation. The most innovative and promising community interventions are those that respond to the reality at the grass root level; that involve all the stakeholders including the parents and the community, and have strong informal networks. They also draw on local practices and assets. Some of them are completely informal with all the costs borne by the parents or the communities. Others are more formal and supported by NGOs, and local or central authorities. Many others are intermediate to these systems. In fact, all possible combinations are possible. Many of these interventions are effective and low cost and, therefore, ideally suited for the specific situation they have been designed for. They empower women, parents and the community by allowing them to come together to take responsibility for their children's lives. Finally, they appear to stand a better chance of sustainability than

externally imposed 'models.'

9.119 Nepal and Ecuador provide excellent examples of community-based childcare. In Nepal, the *praveshdwar* home-based childcare programme of the Government of Nepal has been developed as an integral part of the Production Credit for Rural Women project. It caters to children in the 0-3 age group and is run by the mothers themselves. Mothers form groups of six, take turns to look after the children in their own homes, and provide meals.

9.120 In Ecuador, the Community Home programme is located in the squatter settlements of Guayaquil city, and is operated by United Nations Children's Emergency Fund (UNICEF) and the Government of Ecuador. It provides care for children of working mothers in homes in the community, in this case in the home of a female neighbour who has been trained as a childcare worker.

9.121 STRENGTHEN ICDS SCHEMES AND RECOGNISE THE ROLE OF THE CHILDCARE WORKER: ICDS Schemes need to be redesigned to include the child under three. Current weaknesses in implementation

and allocation need to be corrected. Wages, conditions of work, training and accreditation of childcare workers need consideration at the policy level. Childcare workers like *Aganwadi* workers have a low status, are poorly paid and get little or no recognition. Yet, they are expected to be resourceful, motivated and loving. Pleas for better working conditions run into the argument that financial resources are not available. However, a close scrutiny of the budget shows that lack of interest and will rather than total lack of resources is the root cause for under-funding and the poor attention given to the needs of these childcare workers. NGO initiatives, particularly in developing community based programmes, show that working in this sector can also be an empowering experience for poor women.

MATERNITY ENTITLEMENTS

9.122 A statutory scheme for the implementation of maternity entitlements should cover all women under income criteria. The scheme should provide financial support for childbirth, childcare and breast-feeding in the first few months of the child's life. The funds to support such a

scheme should be raised from a basket of sources, including the employer, the employee, state contributions, and community contributions. It should be linked with the maternal and child health provisions of the public health system.

9.123 The most productive years of a woman's life are also the reproductive years of her life. In the absence of any provision for maternity leave, a woman worker often has to leave her job to have a child. Poor health, additional medical expenses and loss of employment, make the woman worker economically vulnerable during the period of childbirth, plunging her into a crisis of borrowing and high interest expenses. Often, she does not take adequate rest and starts working soon after childbirth with adverse effects on her health. This repeated neglect of a woman's health during pregnancy and childbirth manifests itself in high mortality rates (570 per 100000 live births), anaemia (88% in women 15-49 years of age) and low birth weight of the new born (33% babies less than 2500 gms). A mother's health is closely linked to the child's welfare, and maternity entitlements are the

lifeline to ensure proper survival and development of the child. In fact, the development of the child begins with the care of the pregnant mother and, thereafter, the opportunity to breast-feed her child for the first six months.

9.124 In recent years there has been a distinct trend towards declining allocation of funds for public health. For instance, the Seventh Five Year Plan allocated only 1.75% of the total plan investment to health as compared to 3.3% in the First Plan. The last decade has seen casualisation of the labour force, especially women workers. They are increasingly finding employment in temporary and contractual jobs with inappropriate and inferior conditions of work. The withdrawal of the social safety nets to working women is compounded by the privatisation of health care. The high rates of maternal and child mortality reflect the absence of access to basic services that can ensure the health of the mother and the survival of the child. Today, the reality in the country is that 85% of health needs are being met from private providers, and this percentage is growing.

9.125 The main international

convention covering maternity benefits is the ILO's Maternity Entitlement Convention, 2000. The Convention includes the following components:

- a) Maternity benefits should include all women workers, whether full time or part time or employed in atypical dependent forms of work.
- b) Leave should be granted for periods upto 14 weeks with a minimum of 6 weeks as compulsory in the post-natal period, and cash benefits should include not less than 2/3rds of a woman's insured earnings.
- c) Employment security should include protection from dismissal. The woman should have the right to return to the same job. No dismissal should take place if a woman is pregnant or ill. In case of dismissal the burden of proof is to lie with the employer.

9.126 The ILO convention has a limited scope since it does not consider the application of maternity

benefits to all women. As far as the present framework of the Indian Constitution is concerned, Article 42 under the Directive Principles of State Policy provides that state shall make provisions for securing just and humane conditions of work and for maternity relief. The two main Acts that govern this provision are: The Maternity Benefit Act, 1961 and the Employees State Insurance Act 1948.

9.127 Employees State Insurance Act (ESI) 1948: The Act stipulates that a cash benefit is to be paid to an insured woman in case of confinement, miscarriage, sickness during pregnancy, medical termination of pregnancy, pre-mature birth etc. The Act only applies to non-seasonal factories using power and employing ten or more persons, factories not using power and some other establishments employing 20 or more persons. The Act applies to employees whose earnings are upto Rs.6500/- p.m. The paid leave in the pre and post confinement period is given for twelve weeks. In addition, the woman is also granted a medical allowance of Rs. 250 if her confinement is in an area where ESIC facilities are not available.

9.128 Maternity Benefits Act, 1961:

It is applicable to all workers in the organised sector who are not covered under the Employees State Insurance Act. This Act covers workers in regular employment in factories, mines, plantations and establishments irrespective of the number of people working in the establishment. Further, every woman employee who has worked for a period of 80 continuous days in one year is eligible to be covered under the Act. The salient features of the Act include protection from dismissal during pregnancy, and 12 weeks of paid leave of which six weeks may be taken in the period preceding childbirth if the mother so desires. Further, the Act also stipulates that the employer will not compel the woman to do any arduous work during her pregnancy, or give notice for discharge or dismissal during this period. It also makes provisions for two nursing breaks of 15 minutes each, once the mother gets back to work.

9.129 It is universally acknowledged that there are inadequacies in both the Acts at the National Level. These Acts only cover workers in the organised sector. There is a need, therefore, to extend maternity benefit measures to women workers

in the unorganised sector. Moreover, the coverage of these Acts is very limited even in establishments where all working women are covered by them. A study by Chaddha N. shows that only 0.25% of women avail maternity benefits in a situation though 94% are entitled to it. Further, the laws have many loopholes as factory owners and contractors find it easy not to adhere to the ESI Act by employing 19 rather than 20 women. These Acts provide no work protection for women. Many women are either forced to leave their jobs when they are pregnant, or are not hired at all because they will have to be provided maternity benefits during and after pregnancy. It has been brought to our notice that the amount of benefits provided by these two Acts are inadequate, as women are not able even to cover the cost of the extra nutrition that they require during their pregnancy.

9.130 Apart from these two Acts, there are several government schemes available for maternity benefits. For example, the Employment Guarantee Scheme in Maharashtra (1974) provides one month's wages, food as part of wages, and the facility of a crèche for

children. The Tamil Nadu integrated Nutritional Project provides nutritional supplementation to pregnant and lactating mothers and the Muthulakshmi Reddy Scheme (1988) in Tamil Nadu and the maternal protection scheme of Gujarat (1986) provide cash benefits (Rs 350) to compensate for loss of wages. There is also a government scheme of cash support to agricultural labourers. But all these schemes have problems in

implementation. Women often find it difficult to obtain proof of 160 days of employment, or make optimal use of nutritional supplements.⁴ In some cases, the costs are too heavy for long-term sustainability of the scheme.

9.131 The numbers of child-births The population policy, particularly the two-child norm has an intimate relationship with the maternity benefits and entitlements issue. There are two schools of thought on this. One school argues that discrimination is practised once the issue of maternity entitlements is linked to the two-child norm. Examples of the States of Maharashtra and Rajasthan are cited, where women with more than two children are not even allowed to avail of the Public Distribution System. It has also been cited as one of the reasons for the failure of existing maternity entitlement schemes. One example that is cited is that of the Muthulakshmi Reddy Scheme which has benefited only 20 women in the whole State of Tamil Nadu.

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⁴ Swaminathan, The first five years, 1998, p-260.

9.132 In contrast to this view, the Population Commission and the Government – the proponents of the second school of thought argue that the two-child norm should be seen in the correct perspective. The norm was not binding at the national level, and should be only implemented if informed groups of people were supporting it at different levels. Representatives of the official view also state that the Population Commission was not imposing its will on the States, as its document was merely indicative and not prescriptive. Finally, they add that the word ‘control’ is now being replaced by other phrases to represent the socio-economic and demographic transition that was taking place.

9. 133 While this Commission agrees that it is important to limit explosive growth in population, it wishes to point out that reducing deaths during childbirth and reducing infant mortality are important for society. The high rates of maternal and child mortality need to be seen in the context of the dearth of the basic services that are necessary to ensure the survival of the child. Moreover, it has been seen that “better educated women also have smaller families.

Colombian women with the highest education had fewer children than women who had completed only their primary education. The continuing disparity in male and female education thus inflicts extremely high social and economic costs in the developing world" (Human Development Report 1990). The Commission recommends full baskets of maternity entitlements for the two live children, and a policy that discourages having more children.

STATUTORY SCHEME

9.134 The Study Group has proposed a statutory scheme for the implementation of maternity entitlements. The scheme is to cover all women, the only discriminating factor being the economic criteria, and that too for a brief period of time if funds are not available.

The Objectives of the Scheme are to:

- a) Provide financial support for childbirth and childcare and breast-feeding in the first few months of the child's life, as well as to promote the health of the mother and the child.

- b) Recognise the woman's reproductive role and compensate her for unavoidable absence from work. (To do this, the law should provide every woman with entitlement for four months' financial support. The norms may be fixed for such entitlement).

9.135 Cost of maternity entitlements and benefit: There were 18 million births per year as per the 1981 census. If we assume that even 60% of the mothers availed of maternity benefits, it would mean that 10.8m mothers availed of the benefit. If the daily wages of these mothers were to be protected for 120 days at the rate of Rs. 85 per day, the total amount required yearly for maternity entitlements would be Rs. 11016 crores. This figure would go up to Rs. 15973 crores if the calculation is made on the basis of the current figure of 26.1 m births per year as projected by the latest economic survey.

9.136 The access to this scheme should be through multiple channels and agencies like the *panchayat* office, post office, banks, health

centres, ICDS centres, Government departments and banks. The sources of funding would be employees and the state at the central, state, district (or municipal) and local (ward or *panchayat*) levels; employers and community contributions as followed in Thailand and China, where the community sponsors one worker for every 100 families to ensure the proper delivery of benefits.

9.137 The scheme may also provide for the setting up of a Monitoring and Grievance Committee with representatives from workers, employers and local authorities. We endorse the scheme.

WOMEN WORKERS : ENTERING THE MAINSTREAM THROUGH VOICE AND EMPOWERMENT

9.138 Organising is the key to the empowerment of women. It helps them to unite, become conscious of their rights and obligations, increase self-esteem, and forge channels through which they can avail of financial and credit services, and bring their influence to bear on issues

affecting them.

9.139 Organising ends isolation and alters a person's way of thinking, seeing and feeling. Producers with inadequate capital can pool resources and buy raw materials at wholesale prices. Farmers, who are unable to enter markets individually, can do so collectively. Poor women can build a SEWA Bank by pooling their savings. Landless labourers can become collective owners of land. A woman's group in a village can collectively run a school, an *anganvadi* or a health centre.

9.140 Organising increases bargaining power, and gives voice to the voiceless. Often even the poorest women who have got themselves organised say, "Now people listen to us." For daily labourers, home-based workers and contract labour, organisation can increase their daily earnings and make their working conditions more secure. For the self-employed, it can increase their bargaining power with respect to prices and working conditions. In the case of social sector services, only organising will help to enforce accountability.

WOMEN AND VULNERABILITY

9.141 As has been pointed out, women workers constitute the most vulnerable group in the economy. Over 95% of women workers are in the unorganised sector. These workers are vulnerable because their work is insecure, irregular and often unrecognised. Besides these, they have to balance the work they have to do with their responsibilities for children and home. Since their income is not commensurate with their work, they do not own any assets and so do not have access to social security. They often have to incur debts to meet expenses for illness or other shocks. They do not have access to institutional finance and have to borrow at high interest rates.

9.142 These women mostly belong to the economically backward sections of the society, and to the Scheduled Castes and Scheduled Tribes. Their status in society remains at the lower rungs. They generally live in kutcha or semi-pucca houses, and do not have easy access to water and sanitation. They are illiterate or semi-literate, and though they would like to educate their children, the facilities to do so are either unavailable to them, or are of

very poor quality. Within poor families, it is the woman who owns the least assets and gets the least nutrition, and the girl-child who gets the least opportunities for education and advancement in life. "In many African Countries, women account for more than 60% of the agricultural labour force and contribute up to 80% of total small-scale food production – yet receive less than 10% of the credit to small farmers and only 1% of total credit to agriculture. Although women make up 18% of the self-employed in developing countries, they are only 11% of the beneficiaries of formal credit programmes in Latin America and 10% in the Philippines. The bias is similar in loans from international sources. In 1990, multinational banks allocated about \$6 billion for rural credit to developing countries, but only 5% reached rural women" (World Development Report 1990).

9.143 Women are also physically vulnerable. Physical assault is not uncommon at home or sometimes at work sites. In some backward societies, social violence continues in the name of witch-hunting. The female child still remains less wanted in a number of communities. The

number of female infanticides is still high in many states of India.

9.144 These facts have to be taken into account when we recommend laws, policies and programmes for women workers. Can these laws and policies really reach them through the layers of vested interests and social institutions? Or are the progressive policies likely to be subverted, diluted or ignored? If we look at laws specifically aimed towards women, like the Dowry Act or the Equal Remuneration Act, we find that though these Acts have been drafted with the best of intentions, they are far from effective. In some cases, they have even been used against women rather than for them. The main reason for this is that while these laws and policies are formulated for vulnerable groups, these groups have no strength of their own to use or derive benefits from these policies. Often, they are not conscious of the rights that the law has conferred on them or the programmes of assistance that are available to them. As such, all recommendations for policies for women workers must be combined with an enhancement of their own strength, or what is called their 'empowerment.' Without awareness

and organisation, the laws will remain in the Statute book, and the facilities will remain unused. Organisation, therefore, becomes the instrument for expanding legal protection and facilities, and for transferring them from the Statute book to the lives of the individuals.

EMPOWERMENT:

9.145 Empowerment is the process by which powerless people can change their circumstances and begin to exercise control over their lives. Empowerment results in a change in the balance of power, in living conditions, and in relationships.

9.146 Experience has shown that the process of empowerment cannot be confined to individuals. The social group which is the victim of vulnerability has also to be empowered through aggregation.

9.147 The Study Group constituted by this Commission has pointed out that organising the poor, including women, generally has two aspects, both of which are crucial for success. The first is a struggle on a specific cause or issue, which vitally affects the interests of the people. This

may be a struggle to ensure water for the village; a struggle of agricultural labourers for higher wages, or of street vendors to secure licences. It creates an external atmosphere in favour of the issue, while at the same time creating dramatic internal changes in the participants and often throwing up new leaders. The second aspect of organising is programme-based. It ensures that the organising efforts continue in the future, for a longer period. It could include building and/or managing a water system, forming a co-operative or a savings and credit scheme, running a health or childcare centre or taking joint responsibility for forests and so on. Although less dramatic than the struggle-oriented aspect, it ensures a slow and steady building up of individuals, institutions and changes in relationships.

ORGANISING IN INDIA

9.148 In our country most of the organising so far has been centred around politics, i.e. organising has been undertaken to make one's voice heard in the political sphere, and through the power of votes. However, even in this sphere, much

more development-oriented organising is needed. For example, women have achieved 33% reservations at the panchayat, district and municipal levels. This has yet to extend to State and national levels.

9.149 We do have a tradition of organising at many levels. The first stirrings of the movement for reform in women's status can be seen in the nineteenth century. These included the socio-religious reform movements, notably the *Brahmo Samaj*, *Prarthna Samaj*, the *Arya Samaj*, the Muslim Reform Movement and the like. These reform movements, however, included neither the poor women nor women workers within their purview.

9. 150 Poor women first began to be drawn into a women's reform movement with the advent of Gandhiji and the movement for freedom. As the movement expanded to draw in the poor masses, issues concerning self-employed women began to be addressed for the first time. *Khadi* was perhaps the first issue which symbolised the needs of poor working women, especially women who were engaged in spinning and weaving.

They were further mobilised during the salt *satyagraha*, and were also very active in the anti-alcohol campaign. Gandhiji's struggle for prohibition reflected women's deep concern for the safety of their homes. The post-Independence period, however, saw a decline in the participation of working women in struggles for women's issues. *Mahila Samitis*, *Mahila Mandals* and *Mahila Samajams* had been formed all over the country during the hey-days of the National Movement for Independence. After Independence, these local women's groups continued as ongoing organisations, but the participation of poor women in them declined, as did the militancy of the groups.

9.151 Women had also been active in the growth of the labour movement. The struggles of the jute workers in Bengal, of textile workers in Bombay, Ahmedabad and Coimbatore, of the plantation workers in the North East and of the coir workers in Travancore (Kerala), all involved the active participation of women workers. However, as the labour movement became formalised into trade unions, and as it became part of the tripartite system, and

achieved many material gains and some security for workers, the active participation of women declined.

9.152 A new phase of the women's movement started in the 1970s. In 1974, the Report of the Committee on the Status of Women in India was released. This report gave a lot of prominence to the position of 'unorganised workers' as well as to the status of poor women with regard to education, politics and the law. This report, followed by the celebration of the International Women's Year in 1975, saw a sudden growth and a new turn in the women's movement in India. As the women's movement has grown since then, its members have begun to realise that a genuine movement must project and concentrate on issues that concern, and entail the involvement of large masses of women. Consequently, there has been an attempt to organise poor working women to project the issues that affect them most, such as unequal wages, indebtedness and deforestation.

9.153 To a large extent, the initiatives in organising workers in the informal sector in general, and

women workers in particular, share the same genesis and evolutionary path as the leftist and labour movements.

9.154 The second wave of organising women workers in the informal sector was precipitated by the recognition of the success gained by SEWA and World Wide Fund (WWF) in the 1980s. Besides heralding a movement of women workers in the informal sector, these organisations helped to establish a strong link between the lack of organisation and poverty in the informal sector. The recognition of this by the state resulted in many direct and indirect programmes for women workers. The state continued these efforts with the new empowerment approach that it adopted during the same period. The important programmes in this regard were the central and state sponsored schemes and programmes. *Mahila Samakhya*, a programme for rural women's empowerment, implemented in four states since 1987, Watershed Development Project in Rajasthan and special programmes such as Development of Women and Children in Rural Area (DWCRA) being implemented since 1983.

9.155 One of the significant lessons of the earlier experiences of organising

women workers has been that an intervention to provide women with access to credit can have a multiplier effect, and can, by itself, be a strategy for organising women. The state has responded to this by initiating several favourable policies and institutions to facilitate access to credit programmes. This is the backdrop against which we are looking at the organisations of women workers, especially in the unorganised sector.

9.156 Today there are many different types of organisations that work with or for women workers.

9.157 Trade Unions: Firstly, there are the trade unions. In India, the trade union movement has developed through the struggles of the workers mainly in the industrial sector. Although there are about 50,000 registered trade unions in the country, only eight federations have been recognised as Central Trade Unions. These are National Federation of Indian Trade Unions (NFITU), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU), Indian National Trade Union Congress (INTUC), Bhartiya Mazdoor Sangh (BMS), Hind Mazdoor Sabha (HMS),

United Trade Union Congress (Lenin Sarani) [UTUC(LS)] and United Trade Union Congress (UTUC). These eight cover a total of 1,29,61,182 number of workers, of which only marginal numbers are women. In other words, the established trade union movement has not been able to cover large numbers of women workers in the unorganised sector. At the same time, there are a large number of trade unions that may not be affiliated to central trade unions but are working exclusively in the unorganised sector. These include SEWA, the National Alliance of Construction Workers, the National Fish-workers Federation, the National Alliance of Street Vendors and many unions working with agricultural workers, forest workers, rag pickers and rickshaw pullers, among others.

9.158 Co-operatives: There are also a large number of co-operatives in the country. Co-operatives are people's organisations that promote and generate women's employment for those who do not have bargaining power in the labour market, and are at a lower level in the economic hierarchy. Co-operatives are an efficient form of organising where the poor can gain control of their

resources and manage their own organisations. The Co-operative helps its members to enter markets from which they are usually excluded as individual participants. It, therefore, helps them bargain for better economic conditions. Organising poor women workers into co-operatives has been shown to be a viable alternative, but there are very few women's co-operatives. In 1998, there were only 8714 women's co-operatives, constituting only 1.8% of the total number of co-operatives in the country.

9.159 The disbursement of micro-finance has spread considerably in the last fifteen years in India. Many different types of organisations are engaged in this field. All of them have a host of other 'developmental' activities, besides providing access to housing/income generation loans. These include, education, health awareness, building, watershed management, environmental concerns etc.

9.160 In the last two decades, there has been a considerable proliferation of Non-Governmental Organisations (NGOs) or voluntary organisations. There are different types of such

organisations, many of which work with women.

9.161 There are also many small organisations which work at the local level. These may be unregistered *mandals* or local associations or DWCRA groups.

9.162 Mahila Mandals And Self Help Groups: Due to the intervention of various Government schemes for women over the years, there has been a growth of local women's groups especially in the rural areas. These groups are the result of considerable mobilisation at the village level, which may have occurred spontaneously, or through the interventions of NGOs, or Governmental efforts. In many cases, the presence of women *panchayat* members and *sarpanches* has also helped the growth of these organisations. These organisations are of different types. Earlier there was an emphasis on *mahila mandals* which undertook a variety of activities. In recent years, the emphasis has shifted to self-help groups.

9.163 People's Organisations: Although, many different types of organisations are in existence, the Study Group has recommended that

efforts should be made to promote membership-based organisations or 'people's' organisations. A people's organisation is one that is controlled by the people whom it serves. This control can be of different forms. In the case of small organisations, they could be run, managed and controlled by the people. Bigger organisations, on the other hand, would have to employ skilled persons, maybe professionals, but the guiding force of the organisation must be the people themselves. The form of the organisation often determines the degree of control that members exercise. A people's organisation should be democratic.

9.164 Membership - Based Organisations (MBOs) and Non-Governmental Organisations (NGOs): It is important to point out the difference between MBOs or people's organisations, and NGOs. Although voluntary action is a part of both, a people's organisation is composed, controlled and run by the people for whom it is intended. An NGO, on the other hand, is set up to provide a service to society or a section of society. It is a purely voluntary organisation without any intended benefit to those who control and

manage it.

9.165 NGOs have played a very important role in our society. In recent years, they have moved from welfare-oriented services to development-oriented perspectives and actions. NGOs have often been set up by middle class people who are driven by a strong desire to contribute to society and to development, and who are willing to give up a career-based life for a service-oriented one. However, there is a danger that the very enthusiasm that drives the NGOs, inhibits the growth of the people's organisation, as it often takes over the functions of the latter, decreases or dilutes self-reliance, and is unable to build up the people's capacity to run their own organisations. For these reasons, even though many NGOs are playing an important and beneficial role, they cannot provide a substitute for people's organisations.

9.166 Recognition Of Organisations: The first step towards the effectiveness of an organisation is recognition. When an organisation and its office-bearers are recognised by the existing structures, they are

able to represent its members. For instance, an agricultural workers' trade union has to be recognised by the local farmers and by the District Officer, before it can bargain for higher wages, while a bamboo workers' co-operative has to be recognised by the forest department before it can obtain bamboos at wholesale prices.

9.167 However, one-time recognition is not enough. These organisations have to deal again and again with the same structures and institutions; the same employers, farmers, contractors etc, and the same product and financial markets. Often, after great effort and struggle, an organisation does get recognised, and its demands get addressed. But then, circumstances change, people change, and the organisation has to go through the same process again to get recognition. For example, a sympathetic municipal commissioner may recognise a vendors' union, but he gets transferred, and the new one may not be ready to listen to them. A local bank manager may be positive, and may give loans to women workers, but the next manager, or the manager in another branch may not. For poor women, already over-

burdened by too much work and too many obligations, it may not be possible to go through this process of securing recognition again and again. Consequently, the organisation collapses or becomes ineffective. So, recognition has to be formalised, preferably through written agreements or registration.

9.168 Experience has, however, shown that the process of acquiring and maintaining recognition for an organisation in the unorganised sector is long and tedious, and full of struggle. This is because there are no systems or recognised legal processes, whereby organisations can be formed, sustained and recognised, or, whereby they can enter into dialogue and bargaining on an ongoing basis. What is required is a system by which an organisation of unorganised women workers can be recognised by the existing structures. Once granted recognition, they automatically acquire certain rights. We need to take it further than the trite commitment to grass-roots consultation to which everybody pays lip service, and give it practical meaning and teeth to be able to function effectively. Workers in the formal sector do have this kind of voice representation because of the

vast array of local, regional, national, statutory, tripartite and international negotiating fora which they make use of to be heard by different powers. A similar framework has to be identified to enable workers in the unorganised sector, particularly women workers, to acquire recognition, access and power.

STUDY ON MEMBERSHIP BASED ORGANISATIONS

9.169 With the assistance of the International Labour Organisation (ILO), the Study Group commissioned a study to evolve appropriate strategies and policy recommendations for the empowerment of women workers on the basis of the experiences of selected case studies of organisational forms that have been employed by women workers. The study covered ten cases of organising women. Of these, two are registered societies, three are co-operatives, three trade unions, one is a trust, and another an ILO experiment to empower women workers in the informal sector through existing unions. The organisations

thus selected were:

- a) Bangalore *Gruha Karmikara* Sanga, Bangalore, Karnataka;
- b) Kagad Kacha Patra Kakshakari Panchayat, Pune, Maharashtra;
- c) SEWA- Madhya Pradesh;
- d) Sramjibi Mahila Sanghattan, West Bengal;
- e) Ama Sanghattan, Orissa;
- f) Wahingdoh Women's Industrial Co-operative Society and Nontuh Women's Multi-purpose Co-operative Society, Shillong, Meghalaya;
- g) Ankuram, Sangamam, Porum, Mutually Aided Co-operative Society, Andhra Pradesh;
- h) Shakti Mahila Vikas Swavlambi Sahayog Samiti, Patna;
- i) Annapurna Mahila Mandal, Mumbai, Maharashtra; and
- j) Trade Union Collective, Tamil Nadu.

In addition, the Self Employed Women's Association (SEWA), Gujarat, was studied to examine the structure of various types of MBOs.

9.170 The study found that organising women workers in the informal economy has been in practice in several parts of the country with varying degrees of success. The purpose, origin, size, structure and *modus operandi* of these practices vary. There are state - sponsored worker's co-operatives, NGO - initiated organisations, government - NGO collaborations and political party-based unions. These are formed mainly for the purposes of poverty alleviation *per se*; for providing employment, security and social security as an integrated approach to development, exclusively for the empowerment of women; and as a mechanism of class consolidation. According to the specific purpose, co-operatives, trade unions, associations, and self-help groups for credit and savings, among others, are formed and promoted. A general trend of change is observed among these organisations. Over the years, most of them have drifted away from income generation and employment security, or solely organising women for the purpose of advocacy towards more comprehensive development-focused approaches that aim at organising women for their

overall economic and political empowerment.⁵ Various factors have contributed to this trend, significant among them being the realisation that an improvement in economic status through income generation and increased work participation of women does not necessarily lead to economic and political empowerment, and the recognition of certain limitations of the models of organising women, which are not backed by specific strategies and mechanisms of empowerment.⁶

9.171 Although many different types of organisations are in existence, the study concentrated on Membership Based Organisations (MBOs), or what we have been calling people's organisations, and went into depth to discover what makes an MBO succeed, and what measures are needed to promote a large number of women workers' MBOs all over the country. There is a major difference between NGOs and MBOs. We have already pointed it out. Trade unions are

MBOs, but due to their current limited focus, they have not yet been able to organise women in the unorganised sector. As most of the initiatives in organising women workers are being undertaken by the NGOs, and as traditionally, organisations of workers are understood to function within the framework of trade unions, it is imperative to define the specifics implied by the term MBOs. The latter are better understood in relation to NGOs and trade unions. MBOs, in a sense, can possess the strength of both.

9.172 Many NGOs have created membership-based satellite organisations or have adapted a more flattened organisational structure. Organisations, which are member-based, have the advantages of autonomous functioning and a focused action plan, besides the quality of being democratic. Since membership needs a commonality, it is necessary to build a social or an economic identity amongst the individuals for constituting a member - based organisation. Membership in organisations also ensures the participation of stakeholders as well as equity in the distribution of tangible and intangible benefits.

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⁵ Carr M. et al, (ed) 1996: Speaking Out: Women's Economic Empowerment in South Asia, Vistaar Publication, New Delhi.

⁶ Farrington, J. et al (ed) 1993: Non-Governmental Organisation and the State in Asia, Routledge (London).

9.173 Issues Of Membership-Based Organisations (MBOs): The two main forms of membership - based organisations that exist today are trade unions, and self-help groups or co-operatives. However, the more effective organisations tend to cover many different activities of both struggle and development. Further, these organisations tend to work not as solitary bodies, but as a 'cluster' of organisations which include trade unions and self-help groups and co-operatives. In general, many of these organisations have been sponsored by NGOs, as a result of which the NGO-women's organisation relationship has acquired importance, and needs to be looked at more closely. In some cases, the existing trade unions have encouraged the growth of women's sections within their own ranks, but the success of these sections or departments is yet to be assessed by internal evaluation or external evaluation.

9.174 Trade unions have also been trying to bring in women into their fold but there is a feeling that women workers are marginalized in Trade Unions. One woman TU leader asked us whether we would recommend 33% reservation for women leaders in

the elected bodies of TUs. There have been efforts to address this issue. Despite these efforts, however, the trend largely remains the same as in the larger political sphere. However, the few successful steps taken by trade unions to incorporate the interests of women workers in the informal economy are worth mentioning. The *Hind Mazdoor Kisan Panchayat* has formed co-operative societies for women mat weavers in Kodungallur and for potter women of Aruvacode in Kerala. Similarly, the *Beedi Workers Union* in Belgaum district and the *Chikodi Taluka Kamgar Mahasangh* in Karnataka have organised 7000 women workers in Nipani with extension activities like *SAVALI*, a trust for *devadasi* women and a consumer co-operative society for members. However, it has been found that the leadership of these societies continues to remain in the hands of men who often oversee policy making, and a second level leadership does not develop. It will be interesting to recall the origins of the WWF and SEWA, in this context. Both the initiatives were begun by women trade union activists in the model of a trade union, but for the informal sector, and addressing the inadequate representation of women

workers in the traditional trade unions. During the course of the study, it was found that a number of trade unions in Tamil Nadu, mainly in the agricultural and plantation sectors, are attempting to get together to form a collective. However, as compared to the widespread efforts of NGOs, these efforts are few and far between.

9.175 While examining the activities of these MBOs, one notices that the more successful ones are intensely involved in the core issues affecting unorganised workers, i.e. employment and earnings. At the same time, they take up other social and economic issues as well. They tend to be multi-faceted, dealing with many issues and intervening at various levels in the economy as also in social and political processes. Furthermore, all of them employ methods of struggle as well as of development. For example:

- a) The KKPKP (*Kagad Kacha Patsa Kabshabari Panchayat*, Pune (Wastepickers Association) demands higher rates and access to scrap, and wants to be covered by the Unprotected Manual Workers (Regulation of Employment and Welfare) Act. At the same time, the Association has opened a co-operative shop for trade in scrap. It encourages savings and credit among its members, and has been trying to stop the practice of child marriages.
- b) SEWA-MP agitates for higher wages, provident fund, etc. for *beedi* workers and tendu leaf collectors, and at the same time, sponsors societies for savings and credit and co-operatives for alternative employment. It also sets up *balwadis* and health centres.
- c) The Trade Union Collective at Chennai runs income-generating projects.
- d) The *Shramjibi Mahila Samiti* (West Bengal) organises programmes for employment guarantees [Employment Assurance Scheme (EAS) and Jawahar Rozgar Yojana (JRY)] for women, and at the same time runs a *Khula Manch* (Open Forum), to arbitrate in social issues.
- e) The *Ama Sanghatan*, Orissa is a co-operative for minor forest

produce gatherers, but at the same time runs a grain bank and mobilises for minimum wages among its members.

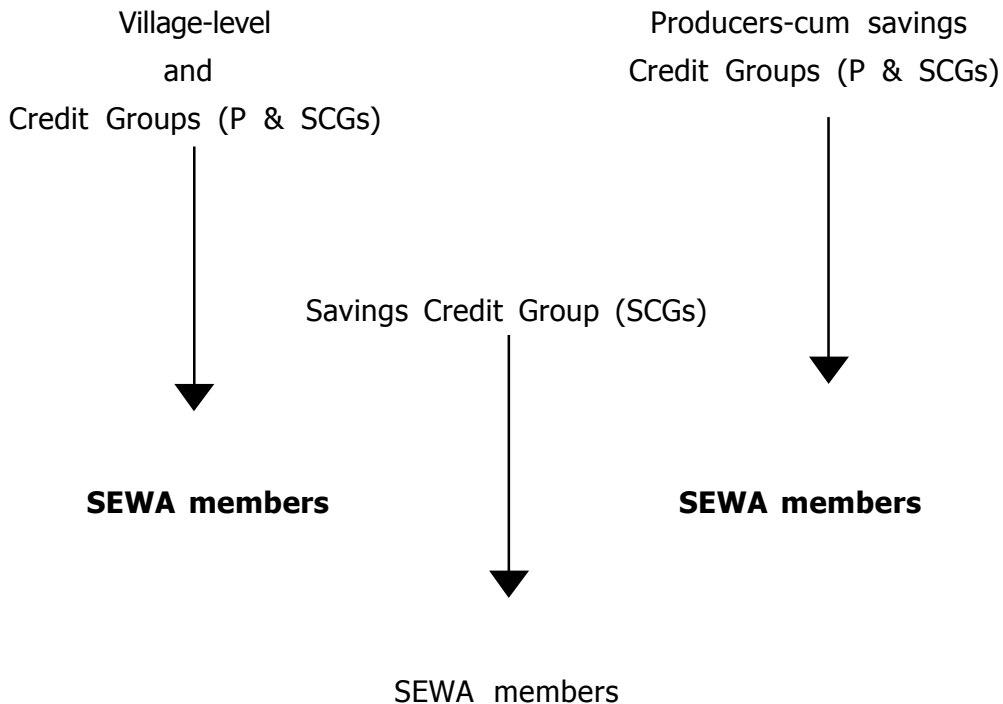
- f) The ASP (*Ankuram Sangamam Porum* - mutually aided co-operative society, Andhra Pradesh) promotes self-help groups (SHGs) and micro-enterprises for women, but also, works on redistribution of land

to the landless, and struggles for equal wages and dalit rights through Trade Unions.

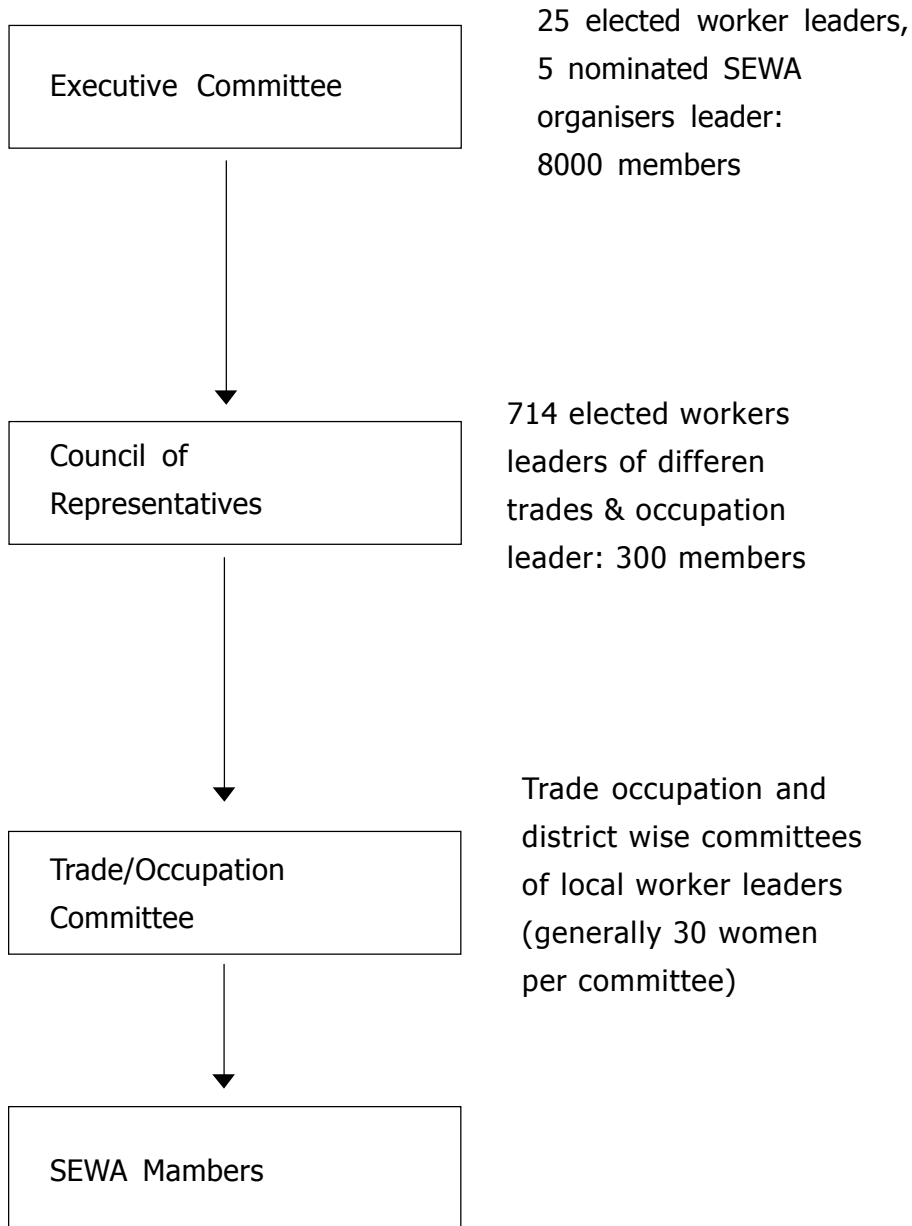
9.176 The largest co-operative is the SEWA Bank with 1,50,000 members. Members of one co-operative are also members of the SEWA Bank and they are also members of the SEWA union. It may be useful for us to look at the

structure of the SEWA organisation.

Structure of District-level Associations



Structure of SEWA Union



Note: Since it is a union, the number of leaders in the Council of Representatives and eventually in the Executive Committee depends on the membership (i.e. actual numbers) in each trade or occupation group.

9.177 ISSUES OF SIZE AND ACCESS TO LARGE NUMBERS:

Organisations can be effective only if they can reach large numbers of workers, and build solidarity among them. One of the reasons for the success of the trade union movement in the past, has been its size and hence its capacity to represent a large number of workers.

9.178 As regards size, membership based organisations are quite large in absolute numbers, given the difficulties involved in organising these workers. SEWA in Gujarat has a yearly paid membership of 2.27 lakhs, while SEWA, MP has 80,000 members. The ASP (AP) has 1.5 lakh members in its SHGs. However, in relation to the number of workers, the coverage is low. The main question that arises is: What are the ways in which these small but successful organisations can be up scaled?

9.179 RECOGNITION AND REGISTRATION :

These organisations continually face problems of recognition, both of the organisation, and of the women workers who are their members. Each of the organisations that were studied has

been demanding identity cards for its members from one official source or another, since they see the cards as a token of recognition for their members as workers. Recognition as workers is the first step towards bargaining for better wages and working conditions. For example, forest workers' unions demand identity cards from the forest department, domestic workers from their employers or from the labour department, rag pickers from the municipality, and agricultural labourers from the District Officer.

9.180 But organisations often face resistance against recognition when they apply for registration. Those that want to register under the Trade Union Act, generally run into problems with the Labour Department. Many organisations are unable to get registered at all. In fact, the Trade Union Act is very liberal in that any seven workers can get together and form a trade union. Furthermore, there is no particular definition of worker. It states, "all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises." Thus, the term workman has not been independently

defined, it has been explained vis-à-vis the term 'trade dispute.' Since the power for registration of trade unions lies with the State Labour Departments, the interpretation of the Act is done by the Labour Commissioner in each State. Most Labour Commissioners associate trade unions with the formal sector and they, therefore, tend to question whether these organisations can be recognised as trade unions. Some of the questions they raise, as reported, are

- a) There is no employer, so with whom will you bargain?
- b) How can you have a union which will include many different types of workers?
- c) How can you have a union of self-employed workers when they are not 'workers'?
- d) How can workers who have no fixed place of work be organised in a union?
- e) How can you have a union confined to women since that may be discriminatory?

9.181 Some States seem to have taken policy decisions not to register

new trade unions. This decision seems to have been taken in the context of the multiplicity of trade unions in the formal sector enterprises, where too many unions inhibit both the bargaining process and the functioning of the enterprise. However, there is no such multiplicity in the unorganised sector. On the contrary, trade unions hardly exist in this sector, but policy decisions taken in the context of the formal sector seem to be automatically extended to the unorganised sector too, without the necessary application of mind.

9.182 Co-operatives too face multiple problems while seeking registration. Non-recognition of the woman worker herself leads to non-recognition of the co-operative. The power of registration of co-operatives lies with the Registrar of Co-operatives, and, as in the case of trade unions, many registrars find it difficult to understand these types of workers, or what they can do collectively. The registration of co-operatives of forest workers or of rag pickers is also hampered by similar problems. The registration of a co-operative which provides services such as cleaning or catering, on the other hand, is impeded by the fact

that most States do not have 'service' co-operatives in these categories.

9.183 However, the major problem that co-operatives face in registration is the amount of paper work and procedures involved. Firstly, the model by-laws prepared by the department do not usually suit the needs of the workers concerned, and have to be modified. This, in itself, is tantamount to a major confrontation with the department. Secondly, the procedures of registration (such as the number of documents required, rules and regulation, etc.) are usually very complicated, and beyond the means of even an ordinary educated person, let alone illiterate women. Thirdly, most departments dealing with co-operatives delay the process of registration or make it quite expensive. There are also complaints of corruption.

9.184 These problems may now be overcome with the passing of the new Mutually Aided Co-operatives Act, which has come into force, first in Andhra Pradesh, and then, in other States. Registration under the

Societies Act is considerably easier than under the other Acts, as NGOs have been well recognised by the State. However, it is more difficult to be a genuine member-based organisation as the Societies Act is basically designed for voluntary and charitable societies. Moreover, technically the Societies are not to be involved in 'business,' and so the goal of economic empowerment becomes more difficult. The Self Help Groups (SHGs) too are easy to form, and this is because they have been recognised by the National Bank for Agriculture and Rural Development (NABARD) and other formal financial agencies. However, these are unregistered, and thus, have no legal standing. In order to sustain themselves, they eventually have to come together to form a co-operative or a society.

9.185 SUSTAINABILITY: The sustainability of the organisations has to be viewed both financially and institutionally. The financial difficulties are obvious. Since the workers belong to the poorest categories with very low and very unstable earnings, any membership fee or earnings collected from them would also be very meagre. Their organisations cannot be more

sustainable than their lives. On the other hand, experience has shown that these workers are willing to pay even out of their small and insecure incomes to sustain their own organisations. Most organisations collect a membership fee of some type, and though this is not usually enough to sustain the organisation, it does bring in some revenue, while also being a major source of commitment and involvement for the members of the organisation.

9.186 The main success of most organisations lies in their capacity to mobilise workers, to raise awareness and to run campaigns. Organisations have used many innovative methods of mobilisation and campaigning to sustain and strengthen themselves.

9.187 Another aspect of sustainability is the capacity of an organisation to manage itself in a democratic way, particularly in a manner that fosters the growth of local leadership and management.

9.188 Forming an organisation requires a great deal of effort, sacrifice and costs. The question is: What are the returns from this effort?

The study found substantial returns in terms of material gains, more employment, higher wages, access to credit at lower rates, access to healthcare, childcare, and so on.

However, the members of the organisation generally rate 'non-material' gains as the main advantage of the organisation.

9.189 MEN AND WOMEN ORGANISING SEPARATELY AND TOGETHER: One of the issues that are often discussed is whether women workers should be organised as part of a general workers' organisation or whether they should have separate organisations. In this context, the experience in our country indicates that both types of organisations do exist, and have their respective advantages and disadvantages, and roles to play.

VOICE REPRESENTATION

9.190 One of the main tasks before an organisation is to adequately represent its workers. The ILO defines Voice Representation at Work as 'effective representation leading to basic levels of security.' In

that context, Voice Representation itself constitutes a form of security for the members of the organisation. We have seen that an organisation has to go through three stages to be able to successfully represent its members. The first is the stage of recognition of the organisation and the workers who are its members. This comes during registration as also during the process of bargaining, or trying to enter the market.

9.191 The second stage of representation is the stage of formalising the recognition of the organisation. This happens with the signing of agreements and with the organisation being invited to serve as a member of existing boards, committees, etc. The third and final stage is, when the representation takes the shape of a system.

9.192 The Study Group has pointed out that as far as informal sector organisations are concerned, Voice Representation has reached only the second stage so far, and that too, only for some organisations. Most organisations have not even reached the first stage, and very few have arrived at the second. The study reports that a few organisations are being represented on the Minimum

Wages Committees, Municipal Committees and the boards of various Government agencies.

9.193 In order to ensure proper representation for women workers' organisations, it is necessary to set up decentralised systems of regulation and representation, both at the sectoral and the overall levels. We will return to this question later.

RECOMMENDATIONS

9.194 The Rules and Regulations of the Government can encourage or discourage these efforts. Existing, established organisations such as trade unions and NGOs can also serve as an impetus to 'organising.' At the same time, membership based organisations themselves need to learn from the experiences of others. The recommendations that follow are therefore directed to Governments, organisations of civil society and Membership Based Organisations themselves.

9.195 Governments : We recommend that the Governments should:

a) Allow widespread registration of

- MBOs of women workers under the Trade Unions Act and issue special explanatory guidelines to all Labour Departments to facilitate this;
- b) Promote Mutually Aided Co-operative Acts in each State and issue special guidelines for the registration of such co-operatives of women workers;
 - c) Frame and enact a special Law for micro-finance organisations;
 - d) Ensure that the economic demands and struggles of women workers' organisations are not in routine fashion treated as 'law-and-order' problems;
 - e) Issue identity cards to all women workers;
 - f) Wherever possible, recognise MBOs as implementing agencies for Government schemes;
 - g) Recognise MBOs in Economic Promotion Zones (EPZs) to protect women workers in this zone;
 - h) Set-up Voice Representation Systems for MBOs of women workers by;
 - Setting up recognised councils of women workers' MBOs, which include Government representatives from different Ministries as well as representatives of industry and agriculture, and
 - Setting up for each sector, councils that are empowered to bargain on specific issues. For instance, in the forestry sector, this council can bargain for rates of minor forest products as well as criteria for issuing licences.
- i) Invest in training and research organisations for building up capacity for MBOs.
 - j) Sensitise State, district, block and panchayat functionaries on issues relating to women, so that village level women's organisations may seek their help.
- 9.196 NGOs, Trade Unions and Other Organisations: Apart from MBOs, other agencies including NGOs, trade unions and various organisations can:
- a) Play a 'promotive' and 'supportive' role for MBOs;
 - b) Support mobilising efforts of

MBOs, especially to increase awareness and membership;

- c) Support the setting up of capacity building systems including many types of training programmes;
- d) Support the attempts of MBOs to enter markets;
- e) Advocate and assist in the setting up of various forms of Voice Representation for MBOs;

9.197 MBOs: The MBOs themselves should:

- a) Try to aim at financial and managerial sustainability.
- b) Recognise that growth and up scaling are important.
- c) Try to develop second- and third levels leadership.
- d) Take the support of Government and NGOs including TUs to build strength.
- e) Work for Systems of Voice Representation.

WHAT CONSTITUTES CHILD LABOUR?

9.198 A child chasing goats or cows, cutting grass or a very young

girl washing utensils, carrying a pot of water, precariously balancing it on her head or cleaning her house while minding her younger brother in a cradle, are not uncommon images in rural India. This is the face of working children in the agricultural sector. Not so visible are the thousands of children rolling *beedis*, working in glass factories or engaged in sericulture, carpet weaving, match making, etc. Similarly, the shoeshine boy or the little child serving a cup of tea or sweeping the floor with a soggy dark piece of cloth in a 'hotel' or a *dhaba*, and the rising number of street children may be the visible forms of working children in urban townships or along highways. But there are innumerable invisible young girls and boys performing domestic chores, helping their parents employed in an urban or rural home. Some of these children attend regular school, some of them struggle to keep pace and go to school whenever possible, while some others drop out. Some of these children manage to attend night schools or non-formal education classes. Others do not even have the opportunity to visit a classroom. These are the multiple images of childhood amongst the less privileged in India.

9.199 The last two decades have seen a significant increase in data and literature on the life and worlds of working children, especially children in highly exploitative occupations such as lock making, gem polishing, carpet weaving and so on. Children in India also experience other forms of oppression and traumatic estrangement. Some are victims of sexual abuse and compelled into prostitution and pornographic performances. The number of children who are victims of trafficking in drugs is also increasing. The report of our Study Group on Child Labour in India highlights the dimensions and complex nature of the problems in the area of Child Labour. It briefly reviews efforts made by both governmental and non-governmental agencies to address the problem, the potential and advantages of various approaches and the inherent difficulties in tackling the problem.

9.200 It is universally accepted that children should not be made to work. But there are no universally accepted or comprehensive answers as to why the problem of child labour persists, and how it can be tackled. The approach one takes determines the

policies and programmes that one adopts to tackle the problem.

9.201 In the main, there are two perceptions of what constitutes child labour. The first identifies child labour as work done by children from poor households outside their home/family for a minimal wage. Firstly, children who have not become adults should be at school, and not at a place of work. Secondly, the work done by these children is not suited to their young age, and thirdly the conditions in which they work are detrimental to their well-being and safety. According to this perception, child labour is synonymous with the exploitation of poor, young children working outside their homes, by greedy and exploitative employers. It is apparent that this definition does not consider work done by children within their home/family as being exploitative, and therefore, meriting description as child labour.

9.202 The conventional definition/concept thus distinguishes between child work and child labour. Child labour is perceived to be an economic necessity for poor households, and the exploitative aspect in children's

work is associated with the profit maximising motive of commercial enterprises, or individual entrepreneurs who entice or employ children to work long hours, at low wages, denuded of opportunities for education.

9.203 This traditional concept of child labour is also endorsed by organisations like the International Labour Organisation (ILO). The ILO says, it is "not concerned with children helping in family farms or doing household chores." It defines child labour to "...include children leading permanently adult lives, working long hours for low wages under conditions damaging to their health and physical and mental development, sometimes separated from their families, frequently devoid of meaningful educational and training opportunities that could open up to them a better future" (ILO 1983). The World Bank, in a similar vein, argues that child work that does not involve an exploitative relationship should be distinguished from child labour. It further argues that in some instances, work done by children within the family may even contribute to the development of the child. "Not all child labour is harmful. Many

working children who are within a stable and nurturing environment with their parents or under protection of a guardian can benefit in terms of socialisation and from informal education and training" (World Bank 1998). Some of the witnesses who appeared before our Commission also argued that in some cases, child labour is a means of transmitting skills from one generation to another, particularly in the case of traditional crafts and skills.

9.204 The other definition of child labour put forward by groups critical of the conventional definition argues that the issue of child labour is not merely a question of whether work done by a child is exploitative and remunerative or not. According to them, all forms of work are bad for children. Any distinction is tenuous and arbitrary. It is particularly so as there is nothing to prevent the child from transiting from one category to another. For instance, in recent years much of the paid work that used to be done outside the home has been transformed to home-based work. Many activities like carpet weaving, match making and glass works which used to be done in factories and sheds, are now being done by

children within their homes. Thus, the distinction between work done by children within the home and outside the home has become blurred.

9.205 Further, the concept of segregating work done by a child into exploitative 'labour' and non-exploitative 'work' suffers from basic flaws. It is difficult to determine the circumstances in which work can be considered exploitative. Often, it is the working conditions, and not the work itself, that reflect levels of exploitation.

9.206 The advocates of this point of view argue that all children who are out of school should be considered actual or potential child labourers. An out-of-school child is often drawn into supplementing family labour, either on a full time basis, to help in the family occupation or to manage family assets or simply engage in different 'adult-releasing' activities. Hence, every out-of-school child is a potential child worker.

9.207 Supporters of this argument point out that restricting the concept of child labour to wage employment is particularly detrimental to the interests

of the girl child. First, it takes little or no cognisance of the work done by the girl child (for it is normally, the girl children who work at home assisting their mothers with household tasks such as cooking, washing and cleaning and looking after younger siblings), and hence, her contribution to the economy. It is further argued that such a narrow interpretation of the concept to cover only children actually working for remuneration may also result in fewer efforts by all concerned to get girls out of work and into school. Thus, it seems legitimate to treat all out of school children as potential working children (boys and girls) and as such potential child labour.

9.208 A definition of child labour, which equates all children not going to school with child labourers, emanates from the rights-based approach towards development which considers being-out-of school as a denial of the child's right to education. "The rights' based approach when applied to the problem of out-of-school children, dictates an inclusion of all children into the schooling system, irrespective of whether they work in agriculture, in industry or at

home” [United Nations Development Programmes (UNDP, 2001)].

TYPES AND DIMENSIONS OF CHILD LABOUR IN INDIA

9.209 In India, estimates of the number of child labourers vary, owing to differences in the methodology used for enumeration of their numbers as well as conceptual differences in defining child labour. While statistics from the census conducted by the Government of India indicate a progressive decline in the number of child labourers over the decades, results from other surveys suggest the contrary. However, in spite of these differences in estimates, it is undisputed that over 11.28 million children in India are working as child labourers, 2 million of whom are doing jobs that are detrimental to their health and safety. These include children who work in the more visible and well-documented industrial sector as well as the not so visible children who work in the agriculture sector or in crafts or in rural settings.⁷

9.210 There are children who

actually work in factories and workshops of different industries. These children work in both the organised as well as the unorganised sector, and can be found in urban and semi-urban areas. While some of them work for wages, a sizeable section of these children who work in industries and factories work as bonded labourers. The carpet industry in the Mirzapur–Badohi belt of Uttar Pradesh (UP) and the *beedi* industry in Andhra Pradesh, Madhya Pradesh and Tamil Nadu are particularly notorious for employing child bonded labour and the plight of these children is well documented. Many of these children, who belong to the Scheduled Castes and Scheduled Tribes, are pledged by their parents either to the factory owners, or their agents or middlemen in exchange for small loans. The children work for long hours, and are paid wages that are much below the prescribed minimum wage. As the parent of a child working in the *beedi* industry observed:

.....
⁷ Source: 1991 Census, Annual Report of Ministry of Labour, 1999

"I have mortgaged my seven-year-old girl, and eight-year-old boy to a Sheth (money lender) three years ago for a loan of Rs. 200 (Rs. 100 on each child). They work all the time for the master. Their total wage should be at least Rs. 20 a day. However, the Sheth has been paying them each Rs. 2. 50 a day, out of which he deducts half every day."

9.211 Most of the children are very young when mortgaged. In the carpet industry, middlemen even encourage families to mortgage children less than 12 years of age. Many of the mortgaged children become bonded over very small sums of money, and many of them continue to be in bondage even after both principal and interest have been paid back in full. This is because loan repayments are manipulated by creditors against the interests of the illiterate parents of these children.

9.212 Besides working in the factory/industry, children are also forced to do other work for their employers such as grazing cattle, working in agricultural operations, fetching water from far off wells and other odd jobs. They are never paid for these jobs. Children who try to escape are often

severely tortured.

9.213 Besides employing children who are mortgaged by poor parents, other methods are also used to recruit children to work in industries. A very common practice in the brass industry is to use the services of middlemen or contractors, who are paid a commission for bringing child workers. Contractors and workshop owners prefer children because they are easy to control. Their parents are offered an advance of Rs. 100 or the equivalent of a month's wage. If a parent takes an advance, the child has to work whether he likes it or not. If he plays truant, the wages of other children from the same village are cut. Instances of children being kidnapped for the purpose of working in the carpet industry have also been reported. Again, children are often lured by false promises of education and good wages.

9.214 Bonded child labour is not confined to the carpet and *beedi* industries. A study conducted in the Sivakasi match factories in Tamil Nadu, reported one woman as saying: ...' the child in the 'womb' is pledged to the factory, and consumption and maternity loans are

obtained on the undertaking that the child born, girl or boy, would work for the factory!' A large number of children also work as bonded slaves in glass factories.

9.215 Depending on the nature of work, the industry in which they work and the circumstances of their coming to work, children are subjected to various forms of exploitation. Their working conditions are shocking. In extreme cases, they are often tortured and made to work for twenty hours a day without a break. It has been reported that in some units little children are made to crouch on their toes, from dawn to dusk everyday, severely stunting their growth during formative years. We were told of *dhabas* where children who are employed are woken up in the morning by splashing hot water on their faces.

9.216 Work in the carpet industry is often the cause of tuberculosis in a large proportion of workers, and it is considered one of the most hazardous of jobs. But this industry employs the largest number of children.

9.217 Apart from factories and workshops, children are also employed

to work in open cast mines in the private sector especially in small mines. Young children below the age of fourteen years, together with women, form a very sizeable proportion of the labour force in the open cast mining and quarrying industry. While in Rajasthan, they work mainly in marble mines, in Madhya Pradesh and Meghalaya they work in limestone quarries. They work mainly for private mining companies, in unorganised kilns, quarries and mines, and are engaged in backbreaking work, carving out chunks of stone from the earth, breaking them up and carrying them in baskets to the edge of the pit.

9.218 Besides these children who actually work in factories and workshops, a number of working children are also found in home-based work, helping their parents. Their parents are normally piece-rate workers, who are paid according to the number of units of output they are able to produce. The children are drawn into this work to help their parents, owing to abysmally low wages that are paid to an adult. Such home-based work is quite typical to a number of industries such as the *agarbatti* (incense sticks) industry

spread out in Andhra Pradesh, Madhya Pradesh, Maharashtra and Gujarat, the garment industry in West Bengal, the coir industry in Kerala and the *beedi* industry in Tamil Nadu, Karnataka, Andhra Pradesh, Gujarat and Maharashtra.

9.219 Children work in the agricultural sector as well. In fact, a major proportion of the child labour force is found in this sector. Many of these children work as agricultural labourers, some of whom are bonded labour. Child bonded labour in rural areas / agriculture is an inter-generational phenomenon. Most of the child bonded labourers in the rural areas are sons or daughters of bonded labourers. Usually a grandfather or father has taken a loan in his youth. After working for several years when the man becomes too old to work, his master demands that the young son/s be sent to replace the father. Thus, around the age of ten the young child is introduced into the system of bondage.

9.220 The not so visible face of child labour in agriculture includes the young boys and girls who work as part of family labour. Coming from poor rural households, these children are forced to take on a number of "adult-

releasing" tasks so that their parents are free to engage in direct productive activity. This is especially true of the girl child, who has to take on the responsibility of fetching fuel-wood and fodder, looking after younger siblings, cooking, washing utensils, and grazing cattle. However, despite evidence to the contrary, the contribution of these children to the economy is not taken into account.

9.221 There is also evidence that children are employed in plantations. Studies show that the percentage of child labour in the tea plantations of Assam and West Bengal is quite high. An analysis of the Plantation Act reveals that the Act, in fact, allows children above the age of 12 to be employed as permanent workers. This is contrary to the provisions of Child Labour Act of 1986, which prohibits employment of children below the age of 14 in any occupation.

9.222 Urban metropolitan centres and semi-urban areas are home to another category of working children viz., street children. These children who work for survival, usually live in public places such as railway stations, bus stops and footpaths, and are without the atmosphere of protection

and support that they would have received in their families. While some of these children, such as shoeshine boys, newspaper vendors, rag-pickers, hawkers and vendors, are self-employed, others work in establishments like *dhabas* (small way-side eating places), or as domestic servants and coolies (porters), as casual labourers on construction sites, as helpers in shops, and so on. A factor that is generally common to all street children is the physical separation from their families. Fear of physical abuse, either at the hands of their parents, or a previous employer, is the main reason why children leave their home.

9.223 Working children are often found amongst migrant families as well. They work at construction sites, sugar factories, brick-kilns, mines and plantations where circumstances do not permit the parents to leave the children at home. Numerous studies have documented that children of migrants form a very large percentage of the non-domestic non-monetary child labour force. Another sub-group falling into this category comprises children, particularly girl children, who accompany their mothers working as part-time

domestic servants. This happens often because of the perceived vulnerability of the female child to sexual abuse in the setting of the urban slum, which pressurises the parents to see that she is never left alone. Domestic work, categorised as non-hazardous by the existing laws, can turn hazardous for a child. Being beaten for breakages, or for not being quick enough, being starved, are commonly mentioned as penalties imposed by the employer. Many researchers and activists who have painstakingly interviewed these child workers and even rescued some of them, report innumerable instances of this kind.

9.224 These examples reveal the travails of millions of children in India and the exploitative nature of child labour, and its sociological and economic dimensions. Children are also found among victims of disasters, natural as well as man made, drug abuse, physical neglect within the family, and being sold and trafficked in for prostitution, producing pornographic material and drug peddling. Besides, there are also children whose services are dedicated to a deity in early childhood (e.g. *Devadasis, Jogins*). These children

are not paid for their services, and often end up as prostitutes in adulthood.

9.225 It is also necessary to take note of the impact that work itself has on the health and education of children who work as child labourers. Working in unhygienic and crowded conditions, children suffer from many occupation related diseases. In the lock industry,* children work with potassium cyanide, tri-sodium phosphate, sodium silicate, hydrochloric acid and sulphuric acid. They inhale noxious fumes, are exposed to electric shocks, and suffer from tuberculosis, bronchitis, asthma and other diseases. As has been stated earlier, tuberculosis is a common occupational health hazard in the carpet industry too. In the brass industry, children work at high temperatures and inhale the dust produced in polishing. The glass industry is particularly hazardous since children carry molten glass and work around furnaces with intense heat. Children working in hazardous occupations, including agriculture-related work, often do so without safety equipment, and are, thus, prone to accidents.

9.226 As for education, it has been observed that child workers in India are largely illiterate. Most have never been to school. Since education is not compulsory, children begin work at very young ages. Even children of pre-primary-school age can be seen working in cottage industries. In fact, child labour is keeping children out of school and contributing to the growth of illiteracy especially among girls. Employers prefer to employ young girls since they are paid lower wages than boys.

9.227 Few children outside of agriculture and traditional crafts can be said to be apprentices, learning traditional family skills. Glass bangle-making and glass blowing are no longer hereditary occupations, and the children employed in them are not acquiring special skills. In the lock industry children work on buffing machines, electroplating, spray painting, filing components, making springs, assembling and packing locks. The urban working children described here are in relatively new occupations and few are following in the footsteps of their parents. The image of the child as an apprentice to a master craftsman is therefore illusory. In reality 'skills' acquired by

the children are of a low level: simple, routine, involving manual tasks or carting.*

GROUP'S APPROACH TO CHILD LABOUR

9.228 The approach of the Group on Women and Child Labour has been that the child, the child's welfare and the child's future should be central to our programmes, and to our laws. Children are the future of our society, and our economy. Every child should have the opportunity to develop his or her skills and potential, to participate both as a citizen and as a worker. In today's society, a certain level of schooling is necessary for each person to feel an equal. Moreover, with a rapidly changing economy, to deny schooling to any group of children is to forever deny them an

opportunity to acquire skills and earn a decent livelihood. A child-centred approach to child labour is, therefore, not merely to save the child from severe exploitation, but also to ensure that she or he has the chance to a future. The Commission endorses this approach.

9.229 In this context, we will like to quote from the UN Human Development Report of 1996. "Millions of children are put to work in ways that deny them their right to childhood. These children invariably work long hours every day in poor, unhealthy and hazardous conditions – knotting carpets, packing matches into boxes, picking garbage, carrying molten glass – without respite and recreation. Such work frequently leads to chronic illnesses, destroyed eyesight, physical and intellectual

* For details see 'Child Labour in Home Based Lock Industries of Aligarh – NLI Research Studies Services No 018/2000/

* The portrayal of the types and dimensions of child labour in this report has largely been drawn from the following sources.

- Bonded Labour in India : National Survey on the Incidence of Bonded Labour, Final Report (New Delhi : Biblia Impex Private Limited) 1981.
- Born to Work, Child Labour in India, Neera Burra, Oxford University Press, 1997
- Juyal, B.N. et al Child Labour: The Twice Exploited (Varanasi: Gandhian Institute of Studies) 1985.
- Marla, Sarma, " Bonded Labour in Medak district (A.P.)" in NLI Bulletin, vol. 3, no. 10, October 1977.
- Mehta, Prayag, " Mortgaged Child Labour of Vellore. Women Beedi Workers Tale of Woe" in Mainstream, vol. XXVII, no. 1, 3 September 1983.
- The Child and the State in India, Myron Weiner, Oxford University Press, 1992

stunting and, in many cases, even premature death. Most of these children belong to marginal communities and to socially and economically deprived groups. The worst consequence of all may be that child labour keeps children out of school, thereby preventing the development of their capabilities – a priority for a long-run solution to poverty and exploitation.

9.230 “The unjust employment of children, unlike unemployment and underemployment, has received little attention until very recently. Estimates of the number of employed children vary from 14 million to 100 million in India, 2 to 19 million in Pakistan, 5 to 15 million in Bangladesh, 2 to 7 million in Brazil, 1.3 to 13 million in Mexico, and some 12 million in Nigeria. In Africa, more than 20% of children are considered to be working, and in Latin America between 10% and 25%. Some of the most widespread forms of child labour – domestic help, agricultural and bonded workers, especially girls – are largely invisible.

9.231 “Child labour is not an economic compulsion of all poor families. It is the consequence of extreme social and economic

exploitation. The only way by which it can be eliminated is by prevention.

9.232 “The only way to prevent child labour is to recognise that the rightful place of children is in school, not in the workplace or in the house. So, the first step is to ensure compulsory primary education for all children. Historically and worldwide, wherever child labour has been abolished, this is how it has been done.

9.233 “At the same time, a set of complementary measures need to be put into place: income enhancement programmes for the poor, payment of minimum wages, the empowerment of women, and enactment and enforcement of appropriate laws, and social services for the families of child workers.

9.234 “More broadly, public action must be mobilised along all fronts (among non-governmental organisations, trade unions, the media, human rights activists, trade associations, employers’ organisations and even among children), to change attitudes towards child labour and to build public pressure against hiring children.

9.235 “Any programme seeking to

deal with the problem of child labour, has to address all the children out of school. It has to bring into its ambit all out-of-school working children irrespective of the nature of the work they do. A second, equally significant consideration is to see the link between eliminating child labour and universalising elementary education. They become almost synonymous. One cannot be achieved without achieving the other. The task of withdrawing children from work therefore, becomes the same as inducting children into school. The fundamental belief on which the programme has to be based is that parents, even poor parents, are not only capable of sending their children to formal day time schools but are also wanting or willing to do so. Viewing all out-of-school children as

potential child labour, irrespective of the nature of the work done by them, would treat the elimination of child labour and the universalisation of elementary education as inseparable processes, the obverse and reverse of the same coin, the success of one automatically leading to the success of the other.

9.236 "Briefly stated therefore, the entire strategy would have to be based on promoting the norm that no child should work, and all children should be in schools. It is only this strategy that can enable children engaged in agriculture comprising nearly 85% of the child workforce to come out of their present plight."

Some facts about child labour in India

Numbers

- a) India has the largest number of children engaged in child labour in the world in absolute numbers. While the 1991 census puts the number at 11.28 million, the 50th round of the National Sample Survey (NSS) conducted in 1993-94, estimated the child labour population at 13.5 million. The Operations Research Group in a study in 1980 estimated 44

million children below the age of 15 years to be working in economic, non-economic and household activities.

- b) An important source of data to make an estimate of the number of working children is the number of children out of school. As per the estimates for 1995-96, there were 173 million in the age group of 6-14. Of these, 110 million children were estimated to be out of school. Of these 110 million children, 60 million are girl children.⁸
- c) There are about 74 million children who are neither enrolled in schools nor accounted for in the labour force, who come under the category of "nowhere" children.

Sectors

- a) The incidence of child labour in India is more rural than urban. More than 90.87% of the working children are in the rural areas and are employed in agriculture and allied activities and in household chores. Cultivation, agricultural labour, livestock, forestry and fisheries account for 85% of child labour.
- b) In the urban informal sector, child labour is found in small-scale cottage industries, in tea stalls, restaurants, workshops, factories, and domestic service and on the streets.
- c) Children working in manu-facturing, servicing and repairs account for 8.7% of the urban child labour force. Out of this only 0.8% works in factories.

.....
⁸ GOI 1995-96 Estimates MHRD, NCERT, SAIES provisional Statistics

- d) In the non-agricultural sector, child labour is found in many activities such as:
- Carpet industry in Mirzapur-Bhadohi belt of Uttar Pradesh (UP)
 - Match and fireworks industry of Sivakasi, Tamil Nadu
 - Diamond cutting industry of Surat
 - Glass industry of Ferozabad
 - Pottery industry of Khurja
 - Brassware industry of Moradabad
 - Tea plantations of Assam and West Bengal
 - Silk weaving industry of Varanasi
 - Sports goods industry in Meerut and Jalandhar
- e) About two million children are engaged in employment that is characterised as “hazardous.” In certain communities where social and caste factors are important, bonded child labour is also present.
- f) Commercial and sexual exploitation of children in the form of prostitution is also present in urban areas.
- g) The unorganised and informal sectors, both in rural and urban areas, account for almost all the child labour force.

Distribution

- a) The incidence of child labour is high among Scheduled Castes and Scheduled Tribes and agricultural labourers.

- b) Among the States, child labour is predominant in the states of Uttar Pradesh, Bihar, Madhya Pradesh, Andhra Pradesh, Orissa, Karnataka and Tamil Nadu, and is mainly found in poor areas and among disadvantaged and marginalised groups in society.
- c) The distribution of child labour in various states appears to indicate certain correlations:
 - States having a larger population living below the poverty line have higher incidence of child labour.
 - High incidence of child labour is accompanied by high dropout rates in schools.

Male/Female ratio

- a) There is no appreciable predominance of male or female children in the child labour population. Male: 54.82%; Female: 45.18%
- b) The concentration of female workers in the agricultural sector is quite high (83%). Of this 52% are agricultural labourers.
- c) Among the male child workers, 78% are concentrated in the agricultural sector.
- d) More female children are engaged in low paid jobs as compared to males.

TOWARDS ELIMINATING CHILD LABOUR: EXISTING LEGAL FRAMEWORK

9.237 CONSTITUTIONAL PROVISIONS: The action that the state has directed towards children has been guided by certain fundamental legal norms. These, in India, are rooted in two important documents:

The Constitution of India and the UN Convention on the Rights of the Child, which India ratified in 1992. The Constitution of India, through various articles enshrined under the Directive Principles of state policy, lays down that child labour in factories, mines and other hazardous occupations should be prohibited (Article 24); that free and compulsory education should be given to children below the age of 14 years (Article 45) and that children should not be forced by economic necessity to enter avocations unsuited to their age and strength (Article 39-e). The Constitution also states that children should receive opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that children should be protected against moral and material abandonment (Article 39-f).

9.238 The UN Convention on the Rights of the Child (CRC) is the first and most comprehensive instrument on children's rights that is legally binding on all the States which ratify it. It was unanimously adopted on 20th November 1989, and was ratified by India in 1992. This implies that India has accepted the legal obligations of bringing its existing laws, policies and programmes in line with the international standards laid down by the Convention. The CRC recognises the indivisibility and inalienability of child rights. It provides the following guidelines for examining the implementation of the convention:

- a) The principle of non-discrimination (Article 2);
- b) The Best interests of the Child (Article 3);
- c) The right to life, survival and development (Article 6); and
- d) Respect for the views of the Child (Article 12).

Further details can be seen in the Annexure of this Chapter.

9.239 Some of the witnesses who appeared before our Commission

raised the question of the Conventions of the ILO that related to Child Labour. Some among them complained that delegations from India, including the representatives of the delegation were very active at the ILO's Annual Conferences, creating opinion in favour of these Conventions, but India was found wanting when it came to the question of ratifying the very Conventions for which the Government had canvassed at the stage of formulation. The ILO has 30 Conventions and recommendations that relate to Child Labour. Of these, we have ratified 8 Conventions. They are: the Minimum Age (Industry) Convention, 1919; Minimum Age (Trimmers & Stockers) Convention, 1921; Minimum Age (Underground Work) Convention, 1965; White Lead (Painting) Convention, 1921; Prohibition in work involving ionising, Radiation Protection Convention, 1960; Night Work of Young Persons (Industry) Convention, 1919; Night Work of Young Persons (Industry) Convention (Revised) 1948; and Medical Examination of Young Persons (Sea) Convention, 1921.

9.240 Our attention has been drawn particularly to Convention No. 182 and

Recommendation No. 190 which deal with the "Prohibition and Immediate Action for The Elimination of the Worst Forms of Child Labour." The Convention was adopted in 1999, but the Government has not yet ratified it. The Government has stated "it is the endeavour of the Government in the long run to eliminate all forms of Labour." Yet, it has not found its way to ratify the Convention, partly because it feels that more tripartite consultations are necessary to identify occupations or processes that can be characterised as among the worst forms of Child Labour, and partly because the necessary machinery to enforce the legislation has yet to be put in place.

9.241 It has been said that: 'The Crucial Article that needs consideration is Article - 3 of the Convention. "For the purposes of this Convention, the term – the worst forms of child labour comprises:

- A) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in

- armed conflict;
- B) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- C) The use, procurement or offer of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- D) Work that by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."
- to the relation between education and elimination of the worst forms of Child Labour. "Each Member shall, taking into account the importance of education in eliminating Child Labour, take effective and time bound measures to;
- a) prevent the engagement of children in the worst forms of child labour;
- b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

9.242 Article 4 says that the types of work referred to under Article 3 "(D) should be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employees and workers concerned, taking into consideration relevant international standards."

- c) enhance access to free basic education, and wherever possible and appropriate, vocational training for all children removed from the worst forms of child labour;
- d) identify and reach out to children at special risk, and
- e) take account of the special situation of girls."

9.243 Article 6 says, "Each Member (state) shall design and implement programmes of action to eliminate as priority (emphasis ours) the worst forms of Child Labour." Article 7 points

9.244 We understand that the hesitation in the ratification of Article

3(A) to 3(D) is because of 3(D). The arguments advanced are twofold: (i) 3(D) is not specific and (ii) the machinery necessary for implementation needs to be set up, before the law is amended to provide for 3(D). Both these arguments seem very weak. Firstly, much of what 3(D) talks of is already stated specifically in 3(A), (B), and (C). The remainder is to be identified through consultation with organisations of employers and employees, and in the context of national conditions. The instrument of a Standing Tripartite Committee has been suggested for this purpose.

9.245 Secondly, there is an effective machinery for implementing 3(A) to 3(C) that can implement 3(D) as well. Thirdly, it cannot be said that no law is enacted unless the machinery for implementation has been already put in place; that one first sets up the machinery and then passes laws.

9.246 Moreover, the Convention is meant to eliminate the worst forms of child labour "as a priority," as has been mentioned in Article 6. It seems incongruous that one says one is for the elimination of all child labour, and yet hesitates to ratify a Convention for the elimination of the worst forms

of child labour as a priority. The prolongation of such a situation may invite the charge that we are not serious. We, therefore, strongly urge the ratification of Convention No. 182 on eliminating the worst forms of Child Labour. We are happy to see that all the main central organisations of Trade Unions have asked for the ratification of the Convention.

LEGISLATION ON CHILD LABOR IN INDIA

9.247 Legislation on Child Labour in India has sought to address three broad concerns:

- a) Prescribing a minimum age limit for employment of children, and regulation of working hours for children;
- b) Ensuring a compulsory minimum level of education for children; and
- c) Ensuring the health and safety of "child labour" by prohibiting the employment of children in hazardous work.

9.248 While the first two types of legislation are interventions that attempt to discourage/reduce/prevent

the incidence of child labour, the latter intervention may be termed as a 'direct' intervention in that it attempts to deal with issues that directly affect child labour, viz., health and safety.

9.249 The main legal instruments used for prescribing minimum age limits and regulating working conditions have been the Indian Factories Act (IFA), the Indian Mines Act (IMA) and their numerous amendments. The first IFA which was passed in the colonial period (1881) fixed the minimum age of employment at seven and maximum number of hours at nine per day. It also provided for four monthly holidays. The Act was applicable only to factories that employed more than 100 workers, with the result that children working in smaller establishments were excluded from its purview.

9.250 The IFA has since been amended almost every ten (10) years with each amendment providing for an upward revision of the minimum age of employment. Later amendments (e.g., 1891 & 1954) also prohibited the employment of children during night time.

9.251 Besides setting age limits and working hours, the IMA also prohibited the employment of children in activities that were dangerous to their health and safety, such as mining, excavation, explosives, etc. The first IMA was passed in 1907. It has been subsequently revised several times.

9.252 A number of Commissions and Committees, the Whitely Commission in 1929, the Rege Committee in 1944 and the Gurupadaswamy Committee of 1979 have recommended laws to regulate child labour. Based on these recommendations the Government of India passed the Child Labour (Prohibition and Regulation) Act, 1986. The salient features of this Act are that it:

- a) Defines "child" as a person who has not completed 14 years of age;
- b) Prohibits the employment of children below 14 years in specified occupations and processes;
- c) Lays down a procedure to make additions to the schedule of prohibited occupations or processes;

- d) Regulates the working conditions of children in occupations where they are not prohibited from working; and
- e) Lays down penalties for violation.

LEGISLATION ON CHILD LABOUR- A REVIEW

9.253 While the earlier laws were piecemeal efforts to regulate the employment of children in particular industries, the 1986 Act was conceived as a comprehensive piece of legislation to deal with the problem of child labour. However, as with the earlier acts, the 1986 Act also operated within a regulatory framework with the belief that child labour could not be abolished as long as poverty existed. As a consequence, the law has revealed several legal and procedural loopholes.

9.254 The law is limited in scope. It does not cover all occupations and processes where children are working. The Act covers only some hazardous occupations and processes. It excludes children working in family based enterprises. A large number of children are working in such firms generally at the cost of their education.

9.255 Premises: The law is based on the premise that the decision on whether children should work, especially within the family or household, is that of the parents. Another premise is that so long as the child is not forced to work in an exploitative environment, the State should not take any legal action. Thirdly, it pre-supposes an employer-employee relationship where child labour is engaged, and assumes that exploitation of children is not possible within the family premises, even though the processes or occupations are, otherwise, hazardous. We would like to point out that whether the child is employed in enterprises and industries outside the home, or at home, for wages or to help in domestic chores or family occupations, it does result in the forfeiture of opportunities for education and for "formation."

9.256 Definition of 'Hazardous' occupations: Although the Act prohibits the employment of children in certain hazardous industries and processes, it does not define what constitutes hazardous work. It only provides a list of hazardous occupations/processes (list in

Annexure 2). As a result, it leaves a loophole for employment of children in hitherto unidentified hazardous occupations and processes, and the use of hazardous materials.

9.257 Focus: The law does not recognise the child as an individual being who should be the focus of the Act. Instead, the focus is on the establishment, employer, administration and procedures on cleansing the establishments of child labour with no provisions for the child's rehabilitation. It does not say what should happen to the child labourer once the employer is prosecuted. It is only recently after the judgement of the Supreme Court in the M C Mehta vs. Tamil Nadu case that the government set up a Child Labour Rehabilitation and Welfare Fund.

9.258 Implementation and Enforcement: The implementation of the Act depends entirely on the State's bureaucratic machinery. It assumes that the bureaucracy, poorly staffed and ill-equipped as it is today, will be able to ensure that children do not work in hazardous processes and occupations, and conditions of work in non-hazardous settings will be upgraded. The bureaucracy is also

expected to determine whether a child is working in a non-hazardous process or a hazardous occupation. Again, under the law, the employer is supposed to notify the Labour Department whether any children are working in his establishment. This means that one expects those who may be guilty or proven to be guilty, to notify their improprieties or illegal acts to the authorities. Moreover, the onus of proving the age of the child lies with the prosecutor, and not the offender.

9.259 Legislation on Education: Education is referred to in three different types of Laws: The Compulsory Education Act, The Persons with Disabilities Act, and The Juvenile Justice Act. The State laws on Education operate on the premise that State intervention is necessary to send children to school. Instead of enabling and empowering parents to send children to school, the law empowers the State to take punitive action against parents who do not send their children to school. The laws on education are only enabling laws. The State is not obliged to provide facilities for schooling. It is only with recent Supreme Court judgements such as in the J P Unnikrishnan vs. State of Andhra Pradesh case that education up to

the age of 14 years has been made a fundamental right. The implementation of the laws is left to interested local bodies, thereby excluding children belonging to areas where local bodies do not implement the provisions of the Acts. Exemptions from compulsory school attendance are to be permitted if a school is not available or if the child's help is required in the vocation of the parents. Disabled children are given exemptions if no facilities are available for their schooling. Thus, the laws enable a large section of children to legitimately be outside the purview of the law and to continue to be out of school. The problem is further compounded by the absence of schools/infrastructure and the falling budgetary allocation for education. Even where schools are present, the poor quality of education provided in these institutions is a major problem.

9.260 Other Lacunae in Legislation: Thus, it is clear that the 1986 Act and the laws on education have many lacunae. These laws effectively cover only a small proportion of children, and leave little or no scope for the participation of people in the enforcement and monitoring of these laws and programmes. The laws have failed to take advantage of the 73rd and 74th Constitutional Amendments which provide significant

opportunities for local community involvement in the elimination of child labour and the universalisation of primary education.

9.261 The National Policy on Education talks of universal elementary education, but education has not become compulsory upto 14 years of age in terms of law. Pre-primary education is not legislated upon. Non-formal education, rehabilitation and general development programmes are talked about in the National Policy on Child Labour (NPCL) but are not made a part of law. Laws on education as well as laws on children ignore the 'nowhere' children.

9.262 The Commission feels that the close links between education and the prevalence of child labour demand a convergence of laws on education and child labour. Today, there are a number of fragmented laws on these issues. While laws on child labour speak about penalising employers who employ child labour, child labour laws do not speak of education, except in the M C Mehta vs. Tamil Nadu case.

9.263 Court Judgements: There are several judgements of the

Supreme Court on child labour. Among these, the judgement on the M C Mehta vs. the State of Tamil Nadu needs special mention. *Inter alia*, the Judgement says:

"By now (child labour) is an all India evil, though its acuteness differs from area to area. So, without a concerted effort, both, of the Central Government and various State Governments, this ignominy would not get wiped out. We have, therefore, thought it fit to travel beyond the confines of Sivakasi...." The court then observed:

- a) that providing an alternative source of income to the family is a pre-requisite for the eradication of child labour;
- b) that employers of children must pay a compensation of Rs. 20,000/- as per the provisions of the Child labour (Prohibition and Regulation) Act, 1986, for every child employed;
- c) that the fine should be deposited in a Child Labour Rehabilitation-cum-Welfare Fund;
- d) that employment should be provided to an adult in the family in lieu of the

- e) child working in a factory or mine or any other hazardous work;
- e) that in the absence of alternative employment, the parent/ guardian will be paid the income earned on the Corpus Fund, the suggested amount being fixed at Rs. 25,000/- for each child. The payment will cease if the child is not sent for education. That in cases of non-hazardous employment, the employer will bear the cost of education;
- f) that the States contribution/grant, fixed at Rs. 5,000/- for each child employed in a factory or mine or any other hazardous employment, should be deposited in the corpus fund and the district will be the unit for collection.

9.264 Judicial pronouncements such as these and the Unnikrishnan vs. State of Andhra Pradesh in 1993 (which stated that the right to education should be considered a fundamental right) have proved to be

important landmarks in dealing with the problem of child labour.

9.265 We welcome these pronouncements, and recommend that the Government incorporates these suggestions in relevant laws or guidelines.

9.266 National Policy On Child Labour And National Child Labour Projects: The Government of India formulated the National Policy on Child Labour in August 1987 with the aim of rehabilitating children withdrawn from employment and reducing the incidence of child labour in child labour endemic areas. The policy lays emphasis on:

- (a) Legal action to ensure the strict and effective enforcement of various legal provisions to combat child labour;
- (b) Centring general development programmes of different ministries to benefit children and create socio-economic conditions that will reduce the compulsions that make children work, and instead, encourage them to attend school; and

- (c) Project-based action plans for children in areas where there is a high concentration of child labour.

9.267 Though much headway has not been made in the first two components of the policy, certain concrete steps have been taken to implement project-based action plans through the implementation of National Child Labour Projects (NCLP).

9.268 National Child Labour Projects: The main thrust of the NCLP is to reduce the incidence of child labour in project areas, thereby encouraging the elimination of child labour progressively. Under these projects, attempts are to be made to integrate elements of various development programmes to benefit working children. Activities in project areas are to include:

- a) Stepping up the enforcement of child labour laws.
- b) Raising public awareness to educate people about the undesirable aspects of child labour.
- c) Setting up special schools/centres for working children with

provision for education, vocational training, supplementary nutrition, healthcare, etc.

- d) Strengthening the formal education structure.
- e) Including families of working children as beneficiaries in poverty alleviation and income-generating programmes.
- f) Monitoring and Evaluation.

9.269 Institutional Framework for Monitoring and Implementation: At the national level, the programme is carried out under the auspices of the Ministry of Labour (MOL). A central Monitoring Committee has been set up for the overall supervision and evaluation of various child labour projects under the National Child Labour Policy. Representatives of ministries/state governments and projects are included in the committee.

The projects are implemented through the District Child Labour Project Society, constituted at the district level under the chairpersonship of the District Collector/

Magistrate. The execution of the project is entrusted to a Project Director, who is normally an officer of the state government. The actual implementation of the project is done by local NGOs with the involvement of trade unions, employers and grassroots organisations.

9.270 The Necessity of Convergence: So far, our policies have approached the situation of the child in a fragmented way. We have tried to deal with the problem of universalising education on the one hand, and of approaching child labour as a hazard on the other. This fragmentation of approach has been matched by a lack of convergence of effort as reflected in our programmes/schemes of the various departments.

9.271 The number of Ministries and Departments (of both the States and the Centre) which handle schemes and budgets that deal with children, are numerous. These include:

- a) The Ministry of Labour
- b) The Ministry of Human Resources Development (which includes Education and the Women and Child Development)

- | | |
|---|---|
| c) The Ministry of Agriculture | h) Department of Finance |
| d) The Ministry of Health and Family Welfare | i) Department of Health and Family Welfare |
| e) The Ministry of Social Justice and Empowerment | j) Department of Rural Development and Panchayati Raj |

9.272 In addition, Ministries/ Departments such as Textiles, Mines, Food also have components in their schemes that relate to children. Certain schemes, since the Budget of 2000, are routed directly from the Central Government to the Districts/ Panchayats bypassing the States. At the level of the State Government, the following Departments have to co-ordinate their efforts if genuine convergence is to take place:

- a) Department of Education
- b) Department of Labour
- c) Department of Agriculture
- d) Department of Backward Castes and Minorities
- e) Department of Economics and Statistics
- f) Department of Employment and Training
- g) Department of Factories and Boilers

- k) Department of Social Welfare
- l) Department of Women and Child Development
- m) Department of Welfare of the Disabled

9.273 Besides these, there are other Departments too that are expected to look after specific categories of employment such as the Departments of Fisheries, Horticulture, Mines, Sericulture, etc. These occupations employ a large number of children and run special schemes only for the welfare of adults employed in these sectors. Similarly, the Department of Food and Civil Supplies implements schemes (such as midday meals in schools), and so does the Department of Revenue (rehabilitation of bonded labour).

9.274 What is evident is that a very large number of government agencies are currently offering welfare and other services which are meant

to reach children. The fragmented approach to childcare and child development is exemplified in this illustrative list. Unless we achieve convergence in operational terms, laws and schemes related to child labour and child development may prove ineffective and inadequate.

9.275 We are proposing an indicative law on child labour which would replace the existing Child Labour (Regulation and Prohibition) Act 1986 (Annexure IV).

CHAPTER-X

SKILL DEVELOPMENT

INDIAN LABOUR FORCE

There is an increasing demand of skilled labour. This is on account of globalisation, changes in technology as well as work processes. Production has been getting globalised and financial markets the world over, are becoming integrated. Information Technology has been primarily instrumental in increasing the speed of communications and reducing its costs. Globalisation, in turn, has led to intensified competition, technological diffusion and adoption of new forms of organisation. As a result of the heightened competition and economic change, developing nations are facing a tough challenge in maintaining the employability of large segments of their labour force. Simultaneously, competition and economic change also provide an opportunity for economic growth and employment

expansion. To take advantage of these opportunities, the level and quality of skills that a nation possesses are critical. Moreover, rapid technology changes and transition to a more open economy entails social costs. These can be restricted only through equally rapid upgradation of the capabilities of the workforce.

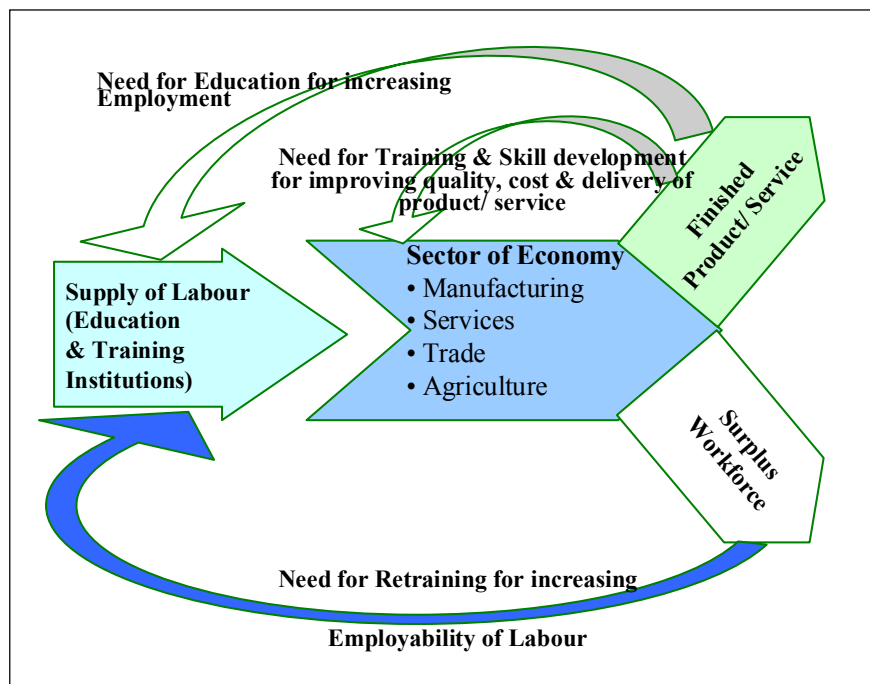
10.2 Against this backdrop, countries like India, which have opened their economy in the last decade, need to invest in the skill development, training and education of their workforce. As technological change, shorter product cycles and new forms of work organisation alter the environment, training systems come under pressure. To counter these pressures on training, incentives for training systems need to be considered. These will help the country's industry to adapt successfully to ongoing economic change.

DYNAMICS OF THE INDIAN LABOUR SYSTEM

10.3 The entire dynamics of the Indian labour system has been depicted in Figure 10.1. At present, labour is used as an input in the various sectors of the economy to produce a visible output viz. the finished product or the service. It may be mentioned that these sectors of the economy also produce surplus workforce, which may be arising out of various reasons like:

- a) Companies turning sick
- b) Closure of companies
- c) Recession leading to reduced workforce
- d) Process automation
- e) Shift of labour from Manufacturing sector to Services sector
- f) Mergers & Acquisitions
- g) Obsolescence of skill sets e.g. typing

Figure 10.1
Dynamics of the Indian Labour System



Source: Study Group Discussions

10.4 The surplus workforce that arises in the system therefore needs to be retrained for better employability. While retraining is one aspect, there is also the need for skill development and training for improving quality, cost and delivery of product/service. Training institutions thus, have to serve as the means for meeting the needs of skill development, training, retraining and education of the workforce.

10.5 As we have been pointing out in every chapter of this Report, 93% of the Indian workforce is employed in the unorganised sector. The growth rate of labour in the unorganised sector has been far higher than the growth rate of employment in the organised sector, as the latter has often become increasingly capital and skill intensive.

INDIAN LABOUR FORCE SKILLS – PRESENT STATUS

10.6 Framework for Segmentation: The entire labour force can be segmented in a 4X2 matrix with the Degree of organisation of labour on the x-axis and the Type of sector of economy on the y-axis. Based on this, we can represent the distribution of various occupation/jobs of the workforce across organised and unorganised segments and in the sector of the economy. The segmentation is depicted in Figure 10.2. This figure shows some examples of the various jobs/occupations/enterprises that can be considered in the organised or unorganised sector.

Figure 10.2

Segmentation of Labour

<i>Type of Sector of Economy</i>	Agriculture	<ul style="list-style-type: none"> • Agriculture • Suppliers on seeds, manure 	<ul style="list-style-type: none"> • Agroprocessing • Fertilizers & pesticides
	Trade	<ul style="list-style-type: none"> • Self employed footloose hawkers & vendors • Contract/ casual wage earner 	<ul style="list-style-type: none"> • Petrol Pumps • Transporters
	Services incl. Infrastruct.	<ul style="list-style-type: none"> • Construction • Self employed service provider e.g. courier, STD booths, Road mechanic 	<ul style="list-style-type: none"> • Utilities (Electricity, Water, Telephone etc. • Hotel & Tourism • IT, Telecom, Mines
	Mfg. sector	<ul style="list-style-type: none"> • Home based enterprises • Factory based small scale industries e.g. tools, woollens, Hosiery 	<ul style="list-style-type: none"> • Auto • Engg.- Light & Heavy • Industrial – Steel, cement, Refineries
		Unorganised Sector	Organised sector
<i>Degree of Organisation of Labour</i>			

Source: Study Group Discussions

10.7 As can be observed from Table 10.1, there has been a gradual shift of workers from the agricultural sector to the informal sector, as the percentage of people in the organised sector has more or less remained constant at around 7%. Substantial

employment growth is taking place in the small and unorganised sector i.e. in tiny and small enterprises. Based on the figures mentioned in Table 1 the informal sector has grown at 1.06% per annum over the period 1997-2000.

Table 10.1

Distribution of Workers by Major Sector of Economic Activity

(Numbers in millions)

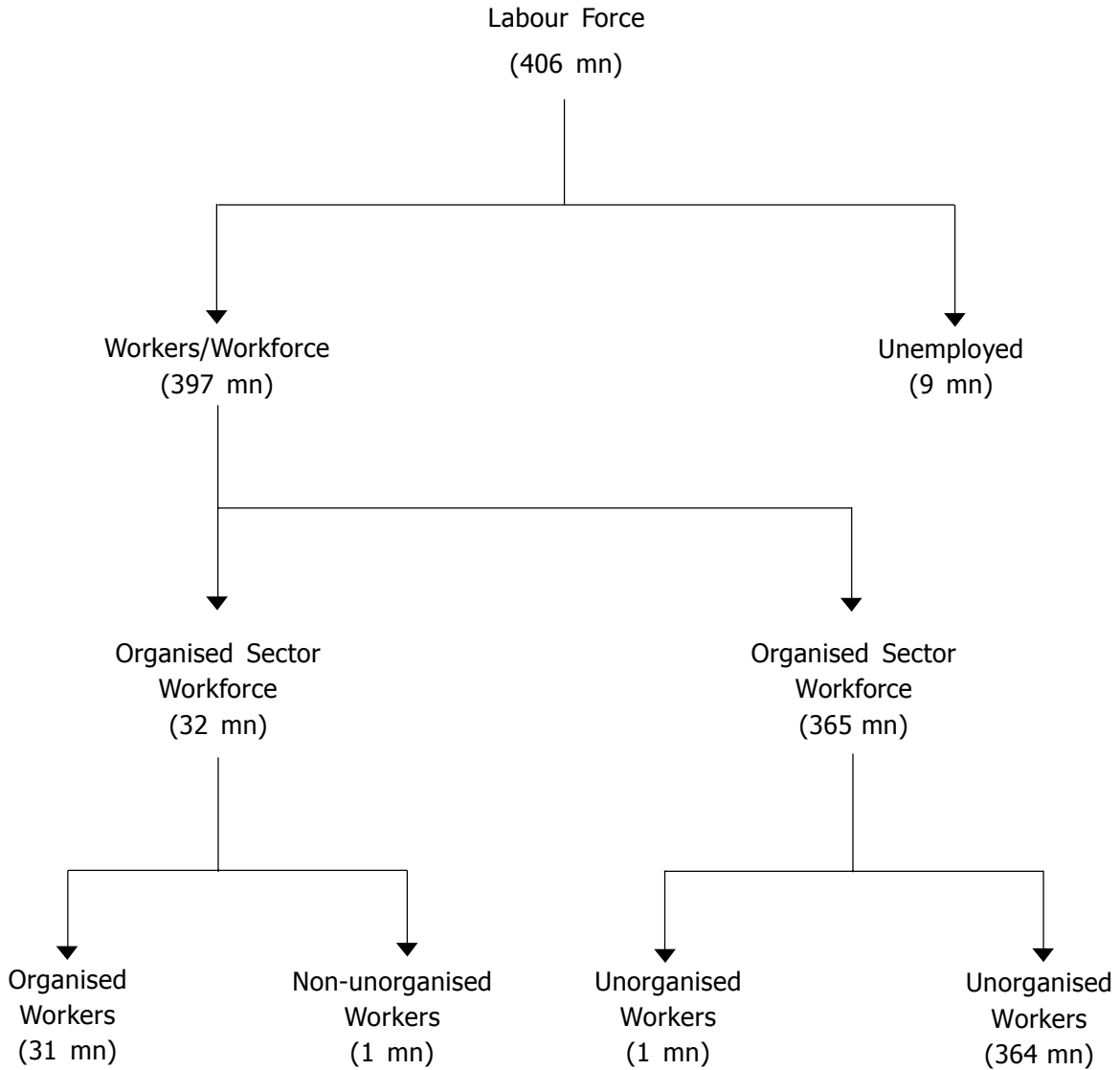
Year (%)	Agriculture (%)	Non- Agriculture		Total (%)
		Organised (%)	Informal (%)	
1972-73	175 74	18.8 8	42.5 18	236.3 100
1977-78	195 72	21.2 8	54.5 20	270.7 100
1982-83	206.2 68	24.1 8	72.5 24	302.8 100
1987-88	206.4 64	25.7 8	89.9 28	322 100
1990-91	218.4 64	26.7 8	96.8 28	341.9 100
1993-94	242.5 65	27.4 7	104.6 28	374.5 100
1996-97	243.8 64	28.2 7	110.1 29	382.1 100
1999-2000	237.6 60	28.1 7	131.3 33	397 100

Source: Manpower Profile India: Year Book 2000, Institute of Applied Manpower Research, New Delhi

A numerical overview of the strength of the Indian labour force in the

organised and unorganised sector is given in Figure 10.3

Figure 10.3
Distribution of the Labour Force



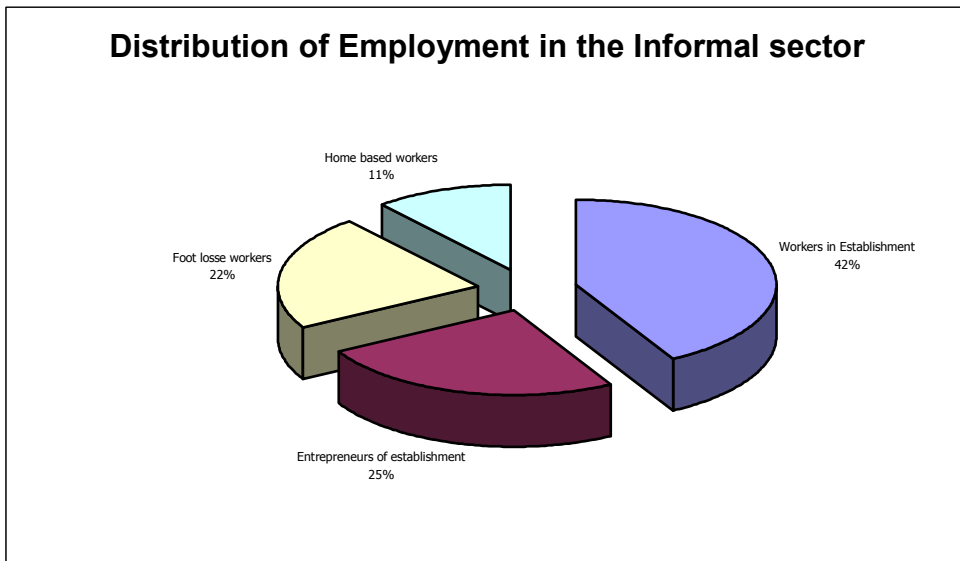
Source: Based on information collected from Manpower Profile India: Year Book 2000 and Annual Report of Ministry of Labour

10.8 The distribution of employment in different segments of the informal sector is given in Figure 10.4. Approximately

67% of the workers are employed in the establishments either as workers, or as entrepreneurs.

Figure 10.4

Distribution of Employment in Different Segments of The Informal Sector



Source: Employment in the Informal sector: MS Ramanujam et. al, Institute of Applied Manpower Research

10.9 It may be mentioned that as data on skill levels is not readily available, it is difficult to quantify the level of skills in the labour force. However, a snapshot of the education levels of the Indian labour force in

1999-2000 reveals a dismal picture (refer Table 10.2 on educational attainments of the labour force) with about 44.0% of all workers being illiterate. It may be observed from the table that 51.3% of the total rural

area workers is illiterate while only 21.5% of the urban area workers is illiterate. About 22.7% of the total workforce had schooling only up to the primary level. Considering that workers need to have schooling at least up to

the middle level and higher level for performing in the market, then only 33.3% of the workforce can be termed to be adequately qualified.

Table 10.2

Composition of Workers of Age 15 Years and Above by Level of Education 1999-2000

(All figures in percentage)

	Not Literate	Literate & Schooling upto primary level	With schooling upto middle & higher level	Total	Share in Workforce
Rural Areas					
Male	39.6	27.3	33.1	100	49.7
Female	74	15.5	10.5	100	25.8
Person	51.3	23.3	25.4	100	75.5
Urban Areas					
Male	16	22	62	100	19.7
Female	43.9	17.6	38.5	100	4.8
Person	21.5	21.1	57.4	100	24.5
All Areas					
Male	32.9	25.8	41.3	100	69.5
Female	69.3	15.8	14.9	100	30.5
Person	44	22.7	33.3	100	100

Source: National Sample Survey on Employment & Unemployment, 55th Round

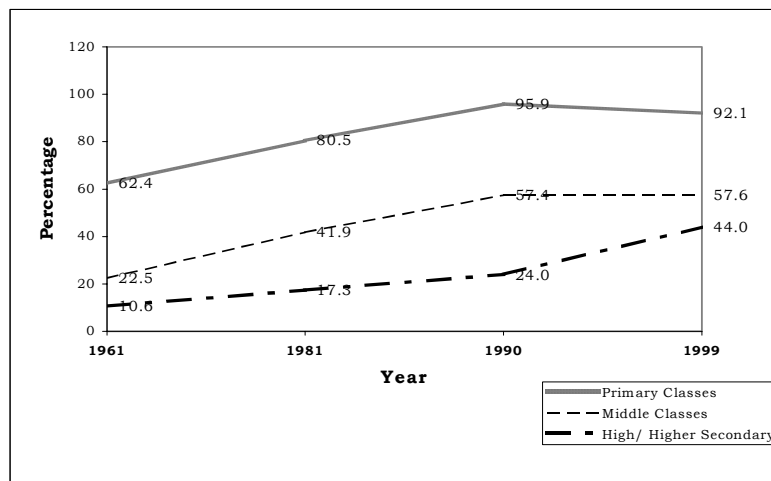
10.10 Further, the category "middle school and above" includes all those who have had some middle school education even though they may have dropped out of the school before completing middle school. The provisional drop out rate at middle school levels was quite high at 42% in the year 1998-99. As per a rough estimate from the 52nd round (1995-96) survey of the National Sample Survey Organisation (NSSO), only 20% of the population in the age group of 14-16 years actually completes secondary school the present.

education.

10.11 These figures indicate the deficiencies in the general education level of the labour force. Figure 10.5 shows the enrolment in different stages of education as percentage of population in the appropriate age group. The overall trend of enrolment in middle classes and higher secondary classes has been growing over the years and it can be inferred from the increasing trend that the new entrants to the labour force will be significantly better educated than

Figure 10.5

Enrolment in Different Stages of Education as Percentage of Population



in the Appropriate Age Groups

Education Stage	Age Group (in years)
Primary Classes	6 - 11
Middle Classes	11 - 14
High/ Higher Secondary	14 - 17

Source: Compiled from data from Manpower Profile of India, Year Book 2000 & Report of Task Force on Employment Opportunities

10.12 While general education is required for most jobs, possession of "marketable skills" (or specific skills) is a must for the labour force for obtaining employment. The NSSO Survey on Employment & Unemployment (1993-94) gives information on the possession of 30 specific marketable skills, by persons in the labour force and the results are summarised in the Table 10.3. In the rural areas, only 10.1% of the male workers, and 6.3% of the female workers possessed specific marketable skills and in the urban areas, 19.6% of males and 11.2% of females possessed marketable skills. As per the report of the Task force on Employment Opportunities set up by

the Planning Commission, about 12.3 million persons are expected to enter the labour force per year, aggregating 86.2 million persons between the year 2000 and year 2007 (Table 10.4). After allowing for underutilisation of seats in training institutions and some overlaps, the percentage of those entering the labour force with some degree of formal training is about 12% gross of the new entrants (about 1.5 million per year) into the labour force. It is estimated that a significant number of new entrants will be absorbed in various types of unskilled labour in agricultural & non-agricultural occupations, while the rest will enter the market with some skills.

Table 10.3

Percentage Distribution of Persons by Possession of Marketable Skill; 1993-94

(All figures in percentage)

Possessing	Rural		Urban	
	Male	Female	Male	Female
No Skill	89.9	93.7	80.4	80.4
Some Skill	10.1	6.3	19.6	11.2
Total	100	100	100	100
Sample Persons	(183464)	(172835)	(109067)	(99283)

Source: National Sample Survey on Employment & Unemployment, 50th Round (1993-94)

Table 10.4**Entrants to Labour Force Between 2000-2012**

(million persons)

Entrants to Labour Force	2000 to 2007 7 years	2007 to 2012 5 years
Rural Areas ¹	52.40	40.30
Urban Areas ²	33.80	28.10
All India	86.20	68.40

Source: Report of the Task Force on Employment Opportunities set up by the Planning Commission

Notes: a. Corresponds to 1.8% per annum labour force growth scenario

1. excluding migrants from rural areas
2. including migrants to urban areas

10.13 It may be mentioned that only 5% of the Indian labour force in the age category 20-24 years, has obtained vocational training. The corresponding figure in other industrialised nations is much higher, lying between 60% and 80%, except for Italy, which is 44%. The corresponding percentage for Korea is very high at 96%. Even if India is benchmarked against developing nations, the Indian

figure of 5%, is far behind Mexico at 28%, Botswana at 22% and Peru at 17%.

PRESENT METHODS OF SKILL ACQUISITION

10.14 At present, persons entering the labour workforce acquire skills from a variety of methods as given below.

- a) Hereditary Skills Acquired In The Family. In traditional family based crafts e.g. pottery, carpet weaving, etc. the younger members of the family learn the art of the craft from senior members in the family. This is also the most common method for acquiring contemporary skills viz. tailoring, repair work etc.
- b) Induction Training: In most organisations, immediately after an employee joins the organisation, he or she is sent for an induction which involves rotation through various departments and familiarisation with the normal practices of the department and method of work.
- c) On The Job Training: This is the most popular method in the informal sector, wherein workers join as unskilled or semi-skilled workers and learn specific skills in the course of their employment. Larger industrial units also impart on the job training in a more structured manner through in-house training facilities
- d) Vocational Training In Specialised Institutions: Vocational skills are also acquired through formal vocational training in specialised institutions. There are 4274 Industrial Training Institutes (ITIs) in India, which impart training in 43 engineering and 24 non-engineering trades. Of these 1654 are in the government sector and the remaining 2620 institutes are in the private sector. The total seating capacity in these ITIs is 6.28 lakhs. Further, there are 6 Advanced Training Institutes (ATI) which are managed by the Central Government that provide training for instructors in ITIs and ATIs for Electronics & Process Instrumentation offering long and short courses for training of skilled personnel at technician level in the fields of industrial, medical and consumer electronics and process instrumentation. There are also proprietary

- institutes organised as businesses, which provide training of various types in areas such as computer applications, readymade garments and hardware maintenance
- e) **Formal Apprenticeship :** Historically, apprenticeship was the principal means of training semi-skilled workers. At its simplest, it is by far the predominant mode of acquisition of trades, crafts and occupations. The most famous is the German "dual system" where apprenticeship is combined with school - based education. The Indian Apprenticeship Act, 1961, requires employers in notified industries to engage apprentices in specified ratios in relation to the workforce. Apprentices get trained for periods ranging from 6 months to 4 years and at the end of the period they are trade-tested by the National Council for Vocational Training. The Apprenticeship Act thus serves two purposes: A) to regulate the programme of training apprentices in industry so as to conform to the prescribed syllabi, period of training etc. and B) to fully utilise the facilities available in industry for imparting practical training with a view to meeting the requirement of skilled workers.
- f) **Vocational Training Linked To Development Programmes:** These are specifically designed to provide training in the informal sector e.g. the schemes for the training of women by the Department of Women & Child Development, Skill development programmes by the Khadi & Village Industries Commission (KVIC), Training programmes of the Department of Small Scale Industry (SSI) etc.
- 10.15 The vocational education and training system in India at a glance is given in Table 10.5 and the total annual training capacity of various training providers is given in table.

Table 10.5
Vocational Education & Training System in India at a Glance

UNDER GOVERNMENT AUSPICES					OTHER THAN GOVERNMENT
Department of Education, Govt. of India	DGET, Ministry of Labour, Govt. of India	DWCD, Ministry of HRD, Govt. of India	Ministry of Rural Area & Employment	Ministry of Industry, Govt. of India	Industrial Enterprises * In-plant Training
* Vocational Education Secondary School Lower school First degree level	* Craftsmen training scheme	* Norad Assisted Programme	* Training Rural Youth for Self-Employment (TRYSEM) -now replaced by other programmes	* Training through DCSSI institutes	Private Training providers * Private Proprietary Training
* Apprenticeship (for graduate engineers, diploma holders & vocational school pass out(s))	* Apprenticeship Training Scheme (trade apprentices)	* Condensed courses of education & vocational training		* Training under National Renewal Fund (NRF)	Non Government Organisations * Informal sector training
* Technical Education	* Advanced vocational training scheme	* STEP ¹		* Training activities of KVIC	Employers Organisations * Support to Industry Training activities
* Community Polytechnic project	* Vocational Training Programme for women				
* Shramik Vidyapeeths	* CSTR * CSMI * CITS * FTIS				

Source: Report of the Task Force on Employment Opportunities set up by the Planning Commission

¹STEP: Support to Training & Employment Programmes for women

Table 10.6**Annual Training Capacity of Various Training Providers**

Department/ Institution	Figures in lakhs
DGE&T, STATE GOVERNMENTS ETC.	
- Industrial Establishments	2.27
- Seats in it is	6.28
DEPT. OF SEC. & HIGHER EDUCATION	
- Polytechnics	2.20
- Arts & Crafts	2.20
- Vocational Stream	5.00
- Community Polytechnics	3.07
- Vocational Courses under National Open School	0.20
DEPT. OF WOMEN & CHILD LABOUR	
- Support to Training & Employment programmes for women (STEP)	0.10
DEPT. OF SSI & RURAL INDUSTRY	
- EDP	0.16
DEPT. OF RURAL DEVELOPMENT	
- SGSY	2.14
DEPT. OF URBAN EMPLOYMENT & POVERTY ALLEVIATION	
- SJSRY	2.00
MINISTRY OF TEXTILES	N.A.
MINISTRY OF INFORMATION TECHNOLOGY	0.35
MINISTRY OF TOURISM	
- Hotel Management	0.024
TOTAL CAPACITY	25.99

Source: Data collated from the Report of the Task Force on Employment Opportunities and Report of the working group on Skill Development & Training set up by the Planning Commission

VOCATIONAL TRAINING

10.16 Vocational Training could be:

- a) Institutional pre-employment training
- b) In-plant Training
- c) Apprenticeship Training
- d) Post employment /In-service/Job Related training
- e) Advanced / Specialist training

10.17 The Indian Trade Apprenticeship Act 1961 was implemented to cover training of trade apprentices. The responsibility of implementation of the Act is with the Central Apprenticeship Advisor/Director of Apprenticeship Training in Directorate General of Employment & Training, Ministry of Labour. The Act was amended in 1973 to cover Graduate & Diploma holders in Engineering and Technology as Graduate and Technician Apprentices. In 1987 the Act was amended again to cover training of students passing out of the 10+ vocational streams, as Technical Vocational Apprentice. As on

June 30, 2000, only 1.65 lakh seats were utilised out of a total of 2.27 lakh seats for apprenticeship training in central or state/ private sector enterprises combined.

10.18 The lacunae in the present trade apprenticeship training can be summarised as follows:

- a) Inadequate coverage of skill requirements
- b) Mismatch in demand and supply relation
- c) Lack of flexibility in the engagement of Trade Apprentices within the same Trade Group
- d) Lengthy and clumsy administrative procedures of record keeping and filling up of return
- e) Lack of incentives to encourage industries to modernise their training facilities
- f) Inadequate and poor quality of training facilities as well as training staff
- g) Small establishments unable to engage apprentices

Present & Future Challenges of Labour

10.19 Having discussed the needs and the current status of the Indian workforce, we can summarise the seven key existing and future challenges for Indian labour.

- a) **Challenge of Globalisation:** The Indian economy has opened up in the last decade. India has also become a member of the World Food Organisation (WTO). In order to remain competitive, the organised sector has commenced outsourcing. The use of casual and contractual labour has increased for meeting varying production levels. Globalisation has also thrown up a challenge in the form of exposure to new technologies and products, which are perceived as a threat to the traditional areas, particularly in the unorganised sector. The lessons from this exposure need to be assimilated by the workforce.

Challenge of Labour Competitiveness vis-à-vis China and

Other Nations: India has been facing competition from China and other South East Asian nations in various sectors including toys, electricals and handlooms. The workforce of these nations is disciplined and cheaper as compared to the Indian workforce. With China becoming a member of the WTO at the November WTO meeting at Doha, Qatar, the challenge to the Indian workforce to remain competitive has increased manifold.

As per the World Competitiveness Report (1994), which examines competitiveness of human resources based on skills, motivation, flexibility, age structure and health of people, India is ranked to be the least competitive amongst the 10 Newly Industrialised Countries. In India the quality of skilled labour, according to the Report, is good. But the proportion of skilled labour in the total labour force of the country is too small. With the result, though the country ranked first among the 10

Newly Industrialised Countries, in terms of quality of skilled labour, with regard to their ready availability it ranked 7 out of 10.

second view treats people as a source of competitive advantage. It leads organisations to invest in skill development.

b) Challenge of Redeployment of Surplus Manpower from Agriculture and Manufacturing to Services & Trade (within self-employed and wage earners): Due to a variety of reasons, there is surplus manpower arising from the organised sector. These persons need to be retrained and made employable. The shift may largely require attitudinal orientation and skill based training.

The industry therefore needs to recognise labour as Human Capital and invest in training. The labour too must make their effort to gain clear acknowledgement from industry and society of their competence, commitment and contribution. Global competitiveness as a nation is a joint task and can be achieved only through the sense of common endeavour between employers and the employed. Short-term programmes to upgrade the skills and output quality of the labour force may be devised by industry associations, which include cross-functional skills.

c) Challenge of Recognising Labour as Human Capital rather than as a Cost: Two views can be taken of human resources, one being that they are a cost and the other being that they are an investment. The first view translates into attempts to keep wages low and to spend as little as possible on training and human resource development. The

d) Challenge of Continuous Employability of Labour: With rapid changes in technology, markets and environment, skill obsolescence is growing. Employment is contingent on

employability. Employability is contingent partly on skills and largely on attitude. The best insurance against job loss is to effectively nurture and nourish a culture of multi-skills in place of mono-skills. This provides career resilience and career self-reliance.

In certain sectors of economic activity in India, labour does not get employment throughout the year, and there are idle periods. The challenge is to ensure they are continuously employable throughout the year and also over their working life. Higher levels of workers' education will allow possibilities of their pursuing more than one occupation during the year, as per seasonal demand. Multi-skilled labour can be utilised for various work

e) Challenge of Enlarging and Utilising Effectively the Infrastructure for Education and Training: While the existing infrastructure for imparting

vocational training and education needs remedial attention, these facilities also urgently need to be expanded. Only then can they meet the increased challenges before them to equip and orient large numbers of the workforce with the latest techniques and operational skills.

f) Challenge of Absorption of New Technologies by Labour Using Education and Training: The Indian workforce has been faced with new production concepts like Computer aided design (CAD), Computer aided manufacturing (CAM), Robotics, Just-in-time (JIT) and Flexible Manufacturing Systems (FMS), which require increased knowledge to be imparted to them. Likewise, in the white-collar segment, MS-Office, Desktop Publishing, Accounting Software etc. have become ubiquitous and vocational institutes must include them in their curriculum. Some of the skill sets tend to become insufficient by themselves for employment e.g. typing.

STANDARDS OF EXCELLENCE²

10.20 Based on the above challenges, the knowledge, skill and

attitudinal requirements of the labour force are expected to attain the following standards of excellence:

Standards of Excellence	Knowledge Requirements (what the job holder must know and understand)	Skill Requirements (what the job holder must be able to do and demonstrate)	Attitudinal requirements (how the job holders must conduct themselves with others)
Service	Optimisation of the equipment usage for the benefit of end users	Customise services to suit individual and end users	High level of teamwork, ability to constantly learn new skills
Product	Requirements of the market place including niches	Ability to prototype product fast	Focus on the market place and customers
Market	Market dynamics of changing user tastes	Shortest time to market product/ service	Speed is of the essence
People	High level of specialised domain knowledge	Ability to work with one's own hands	Positive attitude and national pride
Control	Should know source of new knowledge and set it online	Should be able to change skills fast	Passion to excel and handle one's emotions

2. Based on the paper received by the study group

RECOMMENDATION : NEW APPROACH TO VOCATIONAL TRAINING

10.21 Training Systems: Training targeted at achieving global competitiveness can be successful only through a sense of shared purpose between employers and the employed. The Study group examined the training systems of various countries, which are found to be broadly of three types – “co-operative,” “enterprise based” and

“state-driven.” These have been summarised in Table 10.7 In the co-operative system there is no single institution responsible for the planning and delivery of the training system. Instead, the employers’ organisation and trade unions cooperate strongly for producing the desired result. Germany is one of the successful examples of this system. The details of operation of the German “Dual System” are given as Appendix - I.

Table 10.7

Training Systems

System	Countries	Main Feature
<i>“Co-operative”</i>	Austria, Germany, Switzerland, many countries in Latin America	Pressures to undertake training resulting from strong co-operation amongst employers’ organisations, the state and trade unions
<i>“Enterprise-based”</i> - Low labour turnover	Japan	Low labour mobility, lifetime employment for many staff, ‘long-termism’ arising from absence of stock market pressure. Wage system based on seniority and enterprise-based trade unions
- Voluntarist	United Kingdom, United States	Few institutional pressures on firms to provide training

System	Countries	Main Feature
"State- driven" - Demand-led	Hong Kong, Malaysia Republic of Korea, Singapore, Taiwan, China	State plays a leading role in coordinating the demand for and supply of skills. Operates in an open and competitive economic environment
- Supply-led	Economies in transition; many developing countries, especially in Asia & Africa	Government takes on a prime responsibility for formal sector training in training institutes. Little or no pressure on employers to train

Source: World Employment Report 1998-99

10.22 In the "enterprise based system," as prevalent in Japan, the educational system provides a foundation of basic skills, which is then built upon by employers through intensive off-and on-the-job training. While vocational and technical schools provide some initial training, the bulk of skills development is provided and financed primarily by employers. Employees with few industry-specific skills on entry are shaped by the system into a highly skilled workforce that is very adaptable to change.

10.23 In the "state-driven system" of the demand-led type, which is prevalent in the East and South East

Asian economies, the education and training systems of these economies have to respond to rapid changes in the demand for skills. In this, the governments have played a key role, especially in meeting the demand for higher-level skills. In Singapore, the Skills Development Fund has financed a vast expansion of continuous training for all types of workers and has been an effective instrument of skill upgradation. In the "state-driven system" of the supply-led type, which was operational in many of the centrally planned economies of Eastern Europe and the erstwhile USSR, the training system was sustained through government

financing. It puts little or no pressure on employers to train and instead the government takes on the prime responsibility of running training institutes.

10.24 There are different training systems prevalent abroad. It would be suitable for India to adopt a system that gets participation from government, industry and trade unions, as and when required. The study group appointed by us has recommended a new modular approach to vocational training, which will aid multi-skilling, impart skills attuned to the needs of the labour market, and in consonance with the latest technology. We endorse these recommendations.

NEW APPROACH TOWARDS VOCATIONAL TRAINING ENABLING MULTI - SKILLING

10.25 New approaches towards vocational training have become imperative because of the expectations of the industry from the employee. Firstly too narrow a specialisation or inflexible training arrangement restricts the scope for trained persons to improve upon their competencies while working as

employees. Secondly, the existing informal system of skill development does not meet the career aspirations of the workers in terms of retraining and upgradation of skills. Thirdly, there is a mismatch between the supply of skills through the formal system of education and training and the demand of skills by the industry.

10.26 There is also a distinct shift in the skills from old craftsmanship and physical dexterity of individual trades to mental/intellectual skills which call for logical/abstract thinking and willingness/ability to learn new things quickly, as the technological changes are expected to be continuous in future. Multifunction skill is also another requirement of the future. To display versatility and absorb these higher skills, a worker needs to have an open mind, proper attitudes and be quickly adaptable to any change in working conditions or operational areas.

10.27 The primary objectives of the new approach towards vocational training will be as given below.

- a) Development of proper work culture/work attitude as well as knowledge of diverse technical fields rather than of single skill learning.

- b) Multi-skilling which will help in increasing the employability. This is also important from the perspective that within the working lifetime of an individual, he or she may have to cope with increasing demands of technology on the one hand, and changing skills on the other.
- c) Training should provide flexible pathways to individuals for moving between training and employment sectors.
- d) The final training phase must be conducted in a real work environment or in an environment which is as close to the real as possible, so that the trainees apply all their skill in performing the relevant tasks at the threshold entry level of performance which is acceptable to the employer.
- e) Certification of trades/skills should be done by an authorised agency or licensed competent performer who is external to the training institute (discussed in later paragraphs).

Framework for the new approach

10.28 In order to meet the objectives required in the new approach, the Study Group has recommended a modular approach to training. Such an approach will cater to the diverse vocational needs and workplace requirements. It will also offer flexibility to individuals to move through the levels of education and training. We endorse this recommendation.

10.29 Some of the key parameters to be considered while developing a new approach are given below.

- a) Effectiveness of training should be measured in terms of quality. The proposed approach can set specified minimum standards of quality for satisfying the qualification needs for skilled manpower in various sectors of the economy.
- b) Training to be imparted in small result-oriented modules to develop proper work attitudes all through - emphasis on discipline, cleanliness, order-liness & accuracy.

- c) To impart inputs to develop the ownership concept and to create a safe and pleasant working environment, by adopting the '5S'³ concept- to reduce the rate of accidents and loss of man-hours due to damage, with a goal of zero accidents.
- d) Team to learn to identify and eliminate non-value adding activities and all kinds of waste.
- e) Develop training Module on TPM – Total Productive Self initiated Maintenance - involving total participation to achieve overall equipment effectiveness.
- f) Training should focus on teaching Cause - Effect Analysis with inputs on mechanism of a machine or equipment to understand the effect of its malfunctioning and effect of improper tooling / defective processes on quality of product.
- g) Motivate the trainees to evaluate themselves and their own work with accuracy and to assume responsibility for faultless operation with a Goal of zero rejection/first time OK – Self Inspection & Self Certification.
- h) Inputs on KAIZEN⁴ - to achieve significant continuous improvement in performance through elimination of all waste. Trainees to be motivated to take up small KAIZEN events and encouraged throughout.
- i) Train to learn Team Work:
 - Trainee to be assigned individual exercises and to be guided by the instructor to plan, execute and evaluate performance.
 - Trainee to be taught to assume responsibility of planning, execution and evaluation of his

.....

3 . "5S" is a technique used to establish and maintain a quality environment in an organisation. The name stands for five Japanese words, meaning, Sort, Simplify, Scrub, Standardise and Self-discipline. It is also the starting point for many common quality initiatives such as ISO 9000 and TQM. Practising '5S' develops a pleasant workplace that is high in quality and productivity, keeps cost down, ensures delivery on time and is safe for people to work. It eliminates search time and stoppages and delays in looking for and develops a feeling of ownership in the minds of workers raising their morale high.

4 . "Kaizen" means improvement - Continuous small improvements in personal life, home life, social life and working life involving everyone. Kaizen signifies all improvements made in the status quo as a result of ongoing efforts. The implementation of Kaizen helps to generate a process oriented way of thinking and in developing strategies that assure continuous improvements involving people at all levels. Kaizen is an ongoing process. Kaizen covers a wide spectrum of work, starting with the way a worker works on the shop floor to improvements in the machinery and facilities and finally improvements in the systems and procedures. Kaizen once put into practice makes the worker a "thinker", always looking for better ways to do their work.

own task. Ability to think for oneself. Shift from Dependence to Independence.

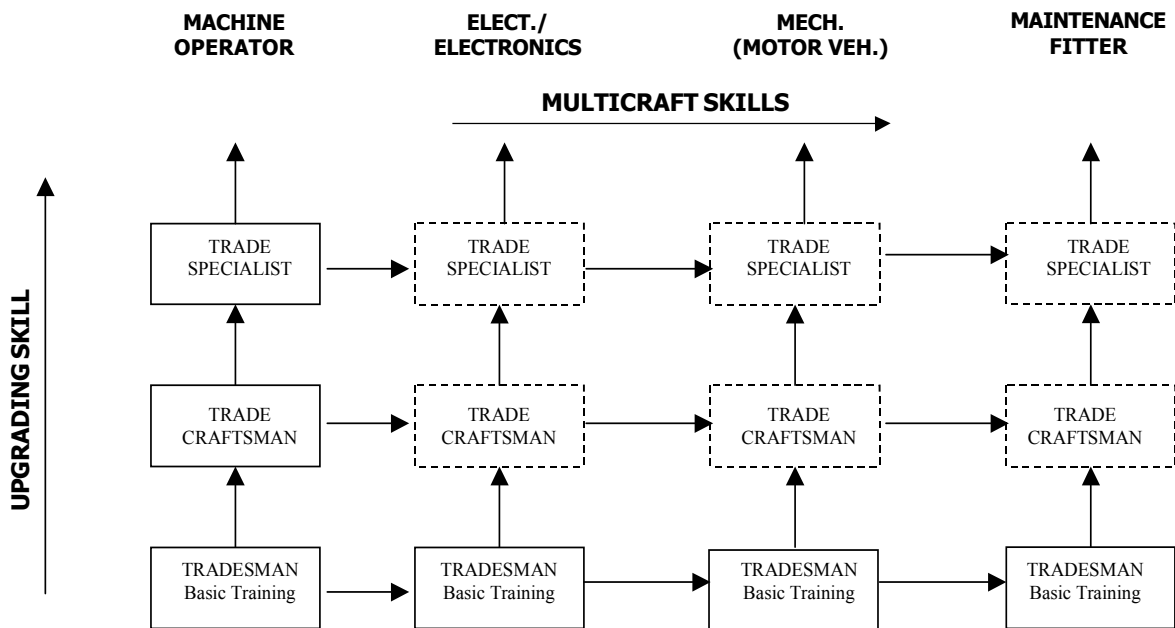
- Trainees to be exposed to Team Work by assigning small projects to a group of trainees. Required to plan, execute and evaluate the task assigned collectively.
- j) Market driven approach: The courses would have to be supported by a system of certification (currently the certification system for vocational trades does not enjoy acceptability from the users. The students

carrying certificates are being re-tested/retrained in the same trade.). Certification system has been discussed separately in later paragraphs.

MODULAR APPROACH

10.30 The proposed training approach (Manufactng Sector) is denoted graphically in Figure 10.6. A relevant example from the services sector (Paramedical) is denoted in Figure 10.7. A detailed note on the proposed training relating to the figure is given below.

Figure 10.6
Proposed Training Approach (Manufacturing sector)

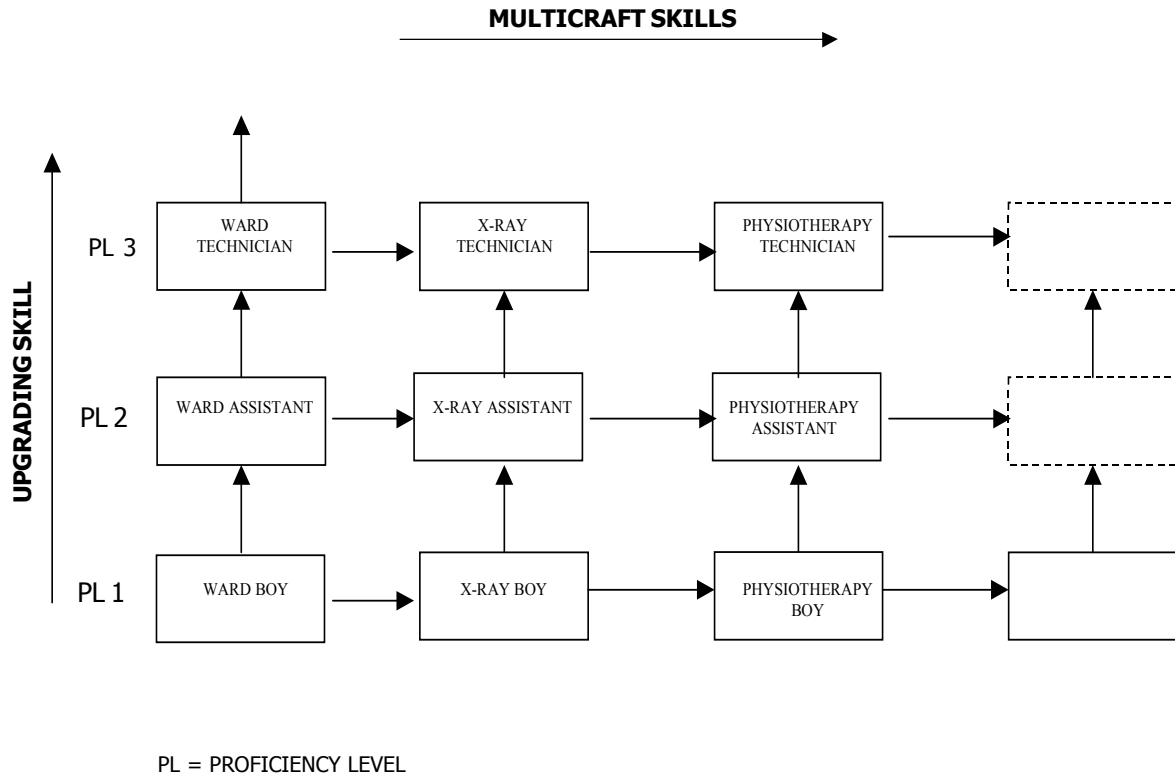


PL = PROFICIENCY LEVEL

Note: Wherever feasible, an individual can also move diagonally across various crafts/ vocations

Source: Study Group Discussions

Figure 10.7
Proposed Training Approach (Paramedical)



Source : Study Group Discussions.

a) PL₁, PL₂, PL₃ etc. are proposed Modules with increasing proficiency levels for a particular group of trades such as, say Machine Shop. Each module will be a cluster of sub-modules, which are designed as a learning element. Each sub-module will represent the smallest possible segment of a required body of knowledge and skill for which

measurable learning objective can be defined. These sub-modules will have a learning objective, a list of exercises to be performed, tools and equipment, standards of performance expected and a mechanism for continuous checking of progress and definite period.

- b) The first Module PL1 would be for a broad based foundation training and common to various trades from a particular trade group. Through this a trainee could be prepared for undertaking a wide range of jobs demanding basic skills rather than too specific skills.
- c) An apprentice after completing first module will be tested to confirm the acquisition of a defined competency/proficiency level – All India Trade Test may be conducted at this stage under the aegis of National Council for Vocational Training (NCVT) to certify the acquisition of 1st level of proficiency. This first certification by National Council for Vocational Training (NCVT) would qualify the trainee for employment.
- d) The trainee, after completing the first module will have a choice to undertake a higher proficiency module, which will give him vertical mobility. This will be up gradation of his skill in the selected trade area. It is further proposed that examinations at higher 'P' levels may be conducted by respective States under the aegis of State Council for Vocational Training (SCVT). The trainee may also have a choice to undergo training across other trade areas. This will provide him horizontal/lateral mobility i.e. an apprentice from machining skill group undertaking 1st module from Electrical group. By undergoing such courses the trainee becomes more versatile/ multi-skilled.
- e) Thus, a trainee with modular approach can pick up either high skills (skill promotion) or greater variety of skills (versatility–mobility across trades). An apprentice of a course will be required to fulfil certain qualifying norms such as certain number of years of shop floor experience etc. for undergoing training at higher proficiency level or across the trades.
- f) Figure 10.8 gives the break-up of a Module into sub-Modules. A module for a Machine Shop Operator has been considered for the sake of example. Sub-modules A, B C would be

common for other modules at PL1 level in other trade areas. Thus, by completing only the sub-module D, E, F from other trade area, the trainees can achieve the performance level

PL1 across the trades. They, in turn, save time (20 weeks in the example taken) and become skilled in one more area. Continuing this, they can become multi-skilled.

Figure 10.8

Break-up of Modules into sub-Modules

	1	2	3	4	5	6	7	8	9	10	11	12	13
1	A			B		D						Task To Be Completed By Group Team Work E	
2												C	
3													
4													

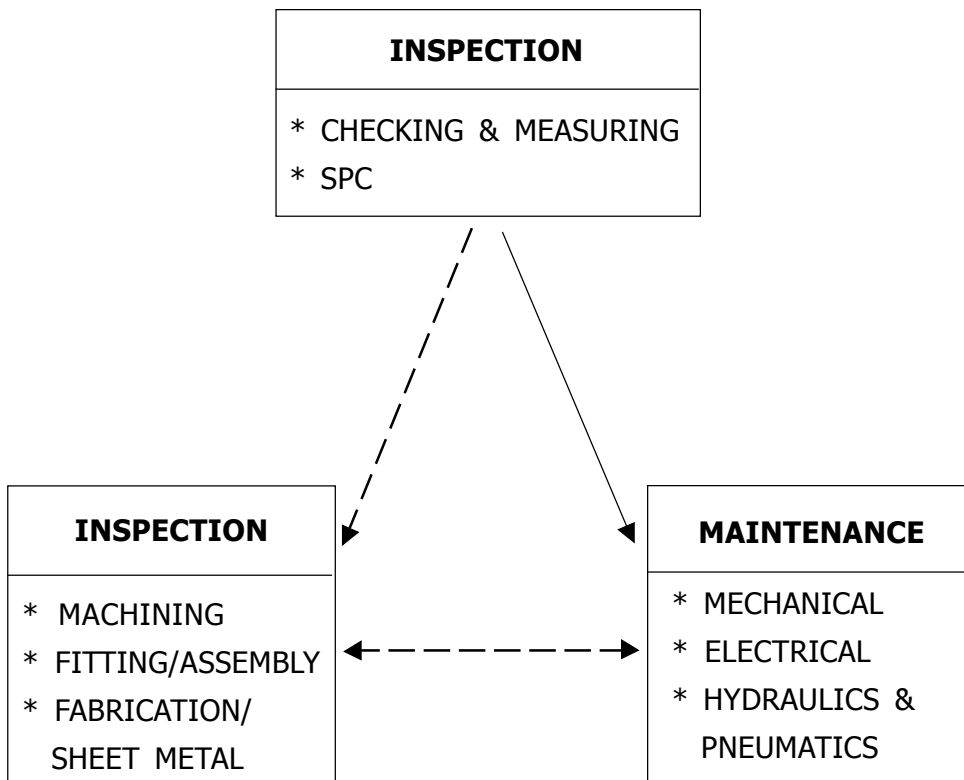
		DESCRIPTION	WEEKS
MODULE	A	Basic and allied skills	12
	B	Maintenance skills	4
	C	Inspection skills	4
	D	Basic trade skills including hi-tech areas	24
	E	Project to be completed by team	4
	F	Project to be completed by working on multi machines simultaneously by trainee	4
		TOTAL	52

g) Figure 10.9 indicates the modular approach towards cross-functional training. A trainee from the 'Production' area may be able to move to 'Maintenance' or 'Inspection' group, by selecting and undertaking appropriate modular

training on fulfilling the necessary qualifying norms and at appropriate time. This cross-functional training would help a person to move up into Supervisory or Technician positions.

Figure 10.9

Modular Approach to Cross-Functional Training



Source: Study Group Discussions

- h) Thus there is an inherent motivational dimension incorporated in modular training approach and the ongoing modular programmes may enhance the career prospect of the individuals.
- i) The concept of continuing Vocational Training will be possible with this module system and then it will become an accepted part of career growth and development.
- j) Once the modular concept is accepted the structure modules could be designed. The existing facility available at ITIs could be rearranged/realigned to make these modules available to the trainees. Establishments having basic training facilities also could take up this new system of modular training. Individuals on their own can take up these modules if employed even after working hours. Facilities at ITIs could be made available on part-time basis for employed persons. Industries may also sponsor the workmen to undergo training in appropriate modules considering their own skill requirements of future at ITIs or they may impart training according to modular plan in their own premises and allow workmen to appear for final examinations and certification.
- k) Fig. 10.10 shows a rotational programme for various trade groups to ensure the optimum utilisation of facilities. It has been observed that the present Apprenticeship Training Programme recommends a set of machines / equipment for each trade. To cite an example Lathe, Milling, Grinding, Drilling machines are prescribed for each of the trades like Turner, Machinist, Grinder, Fitter, Tool & Die Maker, and Millwright Mechanic etc. It is seen that a cluster of such machines are made available in the respective trade training areas at ITIs. These machines remain idle once the respective skills are imparted. This could be avoided by a rotation plan, which makes training cost effective.

Figure 10.10

Cost Effective Training Plan (Optimal use of Training facilities)

ALLIED TRAINING : ROTATIONAL PROGRAMME								
WEEK NO ->	1	2	3	4	5	6	7	8
TRADE	AREAS OF TRAINING							
GROUP :1	MILLING	TURNING	GRINDING	WELDING	ELECTRICAL	SHEET METAL WORKING	TPM	INSPECTION
GROUP : 2	INSPECTION	MILLING	TURNING	GRINDING	WELDING	ELECTRICAL	SHEET METAL WORKING	TPM
GROUP : 3	TPM	INSPECTION	MILLING	TURNING	GRINDING	WELDING	ELECTRICAL	SHEET METAL WORKING
GROUP : 4	SHEET METAL WORKING	TPM	INSPECTION	MILLING	TURNING	GRINDING	WELDING	ELECTRICAL
GROUP : 5	ELECTRICAL	SHEET METAL WORKING	TPM	INSPECTION	MILLING	TURNING	GRINDING	WELDING

Source: Study Group Discussions

MODULAR APPROACH TO THE SERVICE SECTOR

10.31 The modular approach mentioned above is also applicable to the services sector. As an illustration, the approach for the paramedical field is shown at Figure 10.7. The broad level occupations and the course

content (as illustration) are mentioned subsequently.

- a) Few Occupations under Para-Medical field are:
 - i) Ward Technician
 - ii) Operation Theatre Technician
 - iii) X-ray Technician
 - iv) Ophthalmic Technician
 - v) Medical Lab. Technician

- | | |
|---|---|
| <ul style="list-style-type: none"> vi) Life Support Care (ICU) Technician vii) Occupational Health Centre Technician viii) Dressers / First Aiders ix) Physiotherapy technician x) Dental technician | <ul style="list-style-type: none"> vii. Aseptic precautions / Sterilisation of Instruments, Dressings, Linen viii. Patients handling / Communication with patients & relatives ix. Basic 'Bio-chemistry' x. Training in day to day working like measuring body temperature, administering injection, dressing, bandaging etc. xi. Housekeeping and sanitation in hospitals / Labs etc. xii. Preparation of beds xiii. Safety precautions while handling patients, instruments xiv. Basic 'First-aid' treatment xv. General Lab Management and Ethics |
|---|---|
- For the occupation of Ward Technician, the basic module for the Ward Boy at Proficiency Level PL₁ can be as follows (given as illustration only):
- | | |
|---|---|
| <ul style="list-style-type: none"> b) Course Contents covering both Theory and Practice – Hands on experience in Hospital / Laboratories / Clinics / Physiotherapy Centres. i. Study/ understanding of the 'Human Body..' Different parts and their functions ii. Understanding of common anatomical terms iii. Surface Anatomy iv. Study of function of different organs (Basic Physiology) v. Human health and disease vi. Acquaintance with Medical Terms used in 'Clinical Practice' | <ul style="list-style-type: none"> c) On completion of the entire training course in one of the occupations, the trainee may have wage employment or self-employment as illustrated below (for the occupation of medical laboratory technician): |
|---|---|

OCCUPATION : Medical Laboratory Technician

Wage Employment	Self Employment
<ul style="list-style-type: none"> ● Technician / Lab. Technician in ● Blood Bank ● Public Health Lab ● Pharmaceutical Labs / industrial or Occupational Health Centres ● Taluka, District Hospitals ● Private Hospitals, Nursing homes & diagnostic Labs ● Primary Health Centres ● Dental / Pharmacy Colleges ● Micro biology / Bio-chemistry / Pathology Dept. of Medical Colleges & Hospitals etc. ● Physiotherapy clinics ● Municipal Dispensaries 	<ul style="list-style-type: none"> ● Diagnostic Laboratory ● Sale of Readymade treatment kits / medicine ● Distributor for Lab chemicals ● Distributor for lab wares, equipment / spare parts.

TRAINING MODULES FOR SELF EMPLOYMENT

10.32 While developing modules based on proficiency levels PL₁, PL₂ etc. (Fig 10.6), one sub-module, covering necessary inputs useful for the trainee to engage themselves in

selfemployment on completion of training, could be designed wherever possible, depending upon the trade group areas. Separate training modules suitable for only self-employment could otherwise be designed keeping the modular approach in mind.

10.33 The institutes may develop small sections with appropriate training facilities in the selected self-employment areas. To illustrate this point a sub-module on "Plumbing Skills" may form part of the main module of Assembly Fitter or Maintenance Fitter (these details are available from PSS Central Institute of Vocational Education, Bhopal – an NCERT division). Initially, a trainee will learn all plumbing skills in the well developed/equipped section and then practice on live jobs. The Institute may provide on the job training by exposing the trainee to real life situations. For example, the trainee can be put on the job by the institute, if the institute has an annual repair contract with the Bungalow Owners or Housing Societies in the neighbouring residential areas. Institutes thus, would continuously get repair jobs in plumbing; the customer would get prompt service and trainees would get the opportunity of real life experiences and on the job training.

10.34 With this approach towards training for self-employment the institute would be able to earn 'Revenues.' The institute may, at its

discretion, pay a small portion of the earning to the trainee to motivate them to perform well. Trainees will also learn how to communicate with the customer and develop self-confidence in doing repair jobs independently. They can also be trained to keep accounts, spare part inventory and to take proper care of tools and equipment. Such modules would certainly help in developing and consolidating the necessary skills of entrepreneurship.

10.35 Many such modules covering the service sector like "Repairs of Electrical Domestic Appliance" or "House Wiring" or Motor Winding, which form a part of main module of "Mechanic Electrical and Electronics," could be designed to promote self-employment.

10.36 The modular approach to vocational training is applicable to the labour force both in the organised and the unorganised sectors. As has been indicated in the illustrative examples pertaining to manufacturing (machinist) and service (paramedical – ward boy) sub sectors, this system is applicable for horizontal, vertical and diagonal upgradation of skills.

This system results in creating a multi-skilled workforce as well as in increasing the employability of the workforce.

**RECOMMENDATION : COMPE-
TENCY BASED TRAINING SYSTEM**

10.37 **Salient Feature:** In order to meet the new challenges facing the Indian workforce, the Study Group has recommended setting up of a competency based continuing training system covering all sectors of the economy. The training system will have a well-defined certification system for the competencies acquired during the program. It will help in providing learning, training, retraining, assessment and accreditation opportunities, with desired academic flexibility to those who wish to achieve higher skill standards and performance at the work place. This means that the trainees are free to leave the training and join work as and when they feel that they have received adequate amount of training. After some time, they can again join in for training if the situation demands or they feel a need to upgrade or shift laterally.

10.38 The purpose of competency

based training (CBT) is to develop a competent workforce which will consist of individuals who can consistently perform work activities to the standards required in employment over a range of contexts or conditions.

10.39 CBT differs from the traditional training on the basis of which the training cycle is operated. In CBT, the basis of training design is explicit, standards of performance are measurable and reflect the actual expectations of performance in a work role.

The key features of this approach are:

- a) Competencies to be demonstrated are derived from the job function/ roles of different categories of employees
- b) The methodology for assessing the performance is based upon achieving specified competencies and is made public in advance
- c) The rate of progress through

the training programme is determined by demonstration of competency rather than time required for completion

- d) The learning programme is individualised as far as possible, through the use of instructional modules for each competency, which offer different instructional alternatives
- e) Some of the competencies like leadership, team work will be developed in group situations

during the contact sessions

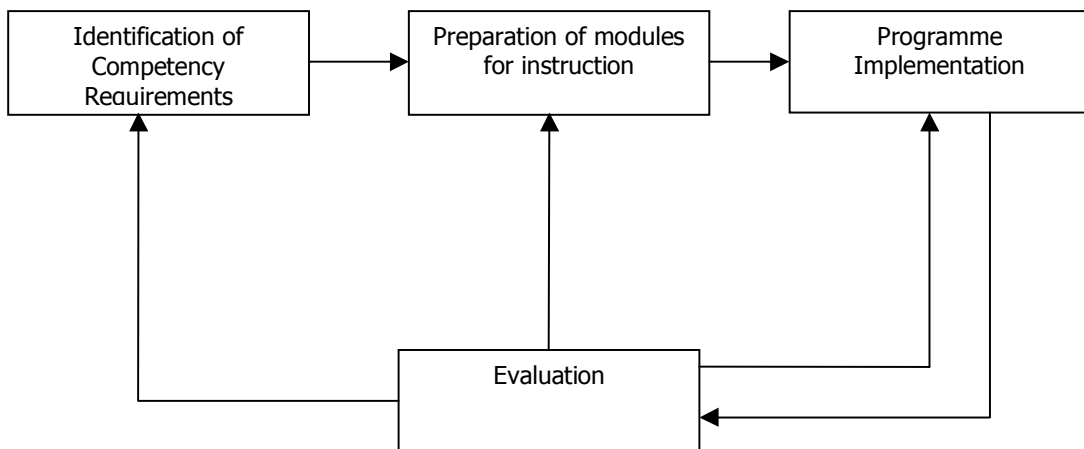
MODEL FOR COMPETENCY BASED TRAINING

10.40 A model for Competency based training for developing required competencies is given as Figure 10.11. It consists of 4 core areas:

- a) Identification of Competency Requirements
- b) Preparation of Modules for Instruction
- c) Programme Implementation and Evaluation

Figures 10.11

Model for Competency Based Training (CBT)



Source: Model for Designing Competency Based Training, Prof. PC Jain et.al.

IDENTIFICATION OF COMPETENCIES

10.41 The first step in the development of this CBT method is the identification of the target group for which the CBT programme is being designed. The target group is that category of the people, which has to undertake a specific vocation (occupation) after the stipulated programme of study. Their occupation (when technical education is considered) could be at various levels such as craftsmen/ technicians/ engineers etc. Every occupation consists of a number of jobs (roles) that are to be performed.

10.42 Identification of competencies is done by analysing the job functions, receiving feedback from allumini employers and trainers looking into

personal growth needs and assessing the future requirements of the occupation. Identification of competencies will also provide us with a list of attitudes, which are desirable for performing the job proficiently. Desirable attitudes represent those qualities relating to the readiness and willingness in the employee to use cognitive and practical skills in the work situation (without much hesitation, ability to work as a team member, to take leadership, to be sensitive to the environment) and those qualities, which deal with feelings, emotions and interests.

10.43 An example of the competencies required by a Plumber attendant at the lowest level (new entrant) is summarised in Table 10.8.

Table 10.8**Plumber Attendant (Competencies)**

S. No.	Task	Knowledge	Skills	Personality Traits
1.	Handling of plumbing tools	- Types of plumbing tools	-Identification of plumbing tools - Handling & uses of tools	- Carefulness - Alertness
2.	Various Operations involved in plumbing e.g. cutting, threading, jointing etc.	- Types of pipes - Types of various operation	- Identification of pipe - Laying of pipe - Types of jointing - Installation of plumbing fixtures	- Hard work - Skilfulness - Accuracy
3.	Fitting of various fixtures and domestic appliances	- Types of fixtures/ domestic appliances such as cocks, showers, traps, water meter, valves, sink, fitting, basin, bath tub, urinal posts etc.	- Identification of fixtures domestic appliances, selection of fixtures - Handling of fixtures - Assisting the plumber in all plumbing operations	- Keeness - Accuracy - Carefulness

Source: Compendium of Occupations based modules, PSS Central Institute of Vocational Education, Bhopal

10.44 The next step is to identify who should be deciding the group of competencies to be included for a particular level of job/role. A systematic and scientific process calls for a group consisting of all the stakeholders such as representatives from the industry and educational institution that will undertake this work. Alternatively, Needs Assessment Boards (NABs) comprising the stakeholders can be established. Their function will be focussed on assessing, compiling and standardising competencies required for selected occupations, on a continuous basis, for both the near and the far future of the labour force of unorganised sector.

PREPARATION OF MODULES FOR INSTRUCTION

10.45 After identification of competencies, skills and enabling objectives for a given training programme, development of instructional modules will start. The instructional process is through modules and the module will have the following characteristics:

a) The focus is on a competency consisting of distinctive identifiable skill/ skills.

- b) Modules are individualised to allow the learner to work at his own place.
- c) It would blend theory and practice, reading, reflecting and acting.
- d) It would include an objective assessment procedure to the extent possible, whether self-monitoring or requiring partner/observer or both.

It would be reality oriented involving the learners in real or simulated situations fairly directly and immediately.

PROGRAMME IMPLEMENTATION

10.46 The three critical factors on which the success of the implementation of competency-based training depends are given below.

a) Feedback on programme: A CBT programme will function effectively if appropriate strategies are put into place which will gather information leading to modifications in the programme. Such strategies could include normal feedback

channels from learners, their employers and the faculty involved in implementation. Yet another strategy could be research into the job performance of employees before and after attending the CBT programme. It may also be possible to explore a mixture of such strategies to provide reliable data on which decisions could be based.

- b) **Resource Mobilisation and Delivery:** The modular approach with its emphasis on individualised instruction demands a great deal of updated learning materials. Hence, there should be planned generation of resources such as filmstrips, slides, video CDs, apart from the usual print material. Provision has to be made for competency testing at different stages, as the concept of an end or terminal examination is no more valid. Further, considering the need to provide basic occupational competencies to a large number of learners in a short time, it may be possible to identify a select group of competencies to be included in

the first phase of the CBT programme, which may be about one to two months duration or more, depending on the needs of the clients. In subsequent phases, optional competencies could be offered. An achievement of about 75% of the competencies offered could lead to career advancement.

- c) **Commitment:** Another key factor for the successful implementation of the CBT programme is the commitment of the institutions and the individuals responsible. Such commitment could be ensured by involving the entire faculty at each stage of development and implementation and by adopting a group strategy.

10.47 **Evaluation:** The evaluation in the CBT model means evaluation of learners and evaluation of programme effectiveness.

- a) **Evaluation of Learners:** Competency assessment is carried out through post test(s),

for each competency. A learner who demonstrates performance of the competency up to a pre-determined proficiency level is declared successful (pass).

Separate tests may be designed for evaluating the knowledge component, skill component and attitude assessment. The knowledge component can be assessed by a written test using objective and short answer questions. It is not necessary that every competency will have a component of knowledge assessment. This will depend upon specific requirements of the competency. The skill component may consist of assessment of cognitive skills and/or psychomotor skills depending upon the requirement of the competency. This assessment can be either in a simulated situation and/or real life situation. For the attitude assessment, no standard questionnaires are suggested. However, the instructor will assess this component by responses got through the questions/ exercises from each

learner during the classroom/ field exercises and formal and informal interactions.

- b) Evaluation of Programme Effectiveness : As mentioned earlier, the success of the CBT method depends partly on obtaining the feedback and using it to modify the programme. A programme can be modified from time to time to refine the module objectives, improve the learning experience for the trainees, and upgrade the learning materials it uses. The programme evaluation should also attempt to address the criteria for performance assessment and objective attainment.

The competency based training system is applicable to the labour force both in the organised and the unorganised sectors. As has been indicated in the illustrative example pertaining to plumber attendant, this system can be effectively used to develop competencies in any job/vocation in all sectors of economy, such as manufacturing, service, trade and

agriculture.

**RECOMMENDATION : COMPE-
TENCY BASED CERTIFICATION
SYSTEM**

10.48 Many developed and developing nations the world over, have evolved a standard of certification of competencies at

different levels. Applicable normally to formal education and training programmes, it can be extended to courses or modules in informal training programmes, as and when required. Some of the certification systems as they exist in foreign countries have been mentioned as

Table 10.9.

Table 10.9

Certification Systems in some countries

United Kingdom: United Kingdom (UK) has evolved a National Vocational Qualification (NVQ) at five levels. These proceed from NVQ-I, at the certificate level, to NVQ-5, at the Higher Diploma level, passing through stages of advanced certificate, diploma, advanced diploma. The basis here is to recognise performance at higher complex levels of advanced skills at par with those offered in formal education programmes, depending upon their levels such as diploma, degree etc.

The colleges of higher education offer competency based vocational education with modularisation of curricula. They conduct conventional courses, general academic programmes, access programmes, retraining and outreach programmes, and short training and recreational courses. NVQ originally assessed performances in work place, pass or fail. At present they have modified it to include college-based courses and assessment at colleges also.

South Korea: South Korea conducts three months to one year training programmes for (full time or part time) for developing job skills. The Ministry of Education accredits the training institutions for equivalence of qualification with those of the formal system of technical and vocational education and training. Skill certification is done by Korean Skill Certification Corporation based on proficiency in skills as a skilled worker or a technician. Skilled workers are given grades of Master, Grade- I, Grade- II and Assistant. Technicians are graded as Master, Grade-I and Grade- II.

Philippines: Philippines conduct non-formal education for literacy, employability, development of technical skills and for development of values and attitudes. Many Ministries and Boards offer non-formal vocational training programmes and accreditation/certification is according to standard criteria.

Singapore & Mauritius: These countries have evolved a policy for certifying skilled workers at three levels starting from National Training Certificate (NTC)-III at the lowest, NTC-II and NTC-I levels. These are considered as equivalent to certificate, advanced certificate/diploma and higher diploma levels.

USA: In USA, certification is done normally at State/District Levels. The informal education consists of a bewildering set of different activities and programmes. These are provided by employers, labour unions funds and secular philanthropic groups as well as by schools and colleges through extension and continuing education.

10.49 In India there is a large network of ITIs, Vocational Schools, Institutions, Export Promotion Councils, Commodity Boards, KVIC/ KVIBS, KVKs, Community Polytechnics, Extension Centres of Agriculture/ Horticulture, Universities, NGOs, Professional Bodies & Associations, Chambers of Commerce and Industries, Confederation of Industries at district, state, regional and national levels etc., conducting a large variety of formal and non-formal training programmes. These sectors

include: Agriculture and allied activities, Mining & Quarrying, Manufacturing, Electricity, Gas & Water Supply, Construction, Trade, Hotels, Tourism, Transport and Communication, Financial, Real Estate and Business Services, Community & Social Services and Personal Services. The annual training capacity of the various formal training providers has been given before in Table 6.

10.50 In order to make the infrastructure more productive and efficient, a national level certification for different trades/skills is recommended. An independent professional body needs to implement competency standards in all vocational trades. Active user involvement in defining quality standards and ensuring that these are duly implemented can be done only by involvement of user associations or individual experts from user sectors.

INDEPENDENT REGULATORY AUTHORITY

10.51 We, therefore, recommend that an independent regulatory authority be constituted by the Government, whose functions shall, among other things, include setting standards for skills required for a particular competency, standards for programme implementation and standards for accreditation of institutions imparting training programmes for skill development and retraining. Such an authority needs to have statutory powers in the formulation of policies (including the mechanism of fees and funding), action plans and programmes for

providing a continuing, coordinated and fully integrated skill development programme. A case in example is the National Council for Vocational Qualifications (NCVQ), which was created in 1986 in the United Kingdom (UK). The NCVQ, in turn, accredited over 150 industry associations to develop standards for their industries. Supplementation of the NCVQ in UK gained momentum, though slowly, and by 1998 about 2.2 million NCVQ certificates were awarded. The NCVQ is now known as Qualification and Curriculum Authority (QCA). It enters into contracts with the National Training Organisation (NTO) to develop standards and provide training.

10.52 The independent National Authority will have the following functions:

- a) Formulation of policies, action plans and programmes for providing a continuing, coordinated and fully integrated skill development programme
- b) To set sector-wise standards for skill acquisition, development and training programmes

- c) To work out plans for more participation and involvement of industry in vocational education
- d) To allocate resources amongst programmes and schemes
- e) To monitor and review various vocational education programmes and make changes based on the feedback
- f) Accreditation of training institutions/ organisations

10.53 The National Authority can also seek support of another agency, which will solely focus on qualification and curriculum development. This institution may be made responsible for accreditation of training providers and setting up of sector-wise skill standards on which the curriculum gets developed. It may be mentioned that the training providers/institutions which will be accredited for providing certification will be required to get their systems and processes revalidated after a prescribed period of time.

CERTIFICATION SYSTEM

10.54 A person who has gained relevant knowledge and skills, formally

or informally in a designated occupation can undertake an Evaluation Test for certification and recognition of his/her qualification (of competencies). This means that certification of trainees/learners is competency based. Accredited persons and institutions, can conduct the tests at specified intervals. As the training is modular, credits will be assigned after completion of each module depending on the performance at the test. The agency for qualification and curriculum development will also prescribe minimum credits essential for job positions belonging to categories of technical workforce and would include compulsory accumulation of a minimum number of credits related to one's job.

10.55 The credits will be valid for a pre-defined period, thereby necessitating revalidation of the competency. In case a person already possesses competencies, gained hereditarily, formally or informally, through distance learning systems such as internet, self-learning modules, previous work in a work place or training in an organisation, he/she can appear for the test with

the accredited person (assessor) or organisation for testing and certification of the level of prior learning. This would help a person in assessing competencies in a particular field and also in deciding the modules to be offered for obtaining a particular qualification. Accreditation of prior learning can be done through the formal or informal education and training method. It could be obtained by an individual in an institutional setting or a course undertaken at an industry training centre or 'on-the-job.'

10.56 It is also desirable that certification of competencies be done with actual involvement of the user organisations like employers, industry and other user systems. A conscious effort must be made to involve the trade unions to contribute effectively in this endeavour.

10.57 A case in example is of TAFE, Australia where a competency-based certificate is issued in a modular manner upon completion of a unit of up to 40 hours of training in a week. Such units can be accumulated over time and can be used for certification based on modules completed.

ENTRY QUALIFICATIONS AND RE-CERTIFICATION OF INSTRUCTORS

10.58 In order that the training is effective at the grass root level, it is essential that the trainers are highly skilled and they also are subject to re-certification of their skills after a set period of time. There is a need to strike a balance between the skill level of the trainer and his/her pedagogical abilities. If the trainer is not a master craftsman, it might turn out that the focus is more on the theoretical aspects and the practical part gets less attention. Also, the trainers/ instructors are to be re-trained in a planned manner for keeping up to date with the changes taking place both in their skill development field as well as the methods of training for skill development. The industry itself can prove to be an appropriate source from where training talent can be recruited for a full time role as skill developers.

10.59 Thus, competency based certification system is applicable to the labour force both in the organised and the unorganised sectors. It is not only the trainees who have to be

certified, but also the trainers under this system. It will also enable persons, who have acquired skills hereditarily, by experience on the job without formal education or by acquiring skills through self learning, Internet as well as other methods (as outlined in section 2.3), to get certification. They can use this certification to enhance their earnings as well as employability.

ADDITIONAL RECOMMENDATION ON SKILL DEVELOPMENT, TRAINING & WORKERS EDUCATION

10.60 In the previous paragraphs we have already referred to the:

- (a) Modular Approach to Vocational training enabling Multi-skilling
- (b) Competency based Training System
- (c) Competency Based Certification System

These are applicable to labour force both in the organised and unorganised sectors. Apart from these, we would like to make the following additional

recommendations as given below.

INCREASING LITERACY LEVELS OF LABOUR

10.61 Keeping in view the fact that 44% of the Indian workforce is illiterate, the current literacy programs initiated by the central and state governments should also be targeted at the future entrants into organised and unorganised labour market.

ASSESSMENT OF TRAINING NEEDS THROUGH COMPETENCY ASSESSMENT BOARDS/ GROUPS FOR THE UNORGANISED SECTOR

10.62 For the implementation of Competency Based Training across all sectors of the economy, it is imperative that the competencies for various occupations are established. This also requires imparting attitudinal training requisite for the occupation for which the learner is being trained. Competency Assessment Board should be established at the National Level. This will focus on assessing, compiling and standardising competencies required for selected occupations on a

continuous basis. The competencies will be identified by interactions with the industry associations, detailed regular surveys aimed at projecting the nature and characteristics of the unorganised sector activities and its workers. It will also focus on curriculum development including attitudinal training requirement for the various occupations.

10.63 The competencies will be identified by interactions with the industry associations, by utilising the services of various specific institutions, and through detailed regular surveys. The aim of these surveys will be to project the nature and characteristics of the unorganised sector – its activities and its workers. They will contribute information that is relevant for structuring the curricula of Competency Based Training programmes.

SELF-EMPLOYED TRAINING IN THE UNORGANISED SECTOR

10.64 As has been observed in this report, a large part of the employment is being generated in the services sector and, there too, mostly in the self-employed sector. The self-

employed sector requires additional skills in the area of accounting and marketing which cannot be imparted through structured formal training. It is felt that 'mentors' in actual business conditions will help in the development of skills. The Bhartiya Yuva Shakti Trust, which is a Confederation of Indian Industry (CII) initiative established in 1991, is one of the relevant models in this context. (The details of this model are available in Appendix-VI of the Chapter). The Trust fosters entrepreneurial activity by providing seed capital loans and practical business advice through mentors. About 1700 people have been employed in 500 ventures between 1991-2000 spread over rural and urban areas. However, it is worth noting that the loan recovery rate is 94%, indicating strong economic viability. Skill development and Training in the construction trades and a three-step approach for achieving it, has been given in Appendix – II.

TRAINING OF RURAL LABOUR

10.65 In order to undertake development of rural areas in the true sense, the country would be

required to establish training institutions at the doorsteps of the rural masses. It would be appropriate to establish Block Level vocational educational institutions in a phased manner in each block, so that the country can economise on the creation of a large infrastructure for such institutions. These institutions are to be set up with the financial support of Government, Non Resident Indians, corporate sector, NGOs. These institutions should aim at two important levels: (a) spread of literacy and (b) spread of vocational education with a view to creating marketable skills and continuous employability of rural labour.

ROLE OF TRADE UNIONS, NGOS & OTHER INTEREST GROUPS

10.66 The objective of achieving a skilled workforce is possible only when all the stakeholders act as partners in training. Trade unions at the national, regional, industry and plant level should all have a say in the running of workers' education programmes.

10.67 The Non Governmental Organisations (NGOs) provide an effective interface between the organised sector and the unorganised

sector. NGOs provide the most conducive means for providing training at the small and micro level. The workers in the unorganised sector require training linked to specific production activities. The NGOs play a vital role in achieving this objective. The Government's decision to support voluntary organisations from the VIIth Plan period onwards was based on the realisation that voluntary organisations not only provide a new modal approach to the rural development but also secure the involvement of families living below the poverty line in the developmental efforts.

10.68 The role of the NGOs assumes more importance in view of the fact that India is a vast country with immense occupational and cultural diversity. With a vast population of Indians living in the rural areas being illiterate, training by formal means becomes difficult. The NGOs are also equipped for capacity building as they can introduce innovation and experimentation since they are unencumbered by Government Rules and Regulations.

10.69 Our Study Group conducted

two workshops especially in the Unorganised Sector on Skill Development, Training and Workers' Education (inviting participation from Non Government Organisations, Trade Unions and Academia), to share the experiences of the participants in providing skill development and education in the unorganised sector. The findings from these workshops have been mentioned as Appendix - III.

FORECASTING OF MARKETABLE SKILLS THROUGH THE ESTABLISHMENT OF A LABOUR MARKET INTELLIGENCE SYSTEM

10.70 For better matching of demand and supply of marketable skills, a labour market intelligence system needs to be set up. This system will forecast the demand of various marketable skills at the national level and at the district level through the existing government machinery, but in consultation with the industry associations, entrepreneurs, experts, NGOs etc. on a continuous basis. This system would take into consideration existing and emerging business opportunities in India and abroad. It will also be applicable for forecasting of marketable skills in both

the organised and unorganised sectors.

STRENGTHENING OF ITI'S AND AUGMENTING THE SUPPORT FROM THE INDUSTRY

10.71 At present, there is insufficient capacity in the areas of skill development and training. Hence, there is a pressing need to enlarge the training infrastructure as well, so as to effectively and productively utilise the existing infrastructure. While infrastructure is available in the form of 4274 Industrial Training Institutes (ITI), there are a number of problems with the ITIs. They need to restructure and reorient their courses at a much faster rate so as to respond effectively to current and future needs of the labour market. Further, the Industry-Institute interaction continues to be weak. So far, inputs from the industry into ITIs are merely of advisory nature, which are not very effective. It is necessary to see that advisory inputs are supplemented with managerial inputs.

10.72 We, therefore, recommend that ITIs need to:

- (a) Run market-driven courses

- (b) Review, and if necessary, revise curriculum every 5 years to keep it contemporary
- (c) Give refresher training on new technologies and tools to teachers at ITIs
- (d) Discontinue obsolete (not required by market) courses

10.73 Further, to ensure effective involvement of industry in the training process, we recommend that some ITIs may be selected, on a pilot basis, for development into Institutes of Excellence. They should be managed jointly with the industry. In this regard, institutionalisation of Industry-Institute interaction and empowerment of training institutions would be important.

10.74 It may be mentioned that in 1997, a study was made in eleven ITIs in North India with the participation of senior officers from Directorate General Employment & Training (DGE&T), State Directorates, Confederation of Indian Industry (CII) and local industry representatives. In January 1998, CII organised a workshop on 'Industry-Institute Interface for the years 2000 and beyond. One of the major

recommendations of this workshop was to set up an Institute Managing Committee (IMC) with the participation of local industry for at least one ITI in each State. It was also proposed that a Steering Committee at the State level, be constituted, which would decide the powers to be devolved to the IMCs. The suggested composition of the IMC with roles and responsibilities is mentioned as Appendix - IV.

10.75 The IMC model has been already tried successfully in ITIs located in the Northern States.

10.76 Broad areas of co-operation and key areas of responsibilities of Industry and Institute are given as follows:

RESPONSIBILITIES OF INDUSTRY

- 10.77 a) The local industry will assist in recommending and monitoring the future needs of the local areas and suggest the courses which the institute should focus on
- b) Selection of candidates at the entry level
- c) Development of training

curriculum and up gradation of existing and new courses

- d) Faculty upgradation and development
- e) Industrial visits of Trainers and Trainees
- f) Providing slots for actual hands on experience
- g) Joint Research and Development Projects
- h) Sharing of testing and inspection facilities
- i) In-plant training of faculty/students
- j) Advise on generation and utilisation of revenue for the institute
- k) Participation of experts from industry in invigilation and as part-time lecturers
- l) Assistance in placement
- m) Accreditation of Institutes and Faculty
- n) Organising continuing educational programmes for working professionals

Recognition of blue collar workers by way of special awards and publicity material.

RESPONSIBILITIES OF THE INSTITUTE

- 10.78
- a) Ensuring quality of theoretical inputs
 - b) On- the -job training to the students
 - c) To encourage faculty for upgrading their knowledge through visits or short-term training courses
 - d) To generate revenues through short term training courses for the existing workers of the local industry
 - e) Proper maintenance of building and workshops of the institute

NEW TRAINING DELIVERY SYSTEMS

10.79 In order to expand training capacity as well as to provide training anytime and anywhere, new delivery mechanisms such as computer based training, web-based training, distance

learning etc. can be adopted which would offer flexibility in timings, pace of learning, and customisation of content to serve the varying needs of the different target groups.

INTEGRATING VOCATIONAL EDUCATION AT SCHOOL LEVEL

10.80 In view of the large number of individuals entering the workforce, vocational education should be integrated at the school level. This will also help in standardisation of training courses. It is relevant to consider, in this context, whether vocational training should be added onto the general school system or whether it should be imparted through separate schools. However, school students should be allowed entry into courses on some trades such as masonry, after the 8th standard (due to low skill level requirement).

INCENTIVES FOR THE CREATION OF TRAINING FACILITIES

10.81 In order that skill development and training get the due focus, it is felt that fiscal incentives should be extended to industry and other

providers of training. They can be given incentives by the government in the form of providing land at concessional rates, a part-funding of the capital cost, tax benefits on the amount spent by them for training and skill development, awards, teachers' training, provision of training material etc. The same can also be extended by way of tax concessions on the amount spent on training and skill development.

10.82 We also recommend that the entire expense in training should be treated as a revenue expense and all capital expenditure on training and infrastructure should be eligible for an accelerated depreciation equal to 1.5 times the amount spent during the same financial year. The investment in training and infrastructure is made to encourage the culture of training and to improve the skills and attitude of performance.

SKILL DEVELOPMENT FUND (FOR THE NEXT 10 YEARS; SUBJECT TO REVIEW)

10.83 As per the World Bank report on Skills Development, well-designed levy-grant schemes can induce firms

to train. Several East Asian economies have effectively used direct reimbursement of approved training expenses, funded out of payroll levies, to encourage firms to train their employees. Successful schemes—such as those in Singapore, Malaysia and Taiwan are flexible, demand-driven, and often accompanied by an information campaign and a programme of technical assistance to smaller firms. The introduction of such a scheme in Taiwan led to dramatic increases in the volume of training, which continued even after the program was terminated in the 1970s. The Study Group set up by us has thoroughly reviewed such programmes, which are prevalent in Singapore and Malaysia, besides the system prevalent in other countries. References in detail made in Appendix - V.

10.84 In order to provide for:

- (a) Retraining of workers rendered surplus/obsolete by layoffs, retrenchment and Voluntary Retirement Schemes/Early Separation Schemes, and
- (b) Training of labour in the

unorganised sector,

We recommend the establishment of a Skill Development Fund (SDF), in the manner in which it has been established in Singapore.

10.85 The key features of the Skill Development Fund are as below.

- (a) The fund will be contributed by organisations which are eligible to contribute Provident Fund either through the Provident Fund office or through their own trust.
- (b) The amount of contribution to be paid by such organisations will be 2.0% of the provident fund contribution by the employer. In addition, the employee will also contribute 1.0% of his/her provident fund contribution. The government will also contribute every month, two times the amount collected from the employer and employees to this Fund. A proposed source of the government's contribution is by way of amount received from

disinvestments in public sector units.

- (c) For the purpose of collection of the contribution, we propose it be routed and administered through the Regional Provident Fund (PF) Office (as per the system prevalent in Singapore), so as to avoid extra administrative burden. The PF office will receive the contribution along with the Provident Fund and deposit the same into a separate account within a week of the receipt. We endorse the view of the Group that no new collection mechanism involving additional government machinery should be devised.
- (d) The respective individuals/ organisations making this contribution to the SDF will be given tax concession for an amount equal to the amount contributed to the SDF.
- (e) At all points of time, 25% of the total amount in the SDF will be invested in a corpus with high safety and reasonable return.

The balance amount in the SDF will be used for purposes that have been mentioned in preceding paragraphs.

- (f) The collections to this SDF shall continue for a period of 10 years. It is expected that by that time the SDF corpus would be self-sustaining. Thereafter, contributions to the SDF may be discontinued. However, this is subject to review based on the requirements of the labour situation at that point of time.
- (g) The utilisation of the amount so collected in the SDF, should be monitored by persons of eminence and reputed industry associations in association with the Central and State Governments.

10.86 Further, for granting the amounts to be paid by the Fund as an incentive to the organisations, certain norms may be required to be set. The organisations fulfilling the norms make an application, giving details of the training efforts being put by them. After evaluation of the quality

of training efforts and the quality of trainees turned out, a committee may prescribe the grants. Guidelines for committee formation and identifying norms can be explored further in consultation with experts.

10.87 The grants offered to organisations by the Skill Development Fund as an incentive for promoting skills would also help in developing a training culture among employers as well as employees and ultimately, we believe it would help to build a world-class workforce for the nation. The fund would also encourage industries to further strengthen their training infrastructure and commitment towards training. Efforts could be directed towards identifying high-end skills, critical for economic growth and encouraging employers to invest in such skills. This will help in increasing the reach of training, to promote skill deepening and in enhancing the employability of the workforce.

COORDINATION OF TRAINING EFFORTS

10.88 Various Ministries of the Government of India are providing vocational education and training

systems in India (refer table 10.6). The Government should find out ways and means to coordinate the work of the Ministry of Human Resource Development, Ministry of Labour, Ministry of Rural Development and Ministry of Industry, to avoid duplication.

WORKERS' EDUCATION

10.89 Workers' education is a special kind of education designed to give workers a better understanding of their status, rights and responsibilities as workers, as union members, as family members and as citizens. It differs from vocational and professional education, which is for individual advancement in that, workers' education places emphasis on group advancement. Workers' education also enables the workers to assess the approaches and technical skills of professional management.

THE IMPORTANCE OF EDUCATION AND TRAINING

10.90 The emerging economic scenario has brought great changes not only to the ways of working and transacting business but also to the

management of households, upbringing of children, cultural activities, leisure and social relationships. The success of all technical training will depend not only on the acquisition of work skills but also on the values and attitudes imparted by general education. Education and training also have other objectives in addition to vocational ones, because they open up access to culture, to knowledge and to political and social life and are essential factors in the development of the individual and the values that guide the life of the individual and social groups. If the training of workers is purely technical, they are unable to adjust to new values, new concepts of the nature of work, new ways of interacting with their peers, colleagues and with work itself. This brings out the fact that workers' education has to continue, and needs to upgrade itself, to meet the expectations of the target groups in order to achieve their goals.

10.91 Thus, a comprehensive programme of education of workers has to be established with the following key objectives:

- a) To instil a sense of belonging in the workers vis a vis their work and organisation, through a better understanding of their work and the work organisation; to inculcate amongst workers a positive sense of dedication and hard work so as to achieve higher productivity and improvement in the quality of products
- b) To improve the bargaining power of the workers, through understanding of their rights and environment, and through organising and collective bargaining
- c) To assist the worker in identifying skills he/she needs to pick up in order to improve value in the job market, and to provide the avenues for acquiring the skills
- d) To encourage the workers to look at alternatives in organisation of their work, like worker cooperatives, in order to improve their collective bargaining power and their

quality of work. Specialised programmes may also be conducted for creating interest in self-employment, or in the acquisition of skill upgradation in the situation of job loss

THE SCOPE OF THE EDUCATION PROCESS

10.92 The education programme should not be a mechanical approach of skill development towards a changing job market. It also needs to look at the vital question of allowing the workers to understand the environment and processes of which they are a part. They should be enabled to have a say in the way in which the processes affect them, through programmes that improve their individual and collective bargaining abilities.

10.93 It is in the context that the education process should specifically focus on an understanding of the economy, industry and the business organisation of which the worker is a part. The scope should include understanding the business and work processes along the supply chain. It should include the potential for

workers to keep abreast with changes in technology and work processes in the industry of which they are a part.

10.94 The education programme should also look at issues of alternative forms of organisation as ways of improving the involvement and control of workers over their work. These include forms of self-organisation, including producer and consumer cooperatives and the Gandhian value of Trusteeship. These alternatives are particularly significant in the context of current business strategies of dispersal and contractualisation of work.

10.95 The programmes should also discuss organisation of workers, and the history of collective bargaining. The new working class should be able to trace its lineage back to older worker class traditions, in order to grow organically and retain a collective identity. This collective identity is essential for developing a sense of worth, and for retaining some control over their work life.

ORGANISATION OF THE EDUCATION PROGRAMME

10.96 As is evident, such a programme cannot be confined to the classroom. There has to be a context of continuous education. The education process should allow continuous interaction and consultation between various participants in the labour movement. It should encompass the process of tripartite negotiations and collective bargaining between management, government and labour.

OWNERSHIP OF THE PROGRAMME

10.97 The involvement of workers and workers' organisations in the design, conduct and control of such a training programme is essential to its success. As such, their prominent role in the ownership of the programme is necessary. Trade unions at the national, regional, industry and plant level should all have a say in the running of the programme.

THE ROLE OF THE CENTRAL BOARD OF WORKERS EDUCATION

10.98 Since its inception in 1958, the Central Board of Workers' Education (CBWE) has done significant work in injecting an understanding and enthusiasm among workers for the

success of industrial growth, production and productivity and harmonious industrial relations.

10.99 The CBWE is a tripartite body, which is headed by a part-time non-official Chairman nominated by the Government of India. The Director, CBWE is the Principal Executive Officer who is assisted by one additional Director, 3 Deputy Directors, a Financial Advisor and other supporting staff. The Headquarters of the Board is at Nagpur and has a network of 4 Zonal Directorates, 49 Regional Directorates, 10 Sub-Regional Directorates spread throughout the length and breadth of the country, and an apex training institute viz. Indian Institute of Workers' Education at Mumbai.

10.100 Initially, the focus of the programme of the Board was on industrial workers i.e. on workers of the organised sector. As an outcome of the recommendations of the Estimates Committee of Parliament in 1971, the Workers Education Review Committee in 1975 and the Ratification of ILO convention No. 141 concerning organisation of rural workers and their role in economic and social development in the year

1977, CBWE launched programmes for workers of the unorganised and rural sectors during 1977-78. Presently, the Board organises 20 to 25 types of programmes for the workers in the organised, unorganised and rural sectors.

10.101 The Study Group has set up by us has identified certain areas where the CBWE can play a vital role which are given below.

- a) The CBWE can play an important role in creating awareness on specified skill training required for the development of the industry and availability of such training facilities. The Board may further coordinate such training programmes by bringing together workers, managements and nearby training institutes
- b) Though the CBWE organises training of trainer programmes, so far as the conduct of classes in the unit level by the trainers is concerned, the performance has not been satisfactory. A suitable mechanism needs to be devised for regular training programmes through the

trainers trained by the CBWE. The Board can play the role of a nodal agency to enforce training programmes through the trainers and also to monitor the same so as to achieve larger coverage of the target groups.

- c) The CBWE, through its wide network, may organise specialised training courses for the retrenched workers/workers who have taken VRS so as to help them in proper investment of money, which can ensure a regular income. These training programmes may also help in creating awareness regarding areas of skill development and related issues.
- d) The CBWE should become more focussed and should organise specialised, need-based programmes for the various target groups in the unorganised and rural sectors. These programmes can also help workers identify opportunities and areas for self-employment
- e) The Co-operative is yet another sector in which there is ample scope for training by the CBWE.

There is a lot of demand from this sector for the training programmes of the CBWE. The Board, may therefore give suitable training programmes to the workers in the co-operative sector.

- f) As the Panchayati Raj plays a crucial role in the Indian system of governance providing for effective local administration, the functionaries of the Panchayati Raj institutions may be trained on a regular basis by the CBWE in subjects of importance from the point of view of changing scenario.
- g) There is a need for more follow-up programmes i.e. to conduct more refresher courses, to repeat the training programmes for the same target groups by the Board as these alone can have a better impact and will sustain the effect.
- h) The Board may also involve non-governmental organisations, academic institutes etc. in conducting various training programmes. This is necessary for a larger coverage, as the

Board, with the existing strength, cannot reach the entire workforce.

LEADERSHIP DEVELOPMENT PROGRAMME

10.102 In an era of transformation, the trade union movement faces its own urgent need for adjustment, for the modernisation of its own stock of technical knowledge and operational skills, for the rethinking of policies and priorities, and for reflecting of leaders capable of forming and implementing the strategies needed to ensure that the best long term interests of workers are safeguarded. The problems of social and economic development can be surmounted only with the full, knowledgeable and responsible participation of organised labour.

10.103 A systematic re-education and training of workers based on their developmental needs and national interest demands a high place on the agenda. It is important that unions themselves take the initiative in studying these problems and that they focus attention on the long-term interests of workers. The training

programmes organised by the CBWE for trade unions must be re-designed to focus on the above areas.

INVOLVEMENT OF STATE GOVERNMENTS

10.104 At present, the Workers Education Programmes are carried out with the grants-in-aid made available by the Central Government. As the majority of workers being trained belong to the States, and as their contribution by way of improvement in skills, work culture, personality development, leadership qualities, awareness of responsibilities goes in a big way to the State's development, the State governments must also participate in the Workers Education programmes. State Governments may be approached for contribution to the scheme either by giving grants or providing infrastructure and other facilities.

10.106 The recommendations made in this Chapter have been made keeping in view the present profile of Indian labour, and the existing and future challenges that Indian labour face. As India integrates more with global markets, more business opportunities will emerge, specially in the area of knowledge based, technology driven and services industries such as Information Technology (IT) Enabled Services, IT Services, Biotechnology, Telecom, Tourism, Infrastructure, Healthcare etc. These opportunities will change our perceptions of present and future challenges. This will call for working out additional and appropriate recommendations for the labour force in the unorganised and organised sectors.

ANNEXURE - I

GERMAN DUAL SYSTEM

Definition

The Dual System of vocational training can be defined as a combination of learning in the 'serious' world of a company career and learning in the 'protected' world of the vocational school, where the companies concentrate on imparting practical knowledge, while the vocational schools concentrate on imparting theory. The term 'dual' also denotes a specific constitutional situation in Germany, in that the Federal Government is responsible for vocational education in the companies and the Länder(state) for the vocational schools.

Financing of Vocational Training in the Dual System

Financing is regulated in different ways, depending on the nature and task of the institutions involved in vocational training in the Dual System. While the (state) vocational school is financed from tax revenues, the companies (mostly private) cover the costs associated with vocational training themselves. Their expenditures for vocational training thus represent costs, and they are passed on to the prices of the products and services as far as the market permits. They also represent company expenditures, which can result in tax breaks. Companies can receive subsidies in special cases and for special groups of youths, such as for the vocational training of handicapped youths on the basis of the Labour Promotion Act or for the promotion of the vocational training of women in commercial-technical occupations.

Although, the latest figures are not available, in the year 1992, Germany spent 2.43% of its Gross national Product (GNP) on vocational education in the Federal Republic.

Transition from the Dual System to the Employment System

It may be mentioned that companies are generally not obliged to keep on the trainees after they pass the skilled workers' examination. Conversely, the young skilled workers are free to accept an employment offer or to leave the company. Alternatively, the respective job market conditions, and individual decisions and plans on the two extremes, determine what happens to the trainees after they complete their vocational training. Statistics reveal, that the smaller the companies are, the more probable it is that the trainees are either unable or unwilling to stay in the companies after passing their final examination. On the employer's side, the hiring rate is also determined by the overall economic situation and the positive or negative development trend in the respective training companies. The hiring rate is lower when business is going badly, and higher when things are going well.

APPENDIX - II

Training And Skill Formation In Construction Trade⁵

Service Nature of the Industry

The construction industry (barring real estate developers) does not really sell a tangible product; it sells a service. The service that it may provide is determined by its clients and is performed at a time and place specified by them. Contractors neither have control on the demand for construction services nor can they stimulate it. They do not even set a rate for their services as rate setting is done by clients. The financing of the construction services is also outside their control as the client, who commissions the service, does it. Only big integrated firms which employ multidisciplinary professional groups, permanent workforce and have access to national and international finance are an exception. But the vast majority of contracting firms operate in a product market where they have no control over demands, technology, materials, workplace, finance and labour supply.

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⁵ Excerpts from article by NICMAR

Skill Mix

The nature of skill mix in building trades is of significance. The skills required to perform building trades vary considerably. A 'mazdoor' could easily be used to assist a mason, concreter, painter or a carpenter. But the skill requirements begin to increase as one moves up the technological ladder. Skills required to become a formwork and centring carpenter, are different from those required in a furniture-making carpenter. Similar is the case in masonry, plumbing, concreting etc. Each of these trades is semi-dependent, though a part of the construction process.

Entry in the building job market is easy and quick at the bottom-end of the skill; the exit at this end is also easy though not as rapid. Unskilled workers keep moving in and out of the industry. But as the level of acquired skill grows, the opportunity for movement out of the industry declines. This is inevitable, as there is no demand for building skills in any other industry. They may change jobs from a contractor to an independent entrepreneur.

Existing Mechanism and Efforts of Skill Formation

The existing institutional framework for skill formation in various construction trades is inadequate. The Directorate General of Employment and Training (DGE&T) in the Ministry of Labour is responsible for vocational training in the country. It runs through state governments and private organisations ITIs all over the country. ITIs impart training in 43 engineering and 24 non-engineering trades. The engineering trades include carpentry, plumbing, masonry and plastering, which though not construction specific, may be relevant to it. As a rule, the training is oriented to the manufacturing and service sectors. Courses are of one to two year's duration and admissions are restricted to high school graduates. Very few construction workers have high school level education to qualify for admission or resources to maintain themselves over the long training period.

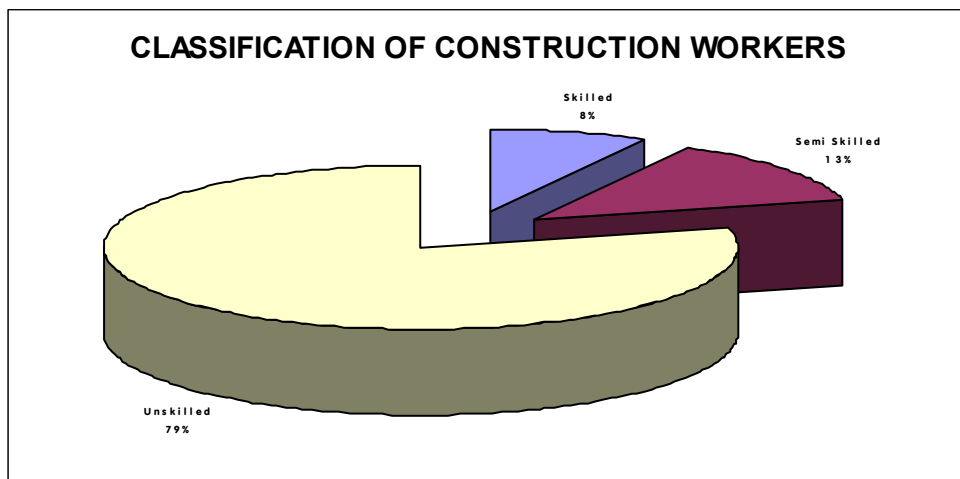
The other major programme for skill training is the Apprenticeship Training Scheme under the Apprentices Act, 1961. Of the number of trades in which apprentices may receive training, only 3 are construction specific (plumber, brick-layer and fitter). The

National Network of Building Centres also trains construction workers. As per the report of the Working Group on Skill Development & Training, about 2,50,000 construction workers are trained annually, in different trades in various 640 Building Centres of HUDCO.

In the absence of any institutional mechanism for skill formation, construction workers continue to be trained by the traditional master craftsmen. Apart from its inadequacy in quantitative terms, the traditional system neither utilises new technologies and work methods, nor does it absorb the benefits of research and development. Also, women workers are not trained in any trade and they remain head load carriers or helpers, all their working life.

Size of Demand

It may be mentioned that authoritative serial data on the size of construction workforce and its distribution by skill, are not available. It is estimated that about 310 lakh workers are working in the construction sector, of which 79% are unskilled. Out of this, 210 lakh workers are seasonal construction workers, and the balance are regular construction workers. Women constitute 23%-27% of the construction workforce. The classification of workers based on their skills is given in the following pie diagram.



Source: Report of the working group on Skill Development & Training

However, studies conducted by the National Institute of Construction Management and Research (NICMAR) bring out the following distribution over the period 1995-2005:

Category	1995-96 percentage	2004-05 percentage
Engineers	4.71	8.47
Technicians	2.46	4.43
Clerical	4.40	4.40
Skilled Workers	15.35	27.62
Unskilled Workers	73.08	55.08
Total	100.00	100.00

Source: Employment Projections in Construction Sector, NICMAR, Jan. 1996

The distribution of manpower requirement by trades in various sectors is expected to be as under:

Trade	percentage
Unskilled workers	54.43
Masons	30.42
Carpenters	7.94
Plumbers	0.32
Electricians	0.47
Others	6.42
TOTAL	100.00

Worker Training Scheme

There are two basic objectives of providing training to develop skills in construction workers:

- a) To improve performance levels, quality of work, efficiency and productivity of the construction industry and
- b) To improve the economic situation of workers in the job market, to enhance wage welfare conditions and make possible to upgrade their economic and social situation in the society.

For achievement of the above objectives, a three-step approach is suggested for training to develop skills in construction workers:

- a) Establish an institutional mechanism that imparts skills in construction trades in a manner that is acceptable to workers as well as contractors and which remains relevant to the dynamic nature of the construction industry,
- b) Create conditions that require contractors and construction firms and other employers to employ those workers whose skill levels are certified,
- c) Design a skill delivery system that gives skills to new workers, upgrades skills of the existing workforce and is flexible enough to allow certification of skills of those who submit themselves to testing and qualify.

Basic Parameters

- a) Training should be a judicious mix of the formal and the informal, of on-site and classroom work, which makes more use of graphics and visuals. It should be of short duration, say 15 days, in one spell and should assume basic literacy and knowledge of local languages in trainees.
- b) Formulation of skill standards, trade tests and training procedures, qualification criteria for certifying agencies may be centralised to ensure uniformity and standardisation.

- c) Training methods and procedures and implementation may be totally decentralised with due regard to regional variations and local requirements.
- d) Contractors and their associations and trade unions may be encouraged to assume the maximum responsibility for training.
- e) Skill levels may be graded and upgraded, and formulated, keeping in view the technology, materials and methodologies of the future. The system should look ahead at least two years from the start date.
- f) Revisions in the training system may be considered perhaps at two year intervals.
- g) Skill testing and certification may be done by technically competent and credible agencies that meet the criteria laid down for the purpose.
- h) Attempt may be made to put to test the workable mechanism on the ground before commencing work. The system should evolve over a period of time, be monitored and improved as experience is gained.
- i) Three aspects may receive special attention, namely:
 - Training of trainers
 - Training of women workers
 - Training of supervisors and mistris
- j) Contractors may be required to employ trained and trade-tested workers on the jobs. This may be written into the contract document and penalty imposed if untrained workers are employed on jobs notified to be performed by skill-certified workers and supervisors.
- k) The training institutions may give more weightage to basic literacy and work experience for admission to training courses.

APPENDIX - III

Training & Education Efforts In The Unorganised Sector

The Study Group conducted two workshops on Skill Development, Training and Workers' Education in the Unorganised Sector, inviting participation from Non Governmental Organisations, Trade Unions, Self-help groups, Individual Beneficiaries and Academia. The first workshop was conducted at Bhubaneswar, Orissa and the other was conducted at Bhopal, Madhya Pradesh.

The Non Government Organisations (NGOs) which attended the workshops were primarily engaged in the development of the following categories of workers viz.

- a) Women workers
- b) Forest dwellers
- c) Brick-Kiln workers
- d) Beedi workers
- e) Poor farmers and workers in agriculture and allied activities
- f) Child workers
- g) Dealers in wholesale and retail trade
- h) Workers in handicrafts and village industries including artisans

Based on the experiences shared by the participants, the areas in which training and education was being imparted are summarised below.

Training in the areas of:

- a) Collection of Forest produce
- b) Processing of Forest produce
- c) Honey gathering
- d) Cultivation of medicinal plants

- e) Crop production
- f) Animal husbandry
- g) Food processing
- h) Mushroom cultivation
- i) Nursery & seed production
- j) Soil Conservation
- k) Multi-skilling to facilitate year long employment
- l) Training in non-farm activities to arrest rural-urban migration

Education in the areas of:

- a) Management of natural resources
- b) Sharing of resources
- c) Sustainability of resources and ecological development
- d) Diverse uses of forest resources
- e) Use of improved nets and fishing boats
- f) Irrigation
- g) Organic farming
- h) Small farmers' technology
- i) Food security
- j) Preservation of agricultural output and fruits
- k) Marketing of produce
- l) Entrepreneurial skill
- m) Living conditions improvement
- n) Promoting self-help groups
- o) Developing Labour cooperatives

Training Agents

Training and education on the above areas is currently being imparted through:

- a) Self-help groups
- b) Community voluntary organisations
- c) Bal Panchayats
- d) Peoples Associations
- e) Anganwadis
- f) Grass root level workers like village level workers, basic health workers and anganwadi workers
- g) Family as a unit
- h) Local panchayat workers/ members

Observations on the Training Efforts

- a) There was no standardisation of courses in terms of training content and curriculum, training aids and training materials or education/ generic skills.
- b) Quality of training imparted was not being reviewed.
- c) No certification or recognition of courses for employment.
- d) Follow-up of utility of training was inadequate.
- e) Selection of trainers was not systematic.
- f) Training of trainers was a neglected area.
- g) No agency for coordination of vocational training for the unorganised sector workers even at the national level.
- h) Training was not based always on training need assessment. Not every NGO assessed training needs before plunging into training.
- i) Inadequate effort in multi-skilling, up-skilling and lateral skill development.
- j) Insufficient infrastructure support for training.

APPENDIX - IV

Institute Managing Committee & Steering Committee⁶

Composition

Steering Committee For State/Union Territory

1. Three Representatives – Industry
2. Senior Representative of Joint Secretary Level of respective Ministry
3. Secretary, State Technical Education
4. Principal/Director of the Institute, (By Rotation)
5. Representative of Trade Association

Institute Managing Committee (IMC)

1. One Representative from concerned Department
2. Representative from State Directorate of Technical Education
3. Four representatives from Industry
4. Principal/Director of the Institute
5. One senior Faculty Member of the Institute
6. Representative of Trade Union
7. One student representative

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⁶ Basic Source : Report of Working Group on Skill Development & Training, Planning Commission.

Role And Responsibilities Of The Institute Managing Committee (IMC)

- a) **Generation and Utilisation of Resource:** The IMC should be free to generate funds through various projects from industry. These funds would be available to the IMC for utilisation as decided by them.
- b) **Student Selection:** The IMC may adopt various methods of selection according to the individual needs of each institute e.g. entrance test, aptitude test and viva.
- c) **Examination Supervision:** Examinations, theoretical and practical will be supervised by experts from industry.
- d) **Faculty Evaluation:** Faculty evaluation will be done by the Steering Committee, and their recommendations will be taken into consider for promotion.
- e) **Teaching Aids:** Teaching aids of the Institute will be upgraded under the supervision of IMC.
- f) **MIS System:** Steering Committee will introduce an MIS System for each Institute. The format of such MIS System has already been created by CII.
- g) **Employment:** The IMC will be responsible for advising on the possibility of employment opportunities, including self-employment.
- h) **Faculty and Staff Development:** IMC will identify the training needs of all faculty and staff member. Detailed training schedules, budget and release of personnel for training programmes will be planned by IMC.
- i) **Industrial Training:** Industrial training will be compulsory for all the students and faculty of the Institute. IMC will prepare guidelines for the industrial training with details of periods of training including projects for students and faculty. IMC will also decide about the stipend to be paid to each student and faculty by the industry providing training.

- j) Transfer of Faculty: IMC will be taken into confidence while transferring the faculty from one Institute to another.
- k) Equipment Maintenance: The equipment maintenance of the Institute for rectification of faults and replacement of the equipments will be supervised by IMC.
- l) Capital Expenditure: IMC will be consulted for the purchase of equipments including accessories and inspection equipment.
- m) Curriculum Revamping: IMC will be allowed to revamp the curriculum of any trade above the existing norms on industry needs base. IMC will be allowed to include new trades and discontinue the obsolete trades.
- n) Faculty Deputation: Deputation of the faculty from one Institute to another will be made on the recommendations of IMC.
- o) Consultancy Rules: The rules for providing consultancy by the Institute will be laid down in consultation with the Advisory Committee.

APPENDIX - V

Skill Development Fund—Other Countries

Singapore uses a levy on the wages of workers to upgrade worker skills through the Skills Development Fund (SDF). The SDF was established in October 1979 with the objective of encouraging employers to train and upgrade the skills of their employees. The SDF does this by offering grants as an incentive to companies to defray the cost of training their workers. These grants are financed by collections from the Skills Development Levy (SDL). Under the SDL Act, every employer, both local and foreign, is required to pay, monthly, a skills development levy for each of their employee whose remuneration in any month is Singapore Dollars 1000 or less. The rate of levy for an employee for any month is 1% of the remuneration or \$ 2.00 whichever is greater. The Fund's aggressive efforts- to raise awareness of training among firms, to support development of company training plans, and to provide assistance through industry associations- have led to a steady rise in the incidence of training, especially among smaller firms.

Other salient features of the SDF are as given below.

- a) No skills development levy is payable in respect of any employee whose remuneration is more than \$ 1000 for any month. For the purposes of the Act, "remuneration" includes wages, salaries, commissions, bonuses, allowances and other emoluments paid in cash.
- b) The term 'employee' includes casual, part-time and foreign workers rendering services wholly or partly in Singapore. Employers of domestic servants, chauffeurs or gardeners are also liable to pay the levy. However, private individual employers employing any of these persons wholly and exclusively for domestic purposes are not liable to pay such levy.
- c) The skills development levy should be paid to the Central Provident Fund Board. Together with the submission of the return of payroll in the prescribed

form, the skills development levy for any month must be paid by every employer within 14 days after the end of that month or by such later date as agreed by the Singapore Productivity and Standards Board (PSB).

- d) Any employer who gives any false or misleading information relating to the return on the payment of the levy or who contravenes the provisions of the Act or Regulations shall be liable, if convicted, to a fine or imprisonment or both. In addition, a penalty at the rate of 10% per annum of the amount outstanding shall be imposed for late payment.

Malaysia's Human Resource Development Fund (HRDF) is an example of a flexible, demand-driven training scheme. The HRDF is generated from payroll levy, which is 1% of employee wages. Promoted investments obtain from 70%- 100% exemptions from income tax. Reinvestment programs obtain grants of up to 40% of the capital investment for production capacity. Depending on their training needs, firms can choose flexibly from among several programs: (1) approved training courses provided by registered external institutions; (2) ad hoc in-plant or external training courses on a as-needed basis; and (3) annual training programmes. Prior approval of training courses under the second and third programs is required from the HRD Council. However, the Council's overhead costs are kept low, and filing burden on firms is reduced, by automatic approval of courses under the first programme, by using registered training institutions as collection agents of the council, and by giving firms with well developed training plans the option of filing under the annual programme. In addition, the HRDF provides firms with grants for developing training plans; organises regional courses on training need assessments, and administers a variety of subsidised programme targeting small enterprises. A preliminary analysis indicates that the scheme may have increased the incidence of training modestly.

South Korea: The huge investment in vocational and technical education is supported by the Ministry of Education by subsidising the cost of practical training laboratories, workshops and vocational schools. Also, there is large amount of funding from IBRD, OECD and other donor agencies. Many Trade Union Centres have education structures and programmes. These get financial support from national trade union bodies and public funds on mutually accepted criteria.

The financing is done through four categories:

- a) Allocation from workers' union funds
- b) Funding from public revenue by State/Local bodies or through other agencies
- c) Per capita payment from employers to union education fund
- d) International agencies and other donor agencies

United Kingdom: Very few non-formal education programmes are from public funding. Fees often cover the full cost of the courses. 13% total public expenditure is for formal and non-formal education and training programmes, but estimates of share of private resources are not available. Department of Employment and Manpower Service Commission provide special funds for training of the unemployed. There is also assistance for formal training programmes from local education authorities.

Mauritius: 1% of wage bill of employers is set apart for funding industrial and vocational training which is a training cess. All training programmes both formal and non-formal are to be approved by IVTB. For many approved training programmes, reimbursement of 30% of the training cost/fee is made to the employer. Besides, employers also get tax concession for an amount equal to twice the expenditure on training, which reimburses 40% to 60% of the training cost, depending upon the income bracket in which the employer falls.

Australia: Further education is done through TAFE colleges and schools, which are run by the State Governments. Funding is from Central and State Governments.

Appendix - VI

BHARATIYA YUVA SHAKTI TRUST (BYST)

Bharatiya Yuva Shakti Trust (BYST) is more than just a Trust which helps the disadvantaged youth. It encompasses a whole new philosophy, which is reflected in its logo. The graphic depiction of three persons, with one larger than the others, and helping them, is based on the Guru-shishya tradition. It also stands for the two kinds of help given: money and mentor. The chain effect of the figures stands for 'people helping people,' which is what BYST, is all about. It is public trust and non-profit organisation

Oh No – Another of those Trusts

BYST gives total assistance to disadvantaged youth who wish to set up, or develop their own business. This assistance includes finance, professional advice, training, education and guidance till the venture takes off.

Target Group

Young people in the age group of 18-35, who are either unemployed or underemployed, can approach BYST.

Essentially they are people who have no alternative sources of funding or assistance. They must have a sound imaginative business idea along with the will and determination to succeed.

Role of Industry and Business in support of BYST

The Indian business community has collectively got together to support the Trust. The support is either through donations, professional assistance, and sponsorship of events, assigning mentors, all on a purely voluntary basis.

The Founding Chairman was the Late J.R.D. Tata and the late H.P. Nanda was the Vice Chairman. Currently, among the eminent members of the business community, those on the Board of Trustees are Mr. Mantosh Sondhi (Chairman), Mr. Rahul Bajaj (Vice Chairman), Ms. Lakshmi Venkatesan Mr. Subodh Bhargava, Mr. Jamshyd Godrej, Mr. Rajive Kaul, Ms. Anu Aga, Mr. Sujit Gupta, Mr. Deepak Roy, Mr. Yogesh Deveshwar, Ms. Chanda Singh, and President (CII).

The Confederation of Indian Industry (CII) provides administrative support and strategic linkages. Over the years, a strong partnership has been built with the private sector for fostering Youth Entrepreneurship at the grass root level. As a Founding member of Youth Business International (YBI), UK, BYST is helping to set up similar programmes globally, enhancing its international linkages.

What makes BYST unique?

The Trust takes on applicants without asking for 'Financial Down Payments or Collaterals.' This way, it provides them with the all important seed capital as loan, which they can use alone or in conjunction with financing from banks and other financial institutions.

A loan of up to Rs. 50,000 is provided to each applicant at the special interest rate offered to small businesses by banks.

The most remarkable feature of the Trust is providing each client with a mentor on a one-to-one basis. As mentioned earlier, this follows the 'Guru-Shishya tradition' where the teacher not only teaches, but also guides and helps to develop the disciple. The mentor gives personalised advice, maintains regular contact with the business, monitors progress, and helps in solving problems and developing business. The interested professionals (mentors), in turn, get a wide range of first-hand business experience and the satisfaction of helping disadvantaged youth.

Coverage of BYST

It supports ventures both in the manufacturing and servicing sector, turning job seekers into employment generators. In the last nine years, BYST has supported a wide variety of enterprises from Doll Making to Desk-Top-Publishing, Herbal Cosmetics to Hi-Tech Electronics, enabling wealth creation.

Functioning of BYST

Business proposals from potential entrepreneurs are welcome directly or are sought by the Trust through vocational schools, entrepreneurial training institutions and well established grass root and non-governmental organisations (NGOs). BYST gives assistance to help formulate these proposals. The screening process, done by an Entrepreneur Selection Panel, (ESP), comprises of experts from industry in Marketing, Finance, Management, etc. On approval of the proposal by them, BYST provides a whole range of Business Development Services along with a Mentor, who gives guidance until the venture takes off.

CHAPTER-XI

LABOUR ADMINISTRATION

There is perhaps no Department or Ministry that deals so exclusively with human relations as the Labour Ministry, and that too, largely by persuasion and introspection rather than coercion. It does have the responsibility of enforcing laws that relate to employment and industrial relations, but its role in this field too is not punitive, but one of vigil and prosecution before a court of law.

11.2 It does not need many arguments or adducing of evidence to prove that the health of the economy of the country, and consequently, the daily life of the common people as well as the elite depends upon harmony in industrial relations. It is difficult, therefore, to over-state the importance of good industrial relations. It is not often realized that even the defence of the frontiers or the internal security of the country depends ultimately on a viable and efficient economy, and this, in turn, depends on industrial relations. There is no reason to think that the maintenance of good industrial

relations which is the responsibility of the Ministry of Labour is less important than the responsibility that any other Ministry holds. Unfortunately, this realization has not been very much in evidence. Perhaps the reasons for this are:

- (a) A perception, which sees the Ministry more as related to the welfare of labour, and a paternalistic attitude.
- (b) The fact that the performance of the Ministry of Labour is not quantifiable.

These attitudes miss the crucial role of industrial relations as the fulcrum on which the efficiency of the economy rests and turns.

11.3 Those who lead and 'man' the Ministry should therefore, have the highest degree of competence, vision, empathy, tact, skill in the arts of persuasion and inducing introspection, and activating social and group consciences. We, therefore, think that these considerations

should govern the choice of the Minister as well as the top echelons of the bureaucracy that bear responsibility for the functioning of the Ministry. They should also, *mutatis mutandis*, govern the recruitment and placement of officers and staff at every level, and every department of the Ministry.

11.4 In the field also, officers must be invested with sufficient authority to attract due deference and compliance, and should be provided with adequate infrastructural facilities that they require to carry out their arduous work over far-flung areas. In the course of our tours to hear evidence, we were struck by the total inadequacy of these facilities. Many officers told us that they had to work from offices that were apologies for rooms, with inadequate and shoddy furniture. They were expected to receive managers of industries and leaders of trade union organizations in such rooms. Often the unseemly conditions of the office made officers of managerial levels or high-level leaders of trade unions reluctant to answer calls and attend discussions in such ramshackle offices, housed in dirty buildings that belonged to others. The officials of the Labour Department/Ministry were hamstrung

to the point of being crippled by the absence of transport and telephone facilities. During our visit to various State capitals, we were informed that the Chandigarh region of the Central Industrial Relations Machinery (CIRM), which comprises the States of Haryana, Punjab, Himachal Pradesh, J&K and the Union Territory of Chandigarh, has only two vehicles, one at Chandigarh and another at Jammu and this made it difficult for officers to travel, visit places on duty, either to nip disputes in the bud or deal with emerging situations of dispute and conflict. The alternative was to borrow transport from the very people whose conduct the officer was expected to inspect. We were told that in many cases this was what was being done. We need not comment on the credibility that this kind of dependence creates in the minds of leaders of enterprises or trade unions. We do not want to suggest that this situation is allowed to continue by connivance. But we do not believe that those who have the responsibility of correcting the situation and generating the credibility, without which officers cannot discharge quasi-judicial functions or functions of vigilance, are unaware of what is happening in the

field. We cannot understand how field officers of this kind can function without instruments of communication or mobility. We will, therefore, strongly recommend that officers of the Labour Department should be provided with offices, infrastructure and facilities commensurate with the functions they have, and the dignity they should have.

11.5 Labour Administration means public administration activities to translate the national labour policy into action. As we have said earlier, labour policy in India draws inspiration and strength partly from the ideas and declarations of important national leaders during the freedom struggle, partly from the debates in the Constituent Assembly, partly from the provisions of the Constitution, and partly from International Conventions and Recommendations. It has also been significantly influenced by the deliberations of the various sessions of the Indian Labour Conference and the recommendations of various National Committees and Commissions, such as, the Royal Commission on Labour, the National Commission on Labour 1969, the National Commission on Rural Labour 1991, and the like.

11.6 India has ratified a total of 39 Conventions adopted at different sessions of the International Labour Organisation. These include conventions on hours of work, unemployment, night work, minimum wages, weekly rest, workers' compensation, forced labour, labour inspection, child labour, underground work and equal remuneration for men and women for work of a similar nature. We are appending a list of the 39 Conventions, as Appendix I at the end of this Chapter.

11.7 With growth in the dimensions and variety of industrial activity and changes in the agricultural sector, the task of labour administration has become increasingly difficult. It calls for comprehension, sensitivity, expedition and efficiency at every stage. To enable industries to be competitive in the present context, and at the same time to protect the rights of workers, labour administration has to provide an industrial relations system, which induces the adoption of a new mindset and participatory culture including the development of appropriate skills. On the enforcement side, labour administration has to ensure effective enforcement of labour laws.

11.8 Labour Administration in India is mostly rooted in labour laws. There are only a few activities that are not based on laws. They are mostly in the field of workers' education and craftsmen training other than apprenticeship training, etc.

11.9 At the Centre, the Ministry of Labour, and in the States, Labour Departments are responsible for labour administration in India. 19 enactments are enforced by the Ministry of Labour. Out of these enactments, the enforcement of 14 enactments is secured through the organization of the Chief Labour Commissioner (Central). The organization of the Director General Mines Safety enforces the safety provisions of the Mines Act, and the Director General Factory Advice Service and Labour Institute (DGFASLI) advises government, industry and other interests concerned on matters relating to health, welfare and the safety of workers. It also provides training to the workmen on safety in factories. The organization of DG FASLI is also charged with responsibility for the enforcement of the Dock Workers (Regulation of Employment) Act, 1948.

CHIEF LABOUR COMMISSIONER (CENTRAL)

11.10 The Chief Labour Commissioner's organization has the responsibility to enforce the Industrial Disputes Act, 1948, the Payment of Wages Act, 1936 and Rules in respect of Mines, Railways and Air Transport Services, the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Equal Remuneration Act, 1976, the Interstate Migrant Workmen (RE&CS) Act, 1979, Payment of Bonus Act 1965, Child Labour (Prohibition and Regulation) Act, 1986, Payment of Gratuity Act, 1972, Labour Laws (Exemption from furnishing and maintaining registers by certain establishments) Act, 1988, Building and Other Construction Workers (RE&CS) Act, 1996, Chapter VI(A) of the Indian Railway Act and Hours of Employment Regulations for Railway Employees, Industrial Employment (Standing Orders) Act, 1946, and the Maternity Benefit Act, 1961 (Mines and Circus Rules, 1963) for organisations where the Central Government is the appropriate government. The Central Provident Fund Commissioner enforces the Employees Provident Fund Act. The

Director General, Employees State Insurance Corporation enforces the ESI Act.

11.11 The Organisation of the Chief Labour Commissioner (Central) known as (CIRM) was set up in April 1945, in pursuance of the recommendation of the Royal Commission on Labour in India with the specific duty of preventing and settling industrial disputes, enforcing labour laws and promoting the welfare of workers in the undertakings falling in the sphere of the Central Government. Combining the former Organisation of Conciliation Officers (Railways), Supervisors of Railway Labour and the Labour Welfare Advisors, it started with a small complement of staff, comprising the Chief Labour Commissioner (Central) at New Delhi, 3 Regional Labour Commissioners (Central) [RLCs(C)] at Bombay, Calcutta and Lahore, 8 Conciliation Officers and 18 Labour Inspectors. As a consequence of the increase in the number of labour laws, and the number of industrial establishments, the responsibilities of the Organisation have increased enormously, and the number of officers too has increased.

11.12 The present set-up of the Organisation consists of the Chief Labour Commissioner (Central) at the Head Office in New Delhi, 3 Zonal Offices headed by Deputy Chief Labour Commissioners(C) at Bangalore, Dhanbad and Mumbai, and 18 Regional Offices headed by Regional Labour Commissioners(C) at Ahmedabad, Ajmer, Asansol, Bangalore, Bhubaneswar, Chandigarh, Chennai, Cochin, Dhanbad, Guwahati, Hyderabad, Jabalpur, Kanpur, Kolkata, Mumbai, Nagpur, New Delhi and Patna. The Chief Labour Commissioner (Central) is assisted at headquarters by a Joint Chief Labour Commissioner(C), a Chief Advisor (Labour Welfare), 3 Deputy Chief Labour Commissioners(C), a Director (Training), 3 Regional Labour Commissioners(C), an Administrative Officer and 5 Assistant Labour Commissioners (C), along with supporting staff. The fieldwork is done by Labour Enforcement Officers(C), Assistant Labour Commissioners(C) and Regional Labour Commissioners(C).

11.13 The Office of Chief Labour Commissioner (Central) performs various duties relating to several laws

and regulations. It performs three types of jobs while implementing the labour laws – enforcement, conciliation and quasi-judicial.

11.14 The Organisation of the Chief Labour Commissioner (Central) is responsible for:

- (a) Prevention and settlement of industrial disputes in the Central sphere, i.e. mines, oilfields, major ports, banking and insurance companies, industries carried on by or under the Central Government or by a railway company, controlled industries specified by the Central Government, Employees State Insurance Corporation, Employees Provident Fund Organisation, air transport services, agricultural financial

corporations, Industrial Development Bank of India, Deposit Insurance Corporation, Unit Trust of India and cantonment boards;

- (b) Enforcement of awards and settlements in the Central sphere; and
- (c) Administration and enforcement of the labour laws mentioned at para 11.10.

PROSECUTION

11.15 On an average, 34 to 35 thousand inspections are conducted in a year and 12 to 16 thousand prosecution cases are filed. These have resulted in conviction in 6000 to 7500 cases. Only 2 to 5% cases have ended in acquittal.

Year	No. of inspections	No. of Prosecutions	No. of convictions	No. of acquittal
1999-2000	34515	11764	5938	108
2000-2001	34968	16070	7475	386

CLAIM CASES

11.16 On an average, 1500 to 2200 claim cases are disposed of in a year, and a sum of Rs.1 crore to 1.5 crore is awarded to the workers as difference in wages and compensation under the Minimum Wages Act.

QUASI JUDICIAL FUNCTIONS

11.17 The quasi judicial functions performed by the officers of Organisation of the Chief Labour Commissioner (Central) are:

Designation	Quasi-judicial functions performed
CLC(C)	<ul style="list-style-type: none"> i) Director General under Building and Other Construction Workers (RE&CS) Act; ii) Appellate Authority under Industrial Employment (Standing Orders) Act
Joint CLC(C)	<ul style="list-style-type: none"> i) Appellate Authority under Industrial Employment (Standing Orders) Act
Deputy CLC(C)	<ul style="list-style-type: none"> i) Appellate Authority under Industrial Employment (Standing Orders) Act; ii) Authority under Rule 25(2)(v)(a) & (b) of Contract Labour (Regulation & Abolition) Central Rules to determine same and similar work for payment of same wages to contract labourers as payment to workmen of principal employer and to specify wages and working conditions of contract labour.
RLC(C)	<ul style="list-style-type: none"> i) Authority under Minimum Wages Act; ii) Certifying Officer under Industrial Employment (Standing Orders) Act; iii) Appellate Authority under Payment of Gratuity Act; iv) Appellate Authority under Contract Labour (Regulation & Abolition) Act; v) Supervisor of railway labour for recommending reclassification of railway employees under Hours of Employment Regulation of the Indian Railways Act, 1989; vi) Appellate Authority under Equal Remuneration Act; and vii) Appellate Authority under Building and Other Construction Workers (RE&CS) Act.
ALC(C)	<ul style="list-style-type: none"> i) Controlling Authority under Payment of Gratuity Act; ii) Authority under Equal Remuneration Act; iii) Registering & Licensing Officer under Contract Labour (Regulation & Abolition) Act; and iv) Registering Officer under Building and Other Construction Workers (RE&CS) Act.

11.18 Besides, the Organisation of the Chief Labour Commissioner (Central) is also responsible for :

- (a) revising Dearness Allowance under the Minimum Wages Act for Central sphere establishments,
- (b) verifying the membership of unions affiliated to Central Trade Union Organisations for the purpose of giving representation in national and international conferences and committees, as also of unions for the purpose of recognition under the Code of Discipline;
- (c) verifying membership for the appointment of Workmen's Director in the State Bank of India and other nationalised banks, etc.,
- (d) advising the Ministry of Labour and employing Ministries on labour matters as and when required,
- (e) collecting statistics regarding industrial disputes, work-

stoppage and lockouts, wages etc. in the Central sphere establishments;

- (f) inquiring into breaches of Code of Discipline,
- (g) coordination of the work of Assistant Labour Welfare Commissioners and Deputy Labour Welfare Commissioners posted in Central Government undertakings, and giving them guidance in their day-to-day work, and liaison with State Government Labour Departments for collection of information as per the direction of the Ministry of Labour.

APPROPRIATE GOVERNMENT

11.19 Under each enactment, enforced by the Organisation of the Chief Labour Commissioner (Central) and the State Labour Commissioners, there is a separate definition of the "appropriate government" except under the Industrial Disputes Act, the Payment of Bonus Act and the Contract Labour (Regulation & Abolition) Act. The Payment of Bonus

Act has the same definition of appropriate government as the Industrial Disputes Act. Initially, at the time of enactment, the definition of appropriate government in Contract Labour (Regulation & Abolition) Act was different. In 1986, Contract Labour (Regulation & Abolition) Act too adopted the same definition of appropriate government as in the Industrial Disputes Act. This has given rise to a problem. The definition of the appropriate government under the Industrial Disputes Act is based on the nature of industries etc. and the Contract Labour (Regulation & Abolition) Act applies even to government departments. As per the definition of appropriate government in the Contract Labour (Regulation & Abolition) Act, even the Central Government departments do not come under Central sphere.

11.20 Under the Minimum Wages Act, the Central Government is the appropriate government for corporations established by Central Acts. This is not the case in other enactments except the Payment of Gratuity Act and the Industrial Employment (Standing Orders) Act.

11.21 Under the Payment of Gratuity Act, the Central Government is the appropriate government for all Central Government public sector undertakings and establishments having branches in more than one State.

11.22 Under the Building and Other Construction Workers (RE&CS) Act, the Central Government is empowered to notify central public sector undertakings for which the Central Government is the appropriate government.

11.23 The definition of the appropriate government under the Trade Unions Act is not based on the kind of industry or establishment where the union is operating. Under the Trade Unions Act, the Central Government is the appropriate government for trade unions that are operating in more than one State. This means that though the Central Government is the appropriate government under the Industrial Disputes Act for some establishments, it may not be the appropriate government under the Trade Unions Act for trade unions operating in the same establishments and vice versa.

11.24 Different definitions of the appropriate government under different enactments cause confusion in the minds of common workmen, sometimes, even in the minds of experts. The expression "under the authority" has been interpreted by the court in different ways from time to time leading to considerable confusion and doubts.

11.25 In the Heavy Engineering Corporation (1969 I SCC 765), the Hon'ble Supreme Court relied on the private law interpretation of the definition of the appropriate government, and held that the Central Government was not the appropriate government for central public sector undertakings. By relying on the common law interpretation, the apex court in the Air India Statutory Corporation case (1997 I LLJ 1151 SC) held that the central public sector undertakings were the instrumentalities of the Central Government, and, as such, the Central Government was the appropriate government for all central public sector undertakings. Again in the SAIL Vs. National Waterfront Workers Union on 30 August 2001, (2001 II LLJ 1087 SC) a five judge Constitution Bench of the

Apex Court observed that the private law interpretation in the HEC case was correct. The Central Government is not the appropriate government for all public sector undertakings, as the mere fact of instrumentality of the Central Government does not mean they are under the control of the Central Government. The apex court, while clarifying the expression "by or under the authority of Central Government", has observed that such authority may be conferred by a statute or by principal and agent relationship between the Central Government and the public sector undertakings or by delegation of powers by the Central Government. It is this situation that makes it necessary to have a clear and unambiguous definition of the 'appropriate government'.

11.26 We have already referred to the need to have uniformity in the definition of the term 'workman' that appears in many laws.

11.27 We hope that both these difficulties will be resolved when the amendments that we have suggested in Chapter VI are adopted.

SIMPLIFICATION OF REGISTERS AND RETURNS

11.28 Many enactments require maintenance of different registers, display of different sets of notices and submission of different returns. A railway contractor, employing 20 workers, is required to maintain 2 dozen registers, display a dozen notices, and submit 6 returns every year. Though there is provision under the Payment of Wages Act, Minimum Wages Act and Contract Labour (Regulation & Abolition) Act to maintain combined registers with the approval of the Chief Labour Commissioner (Central), the process has proved to be time-consuming and cumbersome.

11.29 The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act 1988 made an attempt to simplify registers and returns. Under this Act, only 2 or 3 registers need be maintained, and only one return need be submitted in lieu of registers and returns prescribed under several enactments mentioned in the schedule to the Act. But this law has proved inadequate

since it applies to establishments employing workmen not exceeding 19, and the penalty prescribed under the Act is higher than that in the Act that it replaces. High penalties also discourage employers from taking advantage of the Act.

11.30 We have recommended elsewhere that the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 should be made applicable to all establishments, and the penalty prescribed under the respective laws should be enhanced to make it at par with the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

PLACE OF MAINTENANCE OF REGISTERS AND DISPLAY OF NOTICES

11.31 Different enactments prescribe different places for maintenance of registers and display of notices. For instance, the Minimum Wages Act lays down that registers should be maintained and notices displayed at the work spot. Under the Payment of

Wages Act, registers are to be maintained as near as possible to the work spot. Under the Contract Labour (Regulation & Abolition) Act, registers are required to be maintained within a radius of 3 Kms from the workspot. Thus, an inspector intending to inspect an establishment under different enactments may be required to visit several places. We therefore, recommended that the existing provisions should be amended to provide for maintenance of registers and display of notices at the work spot.

SIMPLIFICATION OF PROCEDURES

11.32 To launch prosecution for non-payment of wages under the Payment of Wages Act, or for payment of less than minimum rates of wages under Minimum Wages Act, the inspector is required to file a claim first before the Payment of Wages Authority or Minimum Wages Authority respectively. After admission of the claim either in full or in part, the inspector has to obtain sanction for prosecution from the Payment of Wages Authority in the case of claims under Payment of Wages Act. In the case of the

Minimum Wages Act, after admission of the claim, sanction is to be obtained from the appropriate government. We recommend that the procedure for prosecution for non-payment of wages or payment of less than minimum rates of wages should be simplified. We have referred to this in detail elsewhere.

PENALTY

11.33 The penalty prescribed under different enactments does not act as a deterrent. For an employer, it is easier to pay penalty than to appoint a person and pay him wages for maintaining records and registers. We therefore, suggest that to make the enforcement effective, there should be commensurately deterrent punishment under all enactments.

RECOVERY PROVISIONS

11.34 One of the difficulties in the effective enforcement of labour laws is the procedure for recovery. Under most of the enactments, officers of the labour departments or the quasi-

judicial authorities are required to file a certificate before the district administration for recovery of the amount as arrears of land revenue. The Authority under the Minimum Wages Act has to submit a petition before the Judicial Magistrate to recover the awarded amount as the fine imposed by the Magistrate. Applications filed before the district administration do not get the priority they deserve, resulting either in delay or non-recovery of the workers' dues, when the receipt of the dues are of urgent importance to the workers. Similarly, when petitions are filed before Magistrates, many of them start hearing de novo resulting in either delay or non-recovery of dues. We, therefore, suggest that the enactments like Payment of Wages Act and Minimum Wages Act should contain a provision for recovery officers appointed by the Labour Department, as has been done in the case of EPF Act (Section 8-B).

POWER TO EXEMPT

11.35 Often the industries working in export processing zones, export-oriented units and employers of information technology industries demand exemption from certain

provisions of the Acts. There can be other situations also in which exemption from a law may merit consideration. Some of our present laws already have provisions for exemption from some or all the provisions (We have referred to this subject in the Chapter of Review of Laws also). We, therefore, recommend that provisions to grant exemptions in cases of extreme emergency or hardship, should vest with the appropriate government, and should be vested in officers not below the rank of Joint Secretary. The advantage in such a system is that if there is any abuse of exemption, it can be withdrawn by an administrative order. However, if the exemption is granted by amending the provisions of law, an abuse, if it takes place, cannot be checked until the provisions are suitably amended again.

MINIMUM WAGES ACT

11.36 At present, the Minimum Wages Act applies to only scheduled employments. Therefore, minimum wages cannot be enforced in non-scheduled employments. This difficulty can be obviated if the Schedule is amended to include an

entry "Other Employments not covered in the Schedule" or all schedules are given up as recommended in the Chapter on Review of Laws. This will ensure payment of minimum wages to all workmen.

TRIAL OF CASES UNDER LABOUR LAWS

11.37 Witnesses who appeared before us mentioned that there is inordinate delay in the disposal of penal cases filed before the Courts. These Courts deal with prosecutions, not only under labour laws, but also other laws, such as, those relating to Weights & Measures, Traffic, Prevention of Food Adulteration, etc., and also look after criminal matters relating to specified Police Stations. To avoid delays, we recommend that criminal cases under labour laws be tried by Labour Courts, as is being done in Madhya Pradesh.

CONCILIATION

11.38 There is a popular perception that the process of conciliation is not

effective in resolving industrial disputes. This perception is only partially correct as the record of conciliation efforts by the Central Industrial Relations Machinery shows. Conciliation has not been as effective in the case of rights disputes, as in the case of interest disputes. In fact, conciliation has an impressive record in interest disputes.

RIGHTS DISPUTES

11.39 In rights disputes over dismissal, denial of regularisation, promotion, etc., conciliation should be optional. The party should have the right to approach Labour Courts and the Labour Relations Commission straightway. However, conciliation should be compulsory in case of industrial disputes related to interests disputes, like wages, allowances, fringe benefits etc. Conciliation proceedings should also be compulsory in the case of strikes and lockouts over any issue. The success of the Central Industrial Relations Machinery in the case of intervention on threatened strikes in the years 1999-00 and 2000-01 may be seen from the table given on the next page

Year	Brought Forward	Received	Total	No. of strikes Averted	Success rate
1999-00	41	742	783	741	94.6%
2000-01	42	586	630	622	98.7%

This undoubtedly shows a high degree of success.

ARBITRATION

11.40 Industrial disputes not settled in conciliation should go for either voluntary arbitration or by arbitrators maintained by the Labour Relations Commission or adjudication. In the case of essential services like health and sanitation, transport, power and water supply etc., the dispute should go for compulsory arbitration. In other cases, it should go for adjudication. Arbitrators should be chosen from eminent persons in industry, conciliators, trade unionists and labour judiciary.

RECOGNITION OF TRADE UNIONS- BARGAINING AGENT/ NEGOTIATING COUNCIL

11.41 We have already dealt with this question in the Chapter on 'Review of Legislation'.

LABOUR ADJUDICATION

11.42 Labour adjudication in the Central sphere has all along been based on ad hoc arrangements. Retired High Court judges or District judges are appointed on the basis of availability with no procedures for selection etc. Retired High Court judges or judges often bring with them the criminal or civil law orientation not suited to labour jurisprudence. At any point of time, 50% or more tribunals remain vacant because of non-availability of judges or retired High Court judges. As a result, the disposal of cases referred to the tribunals gets inordinately delayed. The number of cases pending can be seen from the table we given on the next page.

The number of Industrial Disputes & Applications handled by the CGIT-cum-Labour Courts during the year 2000 (As on 30.11.2000)

S. NO.	Name of the CGIT	Number of Industrial Disputes			Number of Applications				
		B/F as on 1 Jan, 2000	Received during 1 Jan, 2000 to 30 th Nov. 2000	Disposed during 1 Jan, 2000 to 30 th Nov. 2000	Pending as on 30 th Oct 2000	B/F as on 1 Jan. 2000	Received during 1 Jan, 2000 to 30 th Nov. 2000	Disposed during 1 Jan, 2000 to 30 th Nov. 2000	Pending as on 30 th Nov. 2000
1	Asansol	309	97	-	406	47	4	-	51
2	Bangalore	441	78	4	515	448	-	10	438
3\$	Calcutta	184	41	20	205	33	21	22	32
4*	Chandigarh	1374	272	19	1627	313	27	27	313
5	Dhanbad 1	1286	326	83	1529	295	29	15	309
6^	Dhanbad 2	1170	82	-	1252	63	-	-	63
7	Jabalpur	1229	198	62	1365	570	115	5	680
8	Kanpur	624	118	116	626	687	159	357	489
9	Mumbai 1	189	54	40	203	66	9	1	74
10	Mumbai 2	292	112	133	271	429	432	14	847
11+	New Delhi	1057	108	80	1085	350	132	64	418
12	Jaipur	141	67	92	116	27	39	27	39
13	Lucknow	31	205	23	213	-	232	190	42
14**	Nagpur	71	166	29	208	-	-	-	-
15	Chennai	-	88	21	67	-	111	103	8
16^	Bhubaneshwar	-	23	-	23	-	-	-	-
17#	Hyderabad	-	-	-	-	-	-	-	-
	Total	8389	2035	722	9711	3328	1310	835	3803

Source : Annual Report 2000-2001, Ministry of Labour

* upto August 2000

\$ upto September, 2000

+ upto October, 2000

** upto July, 2000

started functioning w.e.f. October 20, 2000

11.43 Industrial tribunals/ labour courts are also not empowered either to issue decrees or to initiate contempt proceedings to enforce their awards. The only course available under law to secure implementation of awards/settlements is prosecution under section 29 of the Industrial Disputes Act by the officers of the Central Industrial Relations Machinery or the State Labour Departments. As officers or establishments, like the CPWD, Defence, Department of Telecom, Archaeological Survey of India or Railways, enjoy protection against prosecution under Section 197 of the Criminal Procedure Code, permission of the employing Ministry is necessary to prosecute them. This permission from the employing Ministry, under Section 197 of the Criminal Procedure Code, is seldom granted. As a result, a large number of awards relating to Railways, CPWD, P&T, ASI, etc. remain unimplemented for long periods. We recommend that all employing Ministries be advised to implement awards or sanction prosecution within one month of the matter being referred to them, failing which it should be deemed that the sanction has been given.

NON - IMPLEMENTATION OF AWARDS AND DENIAL OF JUSTICE

11.44 Many witnesses have complained to us that the awards of Labour Courts and Tribunals are not implemented by employers. The delay in implementation of awards causes lot of hardships to the concerned workmen and virtually amounts to a denial of justice. The remedy in the existing law is for the enforcement authorities to launch prosecution u/s 29 of the Industrial Dispute Act (ID Act). This remedy has not proved effective. It consumes time at every step. Moreover the law as it stands only empowers the courts to impose fines. It does not empower the courts to ensure the implementation of awards.

11.45 In the Central sphere itself, the number of unimplemented awards is approximately 2,500. These involve approximately 20,000 workers. Most of these awards of Labour Courts/ Tribunals have granted relief of reinstatement or regularization from certain specified dates. Many of these awards lie unimplemented for five to fifteen years or more.

11.46 We find that non-implementation of the awards of Labour Courts and Industrial Tribunals has become a major problem that paralyses the effectiveness of the dispute resolution machinery and thwarts the basic intentions of the ID Act. Many big employers prefer to challenge every award in the High Court by filing writ petitions. At present, the award has to be implemented within 30 days from the date of publication (Section 17A). However, the employer files a petition in the High Court only when the notice of the Labour Department is received. The Labour Department issues notices only when the aggrieved worker files a complaint of non-implementation of the award, after submitting many requests to the employer for implementation. Thus, it is only after a considerable period of time that the employer/management files a writ petition so as to avoid prosecution by the enforcement authorities. In the process the employer/management obtains a stay order from the High Court, and the awards remain suspended till the High Court decides the case or vacates the stay order.

11.47 In 70 to 80% of Writ Petition cases the employer/management does

not get success, and the award is upheld. But the decision of the High Court comes after three to five years, and sometimes after seven or eight years.

11.48 The management again takes their time, and if the worker again makes a demand for the implementation of the award, or if the Labour department issues a legal notice for the implementation, they again go on appeal to a larger bench of the High court. Or if it is not feasible, they approach the Supreme Court through special leave petitions for obtaining further stay and prolonging the case. Even after losing in the Supreme Court, the employer/management does not implement the award. If the enforcement authorities file a suit for prosecution, the prosecution is challenged in the High Court. In some awards, petitions are filed in the High Court as well as in the Supreme Court bifurcating issues to confuse the authorities and tie them up in legal complications. Another ten or fifteen years pass in this way, and the poor workman is kept waiting for justice. The law thus becomes a mockery.

11.49 Most of the awards which employers/management challenge relate to the regularization, reinstatement, back wages, etc. of large numbers of workers. Many times, awards in respect of individual workers too are challenged.

11.50 After ten or fifteen years when the employer/management loses in every court, it is often that the concerned worker has disappeared from the scene. Otherwise, the management invokes sec. 19 (6) of the ID Act and terminates the award in a clandestine and perfunctory manner, even though this action of the management is not in conformity with the statutory provision. An award can be terminated under section 19(6) if it satisfies the condition that it has been in operation for a period of one year as provided for in section 19(3). And certain awards that relate to reinstatement, regularization or the payment of back wages etc. cannot be terminated at all. Only awards that relate to service conditions, promotional policies, automation etc. or settlements, can be terminated as provided for in Section 19(6).

11.51 It must be pointed out here that the Hon'ble Supreme Court had directed the Government of India to

set up a committee consisting of representatives of the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Laws to monitor disputes between ministries, and between ministries and PSUs, to ensure that no litigation went to the Court or a tribunal without the matter being examined and cleared by the Committee for litigation. (Order dated 11 October 1991 in Civil Appeal Nos. 2058-59 of 1988 in the case of ONGC V/s Collector of Central Excise).

11.52 The Hon'ble Supreme Court further directed that every Court and every tribunal where such a dispute is raised should first demand a clearance from the Committee, and, in the absence of the clearance, refuse to take further proceedings. The intention of the apex court's order is clearly to prevent litigation between departments, and agencies of the Government.

11.53 But it has been seen that Public Sector Undertakings (PSUs) often file writ petitions against the Labour Ministry, impleading the Labour Secretary, the Labour Commissioner and the Enforcement Officer as main respondents. And they

file such cases in High Courts and the Supreme Court without obtaining clearance from the Committee, and sometimes, from their own Ministries. PSUs involved in such litigation include Coal India Ltd., Telecommunication Department, CPWD, Railways, ONGC, SAIL, ASI, Public Sector Banks, etc.

11.54 The situation in the state sphere private industrial units is even worse. They often make it a point of prestige. Furthermore, awards with high financial implications are hardly ever implemented. Quite often that they fail to enable workers to receive financial dues or back wages or compensation in spite of clear orders from the Courts.

11.55 Poor workers or their unions often find it difficult to defend their cases in the High Court or the Supreme Court, as it costs them huge sums of money. Many times they approach employers or the Labour Commissioner for partial implementation of the award. After losing from all the Courts and feeling pressurized from all corners, the employer pressurizes the workers or unions to accept much less than what the award has given them. For

instance, instead of reinstatement with full back wages of five to ten years or more, the management often tries to bring pressure on the worker to settle for much less, say 10%, as back wages and reinstatement without any service benefits. The management may even offer to settle the case by paying a lump sum amount, The poor worker is thus badgered or coaxed into accepting much less than what the Courts had awarded. One of the methods employed is to threaten to go on appeal to a Higher Court if the employee does not agree to compromise on a lower figure or packet of benefits.

11.56 When an aggrieved workman or union raises a dispute, the matter goes for Conciliation. Conciliation takes two months to one year. On the failure of conciliation, a report is sent to the Government. The Government takes its time, and often, one or two years elapse before action is taken. The case is then referred for adjudication to the Labour Court/Tribunal. The Labour Court/Tribunal submits its award to the Government after two to three years. By then, often, six years time has elapsed. Even so, the matter does not end,

and the employee does not get the redress he had sought six years ago. The employer does not implement the award. He goes on appeal to the High Court or the Supreme Court. It takes another few years for hearings, adjournments and further hearings. The aggrieved worker has still to wait for these processes to end, nursing the hope that the redress he had sought would arrive. But by the time these processes are over, sometimes a decade or more has passed. The worker may have died. He might have changed his employer, and taken up employment somewhere else. The industrial establishment may have closed down. Records may not be traced, and the worker's quest for justice may end in disillusionment and suffering.

11.57 We, therefore, feel that if the existing unethical system of continuous denial of justice is not changed, the workers will lose faith in the law, in labour administration and in the labour judiciary. To remedy the situation it is essential that the award is implemented immediately and the payment to the worker is started on the basis of last salary drawn. This principle would apply to workers both in the private and in the public sector

organisations. However, for public sector organisations, which want to prefer appeal against the orders of Labour Court, they should obtain permission of a Screening Committee to be set up by the appropriate Government.

11.58 If the above recommendation is accepted, it would go a long way in providing relief to the workers.

QUALIFICATIONS FOR PRESIDING OFFICERS

11.59 To ensure that there is no dearth of presiding officers in labour courts/tribunals, we recommend that qualifications for appointment of presiding officers be relaxed to enable experienced conciliation officers not below the rank of Deputy Labour Commissioner and Regional Labour Commissioner, with LLB degrees and at least 10 years' experience in the labour department, to be considered for appointment as presiding officers. This will help the Ministry to appoint presiding officers for all the tribunals and labour courts, and thereby to expedite the disposal of cases pending with the tribunals.

11.60 We also recommend that Labour Courts be given powers to

issue decrees or initiate contempt proceedings for non-implementation or non-compliance of awards. In the new dispensation that we have recommended, there will only be Labour Courts (no separate tribunals).

INDUSTRIAL RELATIONS COMMISSION

11.61 As we have said elsewhere, a Central Labour Relations Commission should be set up for Central sphere establishments, and State Labour Relations Commissions should be set up for establishments in the State sphere. Above the Central and State Labour Relations Commissions, there will be the National Labour Relation Commission (NLRC) to hear appeals against the decisions of the two other Commissions. The National LRC, Central LRC and the State LRCs will be autonomous and independent. These Commissions will function as appellate tribunals over the Labour Courts. They will be charged with the responsibility of superintendence of the work of Labour Courts.

CENTRAL LABOUR SERVICE

11.62 Central Labour Service (CLS) was formed in February 1987

comprising the officers of the Organisation of Chief Labour Commissioner (Central), Labour Officers of the Central Pool and officers of the Welfare Commissioners on the basis of the recommendation of the cadre review committee of Labour Officers of the Central Pool. The objective of the merger of these 3 constituent Services was to provide an integrated structure to inculcate professionalism and provide better promotional avenues to Labour Officers. Originally, the object of recruiting and providing the services of Labour Officers/Senior Labour Officers (now known as Assistant Labour Welfare Commissioners/Deputy Labour Welfare Commissioners) to the industrial establishments of various Ministries/Departments was to allow these officers to function independently, with a certain amount of neutrality and to enable them to look after the welfare of workers in these establishments without fear or favour.

11.63 At present, nine Welfare Commissioners and four Assistant Welfare Commissioners of the Welfare Organisation implement the welfare schemes of different welfare boards. Though the work assigned to

Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners varies from establishment to establishment, they are engaged in an advisory capacity for the implementation of statutory welfare measures under the Factories Act and non-statutory welfare measures, viz. JCM etc., of the industrial units. As they are not required to deal with personnel matters, they do not have knowledge about service conditions, recruitment rules, pay & allowances, leave, etc. In fact, Factory Welfare Officers Rules forbid these officers from attending conciliation proceedings or other quasi-judicial proceedings on behalf of the employer. The only work they are required to do is to prepare a monthly welfare report. Much of their time remains unutilised. The Deputy Labour Welfare Commissioners, wherever posted, attend to the same responsibilities. No instruction or professional advice is given to them by the management of the industrial units where they are posted, since they are not treated as part of the establishment. They learn what they can on their own.

11.64 The Job content of the Assistant Labour Welfare

Commissioners and Deputy Labour Welfare Commissioners is nowhere near or comparable to the job contents of Assistant Labour Commissioner (C) or Regional Labour Commissioner (C). There is hardly any opportunity to develop professional expertise while working as Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners. Over the years, with poor job content and a lot of unused time, Assistant Labour Welfare Commissioners / Deputy Labour Welfare Commissioners have not kept abreast of developments in their fields and often lack initiative and drive. Even experienced Assistant Labour Commissioners (C) of the Central Industrial Relations Machinery, after serving a 4 year tenure as Assistant Labour Welfare Commissioner in industrial establishments, tend to become out of date on developments in the field of labour laws and related judicial pronouncements.

11.65 Grouping of Assistant Labour Welfare Commissioners/Deputy Labour Welfare Commissioners with Assistant Labour Commissioners(C)/ Regional Labour Commissioners(C), who have different kinds of duties and

different degrees of responsibility, has not only told upon the efficiency but also diluted the independence and impartial character of Assistant Labour Commissioners(C) and Regional Labour Commissioners(C). After the formation of the CLS, the posts of Assistant Labour Welfare Commissioner and Deputy Labour Welfare Commissioner have become interchangeable with the posts of Assistant Labour Commissioner(C) and Regional Labour Commissioner(C) respectively. Assistant Labour Commissioners(C)/ Regional Labour Commissioners(C) are posted as Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners in Govt. factories and departments, like the CPWD, under the same employer against whom they had enforced labour laws or decided quasi-judicial cases. Similarly, Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners, employed and paid by the government factories and departments, when posted as Assistant Labour Commissioners(C)/ Regional Labour Commissioners(C), enforce law, take legal action and hear and decide cases against the General Manager of the factory under whom they had

worked. Labour Enforcement Officers, conscious of the fact that, on promotion, they may be posted as Assistant Labour Welfare Commissioners under a General Manager, can hardly be expected to prosecute the General Manager fearlessly, for payment of less than minimum rates of wages to casual labourers under the Minimum Wages Act or for violation of provisions of Contract Labour (Regulation & Abolition) Act. This is also contrary to the recommendation 20 and Convention 81 of the ILO, under which the inspecting staff should not have any direct or indirect interest in the establishment where they are expected to enforce labour laws.

11.66 The functions of the Assistant Labour Commissioner(C) and the Regional Labour Commissioner(C) involve conciliation, a highly personalised art acquired over years of practice, and quasi-judicial functions of authority under the Minimum Wages Act, Payment of Gratuity Act, Equal Remuneration Act and Industrial Employment (Standing Orders) Act.

11.67 As the number of Assistant Labour Welfare Commissioners is

twice the number of Assistant Labour Commissioners(C) and the number of Deputy Labour Welfare Commissioners is 4 times the number of Regional Labour Commissioners(C), each officer may, at best, work one stint of 4 years as Assistant Labour Commissioner(C), another tenure of two years either as Regional Labour Commissioner(C), or Deputy Chief Labour Commissioner(C). In other words, for every tenure of work in the Central Industrial Relations Machinery, an officer has to work two or three tenures as Assistant Labour Welfare Commissioner or Deputy Labour Welfare Commissioner in industrial units. This has resulted in loss of expertise to the Central Industrial Relations Machinery and consequent dearth of experienced officers to train new recruits.

11.68 We see that the system of recruitment and posting of Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners who work as Welfare Officers in factories etc. by the Ministry of Labour has outlived its utility. Under the provisions of the Factories Act, it is the statutory responsibility of the employer to appoint Welfare Officers as in the case of other enactments

related to the activities of factories such as Safety Officers, Fire-fighting Officers, and Boiler Supervisors etc. The appointment of Assistant Labour Welfare Commissioners through the Ministry of Labour has also added to the problems of officers. Rotational transfers do not give them the opportunity to develop a sense of belonging and commitment to the unit. The Central Working Group on Labour Administration of the First National Commission on Labour made the following observations in Chapter VI of its Report:

“As the Labour Officers of Central Pool posted to different factories/undertakings are not taken a part and parcel of the establishment and considered rather as outsiders, their utility is somewhat neutralised. They should form an integral part of the management set-up by each employing Ministry having its own cadre as far as possible”.

11.69 The Administrative Reforms Committee recommended that the Labour Officers of the Central Pool maintained by the Ministry of Labour, in suitable cases, should be

permanently absorbed in the services of public sector undertakings. A labour administration mechanism can function effectively, only if the men in charge are knowledgeable, motivated and experienced in the field of labour administration. We therefore recommend that the Ministry of Labour should not depute its officers to employers' establishments. Different employing Ministries, where Assistant Labour Welfare Commissioners and Deputy Labour Welfare Commissioners are posted, should be advised to absorb them in the cadres of the officers of the respective Organisations. Officers who are not willing to get absorbed or who cannot be absorbed by different Ministries, should be withdrawn in phases, and posted in the other two streams of the CLS, i.e. Central Industrial Relations Machinery and the Welfare Commissioners' Organisation. They may also be considered for deployment in the Organisations of CPFC, ESIC and DGET so that officers of the CLS can be groomed to take higher responsibilities in at least 25 % posts of the Ministry of Labour, particularly the IR & Implementation Division, and in the Office of the DGLW. This will also promote professional expertise and efficiency in the system.

11.70 It is also necessary to improve the knowledge, skills and competence of the officers of the CLS to enable them to win the confidence of the employers and workmen. It is necessary to upgrade the skills of labour adjudicators to enable them to perceive the changes in their roles as labour adjudicators and the impact of their decisions on the national economy. Induction, training and periodical refresher courses are necessary to improve the efficiency and effectiveness of officers of the CLS. To improve the status of these officers, engaged in conciliation, adjudication, etc., there is need for an All India service, like the Indian Labour Judicial Service. These officers should be given proper staff, infrastructural backup, and support facilities, like office equipment, library, transport and communication. There should be access to information on all matters concerning industrial relations, like industrial statistics, long-term settlements, retrenchments, dismissals, strikes and lockouts and judicial pronouncements. A database should be built up on all aspects relating to industrial relations and the officers of the CLS should have access to such database through computer connectivity.

11.71 The question of dealing with the existing posts of Assistant Labour Commissioners of the Central Labour Service at the Central level and its equivalents at State level and other Central Government bodies, as part of the proposed All India Labour Administrative Service, all needs to be looked into carefully. While on the subject of creating an All India Labour Service to substitute the cadres of the Central Labour Service. We reproduce our views mentioned at para 84 of Chapter VI on Reivew of Laws :

“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. It must be recognized that bulk of the labour administration in the States and union territories relate to implementation and enforcement of labour laws which are centrally enacted. Though there may be some State level amendments to some of these laws, the main provisions of these laws are common to all States and union territories. We are of the view that if all the officials of the

labour department of and above the rank of Deputy Labour Commissioners / Regional Labour Commissioners are included in the service and also senior level appointments such as Executive Heads of Welfare Funds, Social security administration and so on there will be an adequate number of posts justifying such a service. Moreover, those who are in charge of Labour administration need some specific skills and attitudes, and aptitudes which we have made reference. Some of these have to be identified and developed considering all this. We recommend the setting up of such an All India Service”.

The related question of their interchangeability to man posts under the State Labour Departments needs to be looked into. This would necessarily mean State based cadres of All India Labour Service to man senior level posts available at respective state levels and having the necessary components of Central Deputation Reserve, leave reserve, ‘foreign’ service reserve, etc. The related issues of the level at which the officials proposed to constitute the All India Labour Service are to be inducted, which has to be necessarily

at Class I level on par with other All India Services, and consequently the issue of dealing with members of CLS below the Class I level as also the Subordinate Services for whom they function as promotional level, also need to be sorted out. Similarly, the feeder services at the state level at Class I level which would function as the promotional base of officials for promotion to the Senior Class I level of the proposed All India Labour Service, also need to be agreed upon in consultation with the State Governments. The Commission is conscious of the fact that no new All India Service was created since the Indian Forest Service has been re-created in the mid 60s, and the earlier attempt in the late 70s for creation of All India Engineering and Health & Medicine Services, did not bear fruit. However, in the interest of uniform standards in administration of labour laws which impact upon the life and conditions of work of the entire working class and its importance for the maintenance of peaceful industrial relations and to national economy, the Commission feels that it would be worthwhile for the Government to initiate appropriate steps in this regard.

Mention must also be made of the significant number of Indians who have migrated to some West Asian and other countries in search of employment. Our attention was drawn to some cases where such workers were deprived of their rights. While these workers will no doubt conform to the laws of the host countries, they may still need advice to resolve their cases. We, therefore, recommend that in countries which have sizeable Indian workers' population, our Embassies must have Labour Attaches, drawn from officials of the Labour Departments or the CLS and later from the proposed All India Labour Administrative Services.

STATE LABOUR ADMINISTRATION

11.72 In the preceding paragraphs, we have talked of the structure, role and the infrastructure of labour administration at the central level. The role of the labour departments of the States and the Union Territories is almost identical, and so are their problems. However, problems relating to infrastructure, both in terms of manpower and other resources, seem more acute in some States. The nature of the work handled by the Labour Departments of States/Union

Territories is much more diverse than what the Central Government handles. While the Central Government is broadly responsible for Public Sector Undertakings and some large Private Sector Organisations, the State/UT Governments look after a vast spectrum of organisations ranging from five-star hotels to road-side *dhabas* and tea shops, from large automobile companies to small workshops that operate with the assistance of one or two persons, from multi-unit multinational organisations to a small family concern functioning from a portion of the residence of the proprietor.

11.73 We have also seen that almost in all labour departments, there is a certain percentage of persons who are not from the cadre of the department but are deputed for varying periods. In the National Capital Territory of Delhi, the basic Labour Inspectorate is drawn from the common Subordinate Services cadre. This does not have salutary effect on professionalisation in the labour departments.

11.74 The problems of the States/UT labour enforcement machinery are the same as what we have highlighted

in respect of the Central Industrial Relations machinery. We hope that the State Governments will pay due attention to the professionalisation and empowerment of the Labour Department because of the crucial role that it has to play in strengthening the economy.

11.75 We would also like to recommend that the Central Government determine some norms for the laws – inspector ratio and the infrastructure of the Labour Departments. Such norms should, no doubt, be determined after due deliberation and after taking into account the International Labour Standards concerning Labour Administration formulated by the International Labour Organisation in 1978. We append the text of the ILO's Conventions on Labour Administration (1978) and the related recommendation at the end of this Chapter (Appendix II).

ENFORCEMENT AND CONCILIATION MACHINERY

11.76 Efficiency and effectiveness of inspections and conciliation contribute greatly to the observance of labour laws. Complexity in laws makes a very heavy demand on the poorly staffed

and poorly equipped labour inspection and conciliation services. The machinery has to be equipped adequately. There are obvious limitations on increasing staff. The concern should, therefore, be on improving the efficiency of the existing staff and infrastructure, without depending on increasing the size of the machinery. For this purpose, the enforcement and conciliation machinery in the Central and State Governments need to be equipped with suitable office accommodation, facilities for transport and communication, like fax machines, telephones with STD facilities and computers in the offices of the Central and State Labour departments. All offices of the CIRM and the State Industrial Relations Machinery should have the benefit of computerization. Regional Labour Commissioners(C) must have telephones in their residences and offices, serviceable and adequate number of vehicles, and well-equipped libraries in regional and zonal offices etc. All this is necessary so that the enforcement and conciliation machinery can keep abreast of latest case law.

11.77 All inspecting officers charged with the responsibility of the

enforcement of multiple enactments should be of Group 'A' status. Their knowledge and experience should be updated through short-term and long-term training and refresher courses.

EFFECTIVE AND INNOVATIVE WAYS OF INSPECTION

11.78 Apart from the provision of material and human resource inputs and rationalisation and simplification of laws, it is necessary to evolve a rational system of identifying establishments that need to be inspected. The Labour Enforcement Machinery receives a number of returns from employing units. These returns provide sufficient information on whether minimum wages are paid and whether reasonable terms and conditions of employment and safety exist in the units. Labour Enforcement Officers(C) may draw up their programme of selective inspections keeping in view these functions. Returns with self-certification can be treated as self-inspection report from the establishments. Labour Enforcement Officers(C) are of course free to check the correctness of the information whenever they have doubt or on the basis of random sampling or complaints. Considering the

limitations of the inspection machinery and the fact that the workers engaged in organised industries do have means of collective bargaining, routine inspections in the organised industries may be reduced, except where conditions of safety are concerned. However, routine inspections are necessary in the unorganised sector to protect the interests of the workmen. To make the enforcement machinery accountable, there should be at least 10% check of inspections by superior officers at all levels.

STATUS OF THE CONCILIATION OFFICER

11.79 To make conciliation effective, it is necessary to improve the status and competence and calibre of conciliation officers through proper recruitment, training and placement. A Labour and Judicial Service can be formed with the officers of the Central Labour Service and future recruitment may be made through the UPSC by holding a competitive examination, followed by two years' probation in the departments of the Labour Ministry, tribunals, CIRM, employment wings of the DGET, ESIC, EPFO, etc., to develop professional expertise and

high standards of efficiency necessary to render effective conciliation and adjudication services.

SOCIAL SECURITY BOARD

11.80 As per the existing system, Employees State Insurance Corporation enforces the ESI Act and provides medical facilities, sickness benefits and temporary and permanent disablement benefits etc. with periodical contributions from both the employers and the employees. Similarly, the EPF Act is enforced by CPFC with the PF contribution of employers and employees. Workmen's compensation is paid to workmen by the Workmen's Compensation Commissioner, after realising the money from the employers. The employer pays gratuity to the workmen at the time of termination of service. In case of non-payment, the aggrieved workers may approach the Controlling Authority for direction to the employer for payment of gratuity. Unlike the PF and ESI, workers do not have to pay contributions for payment of gratuity. As a result, at the time of closing down of the establishment, in many cases, workmen do not get payment of gratuity in time. We have already

recommended that workers should be supplied with a social security card to enable them to get social security benefits wherever they are in the country.

POLICY RECOMMENDATIONS

11.81 For effective labour administration, there should be legislative backup for the simplification of laws and procedures through uniform definitions of 'appropriate government', 'workmen', 'employer', etc., enabling provisions to cover all employments in the unorganised sector under the Minimum Wages Act, speedy recovery of the dues payable to workers, empowerment of the appropriate government to exempt from the provisions of the laws in deserving cases, ensuring that the employment of contract labour is restricted for areas beyond those of core competence, deterrent punishment to make the cost of violation dearer than the cost of implementation, clubbing of the existing set of labour laws into five or more groups pertaining to (i) industrial relations, (ii) wages, (iii) social security, (iv) safety and (v) welfare and working conditions etc., and reduction in the number of registers to

be maintained and returns to be submitted.

11.82 The changes brought about by globalisation, liberalisation and the market driven economy, require that Indian industry should be competitive, both in quality and cost. In order to be competitive, voluntary resolution of disputes should be encouraged over the legalistic approach of settlement of disputes through adjudication. Labour administration should encourage information-sharing, better human resource practices, the emergence of a participative workforce, relationship and trust building, workplace cooperation between the employers and the workers and other cooperative practices. Workmen should take more and more decisions at the workplace. The focus should be on bipartite consultation at enterprise level and voluntary arbitration rather than resolution of disputes by adjudication.

11.83 There should be a legislative framework for voluntary dispute settlement. The first and foremost requirement should be to place a system of recognition of negotiating agency on the statute. It is difficult for the employer to deal separately

with multiple unions having different ideologies. Once there is a system of recognition of a negotiating agency, the employer can negotiate with the recognised negotiating agent or the negotiating council. The responsibility of conducting verification of trade union membership for recognition of trade unions and the formation of a negotiating council should be vested on the Central Labour Relations Commission in the case of the Central sphere and the State Labour Relations Commissions in the case of the State sphere establishments. The Works Committee to be constituted under Section 3 of the Industrial Disputes Act (IDA) should be substituted by an Industrial Relations Committee to promote in-house dispute settlement and resolve all the differences at the unit level as far as practicable.

11.84 Adhocism should end in the appointment of presiding officers of the industrial tribunals. There should be regular a cadre of labour adjudicators drawn from experienced judges and conciliators to improve the quality of adjudication as well as to improve prospects of their professional advancement. We have already said earlier that we visualize only labour courts – not tribunals as

different from courts. These Courts should work under the superintendence of the Central LRC or the State LRC respectively. LRCs should also function as appellate tribunal in respect of decisions given by the labour courts to bring uniformity. At present, there is no appellate jurisdiction against the decisions of the tribunal. However, the aggrieved parties take recourse to the writ jurisdiction under Article 226 in different High Courts. There is lack of uniformity in the decisions of the different High Courts. The National LRC which should function as the appellate authority against the decision of the Central and State LRCs, as national appellate tribunal, may bring uniformity speed and consistency in the decision making process on appeal.

INDIAN LABOUR CONFERENCE

11.85 The Commission has given considerable thought to the role that the Indian Labour Conference (ILC) can, and should play, and the role that it is playing today. The Conference came into being in 1940. We have had the benefit of about 62 years of experience now, and have gathered enough experience to assess the

shortcomings and the utility of the institution. Neither the State Governments nor the organisations of employers and employees are satisfied with the way the Conference has worked.

11.86 According to our Constitution, Labour is a concurrent subject. There are innumerable industrial agricultural and service enterprises in the country. The states have different levels of organization of workers and entrepreneurs. There are problems that are special to some states. There are differences in priorities in the problems that demand attention. There are also problems and goals that are common to all states. In such circumstances, policies can be evolved and some degree of uniformity in directions and programmes achieved, only through frequent and meaningful consultations at high level. The ILC must provide such a forum for consultations. Its sessions should not become an annual ritual that contents itself with platitudes, and declarations. It should be an effective forum for review, consultation and formulation or evolution of perspectives and policies. This is all the more necessary because it is the only high-level tripartite forum that we have.

11.87 The Conference has to be as representative as possible. It should therefore, have representation from the organisations of employers and employees, and the Governments at the Centre, the states and Union territories. Up to now, representation of workers has been on the basis of the Central Trade Union Federations in the organized sector. Some means must be found to include representatives from the unorganised sector and from Central organisations that are not affiliated to the Central Trade Union Federations. There is no reason to hold that workers in the unorganised sector need not be represented at such a forum. Nor is there any insurmountable difficulty.

11.88 We have studied the proposals that the Draft Indian Labour Code, prepared by the National Labour Law Association, has made on strengthening the ILC. We are in general agreement with the proposals in the Code. We agree that the Conference can be used as a sounding board for proposals of legislation. We also agree that the Government can benefit immensely by the advice that it may receive from the conference both in honing and refining proposals and in maximizing support from all

concerned sections. But to begin with, we may not prescribe that every proposal the Government wants to make should first be discussed and approved by the Conference. This may involve incursions into the rights of other statutory bodies or institutions that are charged with the responsibility for immediate action. However, there can be no doubt that where measures can be or have to be anticipated or visualized in a long range perspective, the way of prior consultation is possible and highly desirable.

11.89 We agree that the Conference should:

- a) Review the labour situation in the country;
- b) Consider the Conventions and Recommendation of the International Labour organisation for adoption;
- c) Consider the legislative proposals of the Central Government that are referred to it, before or after being moved in Parliament. We believe that it will be advantageous to elicit the views of the ILC on laws that are to be introduced in Parliament.

Except in emergency situations, we would therefore recommend prior consultation with the ILC;

- d) Provide a forum for consultation and hearing of complaints regarding violation of the rights of labour;
- 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 labour laws;
- f) Review the implementation of the programmes drawn up by the Central Government for the benefit of labour;
- g) Coordinate the conclusions and recommendations of the Standing Labour Committee;
- h) Review the implementation of its own recommendations;
- i) Adopt such resolutions and make such recommendations as it may deem necessary; and
- j) Do such other things as may be decided in the Conference itself;

11.90 We also agree that the Standing Labour Committee should prepare the agenda of the Conference, that there should be a Director General of the Indian Labour Conference; and that the functions of the Director-General should include:

- a) collection and distribution of information relating to conditions of work and life of labour;
- b) examination of the subjects which are proposed to be brought before the Standing Committee and the Conference;
- c) conduct of such special investigations as may be ordered by the Standing Committee and the Conference;
- d) preparation of documents on the various items of the agenda for the meeting of the Standing Committee and the Conference and sending them to participate two weeks in advance;
- e) preparation of the proceedings of the Conference and the meetings of the Standing Committee and issues relating to them;
- f) editing and issuing publications in English, Hindi and regional

languages, dealing with problems of labour;

11.91 We agree too that the ILC should set up tri-partite Standing Committees to consider and review problems, legislation and implementation into main areas like: (a) employment b) labour relations c) safety and health d) living condition of labour e) technological developments and their effects on labour and industry.

11.92 We also support the suggestion that tripartite National and State level Councils of employment should be set up to monitor and plan problems related to employment like:

- a) the development and adoption of an employment policy designed to promote full productive and freely chosen employment;
- b) co-ordination between employment policy and the overall economic and social policy and development programmes;
- c) assessment of the incidence of unemployment and under employment and the measures

- that may be taken to provide relief to the unemployed and the under employed;
- d) promotion of employment overseas;
 - e) development of short-term employment programmes;
 - f) Employment Market Analysis and manpower planning;
 - g) Prevention of discrimination in employment;
 - h) Monitoring the status of women workers;
 - i) Related matters.

COMMITTEES/BOARDS UNDER THE MINISTRY OF LABOUR

11.93 There are 41 Tripartite Committees/Boards under the Central Ministry of Labour. These committees are mainly advisory or consultative bodies that the Government consults in relation to the implementation/enforcement of different labour laws and policy formulation. A few of these committees are non-statutory, like the Industrial Tripartite Committees on various industries like sugar, cotton, textile, jute, engineering, chemical,

road transport etc. and safety committees, the governing body of the Central Board of Workers' Education etc. The Committees constituted under specific labour laws have special roles, albeit, advisory and therefore, require a certain degree of expertise. The non-statutory committees examine, and deliberate on a variety of issues. These committees promote tripartism and democratic functioning in labour administration. Although, the Labour Ministry has not conducted studies to examine the efficacy of these committees, quite a few witnesses have expressed their dissatisfaction with the functioning of these committees. Some of the main committees are listed in the table that we append.

11.94 The members of most of these committees are nominated from employers' organisations, trade unions, academicians and other interest groups without much emphasis on or evaluation of the quality of the contribution that is expected. Sometimes, the Minister chooses them. Sometimes they are chosen by the Secretary or other officers. There is no fixed criterion for their selection and nomination.

The meetings of these committees are held as and when the Ministry considers it necessary or when some members mount pressure. There is no fixed periodicity. These committees also constitute sub-committees. The agenda of the meetings of these committees are prepared by officers. Very often, members come to attend these meetings without adequate preparation. This affects the quality of deliberations in such meetings, and sometimes the meetings are reduced to rituals. In many meetings, divergent views are expressed on small points, and discussions get stuck.

11.95 The meetings of these committees are held at various places, and a lot of expenditure is incurred on travel and arrangements. A lot of logistical support and secretarial assistance have to be made available for facilitating the meetings of these committees.

11.96 In the State sphere too, there is the practice of setting up of many committees and sub-committees. In most of the states, the number of committees is below twenty.

11.97 The Commission feels that the Labour Ministry should scrutinize the

necessity, utility and efficiency of these Committees rigorously. There is no doubt that Committees enable access to a wide range of views from interested or affected groups, and provide a channel for democratic interaction and consultation. But Committees should have specific areas of responsibility or expertise for consultation. Their meetings should be on specific agenda. Discussions should not be a formality, but should lead to the crystallization of views or advice. Members should be chosen for their expertise, experience and/or representative capacity. They should not be sinecure committees, and become the cause of avoidable expenditure from the exchequer.

SAFETY

11.98 Safety, in industrial and agricultural operations, is a necessity not only for the worker and the enterprise, but also for society itself. Occupational hazards and dangers to health and accidents affect all. This means that conditions in an enterprise or industrial activity must be conducive to the protection of human life and limb. If the work place is not safe, clean and congenial, the workforce will tend to be alienated

from it, and such alienation, as opposed to involvement, physical, emotional and psychological, will adversely affect industrial production, productivity and growth.

11.99 Wanting to be safe is a basic instinct. However, the human being has to take risks, even for survival. Sometimes, we take several risks that are not warranted or justified. We carry this tendency to our place of work. Neither the employer nor the employee is free from this malaise. The employer sometimes does not take adequate precautions or does not provide the machines and devices necessary to ensure safety because he is keen to save on costs. Employees do not conform to safety norms, either because they find them irksome or because they feel that they affect the speed of work. If we look at the number of accidents, for instance in mines, it can be said that over a period of years the accident figures have come down. If one examines the accidents in detail, it can be seen that causes of accidents repeat themselves in a disturbing manner. Statistics by themselves, may not give the full picture. The present system of data collection and compilation has its own limitations,

and as such, the figures presented can only be taken as indicators.

11.100 In India, laws on safety of industrial workmen precede the Constitution. Under the Indian Factories Act, 1881, the District Magistrate was designated as the enforcing agency for safety. Factory Inspectors were appointed as early as 1911 even though the Factories Act in the present form came into being only in 1948. Today, we have a number of laws for the safety of persons working in industrial and commercial organisations. Some of them are listed below: -

- (a) The Factories Act, 1948
- (b) The Indian Explosive Act, 1884
- (c) The Petroleum Act, 1934
- (d) Inflammable Substances Act, 1952
- (e) The Insecticides Act, 1968
- (f) The Indian Electricity Act, 1910
- (g) The Indian Boilers Act, 1923
- (h) The Environment (Protection) Act, 1986
- (i) The Public Liability Insurance Act, 1991

- (j) The Dangerous Machines (Regulation) Act, 1983
- (k) The Atomic Energy Act, 1962
- (l) Building and other Construction Workers (Regulation of Employment and Condition of Services) Act, 1996
- (m) Fatal Accidents Act, 1885
- (n) Dock Workers (Safety, Health and Welfare) Act, 1986
- (o) Shops & Establishment Acts of various States
- (p) Plantations Labour Act, 1951
- (q) Mines Act, 1952

Some of these Acts have a slew of rules, which are more exhaustive than the Acts.

11.101 In spite of so many laws, for some strange reason, we tend to take safety lightly at home and outside. Even when we observe laws, we often do so to avoid getting into trouble with the law, not because we feel that observing the laws of safety is a duty we owe to others and ourselves around us. It is perhaps this attitude, which was responsible for the holocaust at Bhopal in the night of December 2/3, 1984.

11.102 Bhopal, the capital of Madhya Pradesh had a population of approximately 8,00,000 at the time of the accident. The Union Carbide plant was first built on the outskirts of the city itself. Soon, it was surrounded by shantytowns. These habitations grew up in violation of all municipal laws and the Government did not realise the dangers of habitation so near a hazardous industry, and hence, did not take timely action, including precautionary steps, to remedy the situation.

11.103 Most of the evidence available indicates that the initial reaction was caused by leakage of water into the Methyl Isocyanate (MIC) tank which led to increase in temperature, the transformation of stored liquid MIC into vapour, the increase in the pressure of tank number 610 to nearly 50 psi, the opening of the rupture disk and the safety valve leading to the vent pipe, and finally the escape of the gas through the pipes and then into the atmosphere through the vent. The question of how the water entered the tank has been a matter of speculation, some ascribing it to carelessness and some to a possible conspiracy. However, it is evident that there were

adequate warnings given by even the outmoded system that was in place, and there are enough indications available to show that adequate time was available to take remedial actions to prevent the accident or at least to reduce the magnitude of the accident.

11.104 Operational and safety failures included storage of MIC for a period longer than permissible, non-functional and non-existent devices for detection and warning, insufficient and untrained staff, failure of Union Carbide to respond to defects and lapses pointed out earlier, shutdown of the MIC refrigeration unit, perhaps to save cost, shutdown of the caustic soda spray system, an out of order flare tower, excess of MIC in the tank, lack of a spare tank for diversion of MIC from other tanks, misinformation about the toxic effects of MIC and treatment and so on.

11.105 Two factors increased the magnitude of the tragedy. The first was the delay in starting the warning signals. Although the impending danger of leak was detected at 11.30 p.m. on December 2, the siren was started at only 1.30 a.m. on December 3, 1984. Some reports also suggest

that the siren actually became operational as late as 2.15 a.m. by which time a number of people had already awakened, and some had already reached the hospitals. Of course, the fact that the accident took place at night also added to the adverse elements in the situation.

11.106 Secondly, the local administration was given wrong information about the toxicity of MIC. The officials of Union Carbide initially maintained that it was not lethal.

11.107 A number of warnings had been given prior to the December 3 incident. In May 1982, a team of American experts from Union Carbide had inspected the Bhopal plant, and were extremely critical of the operation of safety measures.

11.108 In retrospect, the most noteworthy warnings came from the Indian journalist Raj Kumar Keswani who wrote a series of articles in a local Hindi weekly in 1982. Again, on June 16, 1984, about five months before the accident, Keswani reiterated his fears through an article in another major Hindi newspaper '*Jansatta*'.

11.109 After the Bhopal Gas Tragedy that resulted in loss of human lives on an unprecedented and startling scale, the Government initiated a series of amendments in the Factories Act, 1948. These amendments ranged from minor amendments, which specified the location of drinking water to major amendments that introduced a new Chapter IV A, in respect of provisions relating to hazardous processes. There were other amendments too. Safety was made the responsibility of the top person in the organisation, further stipulations were laid down on the general duties of the occupier and the general duties of manufacturers, etc. as regards, articles and substances meant for use in factories and so on. The Factory Inspectors were given powers to prohibit work, where serious hazard is anticipated. Finally, the penalties prescribed in the Act were increased manifold in order to have a deterrent effect.

11.110 Chapter IV A, which has been added, contains provisions relating to the Constitution of Site Appraisal Committees to give opinions on the initial location of a factory involving a hazardous process or for the expansion of any such factory.

The Chapter also casts specific responsibility on the occupier to maintain accurate and up-to-date health records of workers in the factory and appoint persons who possess qualification and experience for handling hazardous substances that were being used in the factory. It also has provisions for compulsory disclosure of information by the occupier to the workers, the Chief Inspector, the local authority and the general public in the vicinity, and provisions for workers' participation in safety management and the right of workers to warn about imminent danger.

11.111 While a number of factories have finalised 'on-site plans' for meeting exigencies of accidents, the progress in respect of 'off-site plans', which is a natural extension of the on-site plans, leaves much to be desired. Similarly, mock trials of off-site plans are an exception rather than the rule. It may be added that the success or otherwise of on-site plans can be judged only when the mock trial takes place, and they prove the efficacy of systems.

11.112 The power conferred by section 87-A, to prohibit employment

where there is serious hazard, has been used by the Factory Inspectorate on few occasions. What is comforting to know is that fortunately, up to now, there have been no occasions on which the Inspector of Factories failed to exercise the power that he should have used.

11.113 The enhancement of penalties under the Act has had a mixed effect. Whilst earlier, persons who were accused of violations of the provisions of the Factories Act would go to the Court, plead guilty and pay fines, the tendency now is to contest cases because penalties have become higher. This implies that today, the quality of evidence presented by the Inspector of Factory has to be much stronger than before, and when it is not so, the Courts tend to acquit the accused. Similarly, since the quantum of penalty is higher, and persons contest cases, the Inspector of Factory has now to spend more time in the Courts, and as a consequence, he has less time to spend in the field for inspections.

11.114 The Factories Act, in the present form, has drawn from the international experience on safety

management. All these amendments graphically show that lessons have been learnt from the grave industrial tragedies which had taken place in the world, and that if the revised safety measures are implemented, they would go a long way in ensuring the safety not only of persons working in the factory but also those living in the vicinity.

11.115 Overall, the amendments made in the Factories Act after the Bhopal Tragedy have been salutary and the spirit should be extended to organisations other than factories as well. Further, the amendments, which have been made, should be implemented properly and if necessary the responsibilities of the non-technical provisions can be transferred to the Labour Inspectorate so that the Factory Inspectorate can concentrate on aspects of health and safety.

11.116 We may also mention that at this stage, we are not going into the specifics of the Factories Act, 1948 in detail as we are dealing with the policy on safety and occupational health in general. However, we would like to record that we did organise a workshop to review the provisions of

the Factories Act, 1948 under the changing scenario, in collaboration with the Directorate General, Factory Advice Service & Labour Institutes on the 21 September 2001 at Mumbai. Among other things, the workshop recommended that while enforcing safety, the public should be enabled to realize that compliance with safety measures is in their own interest and for their own safety. The process may be long, but the effects are likely to be long lasting.

AGRICULTURE

11.117 Till recently, both at the national and the international level, safety in the agricultural sector was not receiving the attention it deserved. The scenario is compounded by the fact that children comprise a large section of the agricultural workforce that is exposed to the injurious effects of chemicals, insecticides, etc. and even the adults working in this sector are mostly illiterate.

11.118 Machinery, such as tractors and harvesters, has the highest frequency of fatality rates. Exposure to pesticides and other agrochemicals constitutes one of the major occupational risks causing poisoning

and death and certain cases of work related cancer. Other hazards arise from multiple contact with animals or insects, plants, poisonous animals and biological agents which may give rise to allergies, respiratory disorders and lung diseases and parasitic diseases. Noise-induced hearing loss, muscular and skeletal disorders (repetitive motion, disorders, back disorders), stress and psychological disorders are also frequent.

11.119 The geographical location and other climatic factors including floods, droughts, famines etc. are other hazards which agricultural workers have to face.

11.120 Workers engaged in the agricultural sector have to be educated about potential hazards. They should possess:

- a) Sound knowledge of the work and procedures in the processes of production;
- b) Means to identify, assess and monitor work-related risk factors;
- c) Information on measures of first aid;
- d) Methodologies for planning and implementing risk prevention

and safety and health promotion programmes.

11.121 During deliberations on matters relating to Occupational Safety and Health, we had the benefit of receiving advice from various experts from reputed organisations like the Directorate General: Mines Safety, Loss Prevention Association, National Safety Council, Controller of Explosives, Chief Inspectors of Factories of different States and, particularly, of NCT of Delhi, Directorate General of Factory Advice Service & Labour Institutes, various industry representatives and, in some cases, representatives of workers.

11.122 We also had occasion to discuss the subject with the Head, Corporate Safety, Environment & Energy in the Hindustan Lever Limited, which is the Indian arm of one of the major global multinational corporations. The most important aspect of the Safety & Health Policy of Hindustan Lever Limited, we were told, is perhaps the accountability of management at all levels starting from the Chief Executive level, for occupational safety and the health performance of the company. Another key feature of the policy of Hindustan Lever Limited is the

recognition of the close links between technology, people and facilities, and also the management's commitment to safety management. During the course of discussions, the representative of Hindustan Lever Limited also referred to a study undertaken by Frank E Bird Jr., the then Director of Engineering Services of the Insurance Company of North America. He studied 17,53,498 accidents and conceptualised a pyramid-like structure of accident ratio which indicates that behind one major injury there are normally ten minor injuries. That is to say that for every accident leading to a major injury, there are at least ten accidents, which resulted in minor injuries. Similarly, for every ten minor injuries there are at least thirty accidents that resulted in some damage to property but did not cause any injury. Likewise, for every thirty property damage accidents there were six hundred accidents or incidents which did not result in any injury or in any damage and could be categorised as 'misses'. The numbers may vary but the conclusion is that every accident which causes major or minor injury or causes damage to property, gives adequate indications of its imminent arrival, and if these

incidents can be noted and corrective action taken, then the occurrence of accidents which cause loss of life or property can be minimised. The other important lesson is that no accident should be taken lightly.

11.123 The costs of accidents can be divided into two categories – one, visible costs and the other, the invisible costs. According to an estimate, for every Rs. 50/- which would be the visible cost on account of medical costs and insurance costs there would be a further cost ranging between Rs. 250/- to Rs. 2,500/- in terms of damage to building, damage to tools and equipments, repairs and replacement of parts etc. These have been described as ledger cost of property damage. Similarly, there would be a further expenditure ranging from Rs. 50/- to Rs. 150/- on account of investigation time, wages paid for time lost, cost of hiring and training replacements, clerical time, loss of business etc. While these are not absolute figures, they do tell us that visible costs are far less than the total cost inflicted by an accident.

11.124 The safety vision of Hindustan Lever Limited envisages an injury free organisation. Safety is

further defined not merely in terms of safety management, but of management effectiveness. Planning in respect of safety is done with a three to five year perspective, and the safety policy is reviewed comprehensively thereafter. The responsibilities and expectations of each individual and each department/section are clearly defined, and are accepted. Management personnel are personally involved in the implementation of the safety policies and finally matters relating to safety have a sense of urgency, and are not related to the cost of production. Another feature of Hindustan Lever's safety policy is that it is not confined only to the four walls of the factory, but goes beyond. It is not confined only to the company's employees but to employees of contractors and visitors as well.

INTERNATIONAL EXPERIENCES

11.125 The Health & Safety at Work etc. Act, 1974 of the UK is a comprehensive legislation dealing with health, safety and welfare in connection with work, and the control of dangerous substances and emissions into the atmosphere. In the first part, this Act lays down the

general duties of employers to their employees, and to persons other than their employees. It also refers to the general duties of the persons in control of certain premises in relation to harmful emissions into the atmosphere. The general duties of employees are also stated in this part. In the next part, the Act has provisions for the establishment of the Health & Safety Commission and the Health & Safety Executive. The nature of the duties of the Commission is laid down in section 11 of the Act. The next part deals with the health and safety regulations and approved codes of practice.

11.126 The Occupational, Safety & Health Act of 1970 in the U.S.A was formulated to assure safe and healthy working conditions for working men and women by authorising the enforcement of standards laid down under the Act and by assisting and encouraging States in their efforts to assure safe and healthy working conditions; by providing for research, information, education & training in the field of occupational safety & health. The Act repeatedly talks of the concept of information sharing on matters of safety between the employer and the employees. Other

salient features of the Act are the constitution of the National Safety Advisory Committee on Occupational Safety & Health to advise, consult with and make recommendations on matters relating to the administration of the Act, an Advisory Committee to assist the Secretary in the standard setting functions entrusted to him under the Act. It also has a provision for setting up an Occupational Safety & Health Review Commission. Provisions relating to inspections, investigations and record keeping stipulate that the information should be obtained with minimum burden on employers, specially those operating small businesses and that unnecessary duplication of efforts in obtaining information should be reduced to the maximum extent feasible. The Act lays emphasis on research and related activities, training and employee education and the constitution of a national institute of occupational safety & health. The Act gives due importance to the collection of statistics on occupational safety and health, and has provisions which specify staffing for the implementation of the Act.

ACTION PLAN

11.127 The global scenario, and its impact on industry and processes poses several serious problems, which require our immediate attention. Some of these are outsourcing of work; migration of labour; unemployment; exposure to the hazards of new technology; lack of acquaintance with new technology; lack of openness and transparency on the part of employments who are reluctant to share full information on technology, etc. Notwithstanding its comprehensiveness, the existing statute, i.e. the Factories Act is applicable only to one sector of the economy. For example, if work activities move from big industries to small, and small to home sectors, some areas are left out in the chain, resulting in loopholes and lopsided administration of safety statutes. Problems relating to migration, contractualisation and casualisation of labour, render it difficult to implement some of the provisions relating to safety and health. Therefore, we need to reflect and evolve a system, that permits flexibility in employment patterns and at the same time assures rigorous standards for the protection of safety and health requirements. A clean, safe

and healthy work place is essential for maintaining standards of production and productivity. Regardless of whether the production takes place, in the main enterprise or in the establishment of the contractor, strict standards of safety should be maintained.

NEED FOR NATIONAL POLICY

11.128 The need for a national policy on Occupational Safety & Health (OSH) cannot be over emphasised. The national policy on OSH management systems should establish general principles and procedures to promote the implementation and integration of OSH management systems. It should facilitate and improve voluntary arrangements for the systematic identification, planning, implementation and improvement of OSH activities at national and organisation levels. It should promote the participation of workers and their representatives at all levels especially at the organisation level. The national policy should strive for continuous improvement while avoiding unnecessary bureaucratic controls, administration and costs. The policy should promote collaborative and

supportive arrangements for OSH management systems at the organisation level by inspectorates, and occupational safety and health services, and channel their activities into a consistent framework for OSH management. The effectiveness of the policy and framework should be reviewed at appropriate intervals. One key area of the policy should be to ensure that the same level of safety and health requirements applies to contractors and their workers as to the workers, including temporary workers, employed directly by the organisation.

11.129 A competent institution or institutions should be nominated as appropriate to formulate, implement and periodically review a coherent national policy for the establishment and promotion of OSH management systems in organisations. We find that laws relating to safety and occupational health are being implemented by a number of sections/ inspectorates in the Labour Ministry at the Central and State levels. These laws are also being implemented by some other ministries/departments, e.g. Environment, Agriculture, Power, Industry, etc. An apex body, perhaps on the lines of an OSH Review

Commission will be best equipped to coordinate these activities. The OSH Act of the USA has other features that are worth emulating viz. its stress on research, training of employees, collection of statistics etc. The implementation should be done in consultation with the most representative organisations of employers and workers and with other concerned bodies. Wide consultation is bound to lead to greater acceptability.

11.130 The institution charged with the responsibility of formulating and implementing the national policy on safety and occupational health should establish a national framework to identify and establish the respective functions and responsibilities of the various institutions called upon to aid and implement the national policy and make appropriate arrangements to ensure necessary coordination. The institution should publish and periodically review national guidelines on the voluntary application and systematic implementation of OSH management systems in organisations. It should establish appropriate criteria and identify the respective duties of the institutions responsible for the preparation and

promotion of guidelines on OSH management systems; and ensure that technically sound guidance is available to employers, workers and their representatives, and to inspectorates, and other public or private services.

THE OCCUPATIONAL SAFETY & HEALTH MANAGEMENT SYSTEM IN ORGANISATIONS

11.131 Occupational safety and health, including compliance with the OSH requirements laid down by national laws and regulations have to be the responsibility and duty of the employer. The employer should show strong leadership and commitment to OSH activities in the organisation and make appropriate arrangements for the establishment of an OSH management system. The system should contain the main elements of policy, organizing, planning implementation, evaluation and means of improvement. These elements have to be audited at regular intervals. The process of auditing would have to be followed by continuous improvement. This is a cyclical and a continuous process.

11.132 The employer, in consultation with workers and their representatives, should set out in writing an OSH policy, which should be specific to the organisation and appropriate to its size and the nature of its activities. It should be concise, clearly written, dated and made effective by the signature of endorsement of the employer or the most senior accountable person in the organisation. The policy must be communicated and readily accessible to all persons at their places of work. As in the case of the National Policy, the policy at the organisation level should also be reviewed for effectiveness and adequacy.

11.133 The employer should ensure, the establishment and efficient functioning of a safety and health committee that includes the representatives of workers and works for assuring safety and freedom from health hazards.

11.134 The employer and senior management should allocate responsibility, accountability and authority for the development, implementation and performance of the OSH management system and the

achievement of the relevant OSH objectives. Structures and processes should be established which should ensure that OSH is a line-management responsibility which is known and accepted at all levels. It should define and communicate to the members of the organisation the responsibility, accountability and authority of persons who identify, evaluate or control OSH hazards and risks. The process should provide effective supervision, to ensure the protection of workers' safety and health, and finally, it should promote cooperation and communication among members of the organisation, including workers and their representatives, to ensure effective functioning of the organisation's OSH management system.

COMPETENCE AND TRAINING

11.135 The necessary OSH competence requirements should be defined by the employer, and arrangements established and maintained to ensure that all persons are competent to carry out the safety and health aspects of their duties and responsibilities.

11.136 The employer should have, or

should have access to, sufficient OSH competence to identify and eliminate or control work-related hazards and risks, and to implement the OSH management system.

OCCUPATIONAL SAFETY & HEALTH MANAGEMENT SYSTEM DOCUMENTATION

11.137 OSH documentation system should be established and maintained according to the size and nature of the activities of the organisation.

11.138 The organisation's existing OSH management system and relevant arrangements should be evaluated by an initial review, as appropriate. In cases where no OSH management system exists, or where the organisation is newly established, the initial review should serve as a basis for establishing an OSH management system.

11.139 The purpose of planning should be to create an OSH management system that supports:

- a) At the minimum, compliance with national laws and regulations; and

- b) Continuous improvement in OSH performance.

11.140 Arrangements should be made for adequate and appropriate OSH planning, based on the results of the initial review, subsequent reviews or other available data. These planning arrangements should contribute to the protection of safety and health at work.

OCCUPATIONAL SAFETY AND HEALTH OBJECTIVES

11.141 Consistent with the OSH policy and based on the initial or subsequent reviews, measurable OSH objectives should be established. These should be specific to the organisation, and appropriate to and according to its size and nature of activities. The objectives should be consistent with the relevant and applicable national laws and regulations, and the technical and business obligations of the organisation with regard to OSH. They should be focused towards continually improving workers' OSH protection to achieve the best OSH performance.

HAZARD PREVENTION

11.142 Hazards and risks to workers' safety and health should be identified and assessed on a continuing basis. Preventive and protective measures should be implemented in the following order of priority:

- (a) Elimination of hazards/risks;
- (b) Controlling the hazard/risk at source, through the use of engineering controls or organisational measures;
- (c) Minimising the hazard/risk by the design of safe work systems, which include administrative control measures; and
- (d) Where residual hazards/risks cannot be controlled by collective measures, the employer should provide for appropriate personal protective equipment, including clothing, at no cost to the workers, and should ensure its use and maintenance.

EMERGENCY PREVENTION, PREPAREDNESS AND RESPONSE

11.143 Emergency prevention, preparedness and response arrange-

ments should be established and maintained. These arrangements should identify the potential for accidents and emergency situations, and address the prevention of OSH risks associated with them. The arrangements should be made according to the size and nature of the activity of the organisation. They should ensure that the necessary information, internal communication and coordination are provided to protect all people in the event of an emergency at the worksite. The arrangement should provide information to, and communication with, the relevant competent authorities, and the neighbourhood and emergency response services. These arrangements should also address first aid and medical assistance, fire fighting and ways to evacuate all people at the worksite. They should also provide relevant information and training to all members of the organisation, at all levels, conduct regular exercises and rehearsals for action that each has to take in the event of an emergency.

11.144 A disaster management plan must be formulated at every unit and industrial estate, and at the city, district, state and national level. Not

only should the plan be formulated, it should be given wide publicity both to persons connected with it and to persons who are not directly connected with it. In some industrial estates in Mumbai, the concept of the Mutual Aid Response Group (**MARG**) has been in practice. Workers working in a factory are given information about the hazardous nature of operations in other factories in their vicinity. They are also briefed about the hazardous substances being handled in the neighbouring factories. The idea behind this scheme is to ensure that even if the workers working in the factory that is hit by an accident were rendered unable to contain the ill effects of the accidents, workers working in the neighbouring factories would be in a position to render assistance. Drawing lessons from the Bhopal incident, it would be important and useful to keep doctors working in major hospitals in nearby areas fully informed of the hazards involved in the factories in their area.

EVALUATION PERFORMANCE MONITORING AND MEASURE-

MENT

11.145 Procedures to monitor measures and record OSH performance on a regular basis should be developed, established and periodically reviewed. Responsibility, accountability and authority for monitoring at different levels should be defined for different levels in the management structure.

11.146 The selection of performance indicators should confirm to the size and nature of the activity of the organisation and the OSH objectives.

11.147 Both qualitative and quantitative measures appropriate to the needs of the organisation should be considered.

INVESTIGATION OF WORK-RELATED INJURIES, ILL HEALTH, DISEASES AND INCIDENTS, AND THEIR IMPACT ON SAFETY AND HEALTH PERFORMANCE

11.148 The investigation of the origin and underlying causes of work-related injuries, ill health, diseases and incidents should identify failures and shortcomings in the OSH management

system, and these should be documented.

11.149 Competent persons, with the appropriate participation of workers and their representatives, should carry out such investigation.

11.150 The results of such investigations should be communicated to the safety and health committee, wherever it exists, and the committee should make appropriate recommendations.

11.151 The results of investigation, in addition to any recommendations from the safety and health committee, should be communicated to appropriate persons for corrective action, included in the management review and considered for continual improvement.

11.152 The corrective action resulting from such investigation should be implemented in order to avoid recurrence of work-related injuries, diseases and incidents.

11.153 Reports produced by external investigative agencies, such as inspectorates and social insurance institutions, should be acted upon in

the same manner as internal investigations, taking into account the needs of confidentiality.

AUDIT

11.154 Arrangements to conduct periodic safety or OSH audits are to be established in order to determine whether the OSH management system and its elements are in place, adequate, and effective in protecting the safety and health of workers and preventing incidents.

11.155 A safety audit policy and programme should be developed, which lays down the qualifications of auditors or auditing firms and agencies, designation of auditor competency, the frequency of audits, audit methodology and reporting.

11.156 The National Accreditation Agency should also approve the auditors after conducting examinations.

MANAGEMENT REVIEW

11.157 Management reviews should evaluate the overall strategy of the OSH management system to determine whether it meets planned

performance objectives. The review should evaluate the OSH management system's ability to meet the overall needs of the organisation and its stakeholders, including its workers, visitors and the regulatory authorities. It should evaluate the need for changes to the OSH management system, including OSH policy and objectives, and identify what action is necessary to remedy deficiencies in a timely manner. Management reviews should provide the feedback direction, including the determination of priorities for meaningful planning and continual improvement, and evaluate progress towards the organisation's OSH objectives and activities and at correction. Finally, the management review should evaluate the effectiveness of follow-up actions from earlier management reviews.

11.158 The frequency and scope of periodic reviews of the OSH management system by the employer or the most senior accountable person should be defined according to the organisation's needs and conditions.

ACTION FOR IMPROVEMENT PREVENTIVE AND CORRECTIVE

ACTION

11.159 Arrangements should be made and maintained for preventive and corrective action resulting from OSH management system performance monitoring and measurement, OSH audits and management reviews.

WORKING GROUP ON OSH SET UP BY THE PLANNING COMMISSION

11.160 The Working Group on OSH set up by the Planning Commission (for the Tenth Five year Plan) has also recommended the following: -

- (a) Evolution of a National Policy on OSH of workers employed in all sectors.
- (b) Umbrella legislation on OSH.
- (c) Apex Body on OSH.
- (d) National Accreditation Agency for establishment of national standards on OSH and development of an audit mechanism for assessing effectiveness of OSH.
- (e) Competence enhancement of enforcement officials.

(f) Training for industry.

11.161 This is in tune with what we have discussed in the previous pages and we endorse the views of the Working Group.

11.162 The need for safety awareness and observance of safety, be it at home, be it at the workplace, be it on the road or be it elsewhere is becoming increasingly critical. Modern lifestyle and consumerism are fraught with hazards necessitating constant safety awareness and observance of safety standards in all sectors and activities. This objective can be achieved by ensuring that increased safety related information reaches the young even as a part of the academic curriculum. This will help in preparing future citizens with the awareness that is necessary. Starting from the primary school level, where simple aspects of road safety and home safety could be inculcated, safety related information inputs could be upgraded progressively at the secondary and senior secondary stages as the academic programme progresses from primary level to advanced level. In fact, this is one of the long-standing recommendations of the International Labour Organisation as well. The time has come to

reiterate this need and to convert it into a national commitment.

DIRECTORATE GENERAL OF MINES SAFETY

11.163 Extraction of minerals from the bowels of the earth is a process that has been prevalent in India from the ancient times. Exploration and mining of lead and zinc in Zawar, copper in *Khetri*, gold in Karnataka are a few illustrations in this context. However, metal mining remained primitive although there was no dearth of knowledge of this science. Minerals are important ingredients for the healthy economic growth of a nation, and India has been eminently endowed with this by nature. There is a close symbiosis between development and mining. The country's economic planning therefore accorded great importance to mining in industrial as well as overall development. Mining statistics of the country classify minerals into fuel minerals, metallic minerals, non-metallic minerals and minor minerals. It does not include atomic minerals. The group of fuel minerals includes petroleum and natural gas and coal and lignite. Metallic minerals include such principal minerals as iron ore, chromite, copper ore, lead and zinc ore, manganese ore, gypsum, steatite,

limestone, etc. Brick earth, granite, building stone, marble, quartzite and sandstone, ordinary sand, road metal, boulder, '*murrum*' and '*kankar*' etc. are classified in the categories of minor minerals.

THE GENESIS

11.164 The history of mining, particularly commercial coal mining of the country dates back to nearly 227 years. It was initiated in the year 1774 by the East India Company through M/s Sumner and Heatley who were granted permission for mining coal in Ranigunj coalfields along the western bank of the river Damodar. Nearly a century later, M/s John Taylor & Sons Ltd. started gold mining in *Kolar* Gold fields in the year 1880, and the first oil well was drilled in Digboi in the year 1866 seven years after the first-ever oil well was drilled anywhere in the world viz. in the Pennsylvania State in USA in 1859. For about a century, however, the growth of Indian mining industry remained sluggish and nearly dormant for want of demand, but the introduction of steam locomotives in 1853 provided an impetus. Within a short span India started producing 1 million tonnes as an annual average. India could produce 6.12 million

tonnes coal per year by 1900, and 18 million tonnes per year by 1920. The production was accelerated in the First World War, but again slumped in the early thirties. The production reached a level of 29 million tonnes by 1942 and 30 million tonnes by 1946. With the advent of independence the country embarked upon a sustained developmental process through the Five Year Plans. In order to achieve goals set by the Plans, the National Coal Development Corporation (NCDC) was established as a Government of India undertaking in 1956 with the collieries owned by the railways as its nucleus. On the other hand Singareni Collieries Company limited (SCCL), which was in operation since 1945, became a Government company under the control of the Government of Andhra Pradesh in 1956. India thus had two Government coal companies in the fifties. The SCCL is now a joint venture undertaking of the Government of Andhra Pradesh and Government of India sharing its equity in 51: 49 ratio. Mining and the policy on management of mineral resources were part of India's industrial policy and the initial stages of the Five Year plan process.

THE STATUTE

11.165 The Constitution of India has bestowed the onus of exploitation and management, (which inter alia includes safety, welfare and health of workers employed in Mines), of mineral resources with the Central Government and the State governments in terms of Article 246-Entry 55 of the Union List and Entry 23 of the State List in the Seventh Schedule of the Constitution. The Industrial Policy Resolution, 1956 and the Mines and Minerals (Regulation and Development) Act, 1957 broadly lay down the framework for the regulation and development of all minerals other than petroleum and natural gas. The Mining Concession Rules, 1960, regulates the grant of prospecting licences and mining leases of all minerals other than atomic and minor minerals. Rules concerning minor minerals are framed by the State Government. The Central Government has framed the Mineral Conservation and Development Rules, 1988 which attracts all minerals. Under Schedule A of the Industrial policy Resolutions, 13 minerals besides coal and lignite were reserved exclusively for the public sector. The Mines Act, 1952 and the Rules and Regulations made thereunder regulate the objectives. These are administered by the Directorate General of Mines

Safety (DGMS) under the Union Ministry of Labour. Apart from administering the Mines Act and its subordinate legislations, the DGMS also administers other allied laws as indicated below, in respect of mines: -

(a) Mines Act, 1952

- Coal Mines Regulations, 1957
- Metalliferous Mines Regulations, 1961
- Oil Mines Regulations, 1984
- Mines-Rules, 1955
- Mines Vocational Training Rules, 1956
- Mines Rescue Rules, 1985
- Mines Crèche Rules, 1966
- Coal Mines Pit Head Bath Rules 1959
- Indian Electricity Rules, 1966

(b) Allied Legislation

- Factories Act, 1948. Chapters III & IV
- Manufacture, Storage & Import of Hazardous Chemicals Rules 1989 under Environmental Protection Act, 1986
- Land Acquisition (Mines) Act, 1985
- The Coal Mines (Conservation & Development) Act, 1974.

THE SOCIAL FACTOR

11.166 Unscientific mining practices adopted by some of the private mine owners and the poor and inhuman working conditions of labour in some of the private coal mines became a matter of serious concern, and armed with the recommendations of various Commissions and Committees, the Central Government took a decision to nationalise private coal mines. This was undertaken in two phases, the first with the coking coal mines in 1971-72, and then with the non-coking coal mines in 1973. In October 1971, the Coking Coal Mines (Emergency Provisions) Act, 1971 provided for taking over in public interest the management of coking coal mines and coke oven plants pending nationalisation. This was followed by the Coking Coal Mines (Nationalisation) Act, 1972 under which the coking coal mines and the coke oven plants other than those with the Tata Iron & Steel Company Limited and Indian Iron & Steel Company Limited, were nationalised on 1.5.72 and brought under the Bharat Coking Coal Limited (BCCL), a new Central Government Undertaking. Another enactment, namely the Coal Mines (Taking Over of Management) Act, 1973, extended the right of the

Government of India to take over the management of the coking and non-coking coalmines in seven States including the coking coalmines taken over in 1971. This was followed by the nationalisation of all these mines on May 1, 1973.

11.167 One of the primary objectives of nationalisation was to bring about improvement in the safety and health scenario.

THE HAZARDS

11.168 The fast changing geo-mining conditions induce a considerable degree of hazard in mining operations. This is accepted all over the world since such geological changes are unleashed by nature suddenly without any warning. And when such a calamity occurs it has a colossal impact, which is so harsh and massive that, the achievements of science take a backseat – for sometime at least. The coalfields, for instance, are being subjected to

exploitation for over a century, and the effects pose challenges to mines safety at regular intervals, and at times at frequent intervals.

11.169 The Manual Board and Pillar system of mining has been traditionally practised in underground coalmines, and accounts for nearly 90% of underground coal production. A large workforce is engaged in these mines. A graphic detail on the engagement of mine workers during the period from fifties to early nineties is placed below:

Average daily employment in Mines (in ,000)											
Year	Coal Ore	Oil Ore	Copper Stone	Gold Ore	Iron	Lime	Mang.	Mica	Stone	Others	Total
											Metals
1951	351.9	N.A.	3.7	21.9	20.2	16.0	55.5	25.2	5.1	49.5	197.1
1961	411.2	N.A.	4.2	16.3	54.5	54.6	46.9	29.6	8.5	45.1	259.7
1971	382.3	13.6	7.6	12.4	52.8	53.2	30.4	12.2	8.8	57.5	234.9
1981	513.4	14.5	13.4	12.3	44.9	49.8	26.5	6.7	7.7	60.6	221.9
1986	543.3	24.9	13.2	11.9	46.6	50.2	17.7	3.3	10.2	68.1	221.2

1987	549.7	25.9	12.6	11.6
48.8	51.2	17.6	3.3	10.8
69.6	225.5			
1988	537.8	26.6	12.3	10.9
46.0	43.0	17.4	2.8	14.2
60.5	207.1			
1989	548.1	25.2	10.8	10.5
44.5	44.6	16.1	2.9	12.9
62.0	204.3			
1990	549.0	26.9	12.3	9.7
38.1	41.5	17.3	2.3	10.1
58.0	189.3			
1991	554.1	35.5	12.8	9.3
40.1	53.5	17.9	2.2	11.2
63.2	200.2			
1992	552.0	35.7	12.7	9.4
42.0	43.0	18.4	1.6	8.9
67.2	203.2			
1993	546.3	33.5	12.2	7.9
39.8	41.6	18.5	1.5	9.2
68.9	199.6			

11.170 Problems of large amount of blocked coal in the pillars of developed workings, numerous old and waterlogged workings, multiple seam workings, seams on fire, gassy seams, surface features, subsidence, populated areas and towns lying above the coal deposits etc. pose unique problems in the safe running of coal mines. Moreover, with the exhaustion of easily available reserves, mining activities are

gradually extending to greater depths, and to adverse geo-mining locales, thereby, further adding to the complexities of health and safety problems in mines. Unique in the context of other mines, coal mining is a dynamic process which is constantly undergoing change from one area to another, with the possibility of different types of hazards surfacing at different times and places. Moreover, coalmines are inherently hazardous in nature, and prone to dangers from inundation, explosion, fire, roof fall etc. and, therefore, require constant monitoring and regular verification of safety norms.

THE REMEDIAL MEASURES

11.170 The National Labour Policy formulated during the Sixth Plan stated that "working conditions include not only wage structure, fixing of minimum wage and protection of income, but also fixing of working hours, periods of rest, paid holidays, provision of canteen facilities and provision of crèches for children. Today, safety includes not only protection of workers against accidents at work but also against occupational diseases. Indeed, with the growth and diversification of industry and agriculture,

considerations of the safety and health of workers have expanded. It has been equally important to improve the environment since safe and healthy working conditions are the best protection for the worker and the best guarantee for increased production..." The Mines Act, therefore, is an instrument to safeguard the interests of workers in relation to their health, safety and welfare. It is a global practice to entrust the responsibility for

safety to an independent regulatory agency. In the Indian context, this role of independent regulatory agency has been entrusted to the Directorate General Mines Safety (DGMS) which is expected to oversee safety measures, undertake periodic inspections of Mines, conduct enquiries into fatal and serious accidents, enquire into complaints,

delve mandatory safety standards, regulate safety in workplaces through controlling the grant of permissions and approvals, ascertain the competence of supervisors

and managers by conducting competency examinations, and other means. The DGMS also undertakes various promotional developmental initiatives for enhancing safety in mines and prides itself on its expertise in diverse mining activities including and coal, metalliferous and oil mining. The Public Sector coal companies have also undertaken various measures to bring down the fatality rate and serious injuries in accidents. The following table shows the rate of fatalities and serious accidents per million tonnes of coal raised.

The rate of fatalities and serious accidents per million tonne

	1975	1995	1996	1997	1998
Fatalities	233	115*	110	112	99
Fatality rate per million		1515			
2.62		612			
0.50*		505			
0.44		519			
0.43		407			
0.38		Serious injury rate per			
tonne of coal production		19.49			
Serious injury		2.65			

2.02
1.99
0.95
million tonne of coal produced

* Excluding 77 fatalities at the Gaslitand Disaster.

NOTE: Figs. for 1997 & 1998 are subject to reconciliation with DGMS. However, serious injury figures for 1997 have been revised in January 1999, after consultation with the subsidiaries of CIL.

11.172 There is a continuous effort to improve and upgrade safety measures. The thrust is on disaster prevention, and the following activities are undertaken with this objective:

- (a) Repeated safety audit of mines and implementation of emerging recommendations; and monitoring.
- (b) Priority inspections of highly gassy mines and fiery mines by Internal Safety Organisation (ISO) officials and follow up of corrective action for removal of deficiencies.
- (c) Environmental Monitoring of degree III gassy and fiery mines to take corrective action before a dangerous situation is built up, by constant vigil and monitoring the parameters which are indicative of accumulation of inflammable gas or increase in heat with the risk of a possible

outbreak of fire.

- (d) Measures against possible danger of inundation by building embankments, barriers, diversion of *jores* etc.
- (e) Monthly review of safety performance of the companies in CMDs meets with critical analysis of each and every accident and formulation of strategies for prevention.
- (f) Increased thrust on use of latest scientific methods of the roof support system through Rock Mass Rating based Support Plans for mines and roof Bolting System of support especially in the new exposes in the roof area. Work relating to Quick Setting Cement Capsules in collaboration with the Central Mining Research Institute.
- (g) Safety clearance of production districts before commencement of operations.
- (h) A major thrust on inspections of the mines by the officials of Internal Safety Organisations (ISO) of the mine management as well as inspections by the trade union representative, members of the Safety Board,

Standing Committee on Safety in Mines, workmen's inspectors and mine level safety committees

- (i) Training and retraining of the workers, supervisors and officials of the mines, providing incentives for attracting suitable persons to serve in the Rescue Services and strengthening field volunteer systems. New technology like infrared imagers, paging systems etc. have also been introduced along with the development of cordless radio communication system for use by the rescue teams for recovery work underground.
- (j) Procurement of large diameter drill machine for evacuation of miners trapped underground, and initiating steps for indigenous production of its accessories. Procurement of high-powered submersible pumps and horizontal pumps which are to be kept in readiness for emergent dewatering of mines.

ORGANISATIONAL SET UP OF DIRECTORATE GENERAL OF MINES SAFETY (DGMS)

11.173 The Directorate General of Mines Safety is a multi-disciplinary organisation with inspecting officers from Mining, Mechanical and Electrical Engineering and Occupational Health disciplines. The officers are selected through the Union Public Service Commission and possess degrees in engineering in various disciplines. They also have experience, varying from seven to ten years of working in responsible capacities in mines and allied industries. Besides, officers of mining cadre possess first class Mine Manager's Certificates of Competency. The Occupational Health cadre is staffed by qualified and experienced medical practitioners. The Directorate General of Mines Safety (DGMS) is a subordinate office under the Ministry of Labour with its headquarters in *Dhanbad (Jharkhand)*, and is headed by the Director General Mines Safety. At the headquarters, the DG is assisted by specialist staff officers for Mining, Electrical and Mechanical Engineering, Occupational Health, Law, Survey, Statistics, Administration and Accounts disciplines. The headquarters office also has a technical library and S&T laboratory as a back-up support to the organisation. The field organisation

has a two-tier network. The country is divided into six zones, each in the charge of a Deputy Director General. There are three to four Regional Offices under each zonal office. Each region is under the charge of a Director of Mines Safety. There are in all 21 such regional offices. In some areas of vigorous mining activities which are away from the Regional offices, four Sub-Regional offices have also been set up. Each of these offices is under the charge of a Deputy Director. Besides the inspecting officers of Mining Cadre in each zone, there are officers of electrical and mechanical engineering and occupational health disciplines.

ROLE AND FUNCTIONS

11.174 Deriving its powers from the laws for setting and ensuring standards, the DGMS exercises preventive as well as educational influence over the mining industry. It oversees compliance as intensively as its resources allow, and conducts a variety of promotional initiatives and awareness programmes.

11.175 Apart from inspecting coal, metalliferous and oil mines, DGMS also undertakes investigations into fatal accidents, certain serious accidents and dangerous occurrences,

and makes recommendations for remedial measures to prevent recurrence of similar mishaps. The organisation also promotes the concept of 'self regulation' as well as involvement of workers in safety management. With the fast changing global scenario and crumbling of established systems, it also attempts to superimpose its traditional role of seeking compliance by legal sanctions and other safety promotional initiatives, wherein safety gets due priority.

TESTING SERVICE

11.176 The current functions of the DGMS can be broadly categorised as under:

- (a) Inspection and investigation into
 - accidents
 - dangerous occurrences – emergency services
 - complaints and other matters
- (b) Work related to the grant of statutory permission, exemptions and relaxations in the form of preview of project reports and mining plans and approval of mine safety equipments, material and appliances:-
 - Interaction for development of safety equipments, material and

- safe work practices.
- Development of safety legislations and standards.
 - Safety information dissemination.
- (c) Safety promotional initiatives including:-
- Organisation of conferences on "Safety in Mines"
 - National Safety Awards
 - Safety Weeks and Campaigns
 - Promoting safety education and awareness programmes and workers participation in safety management through –
 - Workmen's inspectors
 - Safety Committees
 - Tripartite reviews
- (d) Conduct of examination for grant of competency certificates.

MANPOWER

11.177 Recently, the Parliaments' Standing Committee on Labour & Welfare (13th Lok Sabha) observed (Para 2.64 of its report) that during the last 15 years, the size of the mining industry has increased four fold whereas the staff component of the DGMS has remained static, and this is grossly inadequate to meet safety operations in mines. The

Committee further observed that out of 598 coalmines, the Department has been able to make complete inspections in only 159 coalmines during the year 2000-01. The Department has pleaded that due to inadequate staff, it could carry out inspection of all mines only once in four years. The shocking state of inadequacy of staff can be seen from the fact that at present, the Department has only 130 inspecting officers against the sanctioned strength of 167. The Committee, strongly felt that there should be no compromise in so far as the safety of mine workers is concerned, and therefore recommended that the ban on filling up posts and recruitment should not be applied to the DGMS.

11.178 The responsibility entrusted to the DGMS is one on which the lives of thousands of mine workers depend. A marginal delinquency or slipshod adherence to the norms of safety may lead to a catastrophe including the loss of precious lives and untold suffering to many families. The importance of the frequency of inspections was dwelt upon for the first time at the First Conference on Safety in Mines (1958) which made the following recommendations:

- (a) There should be two general inspections of all mines every

year.

- (b) Special inspections should be made for particular objectives i.e. general supervision, ventilation, coal dust, support in depillaring areas etc.
- (c) Mines where conditions appear to be generally unsatisfactory or the standard of management is inferior should be placed under frequent inspections until the mine is brought up to the requisite standard.
- (d) A number of surprise inspections should be made in the afternoon and night shifts.

11.179 A number of committees, thereafter appointed by the Government of India have considered the main issues. The Court of Inquiry appointed to look into the disaster of Jitpur Colliery (1972) recommended that there should be quarterly

inspection of equipment and machinery installed in the mechanised mines, particularly the underground gassy mines. The Third Conference, while endorsing the recommendations of the First Conference on inspection by officers of the mining cadre recommended, in addition, that the electrical and mechanical wings of the DGMS should be adequately strengthened to ensure at least quarterly inspections of each mechanised mine. The Fifth conference on Safety in Mines 1980 recommended two general inspections of all mines every year and follow-up inspections wherever necessary. In 1982, the Review Committee on Role and Functions of the DGMS set up by the Government of India under the chairmanship of Mr. J. G. Kumaramangalam, reiterated the need for annual general inspection of

all mines and the provision of a second general inspection depending upon the situation, in particular, the results of the first general inspection. It also stressed the need for follow-up inspections of mines as a discretionary issue resting with the DGMS depending upon the type of mining activity, degree of gassiness, extent of mechanisation, accident proneness, special problems etc. The results of general inspection and the attitude of the management towards compliance of statutory provisions, degree of 'Self Regulation' practiced and the effectiveness of internal safety organisation were required to be kept in view.									

11.180 In spite of all these decisions and recommendations, there are a large

number of mines which remain altogether un-inspected. The following table gives a statement of the personnel position in the DGMS for the last 3 decades.

strength (S)

Year	Total Discipline wise details sanctioned	In position (P)	Mining Electrical Mechanical O.H.								
			S			P			S		
1971	118	105	100	91	11	8	6	4	3	2	
1981	134	116	105	94	16	14	9	6	7	2	
1991	171	138	127	105	23	19	12	12	9	2	
2001	167	131	123	94	23	21	12	11	9	5	
S – Sanctioned			P – In Position								

11.181 While the DGMS could not cope up with the accelerated rate of growth in the mining industry, oil-mining activities also came into the fold of DGMS from 1957. The work then was limited to small pockets of oil exploration (production was about 0.5 million tonnes per annum) in the upper Assam region only and yet full justice could not be rendered to this sector due to shortage of personnel. A summarised statement of the requirements of manpower in the DGMS according to the Kumaramanglam Committee recommendation is given below:

Requirement of Officers at the base level of Deputy Directors												
Designation	Mining			Electrical			Mechanical			Occupational Health		
	R	S	P	R	S	P	R	S	P	R	S	P
Deputy Director	450	82	67	115	18	13	114	10	8	33	-	-

Requirement of officers for supervision

Designation	Mining		Electrical			Mechanical			Occupational Health				
	R	S	P	R	S	P	R	S	P				
Director	150	29	21	25	4	3	23	2	2	11	-	-	
Deputy Director General	37	7	6	7	1	1	7	-	-	3	-	-	
	R		S		P								
Sub-Total	975		153			121							

Requirement of Officers for special investigations for in-house support

					7		2	1
	Mining	Electrical						
Mechanical	Occupational	Statistics			Director		10	-
					1		2	2
		Health						
Deputy Director	43		6					

Deputy

Growth of Mining Activities

Director-General					
Sub-Total	56	6	8	4	3
	R	S	P		
Grand Total	1052	153	121		

11.182 The shortfall was noticeable, and accordingly, the matter was examined in detail by the International Programme in the improvement of working condition and Environment (PIACT) Mission of the ILO (1982). It also recommended that an effective petroleum safety inspectorate should be set up, and properly staffed.

11.183 The table below shows the trend of growth of mining activities in India (1951

to 1999).

Year	Production in Million Tonnes						Bauxite
	Coal	Copper Ore	Lead & Zinc Ore	Iron Ore	Limestone		
1951	34.98	0.37	0.01	3.71	2.96	0.06	
1961	55.71	0.42	0.15	12.26	15.73	0.48	
1971	75.64	0.68	0.30	32.97	25.26	1.45	
1981	127.32	2.01	0.96	42.78	32.56	1.75	
1991	237.76	5.05	1.82	60.03	75.02	3.86	
1993	260.60	5.15	2.10	63.26	87.72	4.81	

Growth of Mining Activities in India

Year	No. of reporting mines	Value of minerals (in Million Rupees)	Aggregate H.P. (in 000s)	Explosives used (in 000 tonnes)
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Year	Coal		Metal		Oil		1951		893		1810		- 505	
	Coal	Metal	Coal	Metal	Coal	Metal	235	N.A.	188	83	N.A.			
1961	848	2323	-	1141	487	N.A.	438	159	N.A.	4.5	3.8			
1971	781	1995	13	2543	1080	756	732	282	25	12.3	9.4			
1981	496	1768	8	18114	3620	2748	1841	925	35	46.3	15.3			
1991	561	1787	24	79794	19076	18533	4292	1519	507	124.2	40.3			
1992	567	1810	27	96377	21700	23104	4653	1644	583	140.0	44.1			
1993	570	1845	27	107467	23392	31777	3942	1853	541	155.6	44.1			
1994	576	1869	29	122216	24648	34302	4690	1891	548	156.9	43.3			
1995	579	1930	32	133314	33611	37065	5218	1735	579	189.6	46.2			
1996	576	1872	32	157474	36521	37388	5300	1877	523	207.8	47.2			
1997	580	1834	34	193877	43758	32608	5314	2016	570	232.7	43.4			
1998	594	1864	37	205307	45286	42851	5399	2020	602	247.0	47.1			
1999	590	1873	41	203808	45505	32065	5236	1908	645	238.3	45.4			

Note: 1999 data are provisional.

11.184 Compared to this growth, the number of inspections and Inquiries conducted by the DGMS for the period from 1987 to 2000 is given below:

Year	No. of Inspections					No. of Inquiries					Grand Total
	Coal	Metal	Oil	Total	Coal	Metal	Oil	Total			

1987	4688	3569	118	8375	1992	5598	4063	313
1118	507	51	1676	10051	9974	1233	533	59
1988	5052	3151	85	8588	1825	11799		
1159	413	17	1589	10177	1993	5766	3953	262
1989	5829	3313	145	9287	9981	1227	463	57
1193	399	26	1618	10905	1747	11728		
1990	6069	3424	160	9653	1994	5625	3345	213
1107	480	61	1648	11301	9183	1346	539	25
1991	5838	3846	258	9942	1910	11093		
1063	521	102	1686	11628	1995	5461	3206	181
					8848	1192	396	21

1519	10367								
1996	5525	2491	226	8242	1105	330	50	1485	9727
1997	4563	2404	189	7156	1157	406	34	1597	8753
1998	4752	2539	166	7457	1127	398	29	1554	9011
1999	6106	3061	198	9365	1319	483	26	1828	11193
2000*	4008	2408	176	6592	859	232	15	1106	7698

*Figures for 2000 are provisional upto September 2000 only.

11.185 Fortunately, although there was a striking mismatch between the ratio of growth and the strength of inspecting officers of the DGMS and the resultant downtrend in inspections, the trend of casualties and minor/major mishaps did not show an escalating trend. The annual report of the Ministry of Labour (2000-2001) shows that the trend of fatal accidents and serious accidents in both coal and non-coal mines is on a downtrend as can be seen from the following table:

Trends of Accidents in Mines

Year	Number of Accidents in Coal Mines		Number of Accidents in Non-Coal Mines	
	Fatal	Serious		
			1997	335
			143	677
Total	Fatal	Serious	820	70
Total			335	265
1995	137	757	1998	128
894	66	368	651	56
334			310	254
1996	131	677	1999	127
808	72	263		524

651	62	217	279				
2000	120	432	552	39	151	190	
Note: Figures of 1992 & 2000 are provisional.							
PRESENT STRENGTH OF INSPECTING OFFICERS							
11.186 The inspection norms for different levels of inspecting officers are:							
(a) Deputy Director of Mines Safety – 120							
(b) Director of Mines safety posted at Headquarters - 60							
(c) Directorate of Mines Safety –80							
(d) Director of Mines safety posted at Headquarters – 30							
11.187 These norms are based on the workload of the concerned officers. The table below gives the discipline wise strength of inspecting officers of DGMS as on							

1.1.2001				Deputy Director	7	3	1
	Discipline			1			
	Designation	Mining			8	4	
	Electrical	Mechanical	O.H	General			
	Total			Director	29	27	4
		S	P	S	4	2	2
P		S	P	S	-	35	33
P		S	P				
	Deputy Director				82	60	18
	Director General	1	1	16	10	9	1
				1	111	86	
		1	1				
	Assistant Director				4	3	-

-	-	-	GR.I-3
2	7	4	
			GR.II-5
2	5	2	
Total	123	94	23
21	12	11	9
5	167	130	

11.188 It can be observed that the actual number of inspecting officers is about 22% lower than the sanctioned strength. We were informed that this was because of procedural delays in filling up vacancies arising from retirement etc. In fact, a shortage of 20-30% inspecting officers against the sanctioned strength normally exists in this organisation. In addition to this, there has hardly been any increase in the strength of inspecting officers since 1971 though the mining industry has increased several times during this period.

INFRASTRUCTURAL LACUNAE

11.189 The DGMS is an organisation that handles emergency distress situations at close call. The officers of

The DGMS are required to respond instantly in case of emergencies like disasters/ accidents/ dangerous occurrences etc. in mines. In such cases, the officers of the DGMS have to rush immediately to the site and set up emergency response activities. The mines work round the clock, and so the officers of the DGMS have to be ready for emergencies at all times. In this scenario, it must be pointed out that the DGMS has no office and residential complexes of its own at Hyderabad, Ranchi and Nagpur where Zonal and Regional offices are located. Bhubaneshwar, Bilaspur, Goa, Jabalpur, Udaipur and Digboi region/sub-regions are not provided with office and residential complexes. The DGMS has acquired land at several places, and is making efforts to acquire land at more places where offices are presently being operated from rented accommodation. However, due to paucity of funds no expansion programme is being undertaken, and there is every likelihood of encroachment on such

acquired land. Secondly, because staff members reside in far-flung areas, the response time during emergencies becomes longer. Communication is a critical success factor in increasing the efficiency of an organisation which deals with emergency situations. We were amazed to learn that most of the offices did not have even an STD facility. While the nation enjoys an active TV network, with almost instant coverage of accidents by media channels, even Director level officers of the DGMS, heading regional offices have not been provided with STD facilities on their telephones. We cannot understand how they can be expected to respond to emergency situations and save lives when they have no access to telephone facilities.

MAIN CAUSES OF ACCIDENTS

11.190 The cause-wise distribution of fatal accidents in coal and non-coal mines indicates that the fall of roof has been the biggest contributor for coalmines. The major factor for casualties in non-coal mines has been accidents from dumpers and trucks. The details are given on the next page.

Trend of Accidents in Coal Mines- Cause wise

Causes	Number of Fatal Accidents						Number of Serious Accidents					
	1995	1996	1997	1998	1999	2000	1995	1996	1997	1998	1999	2000
Fall of Roof	42	34	38	35	32	32	78	55	53	48	52	36
Fall of Sides	12	9	12	15	12	11	38	40	37	29	21	27
Other	1	0	1	0	4	1	1	1	0	0	2	1

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Ground Movements												
Winding in Shafts	1	0	3	3	3	0	1	0	6	1	3	1
Rope Haulage	11	14	21	18	13	9	162	121	124	109	109	72
Dumpers, Trucks, etc	14	27	24	20	19	25	29	35	28	30	47	37
Other Transportation Machinery	9	10	5	3	6	5	17	16	9	13	13	13
Non-Transportation Machinery	16	11	7	11	6	9	42	38	38	36	27	24
Explosives	6	1	4	4	5	1	10	16	16	6	7	4
Electricity	3	4	7	5	7	7	8	8	2	7	6	4
Gas, Dust, Fire, etc.	4	4	4	2	2	4	0	0	2	1	0	0
Fall of persons	6	10	12	7	11	8	177	139	166	142	120	100
Fall of Objects	5	4	3	2	2	1	143	120	116	59	54	64
Other Causes	7	3	2	3	5	7	51	88	80	42	63	64
Total	137	131	143	128	127	120	757	677	677	523	524	432
Trend of Accidents in Metalliferous Mines- Cause wise												
Causes	Number of Fatal Accidents						Number of Serious Accidents					
	1995	1996	1997	1998	1999	2000	1995	1996	1997	1998	1999	2000
Fall of Roof	3	2	3	2	2	1	2	4	3	2	2	1
Fall of Sides	6	10	8	7	9	8	2	2	5	0	3	1
Other	1	4	4	1	0	0	0	0	0	0	0	0
Ground Movements												
Winding in Shafts	1	0	1	1	0	0	0	0	0	2	2	1
Rope Haulage	0	0	1	0	1	0	1	4	2	3	5	1

Dumpers,	16	19	22	13
15	11	15	13	15
21	11	12		
Trucks, etc				
Other Tran-	2	3	0	3
1	1	12	7	10
9	12	1		
sportation				
Machinery				
Non-Tran-	5	6	3	5
4	3	51	29	16
23	21	17		
sportation				
Machinery				
Explosives	2	2	6	3
8	3	3	6	1
1	4	0		
Electricity	3	3	4	3
5	3	0	2	0
2	1	1		
Gas, Dust,	0	1	0	1
0	1	0	0	1
0	0	0		
Fire, etc.				
Fall of	11	6	8	7
10	4	51	42	43
41	30	30		
persons				
Fall of	6	2	6	3
2	0	60	60	88
64	57	34		
Objects				
Other	2	5	2	1
3	4	55	66	62
66	51	53		
Causes				
Total	58	63	68	50
60	39	250	235	246
234	199	151		

Note: Data for the year 1999 & 2000 are provisional. Figures for 2000 are projections based on Jan-Oct. data

11.191 Mining is hazardous everywhere, all over the globe. But in India, much is left to chance which makes mining dangerous. Although the progress of science and technology has brought about innovative changes in the methods and machinery used for mining in European countries, old methods and instruments continue to be used in most other places. Mine accidents are regular occurrences in China. Most of these are due to lax security measures. Intermittent power shortages result in turning off ventilators inside the shafts and lead to accumulation of gas. Although actual figures are not published, it is well known that many people are killed in China's mining industry each year. According to conservative estimates worked out by independent experts the toll goes beyond 10,000 per year.

Compared to this, the figures in India are appreciably low. There has also been a notable trend in some developed countries that are progressively reducing

mining activities and shifting to other less hazardous industries. Countries like Japan, France, United Kingdom, Belgium, Czechoslovakia and other countries are reducing mining activities. On the other hand Australia, China, and USA are increasing their mining activities. Australia and USA have undertaken large-scale mechanisation and automation which have resulted in reducing the human factor. Their mining has become capital intensive. In our country, the underground fire in the Jharia Coal Fields has been burning since the last seven decades. It has destroyed a large quantity of the precious natural resource. Yet, it has not been put out, because the work of extinguishing the fire is estimated to cost hundreds of crores.

11.192 The trend of fatal accidents and fatality rates per 1000 persons, employed on a 10 yearly average basis from the year 1951 to 2000 are shown in the following table: -

				1951-60	222	0.61	295
				0.82	64	0.27	81
				0.34			
				1961-70	202	0.48	260
				0.62	72	0.28	85
				0.33			
				1971-80	187	0.46	264
	Avg.	Acc.	Avg.	0.55	66	0.27	73
Death	Avg.	Acc.	Avg.	0.31			
Death				1981-90	164	0.30	185
	ACC	Rate	Killed	0.34	65	0.27	73
Rate	ACC	Rate	Killed	0.31			
Rate				1991-2000*	140	0.27	170
				0.33	64	0.29	76

0.35

*Data are provisional and upto September 2000 only.

The figures speak for themselves.

11.193 According to the provisions of the law, all fatal and serious accidents and dangerous occurrences and occupational diseases are required to be notified to the DGMS. The dangerous occurrences to be notified include: -

- (a) explosion, ignition, spontaneous heating, outbreak of fire, eruption or inrush of water or other liquid matter,
- (b) influx of inflammable or noxious gases,
- (c) breakage of rope, chain, or other gear by which persons or materials are lowered or raised in a shaft or an incline,
- (d) over-winding of cages or other means of conveyance in any shaft while persons or materials are being lowered or raised;
- (e) premature collapse of any part of the workings

FOLLOW UP ACTION ON

ACCIDENTS

11.194 It is important to note that all fatal accidents are required to be enquired into by the DGMS within 2 months. The International Programme for the Improvement of Working Conditions and Environment (PIACT) Mission of ILO recommended that all reportable accidents should be expeditiously investigated by the officers of the DGMS because inspectors can make comprehensive recommendations to prevent accidents only if they investigate all that are reported to them and follow them up to see that their recommendations are put into effect. Detailed enquiries are carried out in respect of fatal accidents. This is a statutory requirement, and the level of officers conducting investigation depends upon the severity of the accident. Similarly, a Court of Enquiry is normally set up by the Central Government under Section 24 of the Mines Act whenever a disaster i.e. an accident involving death of 10 or more persons takes place.

11.195 Important and dangerous occurrences are also enquired into by the DGMS. Sometimes, Officers of

the DGMS themselves lead rescue and recovery operations. They are required to be associated till the control measures are completed. The inadequacy of staff is telling upon the work of enquiry into even serious and reportable accidents. We were sorry to learn that hardly 1% of serious accidents, depending upon the cause of accidents, are being investigated. We consider this situation as unacceptable and dangerous and recommend that immediate steps be taken to put an adequate number of officers in place.

ILLEGAL MINING

11.196 Running parallel to the lawful mining activities and in line with the spurt in the growth of the industry, illegal mining is also thriving as a "cottage industry" particularly in the Ranigunj, and Jharia coalfields as also in the Ramgarh and Bermo areas. The problem has assumed huge dimensions in the States of West Bengal and Jharkhand, and is substantially present in the States of Meghalaya and Bihar. Coal mining activities started as far back as the year 1800, and gathered considerable momentum thereafter, particularly during the World War II. Private

parties exploited a number of small bodies and many pits and mines were closed unscientifically in the process, without taking normal and prescribed precautions. After the takeover of the coalmines by the public sector, Coal India Limited, there were a number of running as well as closed mines in Ranigunj - Jharia - Hazaribagh coalfields. The socio-economic conditions of the people residing in nearby villages and the collieries induced them to pilfer coal by mining rat holes in the closed pits, collieries and inclines. Large-scale unemployment, lack of agricultural facilities and the thriving culture of miners prevalent in the area tempted people to take to risky mining ventures in order to find a source of sustenance. The activity has become so rampant, and areas covered are so large and far away from the public gaze that it has become a hard task for the state administration to control or eliminate illegal mining. The absence of the political will to do so adds to the complexity of the problem. There is no doubt that these large scale operations cannot be undertaken without organized and well-planned support from local musclemen and mafia. The Chairman and another official of the Commission

visited the recent accident site at Lalbandh area near Khoirabad colliery of M/S Eastern Coalfields Limited, where an incident of subsidence occurred on October 10, 2001 due to illegal underground mining by unidentified persons. While the officials of the State Government were tight-lipped about the number of deaths, and the officers of DGMS were yet ascertaining the toll, the magnitude of the area covered by the subsidence provided an index of the number of casualties, which might have occurred. The representatives of the State could have addressed the Central Mining Research Institute, Dhanbad for an expert opinion on blasting the subsided area and speeding up the rescue operation. The political leaders and the local people of the area strongly demanded an impartial inquiry and cited various other areas around the place where such mining has been going on for many years.

11.197 The public sector companies understand the problem, the Director General of Mines Safety is aware of it, the State law enforcing machinery is aware of the situation, yet illegal mining thrives, and the production runs parallel to the legal production

and transits to areas beyond the borders of the State. The Coal India Limited has recently taken a very serious view of the matter and initiated a process of consultation with the State Governments to find a long-term solution. The Chief Ministers of West Bengal and Jharkhand have reached an agreement to fight the menace in consultation with the public sector coal management. It has been decided that a task force would be constituted by the State Government to maintain constant vigil on such activities. Senior level officers, particularly of the rank of IG/DG are expected to head this force. In addition, village/ panchayat level committees are also expected to be constituted to keep vigil, and bring incidents to the notice of the concerned authorities. The Coal management has been advised to activate its security network and intensify patrolling and identifying areas which are prone to illegal mining in addition to sealing off mines which have been closed.

11.198 However, it is well known that operations that include the induction and deployment of the heavy equipment necessary for mining, including dumpers, trucks for

transportation etc., cannot be assembled and cannot operate without the knowledge of people living around the areas where illegal mining takes place. There is no reason to believe that the local police have no sensors through which they can come to know of such over-ground activities, like transport of machinery and illegally mined coal that are related to underground activities. The activities of illegal mines not only defraud the state of income, but also pose a severe threat to the lives of those who are induced to work in these illegal mining theatres as well as to people who reside above and around such excavations.

11.199 One view that has been presented to us is that it will be less risky if legal organisations, like co-operatives undertook operations in this area under the supervision of the coal companies. It is said that this may prevent accidents, do good to the exchequer and a large number of workers. The huge and growing clan of retired coal personnel, including engineers, from the public sector would be suitable and competent for overseeing the work of such cooperatives and the State can enforce the provisions of training on

the risk factors of such work. We have not been able to discuss this suggestion with the State Governments or the Public Sector Coal Companies. So, we are not in a position to give an opinion on the suggestion.

11.200 Illegal mining, as already stated, has been going on for a long time, but the Committee on Illegal Coal Mining formulated a serious policy to tackle it only in 1978-79.

11.201 The Committee was constituted on 4 June 1978 by the Ministry of Labour, with the Director General of Mines Safety as Chairman, and Director, Department Of Coal, Ministry of Energy, the Regional Controller of Mines, Nagpur and Technical Adviser to the Ministry of Labour as Members. Subsequently, since the primary responsibility to stop illegal mining lies with the State Governments and such mining activities were prevalent in West Bengal, undivided Bihar and Meghalaya, Director level officers of all the three States were made Members of the Committee. The Committee held its final meeting at Shillong on 9.3.1979 after studying the methods adopted by illegal coal miners in Meghalaya. It made the following primary recommendations: -

(a) **MEGHALAYA**

- Mines being worked in the State of Meghalaya by small family gangs, may, for the time being, be exempted from the provisions of the Mines Act by a notification under Section 83 of the Mines Act, 1952.
- Even if an exemption under the Mines Act were given, these mines in Meghalaya would still be considered illegal in terms of the Coal Mines (Nationalisation) Amendment Act, 1976.
- The Government of Meghalaya may set up a company to run these mines and give sub-lease to the persons operating these mines after obtaining the necessary approval of the Central Government.

(b) **BIHAR AND WEST BENGAL**

- (c) According to the Coal Mines (Nationalisation) Amendment Act, 1978 and the order of the Supreme Court dated May 5, 1978, illegal mining was classified

into two categories:

- Mining by persons without any mining lease.
- Mining by persons whose leases had been terminated under the Coal Mines (Nationalisation) Amendment Act, 1978 and whose writ petitions had been dismissed.

11.202 The Committee observed that such mines do not generally notify opening/reopening/appointment of Managers etc. and surreptitiously worked from time to time, at odd hours, and in total disregard of the statutory safety provisions in the laws.

11.203 The Committee recommended prompt action under Section 379 of the IPC by the police. For the other categories, it recommended that:

(a) **Opening /Re-opening of any Coalmine**

On receipt of notice of opening /re-opening of any coalmine in the State of West Bengal and Bihar, from any private party, the DGMS may send a copy of the notice to the District Mining

officer/Director of Mines of the State Government/Coal Controller under the Government of India to enable them to verify if those engaging in mining held a legal right to operate the coal mine and to enable them to take suitable steps if they did not have such a right.

(b) **Illegal Mining in Leasehold Area**

- The primary responsibility to detect illegal mining within the leasehold area should rest with the lessee. The lessee should keep a close watch to detect mining activities in areas where illegal mining is possible, and should immediately file a complaint on any such activity to the District Mining Officer/Director of Mines of the State Government/ Police/DGMS. The Committee expected that proper and effective action would be taken by the State Government officials and that the lessee would take steps to safeguard its own property.

(c) **Illegal Mining in Non-Leasehold Areas**

- The responsibility to detect and stop illegal coal mining in free areas (not leased out) should rest with the Mining officers of the State Government. If necessary, checkpoints may be provided at suitable points to stop transportation of coal raised illegally. However, the Committee expected that information about illegal mining activity, if any, detected in the free areas near about the leaseholds would be sent to the District Mining Officer/Director of Mines of the State Government/ Police/DGMS by the lessee.

11.204 We could not verify whether these recommendations have been given effect to.

IMPROVEMENTS

11.205 The Report of the Sub-Committee of Parliament, Ministry of Labour on " The Status of Safety in Mines " of April, 1996 made the following recommendations on improvements that the organisation of the DGMS needed:

- (a) adequate and requisite

manpower as per the recommendations of the Kumaramangalam Committee;

- (b) necessary back up support in the form of infrastructure, ministerial manpower and facilities;
- (c) adequate training of all officers both in-house and outside to upgrade their skills to meet the challenges posed by induction of newer machines/ newer technology.

11.206 There are other innovative

recommendations that various other committees and commissions of inquiry have made. It may be useful to categorize these.

INSPECTIONS

11.207 It has been observed that the present strength of inspecting officers cannot take the existing load of mines to be inspected. The problem is chronic, and yet the recommendations of earlier committees have not been acted upon. The possible reason may be the shortage of budgetary support for

creation of posts. To ease this situation, the DGMS may be allowed to levy service charges at an appropriate ratio of project cost from the user organisations. Holding companies applying for permission to operate mines can also be asked to pay such levies at the initial stage and thereafter on an annual basis for availing the services of DGMS. The funds generated may be substantial, and the DGMS may be able to meet its operation costs at least partially. In addition, the DGMS may be permitted to hire the services of retired engineers, engineering firms, surveyors, unemployed engineers like those of the Insurance sector, etc. to get the mines inspected statutorily every year and pay them contractual amounts to comply with such an assignment. The reports submitted by these authorities may be put into the Local Area Network after proper certification by the authorities themselves and with an undertaking that lacunae in their reports will entail substantive penalties, which may extend to the filing of criminal cases for negligence. The nation has a substantial number of engineers who are unemployed who may be able to undertake such activities for limited periods every year. The number of inspection and inquiries carried out by the DGMS for the period from 1987 to 2000 is given below:

Number of Inspections and Inquiries

No. of Inquiries		No. Of Inspections			1107	480	61	1648	
		Coal	Oil	Total	11301				
Year	Coal	Coal Metal	Oil	Oil Total	Total Grand	1991	5838	3846	258
						9942	1063	521	102
						1686	11628		
						1992	5598	4063	313
						9974	1233	533	59
1987	4688	3569	118	8375	1825	11799			
1118	507	51	1676	10051					
1988	5052	3451	85	8588	1993	5766	3953	262	
1159	413	17	1589	10177	9981	1227	463	57	
					1747	11728			
1989	5829	3313	145	9287	1994	5625	3345	213	
1193	399	26	1618	10905	9183	1346	539	25	
1990	6069	3424	160	9653					

1910	11093								
1995	5461	3206	181	8848	1102	396	21	1519	10367
1996	5525	2491	226	8242	1105	330	50	1485	9727
1997	4563	2404	189	7156	1157	406	34	1597	8753
1998	4752	2539	166	7457	1127	398	29	1554	9011
1999	6106	3061	198	9365	1319	483	26	1828	11193
2000*	4008	2408	176	6592	859	232	15	1106	7698

* Figures for 2000 are provisional up to September 2000 only

PURSUING INSPECTION AND REMEDIAL MEASURES

11.208 We have already pointed out the DGMS is unable to accomplish total inspection of mines as is required under the rules and the recommendations of various committees. The report of the sub-committee of the consultative committee of the Ministry of Labour, which had gone into these issues in 1996, suggested various measures to improve the present system. A statement of the number of cases filed and disposed till date, for the 25 year period from 1970, is give below:

Year	Total Number of Prosecution Cases		
	Instituted during the year	Disposed till date	Pending as on 31.01.96
1970	243	235	08
1971	209	196	13
1972	275	245	30
1973	227	173	54
1974	141	122	19
1975	328	277	51

	1976	183
162	21	
	1977	81
67	14	
	1978	107
83	24	
	1979	97
77	20	
	1980	108
83	25	
	1981	78
62	16	
	1982	127
75	52	
	1983	106
63	43	
	1984	125
65	60	
	1985	187
91	96	
	1986	106
70	36	
	1987	55
23	32	
	1988	45
16	29	
	1989	43
26	17	
	1990	50
13	37	
	1991	55
-	55	
	1992	81
12	69	
	1993	113
07	106	
	1994	84
05	79	
	1995	56
01	55	
	Total	3310
2249	1061	

cited in the earlier paragraph says that a total of 3310 criminal cases were filed during the 26 years for serious contravention of laws relating to safety, health and welfare of persons employed in mines. Till 1995, a total of 2249 cases had been disposed of, and 1061 were still pending before the court. The entire DGMS organization has a total strength of one senior Law Officer, and two officers each of Grade I and Grade II in addition to six Law Assistants. It can be safely presumed that the total strength does not permit the organisation to pursue cases filed before the courts of law.

11.210 The DGMS is, therefore, availing of the services of Central Government Standing Counsel (CGSC). Even so, it is found that cases take nearly 8-15 years to obtain a decision in the Lower Court, and appeals in the High Court take another 8-10 years. Even after such long legal processes we find that the fines or penalties awarded are not significant or deterrent. We feel that the provisions under the Mines Act 1952 must be amended to provide for deterrent punishments including imprisonment and special courts or

11.209 The report that we have

designated courts must be set up to expedite trial. It has also been noted that where Government contests cases before various High Courts, the standard of CGSCs is not sufficient and they are at most times unable to influence the court to do justice to the government's submission. The quantum of remuneration paid to them is so low that many times, the counsels themselves ask their juniors to appear before courts. The needs of safety require that this state of affairs is corrected without delay.

DIRECTORATE GENERAL FACTORY ADVICE SERVICE & LABOUR INSTITUTES

11.211 The Directorate General, Factory Advice Service and Labour Institutes is functioning from its headquarters at Mumbai since 1966. Its beginnings can be traced to the office of the Chief Advisor of Factories, which was set up in Delhi in the year 1945. Subsequently, its functions were enlarged and it moved to Mumbai in 1966.

11.212 The main objective of the organisation is to advise the Central/ State Governments, trade unions, employers and others concerned on

matters relating to improvement in safety, health, productivity and working conditions in factories and ports.

11.213 The Central Labour Institute was set up in 1959. It is supported by three Regional Labour Institutes located at Kolkata, Kanpur and Chennai. Another Regional Labour Institute has now been set up in Faridabad, but it is yet to become fully operational.

11.214 The organisation has four functional divisions –

- (a) Factories Advice Division
- (b) Dock Safety Division
- (c) Construction Safety Division and
- (d) The Awards Division

11.215 The Institute deals with issues relating to:

- a) Industrial Safety
- b) Industrial ergonomics
- c) Industrial hygiene
- d) Industrial medicine
- e) Industrial physiology
- f) Industrial psychology

- g) Staff training and productivity
- h) Major accident hazards control
- i) Management information service
- j) Small scale industries, and
- k) Communication and environment engineering

11.216 Each of these areas is looked after by a division in the organisation. The various divisions conduct studies and surveys, undertake training programmes, organise seminars and workshops and render services such as technical advice, testing of personnel protective equipment etc.

11.217 The DG: FASLI has a very large canvas of activity. It includes:

- a) Coordinating with the Ministry of Labour,
- b) Tendering technical service on research activities related to the administration of the Factories Act,
- c) Coordinating technical and legal activities to facilitate uniform standards of enforcement,
- d) Conducting research and consultancy studies, surveys and training programmes.
- e) Administering the Dock Workers

(Safety, Health and Welfare) Act, 1986 and regulations framed thereunder,

- f) Enforcing these regulations in the major ports of the country and advising the State Governments on matters relating to the minor ports under their control.

- g) Carrying out promotional activities by operating schemes for identifying good suggestions in the area of safety and related issues under the Vishwakarma Rashtriya Puraskar scheme.

- h) Recognising and rewarding safety performance under the National Safety Awards on behalf of the Union Government.

- i) Assisting the Union Ministry of Labour in formulating national policies and standards in the area of safety, health and related subjects in cooperation with international agencies, and the ratification of ILO instruments in these areas.

11.218 Another key area of responsibility for the DG: FASLI is coordination in the enforcement of the provision of the Factories Act,

1948. The responsibility for the enforcement of the Act lies with the State and Union Territory Governments. The objective is to bring out a certain degree of standardisation and uniformity in the application of the provisions of the Act. The DG: FASLI prepares and circulates model rules which are incorporated by the State Governments in their respective Factory Rules after making amendments as deemed appropriate. It also holds annual conferences with the Chief Inspectors of Factories of different states where aspects of administration and amendments/changes to Factories Acts and Rules are discussed, and viable alternatives hammered out. DG: FASLI has also been associated with framing of rules under the Environment (Protection) Act, 1986 and the Building and other Construction Workers (Regulation of Employment, Conditions of Service) Act, 1996.

11.219 In view of the role and functions that have been assigned to the Directorate, and the likely increase in responsibilities in the future, the Commission feels that the Central Labour Institute and other Regional Labour Institutes should be accorded greater functional autonomy. They

should also be conferred with more financial authority and powers to retain their earnings. There is also the urgent need for these bodies to conduct wider investigations in subjects related to occupational diseases which may arise from:

- a) Physical factors like noise, vibration etc.,
- b) Exposure to chemical substances including toxic, corrosive, allergenic and carcinogenic matter;
- c) Air-borne particulate matter like dust and fibres etc. and
- d) Biological agents which may cause infections and parasitic diseases.

11.220 These investigations need to be coordinated with those of other organisations like the National Institute of Occupational Health, Indian Institute of Miners' Health etc. functioning under the aegis of other Ministries.

11.221 The Commission also feels that the Directorate has to play a proactive role with the help of State Governments in administering the Factories Act and rules framed under it. This has necessarily to involve

intensive and mandatory training of Factory Inspectors on effective practices, standard procedures etc. and the preparation of manuals for use in the factories and ports. Simultaneously, efforts have to be made to simplify the existing information systems and forms and procedures. Since the Factory Act and Rules are administered by the State Government functionaries, such intensive training would involve sizeable expenditure. Given the acute resources crunch that most State Governments are facing, it will perhaps be reasonable to presume that left on their own, they would not have much resources left for this purpose. Similarly, it will also not be wise to presume that with the existing manpower the Directorate will be able to do justice to its responsibility of periodic inspection of industrial establishments and counselling. In order to obtain maximum benefit and productivity from the available resources, it will perhaps be worthwhile to examine the earmarking of a certain part of the State Inspectorate budget as well as that of the Directorate General and its associate organisations for the purpose of training personnel. The

representatives of the various State Government Inspectorates of Factories told us about the inadequacies in the infrastructure that is affecting the efficiency of these organisations. Since the Directorate discharges its responsibility in some crucial areas like improvement of administration of the Factories Act and related legislations through the machinery of the state government, it is, therefore, necessary to remove the infrastructural gaps and shortcomings in the State organisations. The limited financial allocations in the State Budgets may be one of the reasons for the weakness of the infrastructure. But the risks involved are so serious that the state governments as well as the Central Government should find ways of jointly addressing these shortcomings.

11.222 The Commission also had the benefit of going through recommendations in the Report of the Working Group on Occupational Safety and Health for the Tenth Five-Year Plan. The recommendations relate to amendments to different Acts. Some of the important recommendations include the mandatory appointment of Safety Officers in factories employing 500 and more workers; independent

safety audits of the facilities in factories involving hazardous processes as defined under the Factories Act; compulsory insurance of workers employed in hazardous processes; and bringing the Inland Container Depots under the purview of the Dock Workers (Safety, Health & Welfare) Act.

11.223 In so far as the executive role of DG: FASLI is concerned, its manpower and equipment base has to be strengthened to enable it to discharge its responsibilities effectively. With the liberalization and globalisation of the economy, an increasing number of private ports have come into existence. The volume of traffic to be handled by the public sector and private sector ports is bound to increase enormously in the years to come. Not only will there be an increase in the volume of the cargo handled, but also in the variety of the cargo. It will, therefore, be necessary to take these factors into account not only in determining the strength, competence and specialization of the staff, but also in improving methods.

11.224 In the preceding paragraph, we have recommended the formation

of a National Board to bring about necessary coordination among various organisations functioning under different Ministries that deal with the area of safety and occupational health. The objectives which can be set before the National Board may include:

- (a) Laying down criteria and discharging functions of accreditation of safety professionals for manning positions that relate to occupational health and safety.
- (b) Advising the Government on general legislation on occupational safety and health applicable to all work places.
- (c) Undertaking coordination of the activities of various organisations responsible for the control of occupational diseases,
- (d) Coordinating exchange of information amongst the various agencies under it,
- (e) Developing and authorizing a Code of Practices on Occupational, Safety and Health for use in various industries, and

assisting in its dissemination,

- (f) Providing guidelines for approval of training Centres/Institutes which can be followed by the Chief Inspectorates of Factories under the provisions of the Factories Act, and,
- (g) Laying down policies on curricula, training courses etc. for key categories of workers like those employed in hazardous processes and dangerous operations.

11.225 Till the Board becomes fully functional, these activities can be undertaken by the DGFASLI.

11.226 The Commission also feels that in view of the increasing pace of industrialization, particularly in the area of hazardous chemical processes, there is an urgent need to strengthen measures for occupational safety and health in industries. In the immediate future, the Directorate General may also be asked to devote special attention to assessing safety and health risks in hazardous chemical industries, imparting training in the field or at the workplace, monitoring

occupational health etc. in such industries and preparing necessary documentation in this regard. Besides, it may also be asked to undertake the work of upgrading the existing industrial hygiene and industrial medical laboratories as National Reference Laboratories of the Centre Labour Institute and Regional Labour Institutes.

11.227 The issue requires urgent attention as notwithstanding the various statutory provisions as regards the Environment Protection Act and Factories Act etc there has been a perceptible trend in shifting of the hazardous processes and industries from the developed to the developing nations and also in using the developing countries as sites for disposal of industrial waste notwithstanding international protocols like the Basel Convention to arrest such practices. The infrastructure and manpower available with the Directorate has to be geared up to match the efficiency required to keep watch and counter the effect of such trends.

THE OCCUPATIONAL HEALTH AND SAFETY BILL, 2002

(DRAFT)

11.228 Since problems relating to safety at work places are extremely important to the worker, the entrepreneur, the establishment where accidents or occupational hazards can occur, and to the community that lives or works in the establishment or in its proximity, since work related hazards arise from industrial as well as agricultural activities; since the use of chemicals, compounds, metals, and materials with moderate to intense radioactivity (including chips) has become widespread, and since such activity takes place and materials and processes are used even in home-based work, it has become necessary, in the interests of public and occupational safety, to set up an appropriate machinery to deal with tasks and exigencies in this area. Such a machinery has to specify, identify and promote, to oversee and co-ordinate standards, precautions and administrative steps necessary to ensure safety. It must co-ordinate standard setting, acquisition and deployment of equipment and plant level implementation. The requirements of safety are likely to increase with the use of new technology. We therefore, endorse the

proposal that a Commission on Occupational Safety and Health should be set up by the Central and State Governments. The responsibility that is at present dispersed, and in some cases, un-coordinated though vested concurrently in more than one authority, must be given to a coordinating apex authority which will become accountable and responsible. This Authority will frame rules for different employments that use different processes, chemicals, and radioactive materials etc. We append a draft Bill for the establishment of such a Commission in Appendix III.

MODEL SAFETY & HEALTH POLICY

11.229 In previous paragraphs, we have referred to the need for a national policy on Occupational Safety and Health. We have also discussed the Occupational Safety and Health Management Systems in organisations. Based on the discussions in these paragraphs, we have drawn up a Model Safety and Health Policy for organisations, which is Appendix IV to this Chapter. This model could be adopted by individual organisations. However, it would be important that organisations

constantly review and revise the Model based on their individual experiences.

V.V. GIRI NATIONAL LABOUR INSTITUTE

11.230 V.V. Giri National Labour Institute was established in 1974. The role and functions that were visualized for the Institute laid down that it would:

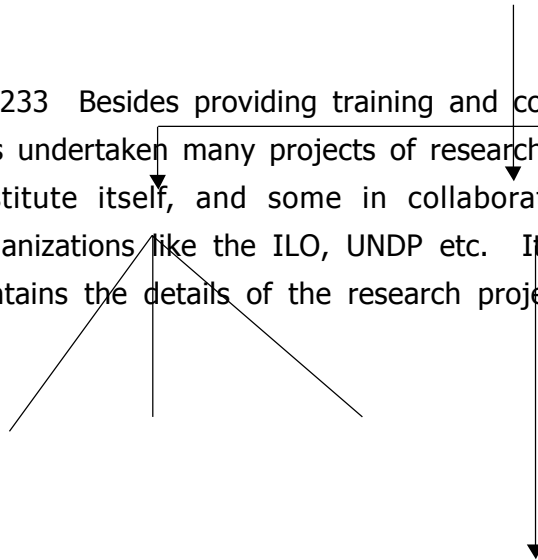
- (a) Undertake and assist in organizing training and education programs, seminars and workshops,
- (b) Undertake, aid, promote and coordinate research on its own or in collaboration with other agencies, both national and international,
- (c) Establish wings for:
 - Ø education, training and orientation;
 - Ø research, including action research;
 - Ø consultancy; and
 - Ø publication and other such activities as may be necessary for achieving the objectives of the society.

- (d) Analyse specific problems encountered in the planning and implementation of labour and allied programs and suggest remedial measures,
- (e) Establish and maintain library and information services, and
- (f) Collaborate with other institutions and agencies in India and abroad which have similar objectives.

11.231 In the last 27 years for which the Institute has been operational, it has been able to build up the infrastructural framework that such an institute requires. Its headquarters are located very near the national capital, in Gautam Buddha Nagar, Noida. It has a campus which houses a large library, rooms for conducting courses of study, seminars and conferences; it has a hostel which can accommodate trainees and has residential quarters for faculty and staff. The Institute can be proud of its library and the facilities, it offers to students, trainees, activists and academicians who want to have access to books, magazines, journals, documents and audio-video aids, relating to the field of labour studies.

11.232 The Institute's activities have mainly included conducting action-oriented research and provides training to grass-root level workers in the trade union movement, both in the urban and rural areas and also to officers dealing with industrial relations, personnel management, labour welfare etc.

11.233 Besides providing training and conducting seminars and workshops etc, it has undertaken many projects of research, some as visualized and planned by the Institute itself, and some in collaboration with the scheme of international organizations like the ILO, UNDP etc. It also publishes an Annual Report which contains the details of the research projects and publications.



Director

A.A.O. Account Officer P.O.
ALIO

Faculty

Administrative Officer

Adm. Coord. Fin. I

Manager Publication

Fin.II Prog. Library

**ORGANISATION CHART OF THE
V.V. GIRI**

NATIONAL LABOUR INSTITUTE

Sr. Fellow Fellow Associate Fellow

11.234 As can be seen from the chart above that we have included, the Institute is headed by the Director. The Director of the Institute is the Principal Executive and is responsible for the management and administration of its affairs. The Director is aided in the day-to-day functioning by a faculty comprising of 15 professionals representing a wide range of disciplines and by some support and administrative staff.

11.235 Since the Institute has been visualized as an institution which functions at the highest level of efficiency and comprehensiveness, it is necessary to review and update its canvass, structure and staffing, and program of training, research and publication. The Commission is of the opinion that it is necessary now to undertake a comprehensive review of the work of the Institute. It therefore, recommends that the Government appoint a committee to review working of the Institute and

suggest the improvement and upgrading that are necessary. Such a committee should include representatives from industry, trade unions, other management institutes, academicians, and activists in the non-governmental organizations, in the unorganised sector, labour economists and representatives of the State Governments and of the Ministry of Labour.

11.236 There are three main areas, which the review should cover: -

- (a) The Institute has obviously to be one which works at a sufficiently high level. It has to be scientific in its approach and it has to make use of modern methods of enquiry, surveys, analysis, research, comparative study etc. It should, therefore, have on its staff and at the helm of the affairs, people who have academic and scientific training as well as the vision of context and the sociological canvass. Interchange between the numbers of the Faculty and practicing professionals in the field of labour is likely to produce results which would be of practical use both to the

Institute and its users. Since, the main objective is study, research, training and publication, the staff and the top officers including the Director must be people who have specialized in the matter and the subjects that are relevant. A question that has to be considered, therefore, is whether a person from the administrative services should be considered necessary to head the institute. Past experience has shown that sometimes, when people from the administrative services are appointed, they share the responsibility for the institute with their other administrative responsibility. The Institute, if it is to live up to its objectives and standards of excellence, must have a full time Director.

- (b) The Institute could also consider introducing courses on Personnel Management and related subjects like Labour Laws, Social Security, Trade Union, etc. This would go a long way in further professionalising the work of V.V.Giri National Labour Insitute.
- (c) The second question is whether,

in view of the nature of the activities of the Institute, and the expectation from it, the Institute should be administered department-mentally or should have full autonomy. The Commission is of the opinion that the Institute can fulfil the expectation from it only if it is clothed with full autonomy and given the status of a high level academic and training institution.

11.237 We have been informed that the Institute has formulated an elaborate program of research. We do not feel that we should make any restrictive comments or observations on the projection, program or research. We would support the view that such projects should be formulated by a competent Research Committee set up by the Institute. One need not say that such a committee should have representatives of the Government as well as other research sector.

11.238 The third question is whether it will be advantageous if the National Labour Institute and Labour Bureau, Shimla be merged. There are many functions where there can be duplication and where co-ordination will be beneficial. We have not been able

to weigh the pros and cons of such merger although the utility of the idea has occurred to us. We will therefore, recommend that the Government give thought to the benefits that may accrue from such a merger.

THE CENTRAL BOARD OF WORKERS' EDUCATION

11.239 The Central Board of Workers' Education was established in 1958, initially to create in workers the awareness of their rights and responsibilities as citizens. The Board is tripartite with members chosen from workers, employers and educational institutions. Its headquarters are in Nagpur. The Board has a Director who is also the Member Secretary and Principal Executive Officer of the Board. Training programmes are conducted by Education Officers.

11.240 The objectives of CBWE are :

1. To strengthen among workers the sense of patriotism, unity, communal harmony and secularism, and to equip them for intelligent participation in the socio-economic development of

the country.

2. To develop better understanding of problems of the socio-economic environment and their responsibilities towards families, their rights and duties as citizens and workers, and as members or office bearers of their trade unions.
3. To develop leadership among them and to develop strong and responsible trade unions through enlightened and better trained workers.
4. To strengthen democratic processes and tradition in trade union movement and to enable trade unions themselves to conduct workers' education programmes.

11.241 The objectives of the CBWE seem to have become somewhat inadequate in the light of developments since its establishment. While the original objectives have perhaps stood the scrutiny of time, it is necessary to give a new direction to these objectives in the light of recent developments. Workers'

Education was the subject matter of deliberations in the 36 Session of the Indian Labour Conference held at New Delhi on 14-15 April, 2000. At that meeting, the Prime Minister underscored the need for upgradation of the CBWE into an institution of excellence. The need of the hour, therefore, is that the CBWE should be a co-passenger of the workers in their journey through these challenging times. Naturally, the objectives and vision of the CBWE have to undergo some redefinition and amplification. The Study Group on Skill Development, Training and Workers' Education, appointed by us, has referred briefly to the role that CBWE can play in the present uncertain and challenging times.

11.242 CBWE can play an important role in promoting awareness of the special skills required for the development of industry and the availability of such training facilities. The Board may coordinate such training programmes by bringing together workers, managements and training institutions.

11.243 The Board can play the role of a Nodal Agency to carry out training programmes through the trainers and also monitor them to achieve larger

coverage of the target groups. CBWE, through its wide network, can organise special training courses for retrenched workers and for workers who have taken VRS to develop new skills including managerial skills so as to help them in proper investment of money which will ensure alternative employment and regular incomes to these workers. It can also impart new skills to such workers. CBWE should focus more and organise, specialised and need-based programmes for various target groups in the unorganised and rural sectors. These programmes can also help workers identify opportunities and areas for self-employment. It can also play a meaningful role in training workers in the cooperative sector as well as in training functionaries of Panchayat Raj Institutions for enhancing the reach of its training activities.

11.244 Keeping in mind the limited manpower available with the CBWE it would perhaps be more appropriate if the CBWE gives more stress on being a catalyst in organising programmes

with the assistance of NGOs, trade unions, managements and other groups instead of attempting to organise all these programmes on its own. We also envisage greater coordination between the CBWE and institutions like V.V.Giri National Labour Institute and the State Labour Institutes.

11.245 During hearings before us, it was pointed out that adequate attention needs to be paid to the pay scales and infrastructure provided to the officials of the CBWE so that they may be commensurate with the enhanced role envisaged for the organisation. We hope that the CBWE and the Ministry of Labour would examine these matters in depth.

11.246 We, thus, envisage a more pro-active role for the CBWE, specially in times when workers and industry are facing grave challenges.

APPENDIX - I

LIST OF INTERNATIONAL LABOUR ORGANISATION CONVENTIONS RATIFIED BY INDIA

S.NO.	NO. & TITLE OF CONVENTION	DATE OF RATIFICATION
01.	No. 1 Hours of Work (Industry) Convention, 1919	14.07.1921
02. *	No. 2 Unemployment Convention, 1919	14.07.1921
03.	No. 4 Night Work (Women) Convention, 1919	14.07.1921
04.	No. 5 Minimum Wage (Industry) Convention, 1919	09.09.1955
05.	No. 6 Night Work of Young Persons (Industry) Convention, 1919	14.07.1921
06.	No. 11 Right of Association (Agriculture) Convention, 1921	11.05.1923
07.	No. 14 Weekly Rest (Industry) Convention, 1921	11.05.1923
08.	No. 15 Minimum Age (Trimmers and Stokers) Convention, 1921	20.11.1922
09.	No. 16 Medical Examination of Young Persons (Sea) Convention, 1921	20.11.1922
10.	No. 18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30.09.1927
11.	No. 19 Equality of Treatment (Accident Compensation) Convention, 1925	30.09.1927
12.	No. 21 Inspection of Emigrants Convention, 1926	14.01.1928
13.	NO. 22 Seamen's Articles of Agreement Convention, 1926	31.10.1932
14.	No. 26 Minimum Wage – Fixing Machinery	10.01.1955
15.	No. 27 Marking of Weight (Package, Transported by Vessels) Convention, 1930	07.09.1931
16.	No. 29 Forced Labour Convention, 1930	30.11.1954
17.	No. 32 Protection Against Accidents	10.02.1947
18.@	No. 41 Night Work (Women) Convention (Revised), 1934	22.11.1935
19.	No. 42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.01.1964
20.	No. 45 Underground Work (Women) Convention, 1935	25.03.1938
21.	No. 80 Final Articles Revision Convention, 1946	17.11.1947
22. **	No. 81 Labour Inspection Convention, 1947 100	07.04.1949
23.	No. 88 Employment Services Convention, 1948	27.02.1950
24.	No. 89 Night Work (Women) Convention (Revised), 1948	27.02.1950
25.	No. 90 Night Work of Young Persons	27.02.1950
26.	NO. 100 Equal Remuneration Convention, 1951	25.09.1958
27.	No. 107 Indigenous and Tribal Population Convention	29.09.1958

@@ Minimum Age initially specified was 16 years but was raised to 18 years in 1989.
Article 8 of Part-II.

APPENDIX – II

INTERNATIONAL LABOUR STANDARDS CONCERNING LABOUR ADMINISTRATION

LABOUR ADMINISTRATION CONVENTION, 1978

Article 1

For the purpose of Convention –

- (a) the term “labour administration” means public administration activities in the field of national labour policy’
- (b) the term “system of labour administration” covers all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organisations.

Article 2

A Member which ratifies this Convention may, in accordance with national laws or regulations, or national practice, delegate or entrust certain activities of labour administration to non-governmental organisations, particularly employers’ and workers’ organisations, or –where appropriate – to employers’ and workers’ representatives.

Article 3

A Member which ratifies this Convention may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers’ and workers’ organisations.

Article 4

Each Member which ratifies this Convention shall, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated.

Article 5

1. Each Member which ratifies this Convention shall make arrangements appropriate to national conditions to secure, within the system of labour administration, consultation, cooperation and negotiation between the public authorities and the most representative organisations of employers and workers, or - where appropriate – employers' and workers' representatives.
2. To the extent compatible with national laws and regulations, and national practice, such arrangements shall be made at the national, regional and local levels as well as at the level of the different sectors of economic activity.

Article 6

1. The competent bodies within the system of labour administration shall, as appropriate, be responsible for or contribute to the preparation, administration, coordination, checking and review of national labour policy, and be the instrument within the ambit of public administration for the preparation and implementation of laws and regulations giving effect thereto.
2. In particular, these bodies, taking into account relevant international labour standards, shall -
 - (a) participate in the preparation, administration, coordination, checking and review of national employment policy, in accordance with national laws and regulations, and national practice;
 - (b) study and keep under review the situation of employed, unemployed and under-employed persons, taking into account national laws and regulations and national practice concerning conditions of work and working life and terms of employment, draw attention to defects and abuses in such conditions and terms and submit proposals on means to overcome them;

- (c) make their services available to employers and workers, and their respective organisations, as may be appropriate under national laws or regulations, or national practice, with a view to the promotion-at the national, regional and local levels as well as at the level of the different sectors of economic activity – of effective consultation and cooperation between public authorities and bodies and employers' and workers' organisations, as well as between such organisations.
- (d) make technical advice available to employers and workers and their respective organisations on their request.

Article 7

When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in cooperation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons, such as -

- (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
- (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice;
- (c) members of cooperatives and worker-managed undertakings;
- (d) persons working under systems established by communal customs or traditions.

Article 8

To the extent compatible with national laws and regulations and national practice, the competent bodies within the system of labour administration shall contribute to the preparation of national policy concerning international labour affairs, participate in

the representation of the State with respect to such affairs and contribute to the preparation of measures to be taken at the national level with respect thereto.

Article 9

With a view to the proper coordination of the functions and responsibilities of the system of labour administration, in a manner determined by national laws or regulations, or national practice, a ministry of labour or another comparable body shall have the means to ascertain whether any parastatal agencies which may be responsible for particular labour administration activities, and any regional or local agencies to which particular labour administration activities may have been delegated, are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them.

Article 10

1. The staff of the labour administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences.
2. Such staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties.

Article 11

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director General.
2. It shall come into force twelve months after the date on which the ratification of two Members have been registered with the Director General.
3. Thereafter, this Conventions hall come into force for any Member twelve

months after the date on which its ratification has been registered.

Article 13

1. A member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 15

The Director General of the International Labour Office shall communicate to the

Secretary General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 16

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole, or in part, then, unless the new Convention otherwise provides -
 - (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The English and French versions of the text of this Convention are equally authoritative.

LABOUR ADMINISTRATION RECOMMENDATION, 1978

I. GENERAL PROVISIONS

1. For the purpose of this Recommendation -
 - (a) the term "labour administration" means public administration activities in the field of national labour policy;
 - (b) the term "system of labour administration" covers all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organisations.
2. A Member may, in accordance with national laws or regulations, or national practice, delegate or entrust certain activities of labour administration to non-governmental organisation, particularly employers' and workers' organisations, or- where appropriate – to employers' and workers' representatives.
3. A member may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers' and workers' organisations.
4. Each Member should, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated.

II. FUNCTIONS OF THE NATIONAL SYSTEM OF LABOUR ADMINISTRATION

Labour Standards

5. (1) The competent bodies within the system of labour administration should—in consultation with organisation of employers and workers and in a manner and under conditions determined by national laws or regulations, or national practice—take an active part in the preparation, development, adoption, application and review of labour standards, including relevant laws and regulations.
 - (2) They should make their services available to employers' and workers' organisations, as may be appropriate under national laws or regulations, or national practice, with a view to promoting the regulation of terms and conditions of employment by means of collective bargaining.
6. The system of labour administration should include a system of labour inspection.

Labour Relations

7. The competent bodies within the system of labour administration should participate in the determination and application of such measures as may be necessary to ensure the free exercise of employers' and workers' right of association.
8. (1) There should be labour administration programmes aimed at the promotion, establishment and pursuit of labour relations which encourage progressively better conditions of work and working life and which respect the right to organise and bargain collectively.
 - (2) The competent bodies within the system of labour administration should assist in the improvement of labour relations by providing or strengthening advisory services to undertakings, employers' organisations

and workers' organisations requesting such services, in accordance with programmes established on the basis of consultation with such organisations.

9. The competent bodies within the system of labour administration should promote the full development and utilisation of machinery for voluntary negotiation.
10. The competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers' and workers' organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.

EMPLOYMENT

- 11 (1) The competent bodies within the system of labour administration should be responsible for, or should participate in the preparation, administration, coordination, checking and review of national employment policy.
 - (2) A central body of the system of labour administration, to be determined in accordance with national laws or regulations, or national practice, should be closely associated with, or responsible for taking, appropriate institutional measures to coordinate the activities of the various authorities and bodies which are concerned with particular aspects of employment policy.
12. The competent bodies within the system of labour administration should coordinate, or participate in the coordination of, employment services, employment promotion and creation programmes, vocational guidance and vocational training programmes and unemployment benefit schemes, and they should coordinate, or participate in the coordination of, these various services, programmes and schemes with the implementation of general employment policy measures.

13. The competent bodies within the system of labour administration should be responsible for establishing, or promoting the establishment of, methods and procedures for ensuring consultation of employers' and workers' organisations, or-where appropriate-employers' and workers' representatives, on employment policies, and promotion of their cooperation in the implementation of such policies.
14. (1) The competent bodies within the system of labour administration should be responsible for manpower planning or where this is not possible should participate in the functioning of manpower planning bodies through both institutional representation and the provision of technical information and advice.
 - (2) They should participate in the coordination and integration of manpower plans with economic plans.
 - (3) They should promote joint action of employers and workers, with the assistance, as appropriate, of public authorities and bodies, regarding both short and long-term employment policies.
15. The system of labour administration should include a free public employment service and operate such a service effectively.
16. The competent bodies within the system of labour administration should, wherever national laws and regulations, or national practice, so permit, have or share responsibility for the management of public funds made available for such purposes as countering underemployment and unemployment, regulating the regional distribution of employment, or promoting and assisting the employment of particular categories of workers, including sheltered employment schemes.
17. The competent bodies within the system of labour administration should, in a manner and under conditions determined by national laws or regulations, or national practice, participate in the development of comprehensive and concerted policies and programmes of human resources development including

vocational guidance and vocational training.

RESEARCH IN LABOUR MATTERS

18. For the fulfilment of its social objectives, the system of labour administration should carry out research as one of its important functions and encourage research by others.

III. ORGANISATION OF THE NATIONAL SYSTEM OF LABOUR ADMINISTRATION

COORDINATION

19. The Ministry of Labour, or another comparable body determined by national laws or regulations, or national practice, should take or initiate measures ensuring appropriate representation of the system of labour administration in the administrative and consultative bodies in which information is collected, opinions are considered, decisions are prepared and taken and measures of implementation are devised with respect to social and economic policies.
20. (1) Each of the principal labour administration services, competent with respect to the matters referred to in Paragraphs 5 to 18 above should provide periodic information or reports on its activities to the Ministry of Labour or the other comparable body referred to in Paragraph 19, as well as to employers' and workers' organisations.

(2) Such information or reports should be of a technical nature, should include appropriate statistics, and should indicate the problems encountered and, if possible, the results achieved in such a manner as to permit an evaluation of present trends and foreseeable future developments in areas of a major concern to the system of labour administration.

- (3) The system of labour administration should evaluate, publish and disseminate such information of general interest on labour matters, as it is able to derive from its operation.
 - (4) Members, in consultation with the International Labour Office, should seek to promote the establishment of suitable models for the publication of such information, with a view to improving its international comparability.
21. The structures of the national system of labour administration should be kept constantly under review, in consultation with the most representative organisations of employers and workers.

RESOURCES AND STAFF

22. (1) Appropriate arrangements should be made to provide the system of labour administration with the necessary financial resources and an adequate number of suitably qualified staff to promote its effectiveness.
- (2) In this connection, due account should be kept of-
 - (a) the importance of the duties to be performed;
 - (b) the material means placed at the disposal of the staff;
 - (c) the practical conditions under which the various functions must be carried out in order to be effective.
23. (1) The staff of the labour administration system should receive initial and further training at levels suitable for their work; there should be permanent arrangements to ensure that such training is available to them throughout their careers.
- (2) Staff, in particular services, should have the special qualifications required for such services, ascertained in a manner determined by the appropriate body.
24. Consideration should be given to supplementing national programmes and facilities for the training envisaged in Paragraph 23 above by international cooperation in the form of exchanges of experience and information and of

common initial and further training programmes and facilities, particularly at the regional level.

INTERNAL ORGANISATION

25. (1) The system of labour administration should normally comprise specialised units to deal with each of the major programmes of labour administration the management of which is entrusted to it by national laws or regulations.
- (2) For example, there might be units for such matters as the formulation of standards relating to working conditions and terms of employment; labour inspection; labour relations; employment, manpower planning and human resources development; international labour affairs; and, as appropriate, social security, minimum wage legislation and questions relating to specific categories of workers.

FIELD SERVICES

26. (1) There should be appropriate arrangements for the effective organisation and operation of the field services of the system of labour administration.
- (2) In particular, these arrangements should-
- (a) ensure that the placing of field services corresponds to the needs of the various areas, the representative organisation of employers and workers concerned being consulted thereon;
 - (b) provide field services with adequate staff, equipment and transport facilities for the effective performance of their duties;
 - (c) ensure that field services have sufficient and clear instructions to preclude the possibility of laws and regulations being differently interpreted in different areas.

APPENDIX III

THE OCCUPATIONAL HEALTH AND SAFETY BILL, 2002

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THE OCCUPATIONAL HEALTH AND SAFETY BILL, 2002 (DRAFT)

An Act to assure safe and healthy working conditions for employees and other persons by authorising enforcement of standards/codes developed under the Act; by assisting and encouraging State Governments in their efforts to assure safe and healthy working conditions; by providing for research, information, education, training and statistics in the field of safety and health and for certain connected matters.

It is hereby enacted as follows: -

1. Short title, extent, commencement and application

- (a) This Act may be called the Occupational Health and Safety Act, 2002.
- (b) It extends to the whole of India, including offshore activities.
- (c) It shall come into force on a date as notified by the Central Government, in the official gazette.

2. Definitions

"State" includes Union Territory.

"Standards" include Rules, Regulations or Codes notified under section 15 of this Act.

(* More definitions to be added)

3. General Purposes

The objective of this Act is to provide safe and healthy working conditions to employees working in industry and to regulate the working of industry so as to protect persons who may be adversely affected by unsafe working practices of the industry, specifically:

- (a) By encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new programmes and perfect existing programmes for providing safe and healthful working conditions.

- (b) By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions.
- (c) By building upon advances already made through employer and employee initiative for providing safe and healthy working conditions.
- (d) By providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems.
- (e) By exploring ways to discover latent diseases, establishing casual connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.
- (f) By providing medical criteria, which will assure in so far as practicable that no employee will suffer diminished health, or functional capacity, or diminished life expectancy as a result of his work experience.
- (h) By providing for training programmes to increase the number and competence of personnel engaged in the field of occupational safety and health.
- (i) By providing for the development and promulgation of occupational safety and health standards.
- (j) By providing an effective enforcement programme which shall include a prohibition against giving advance notice of any inspection and sanctions to any individual violating this prohibition.
- (k) By encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws, by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act,

to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith.

- (l) By providing for appropriate reporting procedures with respect to occupational safety and health, such procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem.
- (m) By encouraging joint efforts of labour and management to reduce injuries and disease arising out of employment.
- (n) By encouraging interaction between the management and community, in general and other industries located in the vicinity in particular, in order to take appropriate remedial actions in case of an accident.
- (o) By reviewing the provisions of law relating to workmen's compensation to determine whether the provisions are adequate and prompt.

4. **Applicability of the Act**

The provisions of this Act shall apply to: -

- (a) Factories as defined in the Factories Act, 1948.
- (b) Mines as defined in the Mines Act, 1952.
- (c) Plantations as defined in the Plantation Labour Act, 1951.
- (d) Dock Workers as defined in the Dock Workers (Safety, Health and Welfare) Act, 1986.
- (e) Establishments as defined in the Delhi Shops and Establishment Act, 1954, but also including all hospitals and educational institutions. (and Shops and Establishment Act of various States.)
- (f) Building Constructions Workers as defined in the Building and Other Construction Workers (Regulation of Employment, Conditions of Services) Act, 1996.
- (g) Beedi workers as defined in the Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
- (h) Employees engaged in transport of goods and passengers.

- (i) Employees engaged in agriculture, fisheries, sericulture, forests (etc.)
- (j) Worker as defined in the Industrial Disputes Act, 1947. It would also include persons employed in supervisory, managerial or administrative capacity.
- (k) All employees except those engaged in domestic work (excluding those in home-based industrial activity).

5. **Supercession of the existing laws**

The existing Acts relating to occupational health and safety shall be superceded and be replaced by the Occupational Health and Safety Standards as and when notified by the Central Government.

6. General duties of employers to employees:

Every employer shall ensure to his employees, employment that is free from recognized hazards that cause or is likely to cause injury or occupational disease, and shall comply with the OHS standards prescribed under this Act.

7. General duties of Employers to persons other than their employees but who are on the premises of the employer:

Every employer shall ensure and be responsible for the safety of persons who are on the premises of the employer, with his consent.

8. General duties of employers and self-employed persons to persons other than their employees and who may not be on the premises of the employer:

Every employer will conduct his undertaking in such a way as to ensure that persons in the vicinity of the industry are not exposed to any hazard to their safety or health due to acts of omission or commission of the industry.

9. General duties of manufacturers etc. as regards articles and substances for use at work:

Every person who manufactures, imports or supplies any article for use in any workplace shall ensure, so far as practicable, that the article so designed

and manufactured is safe and without hazards to the health of the users when properly used. Such persons will also ensure supply of adequate instructions regarding the use of these articles.

10. **General duties of employees –**

Every employee at work shall –

- (a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (b) shall comply with the safety and health requirements prescribed under this Act and standards laid down under this Act.

11. **Duty not to interfere with or misuse things –**

No person shall interfere with or misuse any device or instrument provided for safety and health.

12. **Duty not to charge employees for providing safe and healthy work environment –**

No employer shall levy or permit to be levied on any employee, any charge in respect of anything done or provided for maintenance of safe and healthy working environment.

13. **Rights of employee –**

(a) Every employee shall have the right to:

- obtain from the employer information relating to health and safety at work; and
- represent to the employer directly or through a member of the Unit Safety Committee regarding inadequate provision for protection of his safety or health in connection with the work activity in the workplace, and if not satisfied, to the Safety Committee.

(b) (i) where the employees in any work place have reasonable apprehension that there is a likelihood of imminent serious personal injury or death or imminent danger to health, they may bring the same to the notice of their employer directly or through a member of the Safety Committee and simultaneously bring the same to the notice of the Inspector.

- (ii) The employer shall take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the Inspector.
- (c) If the employer is not satisfied about the existence of any imminent danger as apprehended by his employees, he shall, nevertheless, refer the matter forthwith to the Inspector whose decision on the question of the existence of such imminent danger shall be final.
- (d) No person shall make frivolous and repetitive complaints.

14. **Occupational Health and Safety Commission**

- (a) The Central Government shall appoint an Occupational Health and Safety Commission. The functions of the Commission shall be to formulate and recommend to the Government legislative measures, implement and periodically review a coherent national policy for the establishment and promotion of Occupational Health and Safety Management Systems.
- (b) The Central Government shall appoint a Chairman, and three members and a Secretary of the Occupational Health and Safety Commission. One of the three members shall be an occupational health and safety expert and the Commission and its members shall be full time functionaries with a tenure of three years. They would be assisted by such officials as considered necessary. Such officers will also be declared as Inspectors and shall exercise powers under this Act and the powers of Inspectors under standards as established in section 15 of the Act.
- (c) The National Policy on Occupational Health and Safety shall establish general principles and procedures to: -
 - Formulate comprehensive standards on occupational health and safety.
 - Facilitate and improve voluntary arrangements for systematic

identification, planning, implementation and improvement of occupational health and safety activities at national and organisational level.

- Promote participation of workers and their representatives in various aspects of occupational health and safety at all levels.
- Promote participation of members of the public in general and people working or living near the industry, in the occupational health and safety programmes of the industry.
- Promote participation of members of the medical profession working near the industry in the occupational health and safety programmes of such industry.
- Recommend steps for continuous improvement in occupational health and safety programmes, while avoiding unnecessary administration and costs.
- Provide for research, information, education in the field of occupational health and safety.
- Promote awareness about occupational health and safety to students at school and college level and also in engineering, medical, agriculture and veterinary institutes and colleges.
- Collect, compile and analyse occupational health and safety statistics in order to set up improved standards.
- Provide a model occupational health and safety policy for organisations.
- Develop and authorise an audit mechanism for assessing effectiveness of occupational health and safety in industry.

(d) The Occupational Health and Safety Commission shall have the power to conduct or direct the conducting of inquiries in matters of occupational health and safety.

15. **Occupational Health and Safety Committee**

- (a) The Central Government shall set up an Occupational Health and Safety Committee to advise and assist the Occupational Health and Safety Commission in its functions.

- (b) The Occupational Health and Safety Committee shall comprise the following members: -
- DG FASLI
 - DG MS
 - Director, National Institute of Occupational Health
 - Controller of Explosives
 - Chairman, Central Pollution Control Board
 - Chief Labour Commissioner (Central)
 - Labour Commissioners of 3 States
 - DG ESI
 - DG Health Services
 - 3 representatives of employers
 - 3 representatives of employees
 - 3 eminent persons connected with the field of Occupational Health and Safety
 - Chairman of the OH&S Commission
 - Members of the OH & S Commission
 - Secretary of the OH&S Commission
- (c) The terms of the following members shall be three years or co-terminus with their office whichever is earlier: -
- Labour Commissioner of a State
 - Representatives of employers
 - Representatives of employees
- Provided that all the above persons shall be eligible for reappointment to the Committee, the membership of the Labour Commissioner of a State shall rotate amongst Labour Commissioners of various States.
- (d) Chairman of the Occupational Health and Safety Commission shall be the Chairman of this Committee.
- (e) The Committee shall meet at least twice a year, but may meet as often as considered necessary.
- (f) The Committee may constitute a sub-committee which will visit

various industries to gain first hand knowledge of the conditions relating to occupational health and safety prevailing in such industries.

- (g) The members of the Committee will work on an honorary basis but will be entitled to daily allowance and travelling allowance at the prescribed rates.

16. Occupational Health and Safety Standards

- (a) The Central Government shall as soon as practicable during the period beginning with the effective date of this Act and ending three years after such date, promulgate specific or general standards of occupational health and safety for industries, processes and occupations.
- (b) Every rule made under the Act shall be published in the official gazette and unless otherwise specified, shall take effect immediately on publication.
- (c) The standards so framed shall be laid before both Houses of the Parliament within 6 months.
- (d) These standards will be reviewed and, if necessary, revised on the basis of the recommendations of the Occupational Health and Safety Commission.
- (e) The State Government may add to or amend the standards prescribed, without diluting the standards by the Occupational Health Safety Commission.
- (f) The Central Government, in promulgating standards dealing with toxic materials or harmful physical agents, shall set the standard which assures, to the extent feasible, on the basis of the best available evidence or functional capacity, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to hazard dealt with by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations, experiments and such other information as may be appropriate.

- (g) Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that the employees and users are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.
- (h) Standards for medical examination and compensation shall also prescribe norms for medical examination and compensation to be extended to the workmen even after he ceases to be in employment, if he is suffering from an occupational disease which arises out of and was in course of employment.
- (i) Any employer may apply to the appropriate Government for a temporary order granting a variance from a standard. Such application shall contain: -
- A specification of the standard or portion thereof from which the employer seeks a variance.
 - A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore.
 - A statement of the steps he has taken and will take (with

specific dates) to protect employees against the hazard covered by the standard.

- A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard.
- A certification that he has informed his employees of the application by giving a copy thereof to their authorised representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition to the appropriate government for a hearing.

- (j) The appropriate government may, by an order, exempt the employer from complying with the mandatory standards for a specified period, on conditions which it feels appropriate, if it is satisfied that (i) the employer is unable to comply with a standard by the effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or alteration or facilities cannot be completed by the effective date, (ii) the employer is taking all necessary steps to safeguard his employees against the hazards covered by the standard and, (iii) the employer has an effective programme for compliance with the standard at an early date.

Provided that no such exemption shall be for more than one year. Provided further that such exemption may be renewed for a further period of one year subject to the employer furnishing details to the appropriate government that he has taken adequate steps to achieve

the target of complying with the standards. Application for renewals must be received at least 90 days prior to the expiration of the order or the exemption.

17. Research and related activities

- (a) The National Institute of Occupational Diseases in consultation with the Occupational Health and Safety Review Commission shall conduct or shall cause to be conducted research, experiments and demonstrations relating to occupational health and safety.
- (b) The Central Government, on the basis of such research, demonstrations and experiments and any other information available to it, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment including, but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work.

18. Training and employee education

- (a) The Occupational Health and Safety Commission shall in association with the DG FASLI, DG MS, Controller of Explosives Central Pollution Control Board, Chief Labour Commissioner (Central), DG ESI, DG Health Services, National Institute of Occupational Health organisation of Employers & Employees and other organisations concerned with occupational health and safety, carry out programmes to provide training in the field of occupational health and safety to persons in the industry.
- (b) Such training programmes shall provide for the education of employers and employees for the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employments covered by this Act.

19. **Statistics**

- (a) In order to further the purposes of this Act, the Central Government and the State Government shall develop and maintain an effective programme of collection, compilation and analysis of occupational health and safety statistics.
- (b) To carry out the above functions, the appropriate government may promote, encourage or directly engage in programme of studies, information and communication concerning occupational health and safety statistics.

20. **Power of the Central Government or the State Government to direct inquiry in certain cases**

- (a). The appropriate Government may, in the event of the occurrence of an accident which has caused or had the potentiality to cause serious danger to employees and other persons within, and in the vicinity of the workplace, whether immediate or delayed, appoint one or more persons possessing legal or special knowledge to inquire into the causes of the accident, fix responsibilities and suggest a plan of action for the future to prevent such accidents.
- (b-i) The appropriate Government may direct a Chief Inspector or any other official under the control of the Government concerned or appoint a committee to undertake a survey on the situation relating to safety or health at work at any workplace or class of workplaces or into the effect of work activity on the health of the employees and other persons within and in the vicinity of the workplace.
- (ii) The officer or the committee of persons mentioned in subsection:
 - May, at any time during the normal working hours of the workplace, or at any other time as found by him or the

committee to be necessary, after giving notice in writing to the employer, undertake such survey and the employer shall make available all records and afford all facilities for such survey including facilities for the examination and testing of plant and collection of samples and other data relevant to the survey.

- For the purpose of facilitating a survey under this subsection, every employee shall, if so required by the person or the committee conducting the survey present himself for such medical examination and furnish such information in his possession and relevant to the survey as may be considered necessary by the person conducting the survey.

- (c) The person appointed to hold an inquiry under this section, shall have the powers of a Civil Court under the code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and may also so far as may be necessary for the purposes of the inquiry, exercise such powers of an Inspector under this Act as may be necessary; and every person required to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (XLV of 1960).
- (d) The person or persons, or persons holding an inquiry under this section shall make a report to the Government concerned.
- (e) The Government concerned may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.
- (f) The Central Government may make rules for regulating the procedure at inquiries etc. under this section.

21. **Restriction on disclosure of information**

- (a) No person shall disclose otherwise than in connection with

enforcement or for the purposes of any of the relevant statutory provisions, any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties under any of the relevant statutory provisions or which has been disclosed to him in connection with, or for the purposes of any of the relevant statutory provisions.

- (b) Nothing in subsection (1) shall apply to any disclosure of information made within the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including adjudication or arbitration), pursuant to any of the relevant statutory provisions or of any criminal proceeding or proceeding before a tribunal under this Act which may be taken, whether pursuant to any of the relevant statutory provisions or otherwise, or for the purposes of any report of such proceedings as aforesaid.

22. Protection to persons acting under the relevant statutory provisions

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith or intended to be done under any of the relevant statutory provisions.

23. Penalties

Any person who wilfully violates the provisions of section 6 to 13, shall be punishable with fines which may extend to one lakh rupees. Regulations made under this Act as provided in Section 16, may prescribe higher penalties as warranted by the gravity of the offence.

24. Cognisance of offences

- (a) No Court shall take cognisance of any offence punishable under this Act, except on a complaint made by or with the previous sanction in writing of an officer specified by the appropriate Government in this regard.

- (b) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

25. **Limitation of prosecutions**

No Court shall take cognisance of an offence punishable under this Act, unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the officer specified by the appropriate government.

APPENDIX IV

A MODEL SAFETY AND HEALTH POLICY

The Management recognizes people as its most important asset and is committed to provide a safe and healthy work environment for those working on and visiting our operations. Management at all levels will be responsible and will be held accountable for the occupational safety and health performance of the Company. At the same time, it is the duty of every employee to work in a safe manner so as not to endanger himself and his colleagues at the work place and during travel.

Accordingly, the aim of the Management is to prevent injuries and occupational ill health through the following actions:

- (a) Develop and design processes and plants which, as far as is reasonably practicable, and encompassing all available knowledge and information, are safe and without risk to health.
- (b) Operate and maintain plants within the designated safety criteria throughout their working life.
- (c) Develop, introduce and maintain safety and health management systems across the Company to meet the Company standards as well as statutory requirements for safety and health and verify compliance with these standards through regular auditing.
- (d) Set annual improvement objectives and targets and review these to ensure that these are being met at the individual unit and corporate levels.
- (e) Involve all employees in the implementation of this policy and provide appropriate training.
- (f) Provide for appropriate dissemination of information of safety and health at work through suitable communication networks both within

the company and with external bodies.

THE VISION

The Management's vision is to be an injury and disease free organization. We will achieve this through an Integrated Safety Management approach, which focuses on People, Technology and Facilities, supported by Management Commitment as the prime driver for ensuring a safe and healthy work environment.

RESPONSIBILITIES

Corporate

The Board of Directors of the company is committed to occupational safety and health performance of the Company. The Management will:

- (a) Set mandatory standards and establish occupational safety and health improvement objectives and targets for the Company as a whole and for individual units, and ensure these are included in the annual operating plans.
- (b) Formally review occupational safety and health performance of the Company once every quarter.
- (c) Review safety and health at work when visiting units and recognize exemplary performance.
- (d) Nominate:
 - A senior line manager for occupational safety and health at the individual sites.
 - Corporate safety and health coordinator(s).

The Management, through the nominated safety and health manager will:

- (a) Ensure implementation of the policy and compliance with the standards stipulated under national/local legislation.
- (b) Establish strategies for safety and health at work and key implementation steps.
- (c) Establish appropriate management systems for safety and health at work and ensure auditing to verify compliance.
- (d) Arrange for all employees, appropriate training in implementation of safety and health management systems at work and during travel.
- (e) Ensure that all employees are made aware of individual and collective responsibilities towards safety and health at work and during travel.
- (f) Establish appropriate systems to impart adequate induction training to all personnel on the company sites particularly at initial employment and change of jobs.
- (g) Encourage development of inherently safer and cleaner manufacturing processes to further raise the standards of occupational safety and health.
- (h) Arrange for expert advice on all aspects of occupational safety and health.
- (i) Prepare an annual performance report on occupational safety and health.
- (j) Maintain close liaison with appropriate industry and Government bodies.

INDIVIDUAL UNITS

The overall responsibility for safety and health at each unit will rest with the Unit Head, who will ensure implementation of the Management policy on safety and health at unit level. Concerned line managers/heads of department shall be

responsible for safety and health at department levels.

In order to fulfil the requirements of the safety and health policy at each site, the Unit Head will:

- (a) Designate safety and health coordinator(s) who will be responsible for coordinating safety and health activities at unit, providing/ arranging for expert advice and collating safety and health statistics.
- (b) Specify safety and health improvement objectives and targets for the unit and ensure that these are incorporated in the annual objectives of the concerned managers and officers.
- (c) Ensure that the unit complies with the Company's mandatory standards and statutory regulations with respect to safety and health.
- (d) Ensure strict adherence to the mandatory standards on road safety for all work related travel.
- (e) Arrange appropriate awareness training for all employees on safety and health management systems and standards.
- (f) Regularly review safety and health performance of the unit against set objectives and targets.
- (g) Ensure periodic audits to verify compliance to safety and health management systems and personally carry out sample safety and health audits to check efficacy of safety systems.
- (h) Report safety and health statistics to Corporate Safety & Health Manager on a monthly basis.
- (i) Ensure that safety committees are constituted with adequate representation from employees.
- (j) Ensure formal task and process reviews to identify associated hazards and take appropriate steps to control risks at acceptable levels.
- (k) Ensure that all new operations are subjected to a systematic and formal hazard identification and risk assessment exercise. Findings of such exercises should be implemented prior to commencement of the activity.
- (l) Manage change in People, Technology and Facilities through planned

CHAPTER - XII

OTHER MATTERS

I

WORKERS PARTICIPATION IN MANAGEMENT IN INDIA

It is now necessary that we review the steps that have been taken in India to specify the areas in which, workers can participate in management, and the machinery that can be provided for participation.

Works Committees

12.1 The Royal Commission on Labour (1929-31) said:

"We believe that if these committees (works committees) are given proper encouragement and the past errors are avoided they can play a useful role in the Indian industrial system". These recommendations could, however, be translated into law only in 1947.

12.2 Section 3 of the Industrial Disputes Act, 1947 empowered appropriate Governments to require employers employing 100 or more

workers in any industrial establishment to constitute works committees. The Act and rules made under it provide that the total number of representatives on the works committee including those of the employer should not exceed 20, and that the number of representatives of workers should not be less than that of the employer. The functions that the Act visualised for the Works Committees were:

- a) To promote measures for securing and preserving amity and good relations between employers and workmen;
- b) To that end comment upon matters of common interest or concern; and
- c) To endeavour to compose any material difference of opinion between the employer and the workmen in respect of such matters

12.3 Some of the laws enacted by the States like the Bombay Industrial Relations Act and the MP Industrial Relations Act do provide for setting up of joint committees on similar lines.

12.5 The beginning of these joint committees can be traced back to 1920 when the Government of India constituted joint committees in Govt. printing presses. A similar joint committee was formed by TATA in the TATA Iron & Steel Works, Jamshedpur. A joint committee was constituted in the Carnatik Mill in Madras in 1922.

12.6 The Indian Labour Conference in its 17th session held in 1959 discussed the functions of the works committee and approved a list of functions which could be assigned to the works committees and a list of functions which should not be assigned to the works committees. It will be useful to look at the illustrative lists drawn up by the Indian Labour Conference: -

- a) Items which works committees, may normally deal with:
 - i) Conditions of work, such as ventilation, lighting, temperature and sanitation, including latrines and urinals.
 - ii) Amenities such as drinking water, canteens, dining rooms, crèches, rest rooms, medical and health services.
 - iii) Safety, and accident prevention, occupational diseases and protective equipment.
 - iv) Adjustment of festival and national holidays.
 - v) Administration of welfare and funds.
 - vi) Educational and recreational activities such as, libraries, reading rooms, cinema shows, sports, games, picnic parties, community welfare and celebrations.
 - vii) Promotion of thrift and savings.
 - viii) Implementation and review of decisions reached at meetings of works committees.
- b) Items which the works committees should not normally deal with:
 - i) Wages and allowances.
 - ii) Bonus and profit sharing schemes
 - iii) Rationalisation and matters connected with the fixation of workloads.
 - iv) Matters connected with the fixation of the standard labour force.
 - v) Programmes of planning and development.

- vi) Matters connected with retrenchment and lay-off.
- vii) Victimization for trade union activities.
- viii) Provident fund, gratuity schemes and other retiring benefits.
- ix) Quantum of leave, and national and festival holidays.
- x) Incentive schemes.
- xi) Housing and transport service.

Joint Management Councils

12.7 The Industrial Policy Resolution adopted by the Government in 1956 declared that in a socialist democracy, labour was a partner in the common task of development, and should be asked to participate in it with enthusiasm. A tripartite committee that visited the UK, Sweden, France, Belgium, West Germany and Yugoslavia came to an agreement on the constitution, functions and administration of joint councils. The committee recommended the setting up of JMCs in all undertakings. An All India Seminar held in Delhi in 1957 worked out a model agreement that the management and workers could enter into to set up these JMCs. The scheme was to be voluntary and consultative in nature. Joint

management councils were to deal with all matters except matters falling within the area of collective bargaining such as wages, bonus, hours of work, etc.

12.8 The National Commission on Labour (1966-69), which reviewed the working of the JMCs, observed that there was not much support for the institutions of the JMCs. The Commission held the view that "when the system of recognition of Trade Unions becomes an accepted practice both management and unions would themselves gravitate towards greater cooperation and set up JMCs".

12.9 The tripartite committee which approved the draft model agreement regarding the establishment of joint management councils unanimously agreed on the criteria that should be followed in selecting the undertakings in which Joint Councils should be established;

1. The undertaking should have well-established strong trade unions.
2. There should be willingness among the parties, viz. employers, and workers or the unions to try out the experiment in a spirit of cooperation.
3. The size of the undertakings in

terms of employment should be at least 500 workers. The representative of the Ministry of Railways suggested that a few units with less than 500 workers might be tried on a pilot basis to enable workers as well as employers to identify impediments and rectify them. It was agreed that three or four such units might be taken up in addition to those contained in the agreed list. The Committee further suggested that in choosing enterprises the following criteria should be kept in mind:

- (a) The employer in the private sector should be a member of one of the leading employers' organisations. Likewise, the trade union should be affiliated to one of the central federations;
- (b) The undertaking should have a fair record of industrial relations.

12.10 A committee set up by the Government on the suggestion of the Assam Government made further recommendations in relations to the JMCs in public sector undertakings.

1. The question whether Joint Councils should have separate

sub-committees or technical committees to deal with different subjects should be left to the option of the parties at the level of undertakings.

2. During the period of the experiment, the employee's representatives on the joint council should be nominated by the Trade Union concerned. At a later stage, the intermediate method of submission of a panel of names by the Trade Unions might be considered.
3. The bulk of employees' representatives should be workers themselves. But, if the local Trade Unions wanted to induct outsiders their number should be limited to 25% of the employees' representatives on the joint councils. The question of how many outsiders were to be entertained within this upper limit, and in what capacity would be left to local conditions.
4. If the decision was taken to constitute technical committees, or sub - committees, their constitution should be decided according to specific needs and situations.

5. Outsiders might be taken on technical committees, or sub committees.
6. The size of the joint councils should be restricted to twelve persons.
7. Any member of the joint council could bring forward items for discussion.
8. The joint councils should meet during working hours,.
9. The worker-members of the joint councils should be compensated for loss of earnings, but nothing more should be given by way of remuneration.
10. There should be a provision for recall of members of the joint council.
11. The worker members on joint councils should function as representatives of the workers.
12. The question of giving a minimum percentage of wages, or of income, or of profits, for welfare work to the joint council should be settled at the level of the undertaking.
13. Whether the tenure of the chairman of the joint council should be fixed or not, should be decided by local agreement.
14. All necessary facilities for the work of joint councils should be provided by the employers.
15. Decisions in the joint councils should be arrived at by agreement.

Joint Consultative Machinery and Compulsory Arbitration in Govt. Departments

12.11 Here we must also make a brief reference to the Joint Consultative Machinery set up by the Government to facilitate communication and cooperation between the Government and its employees.

12.12 The setting up of such a machinery was recommended by the Second Pay Commission (constituted in 1959) mainly on the model of the Whitley Councils in the UK. "The Commission defined the objectives of the machinery as promoting harmonious relations and securing the greatest measure of co-operation between the Government in its capacity as employer and the general body of its employees in matters of common concern and with the object further of increasing the efficiency of public service."

12.13 The objective as outlined has the appearance of an amalgam of the objectives of the Works Committees, Joint Management Councils and agencies of collective bargaining. It can be seen that the JCMs, Departmental Councils and Office Councils (which form parts of the system) have enormous potential that can be tapped imaginatively.

12.14 The outstanding features of the scheme are: -

- a) The membership is confined to persons who are highly knowledgeable and do not suffer much from a sense of inequality or inferiority of status in initiating or conducting discussions with senior officers who represent the Government at meetings. They are very different from the workers' representatives on the joint bodies in industries
- b) The political activists, who play a role in Trade Union organisations, have muted voice in this set-up. No outsider can participate in the discussions in these bodies.

12.15 Structure: under the scheme three tiers of councils are set up,- one at the Office/Regional level, a second

at the Departmental level, and a third at the National level. Employees upto the level of Group B Officers in the Ministries and Head Offices of the Departments of CSS cadre and upto Assistants in the subordinate offices are entitled to represent the employees if they belong to the recognised Associations/Federations which are given representation at each level of the JCM. Group A officers, employees of union territories and police personnel are specifically excluded from the scheme. No person who is not an employee or honourably retired employee of the Central Government can be a member of the council. Members are allowed to attend the meetings of the council (on Government time including time taken to travel) treating it as part of duty. The expenses incurred on travel are reimbursed.

12.16 The regional/office level council may be set up wherever the structure of a department so permits. The council will consist of official side and staff side members and their number/strength will depend on the size of employees. In the departmental level council, the number of official side members will be between 5 and 10, and of the staff side between 10 and 20

depending on the size of the department. At the national level the number of members of the official side and staff side is 25 and 60 respectively. The three levels of councils are chaired by Head of the the Office/region concerned, Head of the department concerned, and the cabinet secretary respectively.

12.17 In regard to recruitment, promotion and discipline the consultations are limited to general principles.

12.18 Individual cases are not considered.

12.19 If there is difference of opinion on any issue at the office level council, it can be taken up by the workers side through their federations at the departmental level council, and if no decision is taken at the departmental level council, the issue can be taken up at the national level council in a similar manner.

12.20 Issues which fail to get decided at any level cannot be taken up at the same level at least for one year. The issues which are looked into by a pay commission and decision taken by the Government on

the recommendations of the pay Commission, cannot be discussed in JCMs for five years.

12.21 There is a provision for compulsory arbitration on certain limited matters such as pay and allowances, hours of work, and leave, if a disagreement is recorded at the national level JCM on any of these matters.

Workers Participation in management in TISCO

12.22 After several years of study and discussions with the recognised unions in 1997, Tata Iron and Steel Company at Jamshedpur set up a three-tier machinery for consultation.

- I. Joint Departmental Councils
- II. Joint Works Councils
- III. Joint Consultative Council of Management

12.23 The Joint Departmental Council operates at the level of every department or a combination of two or more departments. The Joint Works Council is for the entire works, and coordinates the activities of the Departmental Councils. Parallel to the Joint Works Councils there is a joint town and medical council for dealing

with matters relating to the township, medical, health and education matters (including those of TELCO). The Joint Consultative Council of Management is at the top. It is entrusted with the task of advising the management on all matters concerning the working of the industry in relation to production and welfare. As a safeguard against the overlapping of the functions of the joint councils and the collective bargaining machinery the role of the joint councils has been streamlined. The functioning of the joint councils is further reviewed in consultation with the Trade Union from time to time.

Workers' Participation in Public Sector Banks

12.24 While nationalising banks it was announced that a scheme would be formulated to provide for workers' participation in management. Accordingly, the Nationalised Banks (management and miscellaneous) Scheme 1970 was notified by the Government. The scheme provided for the appointment of a Workman Director and a Director representing the Officers' cadre of each bank on the Board of each nationalised banks. The union of workmen and the

association of officers which were identified as the representative union/association after verification of membership were entitled to nominate one office bearer each on the Board of Directors of the Bank.

Amendment of the Constitution

12.25 In 1975, during the Emergency, the Constitution was amended by the introduction of Article 43A. the purpose of this amendment was to raise productivity, promote industrial peace and create a sense of involvement amongst the workers. The inserted article that formed part of the Directive Principles of State Policy provided that "The state shall take steps by suitable legislation or in any other way to secure participation of workers in the management of undertakings, establishments or other organisations engaged in the industry". It has thus become incumbent on the state to work towards the effective participation of workers in the management of industrial establishments.

Introduction of New Schemes of Workers' Participation

12.26 In the year 1975 the Government formulated a scheme of

workers' participation in industry at shop floor and plant level. The scheme was to be implemented in the first instance in enterprises in the manufacturing and mining industries, whether these were in the public, private or cooperative sector or departmentally run units irrespective of whether joint consultative machineries had been set up and were functioning in them. The scheme was applicable to such units as were employing 500 or more workers. The scheme provided for setting up of shop councils at the shop/departmental levels and joint councils at the enterprise levels. Each council was to consist of an equal number of representatives of employers and workers. The employers' representatives were required to be nominated by the management from among the persons employed in the unit concerned and all representatives of workers were required to be from amongst the workers engaged in the shop or department concerned. The employer was expected to set up the council in consultation with the recognised union or various registered Trade Unions or workers as that would be appropriate in the local conditions.

12.27 The employer was to determine the number of members in each council, but he had to take the decision in consultation with the unions. Decisions were to be based on consensus, and not by a process of voting, and a decision once taken was required to be implemented within one month. The shop councils were required to meet as frequently as necessary, and at least once in a month.

12.28 Similarly joint councils were required to be set up for each unit covered under the scheme. The chief executive of the unit was to be the chairman. The vice chairman was to be nominated by the worker members of the council. The joint council was to meet at least once in a quarter.

12.29 The functions included not merely discussing production and productivity, achieving efficiency, eliminating wastage, arresting absenteeism, ensuring safety measures etc. but also the physical condition of workings, and welfare measures. The Councils were also expected to ensure a two way flow of communication between the management and the workers. The Council could also make creative

suggestions for improving the skills of workers, and providing adequate facilities for training.

12.30 Soon afterwards, in 1977, the Government of India introduced another scheme for participation. This scheme of workers' participation in management was meant for commercial and service organisations having large scale public dealings such as hospitals, post and telegraphs, railway stations/booking offices, government provident fund and pensions organisation, road transportation, electricity boards, insurance, institutions like FCI, Central Warehousing Corporations, State Warehousing Corporations, Public Distribution System including Fair Price Shops, Super Bazar, all financial institutions, educational institutions, air and inland water transport, ports and docks, handlooms and handicrafts export corporations, municipal services, milk distribution services, the irrigation system, tourist organisations, public hotels and restaurants, and establishments for public amusements, etc.

12.31 The scheme was to cover organisations employing 100 or more persons in these activities. However,

the organisations/services desiring to apply this scheme to units with lesser employment were free to do so. Under this scheme unit councils and the joint councils were to be set up. The objective was to promote confidence between the workers and the management, which it was believed would in turn promote the active involvement of the workers and secure greater satisfaction and better customer service through improved work processes. The functions of the unit councils and joint councils under this scheme were almost similar to those laid down under the 1975 scheme, with the exception that in the new scheme emphasis was also laid on discipline, elimination of pilferage and all forms of corruption.

12.32 While both the schemes i.e. of 1975 and 1977 initially generated considerable enthusiasm with large number of organisations setting up such forums, there was sharp decline in the number of units/enterprises having shop and joint councils after 1979. Apart from the on going controversy about the criteria for determining representation at the participative forum, the exclusion of grievance redressal, the restrictions imposed on consideration of work

related issues, the inadequate sharing of information, the lack of a supportive participative culture, the indifference of the management, the involvement of second rung union officialdom contributed to the ineffective functioning of many forums and their eventual decline.

12.33 Another scheme was introduced in December 1983. This scheme of workers participation in management was made applicable to central public sector undertakings (except those which are exempted from the operation of the scheme by the administrative ministry/department concerned in consultation with the Ministry of Labour). All undertakings of the central government, which are departmentally run, were excluded from the scheme as they were covered under the scheme of JCM.

12.34 As in the 1975 scheme this scheme too was to operate at the level of the shop floor and the plant level.

12.35 The functions of the councils included consultation on production facilities, storage facilities, material economy, operational problems,

wastage control, safety issues, quality improvement, planning, implementation and fulfilment of monthly targets and schedules, improvement in productivity in general and in critical areas in particular, improvements in technology, machine utilisation, knowledge and development of new products, encouragement to and consideration of suggestions, works system, welfare measures, profit and loss statement, balance sheet, operational expenses, financial results and performance, absenteeism, administration of social security schemes, workers training programmes, issues pertaining to women, welfare issues like housing, medical benefits, transport facility, safety measures, canteen, township administration, control of gambling, drinking and indebtedness, environment issues like pollution control, etc.

Tripartite Committee on Workers' Participation

12.36 In pursuance of the recommendations of the Tripartite Labour Conference held in May, 1977, the Government of India constituted a Committee on 23rd September, 1977 under the chairmanship of

Sh. Ravindra Varma, the then Minister of Labour and Parliamentary Affairs initially with 18 members (some more members were added later on) to consider and recommend the outlines of schemes for workers' participation at different levels of management in industrial establishments keeping in view the interest of the national economy, industry & its efficient management and the interests of workers.

12.37 The recommendations of the committee may be summarised:

- 1) Despite the agreement in Government that in keeping with the principles of democracy there should be full and effective participation of the workers in management and efforts made in this regard during the last three decades, it was found that the manner in which it has been implemented had led to dissatisfaction. The scheme of workers' participation should be such as would involve all interest groups in an undertaking. It should provide for free flow of basic information to inculcate responsible responses. The scope of the
- scheme should encompass increase in productivity and production, effective machinery for resolution of conflict, democratisation of work processes and safeguarding the interest of the society, including consumers.
- 2) It will require training of workers and managerial personnel in the art of participative management.
- 3) A representative of the employers in the private sector felt that the objective of any scheme of workers' participation should be to develop industrial efficiency, create a sense of involvement in the work process, generate a sense of discipline, democratise decision making processes and foster closer relationship between the workers and the management, and improve the quality of life at the work place and outside. He favoured a voluntary scheme being applied on a selective basis. A representative of the public sector said that participation was essential for proper involvement of workers. He said that though there may

- be a law on the subject, the scheme should be as flexible as possible to take care of the variety in industrial structures.
- 4) A representative of workers felt that the scheme of workers participation should be such as would create a society which ensured social justice. Another representative of the workers said that the participation should not be only in industrial relations but in the field of management as well. He said that no curbs or limitations should be put on the functions of the joint councils. He argued that the workers were part and parcel of the management as they carried out their directions and therefore should be consulted in all matters. This view of the broader scope of the councils was advocated by many workers' representatives as well.
 - 5) It was agreed that the Trade Unions had a very important role to play in protecting and furthering the rights and economic interests of the workers. Any institutional arrangement should not ignore the vital role of Trade Unions in collective bargaining.
 - 6) The committee by consensus made the following recommendations
 - a) It was generally felt that the experience of voluntary schemes of participative management in the past has not been very happy, and therefore, there was need to introduce the scheme by statute.
 - b) No distinction should be made between the public, private and cooperative sectors.
 - c) The majority of the members favoured adoption of a three-tier system of participation namely, at corporate level, plant level and shop floor level with following scope and functions.
 - 7) Shop Level Issues having commonality amongst various centres such as common production facilities, storage facilities in a shop, material economy, errors in documents, operational problems, wastage control, hazards, safety problems, quality improvement,

monthly targets and production schedules, review of utilisation of critical machines, cost reduction programmes, technological innovations in the shop, formulation and implementation of work systems design, group working, multiple skill development and welfare measures related particularly to the shop would be within the scope of a shop council.

SCOPE OF PLANT LEVEL COUNCIL

- 8) a) Operational areas:
Evolution of productivity schemes taking into account local conditions,
- b) Planning, implementation, fulfilment and review of monthly targets and schedules.
- c) Materials supply, shortfall, quality of inputs, ancillaries, bought-out items, etc.
- d) Storage and inventories, analysis of decisions on accumulation of inventories of raw materials, process materials and finished products.
- e) Housekeeping
- f) Improvements in productivity, general, and in critical areas in particular.
- g) Encouragement to and consideration of suggestions,
- h) Quality and technological improvements.
- i) Sharing gains of productivity arising out of an innovation made in any shop.
- j) Design development, inspection, rectification, machine utilisation, process development, knowledge and development of new products.
- k) Operational performance figures and order book position.
- l) Matters not resolved at the shop level or concerning more than one shop.
- m) Review of the working of the shop councils.
- n) Cost reduction including value analysis, method improvements.

Economic and financial areas –

- a) Incentives
- b) Budget, profit and loss statements, balance sheets.
- c) Review of operating expenses, financial results, cost of sales.
- d) Plant performance in financial terms, labour and managerial costs, market conditions, etc.
- e) Review of overtime.

Personnel matters

- a) Absenteeism
- b) Implementation of policy and criteria regarding transfers and promotions.
- c) Employment of casual and temporary labour and special problems of women workers.
- d) Initiation and supervision of workers' training programmes
- e) Administration of social security schemes.

Welfare areas

- a) Operational details
- b) Implementation of welfare schemes, medical benefits and transport facilities

- c) Safety measures
- d) Sports and games.
- e) Housing policy
- f) Township administration, canteen, etc
- g) Control of gambling, drinking, indebtedness, etc.

Environmental areas

- a) Extension activities and community development projects.
- b) Pollution control.

SCOPE OF CORPORATE/BOARD LEVEL PARTICIPATION

- 9) Issues relating to finances, wage structure, fringe and other benefits, bonus, housing, medical facilities, overall recruitment and personnel policies and norms and resolution of disputes pertaining to the areas of collective bargaining would be dealt with by the normal collective bargaining processes as may be provided for in the proposed comprehensive Industrial Relations Law.

10) At this level, some of the following issues which normally constitute the agenda and business of the board may be taken up for discussion.

- I. Consequences on labour strength.
- II. Expansion schemes
- III. Export strategy and effects on work schedules etc.
- IV. Product mix
- V. Review of the working of the councils at shop floor and plant levels
- VI. Decisions on matters not settled in the councils at the plant level.
- VII. All problems regarding decisions at macro-level referred to it by the plant councils.

The participation of workers in Management Bill, 1990

12.38 Taking into account the shortcomings of the various schemes implemented from time to time and the experience gained, the government decided to review the concept of Workers' participation in its entirety and to evolve a fresh approach to make workers' participation in management more effective and meaningful. It was felt

that a stage had been reached when some kind of a legislative back up was necessary to make further progress. The Participation of Workers in Management Bill was, therefore, drawn up and introduced in the Rajya Sabha on 30th May, 1990. The Bill proposed to make provisions for the Participation of Workers in the Management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected or incidental.

Salient Features of the Bill

12.39 The salient features of the proposed Bill are as follows: -

- i) The Bill proposed to cover all the industrial establishments or undertakings as defined under the Industrial Disputes Act, 1947. However, the Central Government would have the power to notify the classes of industrial establishments to which the Act would apply.
- ii) The Central Government will be responsible for enforcing the law in all cases where it is the appropriate Government under

the I.D. Act, 1947 and also in enterprises where the Central Government holds 51% or more of the paid up share capital. In the remaining cases, the responsibility for enforcement will be that of the State Government.

- iii) The Bill provides for formulation of one or more schemes to be framed by the Central Government for giving effect to the provisions of the law which will include, among others, the manner of representation of workmen at all the three levels and of other workers at the Board level, nomination of representatives of employers on the shop floor and establishment level councils, procedure to be followed in the discharge of the functions of the Councils etc.
- iv) The Bill proposes the constitution of one or more Councils at the Shop Floor Level and a Council at the establishment level. These Councils will consist of equal number of persons to represent the employers and

the workmen. The Appropriate Government shall in consultation with the employer and taking into account the total number of workmen, the number of levels of authority, the number of Shop Floors determine the number of persons who will represent the employer and the workmen in a Council

- v) The Bill also envisages a Board of Management at the Apex level where representatives of the workmen as defined under the ID Act shall constitute 13%, and persons representing other workers shall constitute 12% of the total strength of such management. The persons to represent the other workers in the Board of Management shall be elected by and from amongst other workers of the industrial establishment or by secret Ballot. The persons to represent workmen on the Board shall be elected from the workmen of the industrial establishment by Secret Ballot or nominated by the registered Trade Unions.
- vi) If any person contravenes any provisions of this Act or the

Scheme made under it, he shall be punishable with imprisonment, which may extend to 2 years, or with a fine which may extend to Rs. 20,000/- or with both. It has also been indicated that the Appropriate Government, by notification, will appoint such persons as it feels fit to be inspectors for the purpose of this Act.

- vii) The Bill further provides that a Monitoring Committee comprising equal number of members representing the appropriate Government, the workers and the employers may be constituted by the appropriate Government to review and advise them on matters which arise out of the administration of the Act, any scheme or any rules made thereunder.
- viii) The proposed Bill empowers the Government to exempt any employer or classes of employees from all or any of the provisions of the Act.
- ix) It was proposed to do away with the provision of constitution of Works Committees by omitting

section 3 of Industrial Dispute Act, 1947.

12.40 The functions that have been assigned to shop floor level and unit/establishment level councils as per the Bill were almost the same as those recommended by the committee headed by Shri Ravindra Varma. The Bill was referred to the Parliamentary Standing Committee on Labour and Welfare.

Five Year Plans and workers participation in management

12.41 The first five year plan contained a number of references about collaboration between employers and workers. It held the view that the employer employee relationship is essentially a partnership to promote the community's economic needs. There should therefore be the closest collaboration at all levels between the employer and the employees for increased production, improvement of quality, reduction of cost and elimination of waste. The plan document further laid down that works committees should be set up for settlement of differences on the spot while the joint committees should

function for the centre, and for an industry as a whole.

12.42 The second plan document said that the creation of industrial democracy was a pre-requisite for establishing a society where the worker felt that he was helping to build a progressive state in his own way. A standing joint consultative machinery could effectively reduce the extent of industrial unrest. Such a machinery needs to be evolved at all levels at the centre, in the states, and in individual industrial units. The works committees could function as fora for joint consultation in the units. Experience has shown that for effective functioning of these committees there should be clear demarcation of the functions of these committees and of unions.

12.43 The third plan wanted that the works committees to be strengthened and made active agencies for democratic administration.

12.44 The sixth plan document laid down that there should be emphasis on promotion of cooperation between the workers and the employers through participation in management.

12.48 The eighth five plan felt that labour participation in management was a means of achieving industrial democracy. The Government has been stressing the need for introducing workers' participation in management since independence, although the results of efforts have fallen short of expectations. There was need to bring forward a suitable legislation for effective implementation of the scheme besides providing education to workers in this regard, and securing cooperation of employers as well as workers in overcoming problems in promoting the system of workers' participation in management.

Indian Labour Conference and workers' participation in management

12.46 Workers' participation in management was discussed in the 15th session of the Indian Labour Conference, and there was general agreement that participation should be ensured through legislation, or by mutual agreement between the employees and employers of selected industrial establishments. The employers' representatives wanted that they should be given a period of

two years to operate the scheme on voluntary basis, and if the voluntary experiment did not succeed, the Government might enact a law. Workers' representatives were not in favour of leaving the matter to the initiative of the employers. They felt that to avoid delay in implementation an appropriate legislation was necessary. The question of the method of selection of worker's representatives was also discussed, and it was decided that wherever a representative or recognised union was there under the law, such unions should be consulted in deciding the method of selection of workers' representatives. At the end of the session, a small committee of four persons each from employers and workers groups was set up. The committee accepted the main recommendations of the study group, which was set up before discussing the agenda in the 15th session of the ILC. These recommendations were: -

1) The main functions of the councils may include provision of means of communication, improvement of working and living conditions, improvement in productivity, encouragement to suggestions and assistance in

the administration of laws and agreements. It may be desirable to consult the councils in matters like alterations in standing orders, retrenchment, rationalisation, closure, reduction in or cessation of operations, introduction of new methods, procedures for engagement and punishment. They may also have the right to receive information about the general economic situation of the concern, the state of the market, production and sales programmes, organisation and general running of the undertaking, circumstances affecting the economic position of the undertaking, methods of manufacture and work, and the annual balance sheet and profit and loss statement and connected documents and explanations, and such matters as may be agreed to by employers and employees.

2) It would be preferable to exclude wages and bonus and individual grievances from the purview of joint bodies, but otherwise the list of functions should be flexible enough to be

- settled by joint consultation between the management and the representative trade union.
- 3) To reduce the danger of apathy, councils of management may be entrusted with some administrative responsibility, such as administration of welfare measures, supervision of safety measures, operation of vocational training and apprenticeship schemes, preparation of schedules of working hours and breaks and holidays and payment of rewards for valuable suggestions.
 - 4) There should be a strong self-confident trade union closely connected with the machinery of participation and with a reasonably clear separation of functions. It would be advisable to devise some methods for closely associating the trade unions in the selection of workers' representatives.
 - 5) It is necessary to enlist the willing cooperation of the management at the middle and lower level such as junior managers, supervisors and foremen.
 - 6) Joint consultation should be 'inbuilt' and for this purpose the government should provide advisory service on personnel management on the lines of the British Ministry of Labour.
 - 7) While the Government should accept leadership for organising a sustained educational campaign for creating the necessary atmosphere, it should not be made a departmental affair. But effort should be made to build up a tripartite machinery of direction by utilising employer's organisations, Trade Unions, non-official bodies, etc.
- 12.47 The issue was discussed in the 28th, 29th 32nd and 33rd session of ILC as well. The broad outcome of the discussions in these sessions were:
- a) The envisaged statutory framework should be flexible enabling the Government to introduce the scheme in a phased manner beginning with the establishments above a certain size.
 - b) The mode of representation of the workers should be decided

in consultation with the recognised Trade Union and in other cases by secret ballot. Dismissed employees whose cases are subjudice should not be eligible for participation.

- c) The participation should be on equal basis between the workers and employers. However, there were differences as regards the participation at the board level. While the workers' representatives felt that in the board level also the workers representation should be 50%, the employers representatives felt that to begin with the representation of workers at the board level should be confined only to one representative as workman director. The majority of the state labour ministers were of the opinion that at the board level the representation of workers should be limited to 25% (except the labour minister of West Bengal who wanted that the workers should be given 50% representation on the board).
- d) The question relating to participation in equity should be kept separate from the proposed statutory scheme.

- e) In the 32nd session of the ILC the workers' representatives by and large favoured a legal framework for workers' participation in management whereas the employers' representatives expressed their opposition to the same and they suggested that this should be left to the voluntary initiatives of the employers.

Whether the workers' participation should be by statute or by voluntary arrangement

12.48 We have seen that workers' participation in management introduced statutorily through the institution of works committees under section 3 of the Industrial Disputes Act has not been successful. The reasons have perhaps to be sought in the method of constitution of the works committees and the functions assigned to them. We have also seen that the three voluntary schemes introduced in 1975, 1977 and 1983 have also not found many takers. The debate is still on, whether it should be introduced by a statute or by voluntary arrangements. While the Central Trade Union Organisations have been demanding the

introduction of workers participation in management by statute, the employers' organisations have been against introducing schemes of workers participation in management by law.

12.49 If we look at the institutions of workers' participation in the management set-up in various countries like Germany, Japan and now the member nations of the European Union, we see that most of these systems have been established by law. There is no evidence to show that workers' participation in management has in any way weakened an enterprise financially or otherwise. In fact there is overwhelming evidence to suggest that wherever the system has been introduced the enterprises and the economy as a whole have shown tremendous growth. We, therefore, feel that a legal base should be provided for institutionalising workers' participation in management particularly in the context of liberalisation and globalisation. Workers and the management have to join together to not only sort out their day to day problems, but build up confidence in each other, improve work culture, enable the introduction

of new technology, improve production processes, achieve production targets. These objectives can be achieved only by mutual understanding. Mutual dialogue and workers participation are therefore, the need of the hour. It will not only ensure that the workers' welfare is taken care of and their interests are safeguarded while effecting changes in the enterprise structure or improving technology by obviating unnecessary retrenchments and ensuring payment of dues and full compensation in cases where retrenchment etc. become necessary, but also ensure smooth revision of the strength of the workforce, introduction of new technologies, improving work processes, etc. and make the enterprises capable of standing up to global competition.

12.50 The very fact that for more than half a century we have been trying to explore and expand the area of mutual contact, co-operation and co-determination between the management and workers surely underlines the extreme importance of the co-operative approach to the problems that arise in the course of industrial activity. Almost all the economically advanced nations have

worked out their own variants of industrial co-operation and co-determination, - Germany, Japan, and now the countries in the European Union. All of them have found systems of participatory management useful and beneficial for efficiency, and for creating the atmosphere necessary to meet the demands of competitiveness. They have expanded the rights of workers and increased managerial efficiency. They have reduced the distance between workers and managerial personnel.

12.51 They have improved human relations, and improved human relations have led to improved industrial relations. It has become easier to understand each others' point of view, and frequent, if not constant interaction has led to a clearer picture of the common interest in the viability and profitability of the enterprise. With revolutionary changes in the means of communication, it has become possible for workers to keep track of information relating to processes, balance sheets and the like.

12.52 The content of work has undergone a sea change in many essential processes. The knowledge

worker has taken the place of the old unskilled worker who depended merely on his body labour, or was in demand only for the body labour that he could contribute. There has been a shift in paradigms or/and in responsibility and power equations. All production or processes of production no longer have to be under one roof. The methods that can elicit the best contribution from one who contributed body labour, it has been proved, are not necessarily the same when it comes to eliciting the best from the knowledge worker or one who can contribute only if he has understanding initiative, perhaps even innovativeness. The degree of interdependence in the inputs of workers who work together has changed. Collective excellence, it has been found depends very much on cooperation, voluntary vigilance and coordination, at every level, between one human component and another. Changes in technology that we have witnessed have also resulted in greater understanding of the need for voluntary and imaginative co operation. Such cooperation can come only with the awareness of the commonness of objectives and the identity of interests as far as the work on hand, and its fall out or fruits are concerned.

12.53 India can not be an exception to this state of affairs in the age of new technology. Globalisation will accentuate and accelerate this process. It will, therefore, make it necessary for us to reach higher levels of participatory activity. We will therefore, have to discover the appropriate system that can ensure contact, co-operation and co-determination at as many levels as possible from the plant level to the Board level.

12.54 We have already done considerable thinking on the functions that can lend themselves to co-operation and co-determination at various levels. With globalisation the time has come when we cannot leave the question of participatory management to be determined by the management or the trade unions. Experience has demonstrated the necessity and utility of participatory management. We believe therefore, that the time has come for the Government to enact a law to provide for participatory at all levels keeping in mind the necessity to ensure that the responsibility and freedom to take managerial decisions are not fragmented to the detriment of the enterprise, the social partners or society at large.

II

EMPLOYMENT SCENARIO IN THE COUNTRY

Introduction

12.55 Our Commission has not been given a mandate to make recommendations or suggestions on policies and programmes that can promote the growth of employment in the country. But while viewing various aspects of the current situation of labour, the Commission observed a continuous downsizing of workers in the organized sector and the miseries that it is causing to the retrenched working population. The Commission, also came across deteriorating working and living conditions of workers in the informal sector who are merely managing to eke out a living for themselves. Quite a large number of them are below the poverty line. The only way to improve their conditions is to provide them with decent work and gainful occupation. Without work, all talk about providing protection, improving conditions, and assuring a minimum of social welfare is futile. As President Bush has said in his State of the Union address on January 29, 2002,

an economic security plan can be summed in one word: jobs. If there are no jobs, there is no economic stability. Therefore, we thought that we should look at the present serious problem of growing unemployment, review the present situation and suggest some ways to mitigate the situation. In doing so, we have drawn heavily on the available literature on the subject and the discussions that we have had in the field wherever we met experienced persons who have done laudable work in retaining and adding to the jobs available to the masses of our people.

Employment situation

12.56 Everyone admits that unemployment is like a ticking time bomb. It is growing every year. According to one estimate we may add 70 million unemployed in the next ten years. The economy is expanding, but it is hardly creating any new jobs. The new economic policies of internal liberalisation and globalisation have created an atmosphere which is not conducive to expanding employment in the organised private sector. Most of the existing industrial units are shedding what is termed excess labour, and in order to be competitive

are inducting sophisticated machinery and automation. There are limits to which agriculture can absorb new entrants. Thus there is a "jobless" growth and the rate of unemployment as measured by NSS Surveys has increased after 1991, unemployment increasing from 6.03% in 1993-94 to 7.32% in 1999-00. The NSS data also shows that the growth of employment has come down from 2% per year in the period 1983 to 1993-94 to less than 1% in the period from 1993-94 to 1999-2000. This is a serious situation, and before the ticking time bomb explodes urgent action will have to be taken to promote the generation of more employment in the country. Otherwise it will result in a serious problem of law and order in the country.

Size of the work force

12.57 Table 12.1 presents estimates of population and the workforce as on 1.1.1994 and 1.1.2000. There is a reduction in the proportion of the work force to the total population in both urban and rural areas. Out of 1000 persons, 418 were part of the work force in 1.1.1994. But now only 395 persons are part of the work force. This means that the work

force is not increasing at the same rate as the population. This is equally true of both urban and rural areas. If we analyse age-specific worker population ratios, we find that in the younger generation between the ages of 15 to 29, there is less participation in work. This is probably because this

group may be spending more time in education than in work. There is a beneficial rise in the student population ratios indicating a rising participation in secondary and higher level education. This is a welcome trend.

TABLE 12.1
ESTIMATES OF POPULATION AND WORKFORCE IN
RURAL-URBAN LOCATION

(In 000s)

Population Segment	Estimates of population as on		Estimates of as on Worker		Workforce Population Ratios as on (per 1000)	
	1.1.94	1.1.2000	1.1.94	1.1.2000	1.1.94	1.1.2000
Rural Persons	656,509	718,865	291,531	300,957	444	419
Urban Persons	237,496	285,220	82,301	96,061	347	337

Source : Employment & Poverty in 1990s: Results from NSS K Sundaram

Economic & Political Weekly August 11-17, 2001

12.58 The growth rate of employment should not be compared with the growth rate of the population. It must be viewed in the context of the growth rate of the work force as stated above.

12.59 In the following Table II these rates of growth of population, labour force and employment are presented.

Table 12.2**Rate of Growth of Population, Labour Force and Employment**

Period	Rate of growth of population (% per annum)	Rate of growth of Labour force (% per annum)	Rate of growth of Employment (% per annum)	Average Annual growth rate of GNP (% per annum)
1972-73 to 1977-78	2.27	2.94	2.73	4.02
1977-78 to 1983	2.19	2.04	2.17	3.90
1983 to 1987-88	2.14	1.74	1.54	4.80
1987-88 to 1993-94	2.10	2.29	2.43	5.25
1993-94 to 1999-2000	1.93	1.03	0.98	6.60

Source: Report of Task Force on Employment Opportunities, Planning Commission, Govt. of India, P 2.7 Economic Survey 2001-02.

12.60 From this table, it is clear that the rate of growth of employment declined sharply from 2.43% per year in the period 1987-88 to 1993-94 to a mere 0.98% per year in the period 1993-94 to 1999-2000. But growth of the Labour Force Participation Rates (LFPR), as derived from census data, have declined from 2.29% to 1.03% during the same period. Even then the growth rate of employment is less than the growth rate of the labour force indicating an increase in unemployment, and this is a matter of

grave concern. During the same period average annual growth rate of GNP has gone up from 5.25% to 6.60%. But this has not resulted in the rise of growth rate of employment indicating that the employment may not necessarily grow when GNP growth rate goes up.

Industrial Distribution of total workforce

12.61 Table 12.3 gives details regarding growth of employment by sectors.

TABLE 12.3
GROWTH OF EMPLOYMENT SECTORS (UPSS)

Industry	Employed workers (million)			Annual Growth Rate (percentage)	
	1983	1993-94	1999-00	1983-94	1994-00
Agriculture	207.23	242.46	237.56	1.51	-0.34
Mining & Quarrying	1.76	2.70	2.27	4.16	-2.85
Manufacturing	34.03	42.50	48.01	2.14	2.05
Electricity, Gas & WS	0.85	1.35	1.28	4.50	-0.88
Construction	6.78	11.68	17.62	5.32	7.09
Trade	19.22	27.78	37.32	3.57	5.04
Transport, Storage & Commn.	7.39	10.33	14.69	3.24	6.04
Financial Services	1.70	3.52	5.05	7.18	6.20
Community Social & Pers. Services	23.80	35.13	33.20	2.90	0.55
Total Employment	302.76	374.45	397.00	2.04	0.98

Source: Report on the task force on employment Planning Commission, Govt. of India 2001.

12.62 From the data presented in this table, it can be seen that the absolute number of persons employed in agriculture has declined from 1993-94 to 1999-2000. It is for the first time that such a decline is seen. The proportion of workers employed in agriculture declined from 68.5% in 1983 to 64.5% in 1993-94, and further to 59.9% in 1999-2000. The share

of manufacturing has marginally increased. Employment in sectors like construction, trade, financial services, and transport, storage and communication has grown faster than average and the overall growth in employment is due to these sectors. This more or less concurs with the growth trend of GDP data among the various sectors of economic activities.

Unemployment rates

12.63 In order to have a better assessment of the trends of employment and the unemployment situation, the NSSO provides four different measures of employment and unemployment which capture different facets of the same situation. They are:

- I. Usual Principal Status (UPS)*
- II. Usual Principal and Subsidiary Status (UPSS)*
- III. Current Weekly Status (CWS)*
- IV. Current Daily Status (CDS)*

12.64 Unemployment rates as percentage of Labour Force as alternative measures from 1977-78 to 1999 - 2000 are shown in Table 12.4

Table 12.4
Alternative measures of unemployment rates

(Percentage of Labour Force)

	Usual Principal Status (UPS)	Usual Principal & Subsidiary Status (UPSS)	Current Weekly Status (CWS)	Current Daily Status (CDS)
1977-78	4.23	2.47	4.48	8.18
1983	2.77	1.90	4.51	8.28
1987-88	3.77	2.62	4.80	6.09
1993-94	2.56	1.90	3.63	6.03
1999-2000	2.81	2.23	4.41	7.32

.....
* a) Usual Principal Status (UPS) The usual activity status relates to the activity status of a person during the reference period of 365 days preceding the date of the survey. The action status on which a person spent relatively longer and major time during the 365 days preceding the date of survey is considered as the principal usual activity status of the person.

b) Usual Principal and Subsidiary Status (UPSS) A person whose principal usual status was determined on the basis of the major time criterion could have pursued some economic activity for a relatively shorter time (minor time) during the reference period of 365 days preceding the survey. The status in which such economic activity was pursued was the subsidiary economic activity of the person.

c) Current Weekly Activity Status: The current weekly activity status of a person is the activity status obtaining for a person during a reference period of 7 days preceding the date of the survey.

d) Current Daily Activity Status: The current daily activity status for a person was determined on the basis of his/her activity status on each day of the reference week using a priority cum major time criterion (day to day labour time disposition).

12.65 UPS and UPSS measures show modest increase in the rate of unemployment in the nineties, from 2.56% to 2.81% and from 1.90% to 2.23%. But the CDS measure shows a sharp increase from 6.03% to 7.32%. What is more important is that all the four measures show an increase in unemployment rate

reversing the earlier trend witnessed in 1977 and 1983.

12.66 The World Employment Report gives the following unemployment rates of India and other neighbouring countries. These figures as shown in Table 12.5 are for the year 1996.

Table 12.5
Unemployment Rates in India and some of the other Countries

India	4.4	Korea	2.0
Australia	8.6	Malaysia	2.6
Bangla Desh	2.5	Pakistan	5.4
China	3.0	Phillipines	7.4
Indonesia	4.0	Sri Lanka	11.3

Educated Unemployed

12.67 High rate of unemployment among the educated youth is a very serious problem. This creates a great sense of frustration among young

persons as well as their families. Moreover, the jobs they expect relate to their educational qualifications.

TABLE 12.6
UNEMPLOYMENT RATES (%) AMONGST EDUCATED YOUTH

Year	Secondary education & above			All types of Technical Education		
	Rural	Urban	Combined	Rural	Urban	Combined
1983	20.4	(2.5)	30.0	(10.7)	20.7	(4.2)
	25.0	23.9	24.4			
1987-88	15.9	(3.8)	16.6	(12.1)	16.2	(5.4)
	24.0	20.7	22.1			
1993-94	17.0	(2.9)	20.8	(10.8)	18.5	(4.6)
	29.0	25.9	27.3			
1999-2000	12.5	(3.7)	18.3	(11.2)	14.8	(5.4)
	22.8	24.5	23.7			

Note: i) Technical Education comprises of Additional Diplomas or certificates in Agriculture, Engineering/ Technology, medicine, crafts and other subjects.

ii) Youth refers to the age group, 15-29

iii) Figures in parentheses show the unemployment rate among youth as a whole.

(Source: Report of the Task Force on Employment, Govt. of India, 2001 p 2.19)

12.68 The data in respect of unemployment rates among the educated youth is given in Table 12.6 above. Here youth refers to all the persons who are within the age group of 15-29. The percentage of young unemployed persons having studied upto the secondary level and above has come down from 20.7% to 14.8%. But the unemployment rate among the youth as a whole has gone up. The unemployment rate among technically qualified persons is more or less the same and has marginally come down from 24.4% in 1983 to 23.7% in 1999-2000.

Data from Employment Exchanges

12.69 The Government of India is operating a national employment service. As at the end of June 2000, there were 958 Employment Exchanges in the country and the job seekers registered with these exchanges were 406.98 lakh. Between January-June 2000, 26.64 lakh were registered for new jobs, while Employment Exchanges were able to provide jobs to only 80,000 persons.

12.70 Year-wise registration, placements, vacancies notified and persons on live registers are presented in the following table 12.7

TABLE 12.7
REGISTRATION OF UNEMPLOYED IN EMPLOYMENT EXCHANGES

Year	No. of Exchanges	(IN THOUSANDS)				
		Registration	Placement	Vacancies Notified	Submission Made	Live Register
1	2	3	4	5	6	7
1990	851	6540.6	264.5	490.9	4432.2	34631.8
1991	854	6235.9	253.0	458.6	4531.2	36299.7
1992	860	5300.6	238.7	419.6	3652.0	36758.4
1993	887	5532.2	231.4	384.7	3317.8	36275.5
1994	891	5927.3	204.9	396.4	3723.4	36691.5
1995	895	5858.1	214.9	385.7	3569.9	36742.3
1996	914	5872.4	233.0	423.9	3605.9	37429.6
1997	934	6321.9	275.0	393.0	3767.8	39139.9
1998	945	5851.8	233.3	358.8	3076.6	40089.6
1999	955	5966.0	221.3	328.9	2653.2	40371.4

Source: Annual Report, 2000-2001, Ministry of Labour, Govt. of India.

12.71 There is a total mismatch of persons registering for jobs and the actual number of jobs available. From this, one can realise the gravity of the problem of unemployment, and the strain on the minds of the unemployed.

Recent Trends

12.72 During the last few years there has been considerable talk of downsizing. Either through voluntary retirement schemes or through retrenchment, the number of workers is being reduced. This is true of both public and private sector organisations. In public sector Banks 99,452 have opted for VRS. This accounts for 11% of its staff. SBI leads with 20,850 taking VRS. Staff accounts for 65-70% of total costs in public sector Banks. In new Banks it is only 16%. National Textile Mills has introduced VRS in six units in Tamilnadu and Pondicherry. 2000 textile mills are affected. The Textile industry is one that has suffered most as a result of the new economic policy. 396 out of the 1850 registered units have been shut down. 3.49 lakh of the 9.97 lakh workers in the industry have been retrenched. During the last one year, 15,000 jobs have been cut between March 2000 and June 2001.

12.73 The Hotel industry is also badly affected with business travel as well as tourist traffic going down. About 1200 employees of the Taj Group of Hotels have opted for VRS. Oberoi and Welcome Group of Hotels have downsized by about 1800. ITDC may off load another 1500 after privatisation. Automobile companies are downsizing in order to remain competitive. Between 1998 and 2001, Telco got downsized by 9,375 workers, and during the same period, Bajaj Auto by about 4,785 workers. Hindustan Motors cut 1500 jobs during the last two years. Escorts, Daewoo India, LML Ltd., Maruti Udyog Ltd., all have been reducing the number of their workers. The infotech companies have also been affected. During the last one year, 10,000 persons in the IT sector have lost their jobs. The software sector too is feeling the impact of the slow down. While leading companies in this industry are surviving, second and third rung players are either closing down shops or laying off people. Indian railways is the world's second largest rail transport system. Not only will there be no recruitment in the railways but it is considering proposals to cut 30,000 jobs every year. This is by no means an

exhaustive list. But it gives a glimpse of the grave situation that is developing in the employment market in the country.

Some important issues

12.74 There are some other important issues connected with employment, which need to be mentioned.

Table 12.8
Distribution of workers by category of employment (percentage)

Year	Self Employment	Regular salaried	Casual
1977-78	58.9	13.9	27.2
1983	57.4	13.9	28.7
1987-88	56.0	14.4	29.6
1993-94	54.8	13.2	32.0
1999-00	52.9	13.9	33.2

(Source: NSSO Surveys)

- a) There is a growth in casual labour in the total employment picture of the last decade. This is shown in table 12.8 given above. The proportion of salaried workers is the same at 13.9% in 1977-78 and 1999-2000. The proportion of self employed has come down from 58.9% in 1977-78 to 52.9% in 1999-2000. But the number of casual workers has gone up substantially from 27.2% to 33.2%. Thus casualisation of workers has been the trend during the recent years.
- b) Table 12.9 gives details of the total employment and the total organised sector employment

during the period 1983 to 1999-2000. The figures show that organised sector unemployment is not increasing and indeed it is decelerating. Organised sector employment grew relatively slowly at 1.20% per annum during the 1983-94 period, but then further slid down to only

0.53% between 1994 and 1999. Thus the organised sector has not contributed to the growth in employment and we have to look elsewhere to find avenues of employment growth. Since there is a general preference for jobs in the organised sector, this trend is of great concern.

Table 12.9
Total Employment and Organised Sector Employment

Sector	Employment (Million)				Growth rate (% per annum)	
	1983	1988	1994	1999-00	1983-94	1994-2000
Total Population	718.21	790.00	895.05	1004.10	2.12	1.93
Total Labour Force	308.64	333.49	381.94	406.05	2.05	1.03
Total Employment	302.75	324.29	374.45	397.00	2.04	0.98
Organised Sector Employment	24.01	25.71	27.37	28.11	1.20	0.53
- Public Sector	16.46	18.32	19.44	19.41	1.52	-0.03
- Private Sector	7.55	7.39	7.93	8.70	0.45	1.87

- Note:
1. The total employment figures are on Usual Status (UPSS) basis
 2. The organised sector employment figures are as reported in the Employment Market Information System of Ministry of Labour and pertain to 1st March of 1983, 1994 and 1999.
 3. The rate of growth of total employment and organised sector employment are compound rates of growth.

(Source: Report of the Task Force on Employment, Govt. of India, Planning Commission 2001, p.2.25)

- c) 44% of the labour force in 1999-2000 was illiterate and 33% had schooling upto secondary education and above. Only 5% of the workforce had the necessary vocational skills. Thus there is large scale unemployment, and at the same time, a shortage of skilled workers.
- d) The fact of being employed is obviously no guarantee for escaping poverty. One may be underemployed drawing a meagre or nominal income. It is estimated that 6.5% of the total employed (397 million in 1999-2000) i.e. around 25.74 million are under employed. They have meagre income and they are just eking out a living.
- income segments of the labour force.
- (ii) Pursuing appropriate sectoral policies in individual sectors which are particularly important for employment generation. These sector level policies must be broadly consistent with the overall objective of accelerating GDP growth.
- (iii) Implementing focussed special programmes for creating additional employment of enhancing income generation from existing activities aimed at helping vulnerable groups that may not be sufficiently benefited by the more general policies for promoting growth.
- (iv) Pursuing suitable policies for education and skill development, which would upgrade the quality of the labour force and make it capable of supporting a growth process which generates high quality jobs.
- (v) Ensuring that the policy and legal environment governing the labour market encourages labour absorption, especially in the organised sector.

Recommendations of the Task Force

12.75 (a) Strategy prescribed: The strategy for employment generation recommended by the Task Force of the Planning Commission is based on intervention in five major areas:

- (i) Accelerating the rate of growth of GDP, with particular emphasis on sectors likely to ensure the spread of income to the low

- (b) High Rate of Economic Growth:
- Continuation of economic growth at an average of about 6.5% will not yield a significant improvement in the employment situation, especially the extent of open unemployment. The expected annual addition to the labour force is about 8.7 million per year over the next ten years. We need to accelerate GDP growth to a range between 8% and 9% to achieve our objective of generating enough additional employment to provide productive employment opportunities. To achieve this, the Task Force has recommended expanded levels of direct foreign investment in the economy, proposed improvement in domestic savings, reduction in revenue deficits of centre and states.
- (c) Other recommendations: The report goes on to emphasize and recommend:
- (i) Lowering import tariffs to ensure competition and increasing efficiency for proposed acceleration in GDP growth.
- (ii) Agro-companies being allowed to buy, develop, cultivate and sell degraded and wastelands after detailed delimitations taking these land out of the purview of tenancy laws.
- (iii) Freedom of conversion of rural land into urban use, laws to facilitate private development of townships and estates.
- (iv) The active involvement of large industrial units and MNCs in food-processing.
- (v) The present Ministry of SSI & Agro-Rural Industries should be expeditiously renamed the Ministry of Small & Medium Establishments to reflect the new focus.
- (vi) De-reservation and increasing FDI in the SSI Sector.
- (vii) Expedite grant of necessary permission for setting up of good quality hotels with reasonable price Luxury tax and expenditure tax on hotels need to be moderated.

- (viii) Switch to modern retailing, removal of ban on FDI in this sector.
- (ix) Need for emergence of modern and large transport companies.
- (x) In the construction sector, the present bias against large construction firms should be removed.
- (xi) Special Employment Programmes – Pending review, the total resources devoted to these programmes should be held constant at current levels.
- (xii) The Central Government should completely withdraw from the delivery of vocational training.
- (xiii) The Task Force has also recommended reforms in Labour Laws.

Further Developments

12.76 In view of the importance given to foreign capital, increase in the role to be played by multinationals and the emphasis placed on the corporate sector to solve the employment problem, the

recommendations of the Task Force were criticized by the Swadeshi Jagran Manch, Bhartiya Mazdoor Sangh, Khadi & Village Industries Board and many other organizations. The Government intends to create one crore new jobs every year, and according to the critics, jobs on this massive scale cannot be created by following the recommendations of the Task Force.

12.77 Therefore, in order to undertake a review of these recommendations and suggest new ways of generating employment, the Planning Commission has now set up another expert committee headed by Planning Commission Member Dr. S. P. Gupta. The report of this Committee is still not published. But reports that have appeared in newspapers suggest that the new committee is considering an agriculture driven job creation to be placed in the broad policy framework of second generation reforms. The new committee has used the latest census data to estimate the figures of unemployment. It is understood that it is much higher in the new report, at an estimated 10% of the total workforce against the earlier finding of a meagre 2%. If the total work force is 400 million and

the unemployed will account 40 million, it certainly is a massive figure. The new emphasis may be on such sectors in agriculture as watershed development, minor irrigation, fruit processing and many other diversified activities in agriculture. Their subsequent emphasis will be on creating jobs in the small and medium sector of industries.

Suggestions by Social Security and Employment Advisory Panel

12.78 The Govt. of India has appointed a National Commission to review the working of the Constitution of India. This Commission appointed an advisory panel on promoting literacy, generating employment, ensuring social security and alleviation of poverty. This panel, has produced a report after considering various schemes of the Government, the effort of the Government to generate more employment, and the ground realities. It has some suggestions that we should cite.

12.79 After considering the fact that the industrial sector will not be a major source for employment generation and there are limitations for the growth of employment in the services

sector, the Advisory Panel has laid emphasis on the growth of the small and unorganised industrial sectors. Their emphasis is not on creating jobs but on creating conditions that will enable a large number of people to undertake activities on a self-employment basis. As regards rural employment, the panel has laid emphasis on sustained agricultural growth, on both farm and non-farm employment, primary processing of agricultural products, development of rural community assets, encouraging activities like horticulture, floriculture, sericulture and improvement of productivity in agriculture.

12.80 According to this panel, if properly organised, the following rural activities can create an additional 80 million jobs. The panel has given a detailed activity wise break up of generation of such new jobs. The total number of additional jobs that will be created as a result of all the rural activities suggested by the panel is summarised in the Table 12.10

S.No.	Enterprise	Jobs created
1.	Productivity Improvement in Agriculture	7,000,000
2.	Integrated Horticulture	
3.	Floriculture	
4.	Medicinal Plants Production	6,327,000
5.	Production of Seeds and Planting Materials	
6.	Animal Husbandry Programs	13,700,000
7.	Integrated Program of Intensive Aquaculture'	1,117,500
8.	Sericulture	700.000
9.	Afforestation and Wasteland Development	
10.	Soil and Water Conservation	50,000,000
11.	Water Conservation and Tank Rehabilitation	1,000,000
12.	Compost Preparation, Vermiculture and Organic Farming	5,00,000
13.	Establishment of Agro-Industrial Complexes	1,000,000
	Total:	About 80 million Additional jobs

12.81 All these estimates are based on various specific studies which have been undertaken earlier such as estimates prepared by the International Commission on Peace and Food, NDDB, NCAER etc. These estimates therefore have a sound basis.

12.82 According to the Advisory Panel, operationalisation of this plan through various interventions will result in improved living standard for

the rural poor in terms of nutrition, health and education, by augmenting their income and employment opportunities without seriously damaging the natural resources and environment.

12.83 These recommendations appear practical, and have a practical base. It is worthwhile examining these suggestions seriously in order to prepare a work plan of creating jobs on the massive scale we need.

Is there any alternative model for stimulating growth in employment?

12.84 Where do we go from here? Do we accept the suggestions made by the Advisory Panel appointed by the Constitution Review Committee? Do we wait till S. P. Gupta Committee submits its report? Are there any other alternatives before us?

12.85 We have been able to discuss this subject with many social activists who have been working in different rural areas as also in the informal sector in urban areas to promote growth in employment. They have carried out a number of experiments – some have been successful and some have not been so successful. Nevertheless the experience gained by them may be a good guide to plan for future models of employment growth.

12.86 The Commission is, therefore, presenting a few more ideas for further consideration.

What is the world trend?

12.87 If we consider the general trend of employment in different

countries in South Asia, we find some common features. They can be summed up as follows:

- a. Slow down of economic growth and consequent growth in employment in the unorganised sector
- b. Casualisation of employment in both formal and informal sectors
- c. Non-declining share of the informal sector in the total employment
- d. Stable or rising unemployment rates and persistently high underemployment
- e. Increasing incidence of long-term unemployment
- f. Declining labour force participation rates
- g. Low level of education and skills of labour force

12.88 India is no exception. We have been experiencing similar trends in India during all these years.

12.89 In Table VII on page 10, we have shown that the number of casual workers is increasing while salaried workers are more or less constant and the proportion of self

employed persons is declining. This is in line with the general trend in all the other countries in the region. Casual workers are increasing in both the urban and rural sectors, as well as among both males and females.

12.90 In order to prepare a plan for the growth of employment, one has to identify the sectors in which employment is growing, and those in which employment is not growing.

Contributors to employment growth

12.91 The major contributors to employment in 1999-2000 were agriculture (60%), manufacturing (12%), trade (9%) and community, social and personal services (8%). All these sectors taken together have contributed 89% of total employment.

12.92 In these sectors too one has to distinguish between the organized and unorganised sectors of industry. As for manufacturing industries, large and medium scale units together have contributed to 14% of employment while 86% of employment is in the small scale industries. This is because the SSI sector is more labour intensive. In recent years, with

persistent pursuit of market driven development and increasing emphasis on efficiency of production activities, in the case of large and medium scale industries employment is receding to the background. As a result of globalisation and privatisation there is a general displacement of labour. The technologies adopted in these sectors are mostly capital intensive and these, in their turn result in the displacement of labour.

12.93 Therefore, one can say that the expectation that growth in the industrial sector will be the major source for employment generation has been belied. A GDP growth of about 4.80% was achieved in 1983 to 1986-87. But employment growth during this period was of the order of approximately 1.54%. From 1993-94 to 1999-2000, the average GDP growth was 6.60% to 6.5%. During this period, employment has grown by a mere 0.98%. (Refer Table 12.2). From this it is clear that a mere growth in GDP may not ensure automatic growth in employment. One has to promote employment growth in primary, secondary and tertiary sectors of the economy by pursuing suitable policies and one has to take a conscious decision on

the sectors that should be given further support to promote a higher growth in employment.

Employment growth in small industries sector

12.94 We have already pointed out in an earlier paragraph that there has been virtually no growth of employment in the large and medium sectors of industries. On the contrary, their share has gone down over the

years. Employment elasticity is estimated to be as low as 0.15% in this sector. A large contribution from the small and unorganised sector is likely to raise employment elasticity and employment growth in the manufacturing sector significantly. All these years the small industries sector has been playing a major role in providing employment in the manufacturing sector as can be seen from the following table:

Table 12.11

Employment in small scale industries sector

Year	Employment in million	% growth over previous year
1990-91	12.53	4.77
1991-92	12.98	3.59
1992-93	13.41	3.28
1993-94	13.94	3.97
1994-95	14.66	5.15
1995-96	15.26	4.13
1996-97	16.00	4.84
1997-98	16.72	4.50
1998-99	17.16	2.62
1999-2000	17.85	4.03
2000-01	18.56	4.00

(Source: DCSSI, Govt. of India)

12.95 Thus, employment has been continuously growing in the small sector and this has gone up from 12.53 million in 1990-91 to 18.56 million in 2000-01. There is a cumulative annual growth in employment of 4.19% from 1990-91 to 2000-01.

12.96 The total number of small scale units in the country in 2000-01 was 33.70 lakh, compared to 19.40 lakh in 1990-91; The value of production of small units in 2000-01 aggregated to Rs. 6,39,024 crore; they exported goods worth Rs. 59,978 crore. Thus the small scale sector is an important segment of the Indian economy, accounts for around 95% of industrial units, 40% of the manufacturing sector output, 36% of total exports, and, what is more important, provides direct employment to about 18 million persons. This number is growing every year. At present it contributes about one half of value added and four fifths of the total employment in manufacturing. Thus it is necessary to concentrate on the growth of the small sector, encourage it, create necessary facilities and remove impediments in its progress.

12.97 A number of Committees have been appointed to study the difficulties and problems that small scale industries are facing, the latest being the S. P. Gupta Committee appointed by the Planning Commission. This Committee has made a number of recommendations regarding the availability of credit, improvements in technology, and the marketing of products of small scale industries. The small entrepreneurs have been complaining of harassment by inspectors and the rigidity of labour laws. These apprehensions and difficulties have to be addressed. The SSI sector has proved its competitive ability as seen in the international sector, since it has contributed Rs.59,978 crores in the form of export earnings. While the large corporate sector employed a total number of 67.4 lakh persons according to Annual Survey of Industries (1998-99), the small scale sector employed 171.6 lakh persons in 1999-2000. This number is growing every year and this year (2000) it has gone up to 177 lakhs. (see Table 12.11). Thus this sector has a great scope for providing employment and therefore all efforts should be made to help its growth.

The importance of the service sector:

12.98 Let us look at the potential of the services sector.

12.99 Except a few industries like garments or leather goods which are labour intensive, most of the manufacturing industries are highly mechanised and they employ very few workers. If we look into the shares of

wages and salaries of a wide range of Indian companies both in manufacturing and the service sector, the labour intensity of the service sector enterprises becomes clear. It shows how low labour intensity is in manufacturing and how much higher in services. The following Table 12.12 Wages as percentage of sales shows the position in industrial companies and companies engaged in services.

Table 12.12
Wages as percentage of sales of a few important companies in India
FOCUS ON SERVICES TO CREATE JOB

	INDUSTRIES		SERVICES		
	Apr-Sept 2000	Apr-Sept 2001	Apr-Sept 2000	Apr-Sept 2001	
Tata Steel	13.5	15.3	Mascot	64.4	66.6
Century	12.2	11.2	Systems		
TELCO	9.4	9.3	Digital	37.2	43.4
			Globalsoft		
L & T	8.1	7.7	Satyam	39.3	42.2
Bajaj Auto	7.8	6.6	Computers		
Hindalco	6.6	7.1	E.I. Hotels	26.0	29.2
Grasim	6.6	7.0	Indian Hotels	22.8	22.6
Cipla	4.6	4.8	CMC	22.2	21.5
Hero Honda	3.7	4.1	Wipro	14.1	15.8
Tata Power	3.7	3.4	Varun	13.8	14.1
Zuari Inds.	3.6	3.4	Shipping		
Nirma	2.1	1.9	G.E. Shipping	13.7	11.4
Ispat Ind.	1.6	2.2			

Source: Tushar Mahanti, Eco. Times

12.100 In the above table, among the manufacturing companies labour intensity is highest in Tata Steel, with labour costs 15.3% of sales. By contrast new steel producers like Ispat (2.5%) and Jindal (2.2%) have a far lower labour content. This is because they are employing the latest technology in steel making. Earlier, steel was regarded as a huge employer. But it is no longer so. Compared to manufacturing companies, hotels have more than 22% as wages to sales, Infotech companies have 42% as wages. We refer to this only to point out that the service industry is generally labour intensive and we have to give emphasis on the growth of this sector if we want to promote the growth of employment. The service sector accounted for 49% of our GDP in 2000-01. The share of the service sector has increased sharply from 41.82% in 1980-81 to 49% in 2000-01. This is in a way a good development, and the policy makers have to provide more emphasis on the growth of this sector. The services sector includes trade, hotels and restaurants, banking, transport, communications, insurance and other financial services, real estate, transport & telecommunications,

public administration, defence and quasi govt. bodies etc. While the public administration and quasi govt. services have no scope for further growth, the other sectors in services sector have enough scope to grow.

12.101 The efforts of the Government will have to be to create a congenial atmosphere for the services sector to grow, and to help them to be more competitive.

Urban Informal sector

12.102 So far the policy makers seem to have neglected this sector. This sector comprises very small units producing and distributing goods and services, and mostly consists of largely independent self-employed persons. They employ family labour, operate with very little capital and employ a very low level of technology. This sector is also heterogeneous, and comprises of small scale modern manufacturing and service enterprises on the one hand, and consists of street vendors, shoe shiners, junk collectors, rag pickers, hawkers, rickshaw pullers, small trading and commercial enterprises, repair shops, small time transport operators, roadside dhabas, pan-shops, small

bakeries, food processing units, leather goods manufacturing etc. etc. Employment in this unorganised sector has been of a much higher order than that in the organised sector.

12.103 Table 12.13 shows the share of the unorganised sector in incremental NDP and employment in India.

Table 12.13

Share of unorganised sector in incremental Net Domestic Product (at current prices) and employment in India : 1972-73/1995-96

Period	Share of Unorganised Sector in Incremental (%)	
	Net Domestic Product	Employment
(1)	(2)	(3)
1972-73/77-78	64.5	93.0
1977-78/82-83	65.0	91.0
1982-83/87-88	71.0	91.0
1987-88/90-91	58.0	95.0
1990-91/93-94	59.0	98.0
1993-94/97-98	57.0	-

Source: 1. Govt. of India, National Accounts Statistics, (for various years), CSO, New Delhi.

2. IAMR 1999, Manpower Profile Yearbook, 1999, New Delhi. pp.264-65

12.104 The rate of growth of employment in the organised sector has not only been much lower, but has been declining almost continuously during the past three decades. During the early nineties, 98% of incremental employment that occurred in Indian economy was

in the unorganised sector. However, though it has provided much additional employment in recent years, this sector has been neglected by the policy makers. No special efforts have been made to promote its growth. Most of the workers and entrepreneurs in this sector are

operating at very low economic levels, and quite a large number of them are living under distressing conditions. Most of them are not wanted by urban society, the municipal authorities remove them very often from their places of work, their work places are demolished and their goods are confiscated. Even then they continue to survive under extremely difficult conditions.

12.105 Most of these enterprises in the informal sector operate in an environment where the regulatory framework is poorly defined. While some of them face over regulation, some of them have to depend on the whims of local authorities.

12.106 It is also worthwhile to consider the so called zoning system in Town Planning. Cities are generally divided by Town Planners into commercial, residential, and industrial zones and in a zone only one type of activity is expected to be carried on. For instance, in a residential zone, processing and manufacturing activity is not allowed to be carried on, whereby a large number of undertakings had to be closed down. As a result, many small entrepreneurs are uprooted from their business.

The most striking example was in Delhi. Each residential area can perhaps have enough space for such small tiny manufacturing activity which does not lead to pollution, health hazards and pollution through emission of gases or effluents or noise pollution that affects the quiet to which people are entitled. Activities like IT industry, which do not pollute or create noise, may be allowed in residential areas. Without such liberal provisions, small entrepreneurs will find it hard to start any business and survive. All these relaxations are necessary for carrying on activities in the urban informal sector.

Emphasis on rural sector

12.107 As we have seen we cannot depend on industrialisation alone for creating new jobs. In order to create jobs on a massive scale one has to turn to the rural sector and give emphasis on agriculture, and allied occupations including agri business and processing.

12.108 The International Commission on Peace and Food (ICPF) that was set up under the chairmanship of Prof. M.S. Swaminathan undertook a study

on how to eradicate poverty and unemployment in India (1991). It has come out with a strategy to generate 100 million new jobs in India by the year 2000. This report was presented to the then Prime Minister Shri P.V. Narasimha Rao and the Planning Commission. The scheme was incorporated in the Eighth Five Year Plan and a Small Farmers Agri Business Consortium (SFAC) was constituted. But somehow this idea was not pursued further, and lost its appeal. It is necessary to revive this plan, re-work it in the context of new developments and pursue this strategy with some modifications.

Management of Water

12.109 We had occasion to discuss the subject of water management with a few non-Government organisations in Maharashtra. All of them have made successful experiments in utilising common water resources of the community and its equitable distribution among the rural communities. Most of our agriculture is rain fed, and has to depend on the vagaries of the monsoon. As a result, farming is not sustainable, and yields very poor returns. Therefore, during the off season, farmers have to go

out of the villages seeking jobs. The Green revolution which took place, comparatively in a small area of the country, seems to have become unsustainable over a period of time because of heavy dependence on excessive use of water, chemical fertilizers and pesticides. Therefore, these NGOs advocate and practice water management on a scientific basis, organic farming, and low capital intensive agro-processing, and organise training programmes on these subjects for the benefit of rural communities. They have initiated community - managed land water programmes at the micro level. They believe that the village community has a right over village water resources, and it must be ensured that they are distributed equitably among all the families in the village. As a result every family gets a share in the water resources of the village, and each one is assured of a certain fixed income from such irrigated farming. This has made farming become profitable and has resulted in reverse migration from cities, in certain cases. These efforts made by Pani Panchayat in Maharashtra are commendable, and we would suggest that the Government study and promote them wherever possible.

Similar experiments have been carried on by Anna Hazare and Gram Gaurav Pratisthan in Maharashtra, Forest Revival and Water Harvesting by Tarun Bharat Sangh in Rajasthan, and by the Water Conservation Mission in Andhra Pradesh. A large area of farm lands in the country do not have an assured supply of water. If village water is conserved properly and if its equitable distribution is assured, it will go a long way in improving our farming as well as the condition of our rural communities. It will also lead to better employment levels in the rural areas.

Other Activities related to Agriculture

12.110 There are a number of other activities which are related to agriculture and which can be undertaken in rural areas. We are mentioning them without going into details.

- a. Productivity Improvement in Agriculture such as efficient use of fertilizers, soil health care, realignment of cropping patterns, water management including drainage etc.

- b. Integrated Horticulture
- c. Floriculture
- d. Medicinal plant production
- e. Production of seeds and planting materials
- f. Animal husbandry programmes
- g. Integrated program of intensive aquaculture
- h. Sericulture
- i. Wasteland Development
- j. Soil conservation
- k. Water conservation and Tank Rehabilitation
- l. Compost preparation, vermiculture and organic farming
- m. Establishment of agro-industrial complexes
- n. Development of rural infrastructure e.g. roads, health services, schools, etc.

12.111 All these are agriculture based activities, and if organised properly, likely to result in the creation of jobs on a large scale. We have not gone into details since these activities are well known, and need no description.

Forestry Sector and Forest Workers

12.112 The forestry sector holds large potential for creation of employment in dispersed and remote areas where soil and climatic conditions are not too adverse. These include forested areas, hilly areas, barren lands and also community lands including village forest lands, river/canal/embankments, roadside plantations etc. Besides, there is a large potential in agro-forestry on private agricultural holdings and also private sector plantations on Government lands lying barren/wastelands. Apart from the obvious benefits of employment generation and its consequential impact on poverty, spin-offs in terms of soil conservation, environmental protection, raw material supply for industries, ground-water replenishment etc. all have long term benefits for development and quality of life of the people, particularly those inhabiting areas around forests.

12.113 So far the main effort in the forestry sector has been State sponsored under various programmes administered by Ministries/Departments of Environment and

Forests, Rural Development, Agriculture etc. at the Central and State levels. The overall budgetary allocations under the State sector for various programmes are not commensurate with the size and magnitude of the problem of dealing with maintenance and sustenance of India's vast forest wealth as also the need to create employment and purchasing power for the people who inhabit these forest areas. Besides, the importance of forest produces in subsistence economies by way of providing nutrition, food security in lean seasons, source of supplementary incomes and range of household items from fodder for livestock, fuelwood to construction material, medicinal plants and so on can not be over emphasized.

12.114 A new thrust for the creation of employment that can be undertaken over and above the programmes run under the aegis of the State would obviously include large-scale private investment in forestry and promotion of agro forestry on agricultural land. While the latter is being attempted for quite sometime, and has had some success, specially in the plains of Northern India where one can often

find rows of trees planted for fuelwood and other purposes along the partitions separating holdings, this is not very much prevalent in other parts of the country. While the State needs to encourage the promotion of activities in these areas, the issue of private sector investment in forestry needs to have a relook in spite of the failure of many companies which were promoted a few years ago for this purpose. One area that would need particular attention is that of the legal provisions that exist at present. The Forest Conservation Act, 1980 defines any area as forest which has been declared so, or which would qualify to be categorized so, if it has any coverage of trees and forest growth even though the land may not have been declared as forest land. The survey and settlement records in many States carried out during 1960s and 1970s categorised vast expanses of fallow land owned by the State as having bushy forest growth though these came under the control of the State Revenue Departments. Even if these lands are not suitable for agricultural operations, the States are unable to lease these lands because the Forest Conservation Act precludes any commercial activity on such lands. Though very often these lands

do not have any canopy cover but some undergrowth or bushes in some areas, these are deemed to be forest lands. It is difficult to appreciate the rationale of not allowing any commercial activity on such lands when such plantations are going to remain standing at least for 20 odd years before these can be harvested. When the State is unable to fully look after the lands classified as forest land and under the direct control of the State, there is perhaps need to review the provisions of the Act and its implications in respect of such private activities which would ensure that the areas would have canopy cover for medium term conferring benefits of soil and moisture conservation, groundwater recharging, arresting of monsoon run off, biosphere improvement benefiting surrounding agricultural lands etc. apart from the creation of direct employment during the initial years and subsequently for watch and ward etc. Other benefits would include fodder, fuelwood from fallen branches etc., which have considerable implications for the surrounding population.

Village Industries

12.115 We are told that in China rural

enterprises have played a great role in modernising the rural communities. It has been reported that China has been able to bring down the percentage of people dependent on land from 70% to 45%. The Township, Village and Private (TVP) enterprises sector has become the most dynamic sector. It accounts for 40% of the country's industrial employment, more than a quarter of its output and almost a third of its exports. It is worthwhile to study the organization of these enterprises, the progress made by them and the types of products manufactured and marketed by them. Perhaps we may be able to benefit from their experience.

Importance of rural sector

12.116 For generating employment the main emphasis has to be on the rural sector, and agriculture. We have a total number of 260 million persons (with 193 million in rural areas) below the poverty line. They do not have economic access to food and many of them do not get food two times a day. When high growth levels are led by exports and the service sector, the impact on poverty levels is minimal or even negative. But if the growth rate is based on high growth rate in the

primary and secondary sectors, the level of poverty as well as the disparity between rural and urban areas comes down.

Skills Development

12.117 For promoting the growth of employment, special skills have to be developed, and for this, training programmes have to be organized at different levels. This subject has been dealt with in a separate chapter and therefore, we do not propose to go further into it here.

Emphasis on self employment

12.118 However, there are two aspects of the problem one must emphasise. At present, in rural areas there is a dominance of casual workers and self employed persons who are in large numbers. This is likely to continue for some time to come. New economic changes will provide more opportunities and not enough jobs. Therefore, one has to take advantage of the opportunities. Both in urban and rural areas, there may not be an impressive rise in wage employment but there will probably be enough scope for self employment. The emphasis,

therefore, has to be not on wage jobs but on creating self employed persons or entrepreneurs. The entire system of training and education will have to give emphasis on the development of entrepreneurship.

No one in charge of Employment Promotion

12.119 While we were discussing the subject of employment promotion with various Government officers, we came across the fact that there was no Ministry or Department specifically responsible for executing plans for the growth of employment and supervising their implementation. The Planning Commission, generally undertakes a study, prepares a plan for employment growth. Then different departments of the Government prepare their own schemes, and execute them. There are a large number of such Government sponsored programmes. The Ministry of Labour deals with employment, as far as questions in Parliament are concerned. It collects information from different departments and prepares replies to questions to be answered in Parliament.

12.120 We do not think that this arrangement is satisfactory. While the Planning Commission may continue to prepare plans for promotion of employment sectorwise, the actual execution of these schemes should be the responsibility of a Ministry in the Government of India. The obvious choice seems to be the Ministry of Labour. Unless there is someone responsible, there will be no initiative, no diligent execution and no monitoring. We recommend that the Government consider this suggestion.

SUB SECTORS

TRAVEL AND TOURISM

12.121 There is general awareness that the travel and tourism industry has great potential in the country for generating jobs. This is particularly so because a large part of the potential in the country has remained untapped. Jobs generated in this sector have relatively small gestation periods, are less capital intensive, and are likely to be spread to all areas in the country and across various categories of establishments, thus allowing more equitable distribution across the regions and covering

employees with varying levels of skill and training. It also provides scope for women and young people to make their mark. It can result in spin-offs like revitalisation of arts and crafts, including the performing arts.

12.122 Employment figures since the beginning of the New Economic Policy and the projections in the medium term are given in Table 12.14

(Employment in Million)

Employment	1989-90	1995-96	2000-2001	2003-04	2006-07
Direct	2.65	10.65	17.31	22.50	27.50
Indirect	3.60	14.48	23.54	31.50	38.50
Total	6.25	25.13	40.85	54.00	66.00

12.123 The strategy adopted for realising the potential during the current plan has been to establish necessary coordination with all the relevant agencies and benefit from the emerging synergy. The specific components of development activity which are under way include infrastructure development, product development and diversification, promotion of entrepreneurship and self employment, human resources development, promotion and marketing thrust etc. The Tenth Plan strategy involves encouragement of private and public partnership with the Government playing the role of active facilitator. Marketing of destinations and brand building are to be the key

components for promoting tourism. Specific development initiatives include development of Mega tourism resorts, targeted approach towards development of tourism circuits, and promotion and marketing initiatives. A comparative picture of travel and domestic industry in India and selected East/South East Asian countries between 2001-2011 based on domestic satellite tourism accounts compiled by the World Travel Tourism Council and published in August, 2001 are given in Appendix-I.

12.124 Government initiatives so far, in practice have had a bias for the development of the 'organised' sector of the high end of the tourism

and travel industry particularly oriented towards maximizing foreign tourism in India. Promotion of domestic tourism has mostly been taken up by the State Govts. based on their own resources. Development of the low-end sector of the travel and tourism industry has been largely in the hands of small enterprises/businesses, and mostly confined to pilgrimage and other commercial/industrial centres for catering to the movement of religious tourists/job seekers. Human Resource Development of the persons engaged in the low end sector has not been under focus. We have to give attention to this segment so as to enhance a value addition which would result in higher realisation of the potential.

IT INDUSTRY

12.125 The Information Technology and IT enables industry and particularly developments in the field of telecommunication, the Internet revolution and associated technological developments are bringing about rapid, informative and significant changes in different aspects of human life. In all sectors of human existence and activity,

healthcare, communication, trade, manufacturing services, entertainment, education, research and so on, information technology and IT industry have been in the forefront of profound changes. It is expected that the pace would only quicken in the coming years and the country can profitably make use of its experience especially in the software segment, to make significant gains in the world scene.

12.126 The present estimated number of IT professionals in the country is 5,22,000, of which nearly 1,70,000 are in the IT software services export industry and 1,06,000 are working in the IT enabled services, and 2,20,000 in user organizations. For the next four years till the end of 2005, NASSCOM (India's National Association for Software and Services Companies) projections reveal a shortage of nearly 5,30,000 knowledge professionals assuming optimum growth in industry avenues. The present level of about 1,06,000 personnel employed in the IT enabled services, is, according to another study by NASSCOM – MCKINSEY, likely to grow and provide employment opportunities for ten times the number by 2008. The

domestic sector also offers a large potential for all such services with improvement in the infrastructure like assured electricity, better communication links etc. and spread of the IT boom to farthest corners of the country. The IT sector which expanded from Rs.5,450 crore (US\$1.73 billion) in 1994-95 to Rs. 64,200 crore (US\$13.5 billion) in 2001-02 with its share in GDP from 0.59% in 1994-95 to 2.87% in 2001-02 can achieve a growth in the medium term. With the recession in the US economy coming to an end by the last quarter of 2001-02, there is likely to be further growth in the IT sector in the coming years. The projected volume of IT software and service sector achieving an annual revenue of US \$ 87 billion by 2008 may require at least three million additional knowledge workers in the next six years and one third being required exclusively for catering to the demand from other countries of the world. The projected magnitude of the employment potential is of great importance, but the more important consideration would be the quality of knowledge workers which would decide the fate of the industry in India over the medium to longer terms. Concerted action is required to sustain efforts of a magnitude

commensurate with our potential and the place that India has secured in the forefront of the Information Technology/Knowledge economy globally.

HEALTH CARE SEGMENT

12.127 The health care sector is also another area which offers considerable potential for the creation of sustainable jobs throughout the length breadth of the country. Presently, there is no reliable mechanism to provide accurate data with regard to the deployment of various paramedical professionals. In the absence of such data, no firm policy can be evolved for the development and equitable distribution of paramedical staff. This is especially so since there is no statutory Council services except in respect of nursing and pharmacy. The Ministry of Health is aware of the problem and the approach paper of the Working Group on Human Resources for Health for the Tenth Five Year Plan recommends remedial measures. The country would need more than 1.5 lakh paramedical personnel by the year 2007 over and above the projected availability of over 17.76 lakh persons in 2002. Besides, the Government approach

for catering to the health needs of the rural population suggests a pool of medical practitioners which needs to be extended to include a cadre of licentiates of medical practice (LMPs) as also the practitioners of Indian Systems of Medicine and Homoeopathy to provide alternate cost effective avenues of medical services. Similarly, in areas where there is an acute shortage of doctors, qualified nurses and mid-wives can be permitted to render simple primary health services. These people need to be provided with basic adequate training and their performance can be monitored through professional councils.

12.128 With increasing affluence leading to changes in the lifestyle and health and the health concerns associated with the stress and strain of urban life, there is also going to be a large increase in the requirement for medical services in the urban areas. This is further compounded by the increase in population and migration. There is substantial scope for increase in employment in sectors like psychiatric counselling, fitness professionals and nutritionists etc. which would call for extended initiatives in catering to the demand

for personnel in these areas. In the high end segment of medical services too there is considerable scope for expansion of services and employment potential not only for catering to the relatively affluent sections of society but also for meeting the demand of such services from the neighbouring countries.

12.129 The manpower available in the health care sector in the rural areas in the country shows a huge shortfall in the personnel levels which run to over 1.60 lakhs medical and paramedical personnel. Given a very low ratio based on which the norms for requirements of personnel have been laid down, there is considerable scope for absorption of medical and paramedical personnel for catering to the backlog and expanding requirements of this sector. With increasing growth and availability of resources both with the population and the Government, there is going to be a significant expansion of healthcare and employment potential in the medium to longer term. An integrated approach in this matter needs to be drawn up with a medium to longer term perspective which would generate both quality employment and improvement in the quality of life of the people.

III

REVIEW OF WAGES & WAGE POLICY

12.130 Our terms of reference make only a tangential and incidental reference to the question of wages and productivity. They do not form part of the central focus of the task that has been entrusted to us. Even so, it cannot be denied that wages and productivity are among the central concerns of workers as well as entrepreneurs. One seeks employment so that one can attain a 'decent' or dignified standard of living. The wage or income that one obtains from one's work is therefore, what enables one to achieve a fair standard of living. One seeks a fair wage both to fulfil one's basic needs and to feel reassured that one receives a fair portion of the wealth that one works to generate for society. Society, in its turn, feels that it has a duty to ensure a fair wage to every worker, to ward off starvation and poverty, to promote the growth of human resources, and to ensure social justice without which continuous threats to law and order may undermine economic progress.

12.131 But the resources to pay

wages have also to be created. They have to come from the economic viability and profit of undertakings. So those who run undertakings are concerned with their capacity to pay the wages that are considered to be fair both in terms of individual needs and the social responsibility to citizens.

12.132 Our Constitution accepts the responsibility of the state to create an economic order in which every citizen finds employment and receives a 'fair wage'. One of the earliest decisions taken by the government of free India was to set up a Committee to define a fair wage, and indicate the economic and legal means for ensuring a fair wage to every employed citizen. An examination of this question established the integral relation between the quantum of the fair wage and the capacity to pay the wage, and the need to balance and constantly upgrade both to ensure a fair standard of life, social security and social justice.

12.133 Ever since then, we have made many attempts to define the concept of a fair wage, a minimum wage, a floor wage, and a living wage. We have also tried to identify

how far the capacity to pay can be allowed to determine the minimum wage, and at what point the capacity to pay should be taken into account and should be regarded as the main determinant. The meandering progress that we have made is reflected in the reports of Committees, Conferences, Commissions, and Judgments of the Supreme Court. They can also be traced to the Fundamental Rights and Directive Principles specified in our Constitution and the International Conventions we have accepted or ratified. We will therefore, begin our observations with a review of the thinking and legislation on wages in our country, and the ideas and attempts at making wage differentials more equitable.

A Brief History of Wages

12.134 As early as in the year 1860, Government of India passed the Employers' and Workmen's (Disputes) Act. This Act was an enabling measure and was designed to secure settlement of wage disputes by magistrates summarily. Along with this it also provided for penal sanctions for breaches of contract by workers. In the year 1929, the Royal Commission on Labour found that the Act had

ceased to be used. The Government therefore, repealed the Act in 1932.

12.135 Legislation for the settlement of industrial disputes including the setting up of Wage Boards was the subject of investigation by the Governments of Bengal and Bombay in 1921 and 1922, and the Government of India prepared a Bill on such disputes in 1924. However, the Indian Trade Disputes Act 1929 provided for setting up Courts of Inquiry and Boards of Conciliation for the settlement of industrial disputes. Some provincial Governments assumed statutory powers to intervene in labour management disputes and established machinery to bring both labour and management together to settle such disputes. These developments made a significant contribution towards the evolution of a wage policy aimed at protecting wages. The first direct step in this regard was taken in 1936, when the Payment of Wages Act was passed.

12.136 With the commencement of the Second World War, the Government assumed more powers under the Defence of India Rules to ensure uninterrupted industrial

production. Rule 81A of the Defence of India Rules issued in January 1942 gave Government wide powers to make rules or issue special orders to restrain strikes and lockouts and to refer any dispute including wage disputes to conciliation or adjudication. The broad features of these measures were later incorporated in the Industrial Disputes Act of 1947 and agencies like Conciliation Officers, Industrial Tribunals, Labour Courts etc. were set up by the Government to promote the settlement of industrial disputes.

12.137 In September 1946, the Interim Government announced a five-year programme of legislative and administrative action in the field which included:

1. Statutory prescription of minimum wages in sweated industries,
2. Standardisation of wages and occupational terms in all major industries and the determination of differentials in wage rates as between various occupations in an industry, and
3. Promotion of "fair wage" agreements wherever possible

with due regard to the capacity of the industry to pay.

12.138 In December 1947, the Government convened a tripartite conference at which an Industrial Truce Resolution was adopted unanimously. The object of the Resolution was to devise measures to arrest rapidly deteriorating relations between labour and management and to increase industrial production. According to this Resolution, "the system of remuneration to capital as well as labour must be so devised that while in the interest of the consumers and primary producers, excessive profits should be prevented by suitable measures of taxation and otherwise, both will share the product of their common effort after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserve for the maintenance and expansion of the undertakings".

12.139 The Industrial Policy Resolution announced on 6th April 1948 emphasised (1) fixation of statutory minimum wages in sweated industries and (2) promotion of fair wage agreements in the more organised industries.

12.140 This made it necessary to quantify or lay down clear criteria to identify a fair wage. Therefore, the Central Advisory Council in its first session (November 1948) appointed a Tripartite Committee on Fair Wages consisting of representatives of employers, employees and Government to enquire into and report on the subject of fair wages to labour.

Committee on Fair Wages

12.141 The Committee on Fair Wages defined three different levels of wages viz; living wage, fair wage and minimum wage.

12.142 The Committee felt that the living wage should enable the worker to provide for himself and his family not merely the basic essentials of food, clothing and shelter but a measure of frugal comfort including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against more important misfortunes including old age. The Committee was not sure how it could aim at or approach this standard in the prevailing economic conditions. It, therefore, analysed the basis for fixing a minimum wage, and came

to the conclusion that a living wage should be the target. Even in advanced countries the general level of wages and the capacity of the industry to pay had been considered relevant. In India, the level of the national income was so low that it was generally accepted that the country could not afford to prescribe by law a minimum wage which would correspond to the concept of the living wage described in the preceding paragraphs. Taking Indian conditions into consideration, the Committee was of the view that a minimum wage must provide not 'merely for the bare sustenance of life, but for the preservation of the efficiency of the worker'. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities. It further observed that its members were unanimous that the fair wage should on no account be less than the minimum wage. It also observed that while the lower limits of the fair wage must obviously be the minimum wage the upper limit should be set by what may broadly be called the capacity of industry to pay. This would depend not only on the present economic position of the industry but also on its future prospects. The Committee

further recalled that between these two limits the actual wages should depend on a consideration of the following factors:

- a. the productivity of labour;
- b. the prevailing rates of wages in the same or similar occupations in the same or neighbouring localities;
- c. the level of the national income and its distribution; and
- d. the place of the industry in the economy of the country.

12.143 It then went on to consider the first item, that is, productivity of labour. It observed that in India collective bargaining had not so far been a potent factor in the determination of wages. That being so it was more than likely that at least in certain occupations and industries the workers were getting a wage lower than the value of their marginal net product. It also observed that the awards of industrial tribunals and courts had made only a casual reference to the productivity of labour. In deciding upon a minimum wage, tribunals and courts had largely been guided by considerations of the minimum needs of workers and of the capacity of industry to pay. It was

therefore of the view that the wage fixing machinery should relate to a fair wage, a fair rate of work and that in case of doubt whether the existing work-load was reasonable or not proper, time and motion studies should be instituted on a scientific basis.

12.144 As regards the prevailing rates of wages, its observations were that, while prevailing rates of wages fixed as a result of proper collective bargaining would bear a close approximation to fair wages and should, therefore, be taken into account in fixing fair wages, the same could not be said of prevailing wages resulting from unequal bargaining. The wage fixing machinery should therefore make due allowance for any distortion of wages caused by unequal bargaining.

12.145 It then referred to the question of the capacity of the industry to pay. It first observed that the capacity would mean one of three things, viz. (1) the capacity of a particular unit (marginal, representative or average) to pay; (2) the capacity of a particular industry as a whole to pay; or (3) the capacity of all industries in the country to pay.

Ideas on this subject have varied from country to country. The Committee was, however, of the opinion that capacity should not be measured in terms of the individual establishment, but the main criterion should be the profit-making capacity of the industry in the whole province. The Fair Wages Committee was of the view that in determining the capacity of the industry to pay, it would be wrong to go by the capacity of a particular unit or the capacity of all the industries in the country. The relevant criterion should be the capacity of a particular industry in a specified region, and as far as possible the same wages should be prescribed for all units of the industry in that region.

12.146 As regards the measure of the capacity, there were two points of view in the Committee itself. One view was that the wage fixing machinery should, in determining the capacity of the industry to pay, have regard to: (1) a fair return on capital and remuneration to management; and (2) a fair allocation to reserves and depreciation so as to keep the industry in a healthy condition. The other view was that the fair wage must be paid at any cost, and that industry must go on paying such a wage as long as it does

not encroach on the capital to pay that wage. The Committee was of the view that the main objective of the fixation of fair wages should not be lost sight of. The objective was not merely to determine wages which are fair in the abstract, but to see that employment at the existing levels is not only maintained but if possible increased. From this point of view, it will be clear that the level of wages should be such as enables the industry to maintain production with efficiency. The Committee, therefore, recommended that the capacity of the industry to pay should be assessed by the wage board in the light of this very important consideration. The wage board should also be charged with the duty of seeing that the fair wages fixed for any particular industry are not very much out of line with wages in other industries in the region because wide disparities would inevitably lead to movement of labour and consequent industrial unrest not only in the industry concerned but in other industries as well.

12.147 The Committee then considered the classes of workers for whom, and industries in regard to which, fair wages should be determined. It came to the conclusion

that in the initial stages, in view of administrative and other difficulties, provision needed to be made for the fixation of fair wages of only categories up to the supervisory level. The Committee observed that in the written evidence received by them, there was unanimity of opinion that fair wages should be determined on an industry-cum-region basis. The Committee supported that view since it felt that it would not be feasible to fix wages on any other basis.

12.148 The Committee then identified the criteria that had to be considered in fixing wage differentials as:

1. the degree of skill,
2. the strain of work,
3. the experience involved,
4. the training required,
5. the responsibility undertaken,
6. the mental and physical requirements,
7. the disagreeableness of the task,
8. the hazard attendant on the work, and
9. the fatigue involved.

12.149 The Committee was of the view that the wage fixing authorities should carefully go into the question of wage differentials after deciding on the weight to be attached to each of the above factors. It felt that it was not possible to advise the wage fixing machinery on what weight should be attached to each factor, as it was a matter that would have to be evolved gradually on the basis of experience. The Committee also suggested that the wage board should try to evolve standard occupational nomenclature so that the work of classifying and assessing may be undertaken on a uniform basis throughout the country.

12.150 We have dealt in detail about the report of this Committee because it has influenced the principles of wage fixation, the form of wage fixation machinery and other matters for a long time. The judiciary too has evolved many principles of wage fixation basing themselves on the criteria prescribed by this Committee.

Setting up of Wage Boards

12.151 The First and Second Five Year Plans gave importance to (1) laying down principles for bringing wages in conformity with the

aspirations of the working class and (2) setting up an appropriate machinery for the application of these principles. According to them, the existing machinery for the settlement of disputes, namely the Industrial Tribunals, had not succeeded in giving full satisfaction to the parties and, therefore, they recommended authorities like Tripartite Wage Boards consisting of equal representatives of employers and workers and an independent Chairman. Accordingly, Wage Boards were set up for the following sectors: cotton textile industry, jute, plantations, mines, engineering, iron and steel, chemicals, sugar, cement, railways, posts and telegraphs, ports and docks etc.

12.152 For quite some time, these Wage Boards determined the wages and other remuneration to be given to the workers in these industries. Thus wage bargaining mostly took place at the industry level, and through Government controlled wage boards. Since there were not much regional variations, this system worked well for quite some time.

12.153 In 1973 and 1978, Indian economy suffered two oil shocks. During these years the actual growth

rates of industrial production fell far below the plan targets; unemployment rates doubled, new forms of workers' protests such as hartal, go-slow and gherao emerged. The number of strikes and the number of mandays lost increased considerably. This culminated into an all India Railway Strike in May 1974 that paralysed the entire economy.

12.154 This period also saw the growth of independent plant based militant unions without any political affiliations. In order to share the monopoly gains of an industrial unit and productivity increases as a result of technological changes, such unions were organised on unit basis, and through their militancy, they were successful in obtaining much higher wages and other facilities for the workers. Slowly industry-wise wage boards and wage settlements took a back seat, and company-wise negotiations and wage settlements emerged.

12.155 Though there are many principles that are taken into consideration in wage determination in the unit-based bargaining system, the two main principles are: first, the capacity of the industrial unit to pay,

and second, the bargaining strength of the trade union to negotiate with the management.

Sectoral Bargaining at the National Level

12.156 As has been said earlier, prior to the 1970s, Wage Boards appointed by the Government gave awards on wages and working conditions. The number of Wage Boards declined from 19 in the late 1960s to two (one for journalists and other for non-journalist newspaper employees) in the late 1990s. Since the early 1970s sectoral bargaining at the national level has been occurring mainly in industries in which the government was the dominant player. These included banks and coal, steel and ports and docks. Fifty eight private, public and multinational banks are members of the Indian Banks' Association. They negotiate long-term settlements with the All India Federations of Bank Employees. There is one national agreement for the entire coal industry. In steel, there is a permanent bipartite committee for integrated steel mills in the public and private sectors. Since 1969, this Committee, called the National Joint Consultative Committee

for Steel Industry (NJCS), has signed six long-term settlements. The 11 major ports in the country have formed the Indian Ports' Association. They hold negotiations with the industrial federations of the major national trade union centres in the country.

12.157 A feature of national-level sectoral bargaining is the presence of a single employer body and the involvement of the concerned administrative ministry from the employers' side. In many sectors, two to five major national centres of trade unions, which have a major presence through their respective industry federations of workers' organisations, negotiate. In banks, coal and ports and docks, often agreements have been preceded by strikes or threats of strike. It is only in the steel industry that this has not happened during the past 29 years. Even though industry-wide bargaining is not extended to the oil sector, which was nationalised in the 1970s, the oil coordination committees achieve a great deal of standardisation in pay and service conditions even if collective bargaining occurs at the firm and/or plant level (for instance,

Hindustan Petroleum Corporation Limited). Agreements in banking and coal covered 8,00,000 workers each while those in steel and ports and docks covered 2,50,000 workers each.¹

Wage Policy – Theory and Various Issues

12.158 Wage policies have engaged the attention of politicians, administrators, and academic analysts for many years now. We have the classical theory of wages, insider-outsider models, and the efficiency wage theory - that have emerged in the USA, and quite a few other models and theories. Perhaps it is also possible to visualise other criteria and models. But we have not gone into the advantages and disadvantages or compulsions of all these theories because we feel that a self-contained and detailed discussion of all these are beyond the terms of reference of our Commission. We have suggested elsewhere that the

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¹ Dr. C.S. Venkatratnam: Collective Bargaining: A response to adjustment process and Restructuring in India 2002, a study sponsored by the Planning Commission, Government of India

Government should appoint a high level committee with technically competent people including economists, trade unionists, entrepreneurs, consumers, and establishments to go into all aspects of the inter-related questions and to formulate a national wage policy. It should have been done much earlier in view of the commitments in our Constitution and the Conventions we have accepted. The need has become all the more important in the light of the new circumstances and changed factors that have emerged with globalisation and new technology.

Growth in Inequality of Wages and Earnings

12.159 There is increasing inequality in the labour market, and wage differentials present among various groups and various sectors of the economy. There are large inter-industry and intra-industry wage differentials. In different sectors of the economy, a worker will be paid differently though he may be doing the same kind of job. Even in the same industry, different units may pay different wages for the worker who is having the same measurable skills. First the differentials are found across

occupations: the firms that pay professionals a premium over the market average also pay less skilled workers a premium over the average in their occupations. Second, these differentials have a strong tendency to persist over time, industries that pay premia in one period tend to be found paying them in later periods.

12.160 Different areas of wage employment will have different wage levels and we have to recognise this fact. We have the modern capital intensive organised sector of IT industry, petro-chemicals, pharmaceuticals, etc., where wages and other allowances are likely to be more attractive than in small-scale industry and other traditional labour-intensive sectors such as the unorganised urban and rural sector and agriculture. Though our efforts should be to reduce these wage differentials and introduce some sort of standardisation, as the matter stands today, it is practically very difficult and these differences in earnings of the workers in different sectors of industry are likely to continue. Much depends upon the capacity to pay and profitability of these sectors. Any wage policy will have to take these factors into consideration.

Rise in Real Wages

12.161 A wage policy will also have to aim at a progressive rise in real wages. Wage increases can come on account of increase in cost of living and improvement in standard of living. As a result of increase in prices, there is an erosion in the wage levels in real terms, and in order to prevent such an erosion, dearness allowance is paid and it is linked to the consumer price index. There are various methods of linking the consumer price index with the dearness allowance and determining the extent of neutralisation of price rise through payment of D. A. Some enterprises pay a fixed dearness allowance and also a variable dearness allowance linked to the consumer price index. Some pay dearness allowance only linked to the consumer price index. The extent of neutralisation also differs from organisation to organisation.

12.162 In 1978, Government of India appointed a Committee on Consumer Price Index Numbers under the chairmanship of Dr. N. Rath. After examining the method of constructing consumer price index numbers that was being followed at that time by the

Labour Bureau, Shimla, the Committee made a number of suggestions regarding collection of information for constructing index numbers, the number of centres to be covered, coverage of workers, sample size design for family living surveys, selection of commodities, linking factors, etc. We are told that based on the recommendations of this Committee, the series were suitably revised.

12.163 The present series of consumer price index for industrial workers for 70 centres, all India and 6 additional centres (on the base year 1982 = 100) is based on the working class family income and expenditure surveys conducted during 1981-82. These series were released w.e.f October 1988 index. As per ILO Recommendation (Recommendation No. 170 vis-à-vis Convention No. 160 ratified by India in 1992) the Household Expenditure Surveys should be conducted at least once in every ten years. But the work was delayed because of the delay in sanctioning the scheme. Now in 1999 - 2000, the surveys have been conducted at 78 centres by the Labour Bureau, Shimla through the NSSO. On the basis of this survey, new series

are likely to be released in 2003. Thus there is a considerable delay in conducting the survey and in constructing the new series of index numbers.

12.164 Therefore, the very purpose of linking dearness allowance to the price index is lost. This is because the consumption pattern of the population undergoes changes, many varieties of items go out of the market and prices for them are not available, some items become obsolete, and since the index numbers have an upward bias, the employers have to pay higher dearness allowance than is necessary.

12.165 Therefore, it is necessary that the consumption surveys are conducted with fixed periodicity and new series of index numbers are constructed every ten years. A suggestion has been made that there should be a separate legislation to ensure that new index series are undertaken on the basis of fixed time schedules. For this provision has to be made for necessary resources, staff components, cooperation from NSSO and State Governments etc. The Commission endorses this suggestion and would request the Ministry of Labour to move in the matter.

12.166 Apart from the organised sector, dearness allowance is also paid to workers in the unorganised sector as a part of minimum wages. Their dearness allowance is revised every six months depending upon the movement of index numbers. This is how erosion in the purchasing power of workers in the unorganised sector is prevented. For them too, it is necessary to assure revision of consumer price index at fixed time intervals.

Wages in the Unorganised Sector

12.167 If one is considering the problem of a wage policy from the point of view of the national economy, one cannot restrict one's vision only to the organised sector. A national wage policy must bring within its purview problems of workers in the unorganised sectors who are not unionised and therefore who have no bargaining strength. In fact the entire emphasis of Government wage policy should be on fixing minimum wages and implementing them for the workers in the unorganised sector. Fixing a national minimum wage, fixing minimum wages for different jobs in the unorganised sector, revising these wages periodically, linking them

to dearness allowance in order to prevent erosion in real wages and the like assume much significance in this context. Government has to set up a proper machinery for fixing these wages and also ensuring that they are paid.

Objectives of a Rational Wage Policy

12.168 What can be the objectives of a rational wage policy? There are many objectives, and we have to isolate and discuss them separately.

- a) Do we need a national minimum wage in order to ensure that those who are employed in any region or in any sector of the economy are assured of a minimum income that can buy minimum necessities of life for them?
- b) Do we need a wage policy under which we have to secure as much employment as possible? Is it necessary to have a poverty level low wage for this purpose?
- c) Do we need a wage policy as part of a total anti-poverty programme in which our goal is to remove poverty of the bottom

classes of our society through the use of employment at a level of wages which removes such poverty?

- d) Do we want to remove the differentials of wages of workers in the organised sectors, and between the organised and the unorganised sectors? Is it possible to do so?
- e) Is it possible to standardise wages in the same type of industry? Should we attempt to do so?
- f) Should we give more emphasis on prescribing wages for the unorganised sector, and leave the wages in the organised sector to be decided by collective bargaining?
- g) What can we do to ensure at least a minimum income to the workers in the unorganised sector?
- h) Can the wage rise be linked to increase in productivity?
- i) Can we have a wages, incomes and prices policy? What is the practical shape it can take, and what will be the machinery to enforce it?

National Minimum Wage

12.169 Various Committees and Commissions have discussed the necessity of introducing the concept of a national minimum wage below which no employer should be allowed to engage any worker in the country. The advocates of a national minimum wage claim that such a minimum would have more extensive coverage, and would make implementation easier and effective because of its simplicity and applicability to all types of employments in all parts of the country.

Recommendations of the First National Commission on Labour

12.170 The First National Commission on Labour discussed this issue and came to the conclusion that "a national minimum wage in the sense of a uniform minimum monetary remuneration for the country as a whole is neither feasible nor desirable. If one is fixed, the dangers are that there will be areas which will not afford the minimum if the minimum is worked out somewhat optimistically. And if calculations are allowed to be influenced by what a poorer region or industry can pay, the

national minimum will not be worth enforcing”.

12.171 The Commission also pointed out the difficulties in constructing a national minimum wage because of the large variations in consumption patterns of persons in different regions, the wide variety of items used by them, regional price variations and so on. In view of these, the Commission suggested that in different homogeneous regions in each state regional minima could be notified. The Commission recommended fixation of such regional minima in view of the wide variation in rates of minimum wages fixed under the Act even within a small geographical region.

Recommendations of the Bhoothlingam Committee

12.172 Government of India set up a Study Group on Wages, Incomes and Prices, popularly known as the Bhoothlingam Committee in 1977. The Committee gave its report to the Government in 1978. This Committee did not agree with the recommendations of First National Labour Commission, and said that “in our view, the real minimum wage can

only be the absolute national minimum, irrespective of sectors, regions or States below which no employment would be permitted”. This Group also observed that in determining such a national minimum wage, several considerations had to be kept in view and it had to be consistent with factors like (a) the per capita national income adjusted after applying the participation rate (b) average national income per consumption unit and (c) per capita rural consumption expenditure. It could not also deviate too much from prevalent earnings in the small-scale sector and its impact must not be such as to inhibit the generation of employment. It recommended that the national minimum wage should be Rs.150 per month at 1978 prices, to be achieved within a period of seven years, starting with not less than Rs.4 per day for eight hours of unskilled work or not less than Rs. 100 per month and being revised every two years to achieve the goal. Thereafter the revision in the minimum wage should be done every three years (as was also recommended by the National Commission on Labour, 1969) in relation to the trend increase in per capita national income. This minimum wage was to be applicable

throughout the country for unskilled work for every adult of 18 years or above, irrespective of sex, bringing up the statutory minimum wages wherever they were lower. State Governments were to continue to have the freedom to fix higher minimum wages wherever they were lower. For the agricultural sector the Group felt that a desirable minimum rural household income would be a more meaningful concept because of the irregular and seasonal nature of employment and unstable and varied sources of income. The minimum income to be aimed at should be such as to enable the bottom 30% to come up roughly to the level of the next higher decile. It was placed at Rs.1800 per annum (1977-78 prices) for planning purposes. Policy measures should be directed towards creating conditions in which the households of those who work part time or sporadically, as well as landless labourers and marginal farmers are enabled to earn the minimum within a period of seven years. The measures were to include improvement of the productivity of marginal farmers through higher value crops and increasing opportunities for work with better returns.

Recommendations of the National Commission on Rural Labour

12.173 In 1991, the National Commission on Rural Labour constituted under the chairmanship of Dr. C. H. Hanumanth Rao made a strong recommendation for a national minimum wage for rural labour. They deplored the wide variations in the minimum wages prescribed for unskilled workers in agriculture by various State Governments, and laid down the following principles for fixation of minimum wages:

- a) the cost of living relating to the minimum subsistence level for the worker and his family of three adult consumption units, and
- b) the minimum wage will be the same for all employments

12.174 The National Commission on Rural Labour thought that the application of these principles would naturally bring about uniformity in the minimum wages throughout the country irrespective of the authorities notifying the wage. The Commission called this the basic minimum wage applicable for the country as a whole,

and no wage should be fixed or permitted below this level. This is to be distinguished from the minimum wage which may be notified above this level under the Minimum Wages Act by different State Governments. Differences in the wages arrived at on the basis of cost of living would be accounted for only by the differences in the comparative cost of living between various regions in the country. The Commission felt that this approach will admit of minor variations.

Recommendation by the National Commission on Self Employed Women

12.175 In 1987, the National Commission on Self Employed Women and Women in the Informal Sector was appointed with Mrs. Ela Bhatt as the Chairperson. In its report, the Commission recommended a reasonable wage of Rs. 500 for women workers. The Commission did not call it a national minimum wage, but it amounts to the same.

12.176 The National Minimum Wage has been discussed on many other

occasions in different fora. Because fixation of wages depends on a number of criteria like local conditions, cost of living and paying capacity which vary from State to State and from industry to industry, many difficulties have been pointed out. The Indian Labour Conference held in November, 1985 expressed the following view:

“Till such time a national wage is feasible, it would be desirable to have regional minimum wages in regard to which the Central Government may lay down the guidelines. The Minimum Wages should be revised at regular periodicity and should be linked with rise in the cost of living”.

12.177 Accordingly, the Government issued guidelines in July, 1987 for setting up Regional Minimum Wages Advisory Committees. These committees renamed subsequently as Regional Labour Ministers' Conference, made a number of recommendations which included reduction in disparities in minimum wages in different States of a region, setting up of Inter-State Co-ordination Council, consultation with neighbouring States while fixing/ revising minimum wages etc.

Floor Level Minimum Wage

12.178 In the absence of a National Minimum Wage Policy, the Central Government introduced the concept of a National Floor Level Minimum Wage of Rs. 35/- per day in 1996 based on the recommendations of the National Commission on Rural Labour. The floor level of minimum wage was further enhanced to Rs. 40 per day in August 1998. We were told that this had been revised to Rs. 45 this year, and accordingly the Prime Minister had written letters to all State Governments. For the time being this has become a sort of national minimum wage. It can, therefore, be that till such time as a National Minimum Wage Policy is evolved, this floor level minimum wage may be treated as the current national minimum wage.

12.179 In view of the importance of the subject, our Commission feels that the Government of India should appoint an expert Committee to study the pros and cons of this subject and make suitable recommendations for the construction of such a national minimum wage.

12.180 Our Constitution gives us a mandate to assure 'fair wages' to the

workers. We have endorsed this commitment in the International Conventions and Declarations that we have accepted. A Fair Wage Committee was appointed in 1948. In spite of all this, we have not been able to determine a national minimum wage. The diversities in the different parts of the country and different regions in the same State, including unequal capacities to pay, have delayed the fulfilment of the promise in the Constitution. Some Committees have held the view that a uniform national minimum wage is difficult to determine, and will be even more difficult to enforce everywhere. Some members of our Commission hold the same view, and feel that it may be impractical to suggest a national minimum wage. The general opinion in the Commission is that the concept or commitment of a national minimum wage can not be abandoned on the plea that there are difficulties. It has to remain an ideal or goal to be reached. We have recommended that an Expert Committee must be appointed to study all aspects, and make a recommendation that is practical and leads to the goal even if it is in progressive phases. Till we reach the target, our immediate attempt should be to progress towards the next

phase, leading from a floor level minimum wage to a regional minimum and finally to a national minimum. In determining such a wage, the recommendations of different Committees, the 15th session of the ILC, and the judgments of the Supreme Court should be used as guidelines.

Low Wage Policy

12.181 As is said earlier, now no one advocates a low wage policy, and payment of the minimum wage as prescribed is legally binding on the employers. But such a low wage policy was advocated by a few economists and politicians in order to encourage employment in the country, and in order to keep industrial costs down. The first Five Year Plan had also warned against any upward movement of wages. Their theory was that if wages are low, more employment can be generated in the country, and costs of production of products can also be held under check.

Differentials in Wages

12.182 What should be the maximum-minimum differential in wages of employees of an organisation?

12.183 It is difficult to lay down a clear cut criterion for fixing an appropriate ratio between salaries of the top management and wages paid to the worker at the lowest rung of the ladder. In general, the ratio seems to be high in a developing country where the level of higher education in many fields is not commensurate with the needs of economic development and where the general level of education of workers is not very high. Therefore, the unskilled worker is paid the minimum, and managerial experts whose skills are rare are paid much more. Sometimes, foreign experts are also hired, from countries where the general levels of pay are high compared to our country, and they have to be paid much higher salaries than would be warranted by the paying capacity of our country. Higher salaries are thus fixed externally at the international level. Thus they get completely out of line with the wages of purely local labour which is unskilled and which is abundant in supply.

12.184 It would be worthwhile to quote the example of China. In China as well as in the erstwhile communist East European economies bringing down maximum and minimum

differential had been one of the important objectives of a wage policy.

12.185 Government of India had tried to fix a ceiling on managerial remuneration, and thus an effort was made to bring down the differential in wages in private enterprises. But as a result of persistent demand and severe criticism, after the new economic policy of liberalisation, the ceiling on managerial remuneration was raised substantially in July 1993 and relaxed completely for profit making companies in February 1994. Companies were required to make disclosures for employees earning more than Rs. 12 lakh annually. But their number has increased considerably over the years. Now under Schedule XIII of the Companies Act 1956, companies can pay 100% increase in the maximum level of remuneration. Therefore, the clause has been amended, and Companies need to give details of only such employees as are paid over Rs. 24 lakh per annum. The trend is towards increased remuneration to top management and widening differentials. Apart from the removal of such ceilings, most of the top managerial personnel receive a share of 1 or 2 percent in the profits of the

company. In addition to this they also receive perquisites like free housing, chauffeur driven cars, free club memberships, free international travel etc. In the absence of full data, it is very difficult to comment generally on the wage-differentials. But the general observation is that after the policy of economic liberalisation, these differentials have been further widened.

12.186 The Fifth Pay Commission appointed by Government of India has discussed this issue while fixing maximum pay for Government servants. The Commission had analysed the maximum and minimum disparity ratios of Government servants. Their conclusions were:

- a) During the period 1948-1996, the minimum salary of the lowest Government employee rose from Rs.55 to Rs.2,060.
- b) During the same period, the pre-tax maximum salary rose from Rs. 3,000 to Rs. 16,580, while the post-tax salary rose from Rs. 2,263 to Rs. 12,615.
- c) The disparity ratio between the maximum pre-tax remuneration and the minimum went down

progressively from 54.5 (1948) to 46.2 (1949), 37.5 (1959), 34.0 (1965), 24.8 (1970), 10.7 (1986) and 8.0 (1996).

- d) The post-tax disparity ratio came down even more drastically from 41.0 (1948) to 6.1 (1996). The post-tax ratios were naturally lower than the pre-tax ratios because of progressive rates of taxation.

12.187 The falling disparity ratio was the result of a deliberate policy followed by successive Commissions. This was probably in tune with the prevalent socialist ideas of the time. The ratios did not remain constant even in the intervening period between two consecutive Pay Commissions. Thus the pre-tax ratio

slipped from 10.7 (1986) to 8.0 (1996). This phenomenon is explained by the prevailing practice of offering only partial neutralisation for increased cost of living at the higher levels, while there is complete neutralisation at the lower level.²

International Comparisons

12.188 The Fifth Pay Commission had also collected data from various countries in order to know these differentials in wages. The information received on maximum-minimum Government pay scales in different countries was as follows:

International Disparity ratios, 1995

Country	Ratio	Country	Ratio
Malaysia	3.0	Sweden	4.0
France	6.6	Indonesia	6.9
Australia	7.7	China	8.0
Thailand	9.0	Hongkong	40.0

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² Report of the Central Pay Commission Jan. 1997 – Vol. I p 434

12.189 It can be observed that the disparity ratio ranges between 3 in Malaysia and 40 in Hongkong.

12.190 An OECD study on the salaries of senior functionaries has reported that Japan, UK and Canada reward their senior civil servants better than Germany, USA, the Netherlands, Ireland, Australia, France, Finland and Sweden. While the real incomes of senior civil servants rose in the range of 20 to 40% between 1980 and 1990 in the case of Japan, UK, Canada, Ireland, Finland, Sweden and US, it fell in the case of Germany, the Netherlands, Australia and France. Differentials between the senior and lower grades are clearly compressed in the case of Canada, Australia, France, Germany, the Netherlands, UK and US. Also substantial remuneration discounts for public service vis a vis private service exist in countries like France, Germany and the United Kingdom.³

12.191 This information is for the year 1995 and for Government servants in the respective countries.

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³ Report of the Central Pay Commission Jan. 1997 – Vol I p 437

Perhaps the disparity ratios are likely to be different for the private sector enterprises in these countries.

12.192 The Fifth Pay Commission had also carried out studies on remuneration paid to top management personnel in the private sector. Their observations were as follows:

- a) The CEO in private sector gets a pay packet which is nearly 50% higher than his counterparts in public sector undertakings and Government.
- b) In addition to the salary, the CEO in private sector draws an average performance related incentive which works out to 65% of the basic salary.
- c) The CEO in private sector draws sundry allowances for club membership, credit cards, services, amenities, domestic servants, use of car, housing, free travel etc.

12.193 Thus there was, and even now there is a difference in the compensation paid to employees in the private sector and to Government employees.

12.194 The increase in the salaries of the Government employees as a result of the Pay Commission recommendations, resulted in pre-tax disparity ratio between maximum and minimum remuneration reach the level of 10.7.

Logic of Wage Differentials

12.195 What is the logic of this differential in wages? The chief factor determining the excess earning of trained personnel over minimum wage is the cost of investment in education, including time spent on education, the excess earning being meant to compensate for the investments and time spent in education. Secondly, in the case of top managerial personnel, they have adequate technical experience of management, they have to carry risks of business and are responsible to produce results. Their job is more than full-time. Therefore, they are to be paid higher salaries to compensate for the risks and for sacrificing all their time for business. Such managerial talents are rare to be found and therefore, they have to be adequately compensated and retained.

12.196 How does it happen that a film star receives a remuneration

which is so much higher than that of a street cleaner? Why does a foreman receive more than an unskilled worker, or an accountant more than a sweeper? These are stock questions to be found in economic text books. The answers given also are stock answers. Foremen and accountants are few have to spend long years in training and unskilled workers and sweepers are available in plenty and they need no training. This is the way the differentials in employments are sought to be justified. The actual higher or lower wages depend upon the scarcity of labour in that category.

12.197 The country needs to reward persons who have put in more efforts to acquire specialised skills, as long as better quality or talent is sought to be recruited or trained. Moreover the differentials will continue to exist when the intellectual capital of a person, skills and experience acquired differ from person to person. This also differs from industry to industry. In a labour intensive industry say cotton textile industry, where wages constitute 25% of the total costs, we see that wages per worker are lower than in a capital intensive industry like

petro-chemicals or fine chemicals. Again a small industry or an industry in rural area is not expected to pay the same wages and fringe benefits to workers as in large-scale industry. The capacity and profitability of such industries is much less, and the skills required from workers in such small units are also less. We can hope that over a period of time these differentials will narrow.

12.198 Thus the differentials in wages are bound to persist and it is difficult to eliminate them. Their differential ratio perhaps can be brought down by judicious wage policies to be pursued at the enterprise level. It is up to the management of the enterprise to initiate action.

12.199 As long as we follow a laissez-faire policy in respect of wages and both employers and employees are free to fix their wages, the Government will find it difficult to exercise strict control.

12.200 As has been mentioned earlier, there have been differences in the wages paid in different sectors. These differences prevailed for the same skills within an industry itself and

that too at the same place. This problem has been discussed in India since long. As far back as in 1922, the Bombay Industrial Disputes Committee discussed this problem and again the Textile Tariff Board did so in 1927. The Whitley Commission pointed out the need for adopting a common standard of payments for similar classes of work in some of the leading industries. In 1934, a wage census was conducted by the Government of Bombay and it compiled data for standardisation. The Textile Labour Enquiry Committee (1940) and Committee on Fair Wage (1948) showed strong preference in favour of standardisation. The First National Commission advocated standardisation of occupational nomenclature and arrangements for a wage census on a regular basis because it felt that, that would assist in standardising wage rates.

12.201 In the changed circumstances, with a variety of wage rates in different industries and in enterprises of the same industry, standardisation has become pretty difficult. This is because of the large variation in the capacity of each industry to pay and different market conditions in which they operate.

West Bengal Experiment

12.202 But because of the peculiar circumstances in the seventies, this standardisation was brought about in the engineering industry in West Bengal. This was a unique experiment that is worth mentioning.

12.203 In the sixties, wages in major industries in West Bengal such as jute, cotton textiles, plantation and engineering, wage fixation and revision in salary scales was done through awards of industrial adjudication. Thus in the case of the engineering industry, there were three omnibus engineering tribunal awards namely that of 1948, of 1950 and of 1958. These were followed by Wage Board recommendations for the engineering industry in 1966. There was also a Special Engineering Tribunal Award which was known as the 7th Industrial Tribunal Award which related to engineering establishments employing less than 250 employees.

12.204 Around 1969, when the leftist government came to power in West Bengal, the image of West Bengal industry suffered a set back. Those were the days of gheraos, strikes, sudden stoppage of work,

frequent intimidation by workers etc. As a result, the State received a big set back in its industrial development. Investors were not prepared to go to West Bengal and no new industrial projects were coming up in West Bengal. The Government wanted to improve this tarnished image of the state. It took considerable interest in settling labour problems and in ensuring investors that there would be no labour problems in the state. Most of the trade unions were controlled by the leftist parties and, therefore, it was easy to convince the trade unions and force them to be more accommodative and less militant. As a part of this effort, the parties in power almost forced trade unions in the State to come together and carry on negotiations with industry to have industry-wise wage settlements. As a result, the first wage settlement in the engineering industry in West Bengal was signed in 1969. The Government played a major role in bringing the two parties together and forcing them to sign such a settlement. Following this settlement, four successive industry-wise agreements through collective bargaining and intervention of the Government were reached in 1973, 1979, 1983 and 1988. Most of the Federations of Trade Unions, and the

Confederation of Indian Engineering Industries (CIEI) would sit and negotiate wages of all types of workers in engineering industries in West Bengal. A good deal of preparatory work was also done by both unions and employers.

Role played by the State Government

12.205 The State Government played a positive role in bringing about the settlements. All the meetings of negotiations were presided over by the Labour Commissioner and he acted as a conciliation officer. If there was an impasse in negotiations, there was political intervention and the Labour Minister as well as the Chief Minister intervened to see that the negotiations were successful. The State Government tried to bring both parties together. It used its influence and saw that there was a reasonable settlement. The State Government was also a party to the settlement and, therefore, this was a tripartite settlement. This was a unique experiment and, therefore, it has been narrated in detail. At no other place, according to our information, were such experiments carried out. Now we are told that this system of

industry-wise negotiations do not take place, and unit-wise bargaining is resorted to.

Wage Determination through Collective Bargaining

12.206 We have earlier referred to the elimination of Industry level Wage Boards and the increasing trend of resorting to collective bargaining at the individual plant level. Let us understand the legal position of such agreements. There is no law at the national level for recognition of trade unions. But some states like Maharashtra and Madhya Pradesh have legal provisions for recognition. In some states like Orissa, West Bengal and Andhra Pradesh, unions are recognised as bargaining agents through secret ballots. Under section 2(p) of the Industrial Disputes Act, 1947 collective agreements can be reached with or without the involvement of the conciliation machinery established by legislation. While settlements reached in conciliation are binding on all parties, settlements arrived at, otherwise than in the course of conciliation proceedings are binding only on parties to the agreement. It is not binding on workmen who did not sign

the agreement or did not authorise any other workman to sign on his behalf. A collective agreement presupposes the participation and consent of all the interested parties. When workmen are members of different unions, every union, without regard to whether or not it represents a majority, cannot, but be considered an interested party. Also, some workmen may not choose to be members of any union and one or more unions may, for reasons of their own, not like to reach a settlement. Section 2(p), and 18(3) of the Industrial Disputes Act, 1947 deal with such practical difficulties by making collective agreements binding even on indifferent or unwilling workmen as the conciliation officer's presence is supposed to ensure that the agreement is bonafide.

Unorganised Sector

12.207 Collective bargaining is not common in the unorganised sector. In several cases bipartite collective agreements in the unorganised sector have provided for wages lower than the applicable minimum wages. Where such agreements are entered into through conciliation and/or registered with the appropriate government, the

labour commissioners concerned are expected to ensure that the wages, benefits and other conditions are not lower than the applicable minimum wages and other standards laid down in labour laws.

Special Features of such Collective Agreements

12.208 In any industry, some units are doing well and some are not doing so well. While signing wage agreements on industry-wise basis, one has to take care of what is affordable to the least profitable unit in the industry. Many times workers in more profitable units feel that they are not given adequate remuneration and facilities. This was one important reason why trade unions in such profitable units opted out, and signed individual agreements with managements of such companies. As a result, they got better remuneration and better facilities. As has been started earlier, workers in such prosperous enterprises were able to wages that were described as disproportionate. They were also able to share the monopoly gains of such companies because of the militant methods they followed.

12.209 Following are the some of the special features of such agreements:

- (a) A steep rise in wages not comparable to any other sector of the economy. Unions were able to achieve better terms because of their bargaining power.
- (b) As a result of the steep increase in wages, incomes of many workers became taxable. Unions then preferred a variety of allowances apart from rise in wages. Some of these allowances were not taxable. One will thus find a variety of allowances being added to emoluments.

Thus, as in the case of managerial personnel, workers too have had the benefit of augmenting incomes through special allowances and perquisites

12.210 Wages are generally defined as only basic wage, fixed and variable dearness allowance and not any other allowance and benefits. Thus all the other allowances paid and monetary value of the facilities provided by employers in the organised sector are not included in "wages". But the value

of all these allowances and perquisites is substantial if one is to compute the total remuneration paid to the workers.

Court Decisions

12.211 The principles of wage determination have been greatly influenced by Court decisions from time to time. In many cases of wage-disputes, the Supreme Court has given decisions which lay down some principles of wage fixation and these principles later have become important factors in wage determination. Here are a few important decisions.

12.212 In the case of Crown Aluminium Works vs. their workmen (1958 I LLJ 1), on the specific issue of capacity to pay, the Supreme Court has said "There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in the under-developed countries where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages..... If an employer can not maintain his

enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms”.

12.213 In *M/s Unichem Laboratories Ltd. vs. Their Workmen*, [1972 – I LLJ 576, 590, 591], the Supreme Court observed as follows:

“In the fixation of wages and dearness allowance the legal position is well established that it has to be done on an industry-cum-region basis having due regard to the financial capacity of the unit under consideration.... Industrial adjudication should always take into account, when revising the wage structure and granting dearness allowance, the problem of the additional burden to be imposed on the employer and ascertain whether the employer can reasonably be called upon to bear such burden.... As pointed out in *Greaves Cotton and Co. and others vs. Their Workmen*, [1964 – I LLJ 342], (1964) 5 S.C.R. 362, one of the principles to be adopted in fixing wages and dearness allowance is that the Tribunal should take into account the wage scale and dearness allowance prevailing in comparable concerns carrying on the same industry in the region....”

12.214 From an examination of the decisions of the Court, it is clear that the floor level is the bare minimum subsistence wage. In fixing this wage, Industrial Tribunals will have to consider the position from the point of view of the worker, the capacity of the employer to pay such a wage being irrelevant. The fair wage must take note of the economic reality of the situation and the minimum needs of the worker having a fair-sized family with an eye to the preservation of his efficiency as a worker.

Minimum Wage - a Statutory Obligation

12.215 A minimum wage was considered a necessary catalyst to advance the social status of the worker even according to our ancient law, and treated as an obligation of the State.

12.216 In the *Secunderabad Club vs. State of Andhra Pradesh* case (1997- I LLJ 434), Mr. Justice Y. Bhaskara Rao adverting to the concept of minimum wages as laid down in the *SUKRA NEETI*, observed:

“It would be relevant to look at the conditions governing wage, life and other social aspects of workers, which are delineated in *SUKRA NEETI*,

an ancient treatise. The English translation of which is:

'Wages to be considered as fair must be sufficient to procure the necessities of life from out of the wages. The wage of an employee should therefore be a fair wage, so as to enable him to procure all the necessary requirements of life.' (SUKRA NEETI II, 805-806)

'By payment of very low wages, employees (of the king) are likely to become his enemies and they are also likely to become plunderers of treasuries and cause harassment to the general public.' (SUKRA NEETI II, 807-808)

12.217 Thus the concept of payment of minimum wages is inbuilt in our society even before the introduction of the Minimum Wages Act of 1948.

12.218 The principle that it is the duty of the State to ensure the payment of minimum wages has been recognised by the framers of the Constitution by incorporating Article 43 in the Constitution of India. Though this Article is included in the Chapter on Directive Principles, and in its

sweep contemplates payment of 'living wages' to a worker, nevertheless, it is the duty of the State to ensure that workers are paid minimum wages. The exercise to fix minimum wages thus is the responsibility of the State. It enacted the Minimum Wages Act in 1948, whereby it has directly imposed statutory minimum standards on the scheduled employments.

Components of Minimum Wages

12.219 In *Unichoyi vs. State of Kerala*, (1961 – I LLJ-631), the Supreme Court explained what the components are that would make up the minimum wages and stated:

"It is, therefore, necessary to consider what are the components of a minimum wage in the context of the Act. The evidence led before the committee on fair wages showed that some witnesses were inclined to take the view that the minimum wage is that wage which is essential to cover the bare physical needs of a worker and his family, whereas the overwhelming majority of witnesses agreed that a minimum wage should also provide for some other essential requirements such as a minimum of

education, medical facilities and other amenities. The committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the committee have been generally accepted by industrial adjudication in this country. Sometimes, the minimum wage is described as a bare minimum wage in order to distinguish it from the wage-structure which is "subsistence plus" or fair wage, but too much emphasis on the adjective "bare" in relation to the minimum wage is apt to lead to the erroneous assumption that the minimum wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand, since the capacity of the employer to pay is treated as irrelevant it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage,

but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the schedule industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker."

Industry - cum - Region

12.220 The principles which govern the field have been laid down in several judgments of the Supreme Court. One of the early decision was a decision of the Supreme Court in *French Motor Car Company Ltd vs Their Workmen*, reported in 1962 II LLJ 744, in which it was held that: "It is now well settled that the principle of industry-cum-region has to be applied by industrial court, when it proceeds to consider questions like wage-structure, dearness allowance and similar conditions of service. In applying that principle industrial court have to compare wage-scales prevailing in similar concerns in the region with which it is dealing, and generally speaking, similar concerns

would be those in the same line of business as the concern with respect to which the dispute is under consideration." It was also observed that amongst the factors which must be considered for the purpose of wage fixation were (i) the extent of business carried on by the concern, (ii) the capital invested therein, (iii) the profits made, (iv) the nature of the business carried on, (v) the standing of the business, (vi) the strength of the labour force, (vii) the presence or absence and the extent of the reserves, (viii) the dividend declared and (ix) the prospects of the future of the business and other relevant circumstances. Comparability would also postulate that there must be comparability of size.

12.221 The Supreme Court in *Greaves Cotton & Co Ltd vs Their Workmen*, (1964 I LLJ 342) held that where there are large number of industrial concerns of the same kind in the same region, it would be proper to put greater emphasis on the industry part of the industry-cum-region principle as this would place all concerns on an equal footing in the matter of production cost and in the matter of competition in the market. On the other hand, where the number

of comparable concerns were small in a particular region and the aspect of competition is not the same importance, the region part of the industry-cum-region formula assumes greater importance. The Supreme Court in the *Greaves Cotton* case also observed that the Industrial Tribunal while making a comparison must take into account the total wage packet for each category of factory workmen.

Financial Capacity of the Employer

12.222 The judgment of the Supreme Court in *Ahmedabad Millowners, Association vs. Textile Labour Association*, [1966 I LLJ 1], enunciates the considerations which must inter alia guide the Industrial Tribunal in dealing with the financial capacity of the employer to meet an additional burden occasioned by a revision of the wage structure. In this regard the Supreme Court held as follows:

"On the other hand, in trying to recognise and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation against the ever-increasing rise in the

cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage-structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden.... What has been the progress of the industry in question; what are the prospects of the industry in future; has the industry been making profits; and if yes, what is the extent of profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face? These and similar other considerations have to be carefully weighed before a proper wage-structure can be reasonably constructed by industrial adjudication vide *Express Newspapers (Private) Ltd., & Anr. Vs. Union of India & Ors.* [1961-I LLJ 339]. Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play a major role in the calculations which industrial adjudication would make in regard to the construction of a wage-structure. A broad and overall view of the financial position of the

employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it; and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit”.

Pretax profits of the Company

12.223 In *Unichem Laboratories Ltd. vs. Their Workmen*, reported in 1972 I LLJ 576, a Bench of three Learned Judges of the Supreme Court referred to the earlier Judgment in *Gramophone Company Ltd. vs. Its Workmen*, (1964 II LLJ. 131), where the Court had held that:

“When an Industrial Tribunal is considering the question of wage structure and gratuity which in our opinion stands more or less on the same footing as wage structure, it has to look at the profits made without considering provision for taxation in the shape of income-tax and for reserve. The provision for income-tax and for reserve must in our opinion take second place as compared to provision for wage

structure and gratuity, which stands on the same footing as provident fund which is also a retirement benefit." This principle was quoted with approval by the Supreme Court in Unichem Laboratories case.

Principles of Wage Fixation

12.224 In *Kamani Metals & Alloys Ltd. vs their workmen*, [1967 – II LLJ 55]; (1967) 2 S.C.R. 463, the Court observed as follows:

"Fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable. The task is not rendered any the easier because conditions vary from region to region, industry to industry and establishment to establishment. To cope with these differences certain principles on which wages are fixed

have been stated form time to time by this Court. Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen but not at a rate exceeding his wage, earning capacity in the class of establishment to which he belongs. A fair wage is thus, related to the earning capacity and the workload. It must, however be realized that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal".

12.225 In *Hydro (Engineers) (Private) Ltd. vs. their workmen*, 1969 – I LLJ 713-716], the Supreme Court further observed as follows:

“It is thus clear that the concept of minimum wages does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralizing the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of a minimum wage”.

12.226 In the case of *Killick Nixon Ltd. Vs Union* (1975- II LLJ 53SC), the Supreme Court has laid down certain considerations of fixing wages. They are as follows:

- 1) Condition of the wage scales prevalent in the Company.
- 2) Condition of the wage level prevalent in the industry and the region.
- 3) The wage packet as a whole of each earner in the company with all amenities and benefits and its ability and potency to cope with the economic requirements of daily existence consistent with his status in society, responsibilities, efficiency at work and industrial peace.
- 4) The position of the company concerns in relation to other comparable concerns in the industry and the region.
- 5) Pre-emptive necessity for full neutralisation of the cost of living at the rock-bottom of the wage scale if at all just above the subsistence level.
- 6) The rate of neutralisation which is being given to the employees in each salary slab.
- 7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.
- 8) Degree of sacrifice necessary even on the part of workers in general interest.
- 9) The compulsive necessity of securing social and distributive justice to the workmen.
- 10) Capacity of the company to bear the additional burden.
- 11) Interest of the national

economy.

- 12) Repercussions in other industries and society as a whole.
- 13) The state of the consumer price index at the time of decision.
- 14) Forebodings and possibilities in the foreseeable future as far as can be envisaged.

12.227 We should also point out that the revision of DA is not the same as the revision of wages.

Price, Income and Wage Policy

12.228 In the context of wage fixation, very often questions regarding price policy and income policy are raised. In fact it is advocated that there should be an integrated price, income and wage policy in a country. It is necessary to consider a number of questions in this context.

- a) What could be the minimum wage and what are the norms on which a minimum wage should be based?
- b) Will the minimum wage be different or same for (i) agriculture, industry and the service sectors (ii) organised and

unorganised sectors
 (iii) urban and rural sectors
 (iv) different states and regions
 (v) between different employers in the organised sector

- c) What would be the criteria for determining differentials between minimum and maximum wages, could the ratio be different for different industries?
- d) What can be the criteria for determining the maximum income? Should there be any relationship between maximum income and maximum wages?
- e) Can there be any common policy for fixation of wages, income and prices in the economy?

12.229 All these issues go into the making of a price, income and wage policy. The Government has to take a position on all these issues and attempt implementation and coordination of these policies.

12.230 Take for instance differentials of wages and incomes. Differentials between different sectors

of the economy are bound to exist in a dynamic society. As we have seen earlier, they are indicative of differences in skills formation, capital endowments, risk taking abilities, forecasting skills etc., only difference is that the incomes policy asks the rationale of these differences. But the effect of market forces cannot be ignored. An income policy based on rigid differentials may break down. This has been the experience even in the communist countries. Soviet Russia was not able to control such differences in remuneration of different persons working in various sectors of its economy.

12.231 Income policy in the sense of controlling incomes of different sectors of the economy and freezing the existing incomes may run into problems. The case for an incomes policy is strong if we use it in India as one important policy element in supplying a sense of proportion to the various competing groups, as an important weapon of "high growth, higher distribution", strategy of development, as a supplier of valuable guidelines to anomalies not only in wages but also in investments, prices and profits, and as an instrument not only of rationalising

wages, bonus and dearness allowance, but of the system of price controls, investment and taxation.

12.232 As we said earlier, in 1977, a Study Group was appointed on wages, incomes and prices under the chairmanship of Dr. S. Bhoothlingam and their recommendations for a price, wage income policy were as follows:

- a) Wage policy has to strike a balance between ensuring minimum incomes for unorganised labour and increasing opportunities for employment. This policy must pay adequate attention to rationalisation of wage structure and ironing out anomalies. It should encourage systems of incentives for higher productivity and better performance.
- b) Incomes policy should cover all non-wage incomes. The level of incomes of those below poverty level should be enhanced. Apart from progressive taxation, the emphasis should be on encouraging savings and investments, discouraging ostentations and luxury and

reducing disparities in consumption.

- c) The main objectives of prices policy should be to maintain reasonable stability of prices while reasonable prices can be assured to producers like farmers. Consumers should also be taken care of. Wherever subsidised prices are implemented, efforts should be to see that the benefits actually go to those for whom they are intended. Price system should serve the economic objective of growth and development.

12.233 What is the scene like today? Economic conditions have changed in the last few decades. We are no longer in a regimented economy or a semi-regimented economy, economic forces are now allowed to play freely. Government is not in a position to fix the incomes of workers or the management in the organised sector; it cannot put any ceilings over the incomes of self-employed persons; price controls operate on a very few commodities.

12.234 In fact prices of some commodities like fertilisers, cooking

gas, kerosene etc. are controlled through subsidies on their prices. For foodgrains, higher prices are offered as a part of Government monopoly procurement policies. The result is an overflowing stock of foodgrains in Government godowns. Both these policies have put considerable strain on Government resources and Government is reconsidering these policies. But because of anti-poverty considerations, it has to continue these policies. Will it be possible to control prices of all commodities and services? For instance, it is not possible to cut back the incomes of some categories of highly paid doctors or lawyers or the self-employed. Quite often their high incomes are earned only during certain phases of their working lives. It is also not possible to control the income of a private businessman. It can be done only through steep taxation. But the experience is that if we have such steep taxation, businessmen do not disclose their incomes and large business operations take place outside the books. We thus come across the difficulties that the government is experiencing in controlling prices, wages and incomes. The moot question seems to be whether we can

have a free economy or an economy in which the state does not want to exercise the functions of control, and at the same time formulate and implement a policy of wages, prices and incomes.

Minimum Wages

12.235 The 15th Session of the Indian Labour Conference held on 11th and 12th of July 1957 at New Delhi adopted a resolution on the fixation of minimum wages. It was agreed by the Conference that the minimum wage had to be need based, and had to ensure the minimum human needs of the industrial worker, irrespective of other considerations. To calculate the minimum wage, the Committee accepted the following norms and recommended that they should guide all wage fixing authorities, including minimum wage committees, wage boards, adjudicators, etc.:

- (i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded;

- (ii) Minimum food requirements should be calculated on the basis of a net intake of 2,700 calories, as recommended by Dr. Akroyd for an average Indian adult of moderate activity;
- (iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average worker's family of four, a total of 72 yards;
- (iv) In respect of housing the norm should be the minimum rent charged by Government in any area for houses provided under the Subsidised Industrial Housing Scheme for low-income groups; and
- (v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 percent of the total minimum wage.

12.236 The Committee took note of the steps taken by Government for conducting (a) a wage census, and (b) family budget enquiries in various industrial centres.

12.237 As for fair wages, it was agreed that the Wage Boards should

go into the details in respect of each industry on the basis of the recommendations contained in the report of the Committee on Fair Wages. These recommendations of the Fair Wages Committee should also be made applicable to employees in the Public Sector.

12.238 Thus in 1957, the Minimum wage was evolved as a need based concept.

12.239 In 1968, some more criteria for the determination of minimum wages came to be recognised when the International Labour Organisation listed three criteria for fixing minimum wages. These were (i) the needs of the worker; (ii) the capacity to pay of the employer; and (iii) wages paid for comparable work. In 1969, the capacity to pay was explicitly admitted as a relevant factor by the National Commission on Labour when it held that in fixing the need-based minimum wage the capacity to pay should be taken into account.

12.240 In 1991, the Supreme Court, in its judgment in the case of Reptakos Brett and Co. versus others, expressed the view that the criteria recommended by the Indian Labour Conference 1957 may not suffice. It

held that an additional component for children's education, medical requirements, recreation including festivals/ceremonies and provisions for old age and marriage should constitute 25% of minimum wages.

12.241 The Minimum Wages Advisory Board (Central) in its 24th Meeting in 1991 recommended that minimum wages should be linked to productivity, and the appropriate Government under the Minimum Wages Act may fix piece-rate wages wherever feasible.

12.242 The Indian Labour Conference in its Thirtieth Session in September, 1992 expressed the view that while the tendency to fix minimum wages at unrealistically high levels must be checked, implementation of wages once fixed must be ensured. It felt that the implementation machinery, consisting of labour administration in the States had been far from effective. It was desirable that workers' organisations and non-governmental voluntary organisations etc., played a greater role instead of engaging an army of inspectors for this purpose.

Approach of the Pay Commissions

12.243 The Pay Commissions of the Central Government took different approaches for the determination of the Minimum Wages for government employees. They were as follows:

- (i) The need based approach;
- (ii) Capacity to pay approach;
- (iii) Relative Parities approach;
- (iv) Job evaluation approach;
- (v) Productivity approach;
- (vi) Living wage approach.

12.244 We are not suggesting that each of these was an exclusivist approach. These various aspects have found mention and been given varying emphasis in the report of different Pay Commissions. The decision of the Pay Commissions on minimum wages was often determined by some kind of harmonisation between the first two i.e., the need-based approach and the capacity to pay approach. This was essential because a minimum wage which was found to be socially desirable was not necessarily economically feasible. Job evaluation and measurement of productivity was not found to be feasible by

the earlier Pay Commissions, and fair comparisons with the public and private sector were also not conceded by them. On living wages they observed that a living wage was a desirable level towards which the State must endeavour to go.

12.245 The Fifth Pay Commission after comparing public sector and private sector employees, comparisons with State Governments and considering the expectation of the employees tried to work out a minimum wage for Central Government Employees of the lowest cadre. The Commission used a modified version of the constant relative income criterion and fixed Rs : 2440/- as the salary of lowest paid employee of the Central Government. This meant more than a three-fold jump in the basic pay from Rs. 750/- to Rs. 2400. The Commission had estimated that this would mean an additional outgo to the tune of Rs. 294.1 crores every year for this category of employees.

12.246 It is not necessary to describe the pressure that such a steep rise in pay scales of Government Employees causes on the Government's Budget.

Minimum Wage vis-a-vis Government Pay

12.247 Our Study Group on Unorganised Labour recommended that the minimum wage prescribed by the Fifth Pay Commission for the lowest category of Government employees (Rs. 2400 + Rs. 2100 DA = Rs. 4500/-) should be the minimum wage for a worker in the unorganised sector. We could not agree with this recommendation. It may be advisable to repeat our arguments on this question from earlier paragraphs in our chapter on the 'Unorganised Sector'.

12.248 We fully appreciate the considerations that have prompted the Study Group to make this recommendation. But we regret that we do not find it possible to accept and endorse this suggestion. Firstly, in monetary terms, the minimum wage that the Study Group has recommended will approximate to Rs. 4500/-. Secondly, there are lakhs of people with very low incomes both in the rural areas, and in the urban areas, – perhaps just around the amount that the Study Team has recommended as the minimum wage, who engage or employ others as

domestic servants or in sundry services like those provided by dhabas (eating places) in the rural areas. They may not be able to pay a minimum wage almost as high as their own incomes. In such a situation, if the law on minimum wages is observed or enforced in letter and spirit, many lakhs of workers will cease to be employed. They will lose their jobs. An alternative scenario will be that to protect their jobs or employment, domestic workers and others of the kind we have referred to earlier, will agree to work for a sum of remuneration that is lower than the prescribed minimum wages. The worst development will be when the custodians of law and order who are mandated to enforce the law on minimum wages and trade unions who are committed to struggle for and protect the rights and real wages of workers come to an agreement, outside the law, on a remuneration or wage far below or appreciably below the legally prescribed minimum. Such a possibility is not a creation of our imagination. In the course of the evidence tendered before us in West Bengal, we were informed that the actual wage paid to bidi workers in West Bengal is much less (Rs. 35 per 1000) than notified minimum

wage (Rs. 70 per 1000 bidis).

12.249 Disparity in minimum wages, lapses in the implementation of the law and enforcement, periodic non-revision of minimum wages are among the factors that make a mockery of such an Act. The State government of Bihar fixed Rs. 27.30 as the minimum wage for agricultural workers in 1996, while an agricultural worker near Dhanbad received Rs. 20. A female agricultural labourer in the same area received a daily wage of Rs. 15 and 200 to 250 grams of muri (puffed rice). In Fatehpur, Ahrawa and Fulepur villages of Barh in Bihar, the agricultural workers got as wages one kilogram of rice or flour and half a kilogram of sattu for breakfast. In the Baruhi village of Bhojpur, in 1996, women got Rs. 15 and a breakfast comprising of 2 rotis, while men got Rs. 25, lunch and breakfast. Bihar, which has the highest number of inspectors exclusively for the agricultural sector could not enforce the minimum wages, set by the State government during this period.

12.250 In West Bengal, when we enquired why the minimum wage law

was not being enforced, we were told that both the Trade Unions and the Government Department had agreed to the below-minimum wage payments as both were agreed on protecting the jobs of bidi workers. We have enough reasons to believe that similar arrangements are entered into elsewhere too by the enforcing authorities and the representatives of workers. We believe that any law that creates such a situation becomes a mockery, if not a self-inflicted fraud. We, therefore, feel that we should legislate only what is capable of being put into practice at the ground level. Anything higher that is desirable will have to remain an aspiration or an eventual goal, not a clause in the law. Any other course will breed disrespect, unconcern and contempt for the law and law enforcing authorities. We feel that the purpose of the law and highly desirable social goals can be better served by prescribing an adequate minimum wage, and providing for compulsory review of the adequacy of the minimum to keep pace with aspirations, needs and the cost of living (and increasing levels of expectancy about higher standards of living to which the worker is entitled).

12.251 Almost all the Committees and Commissions are against a subsistence level minimum. In principle, every committee constituted in this regard has agreed with the standard consumption units and calorie contents. However, the Wage Boards after the Second Pay Commission (1957-59) have not found it possible to fix the need-based minimum wages recommended by the Indian Labour Conference (1957). The Report of the Committee, set up by the first National Commission on Labour, on the Functioning of the System of Wage Boards (cited in the Report of NCL, 1969) found it infeasible because the need-based minimum would be beyond the capacity of the industry to pay and might result in the transference of the burden to the consumer.

12.252 Sub-committee 'D' of the Standing Committee of Labour Ministers (1981) recommended that the level of minimum wage should not be below the poverty line. The Report of the Committee of Secretaries of States (1981) has also recommended that the minimum wages should be at such a level as to take a family of 3 adult units of consumption above the poverty line, and the consumption basket should consist of per capita

per day requirements of 2400 calories in rural areas and 2100 calories in urban areas as well as clothing, shelter, fuel, light, education, etc. The Report of the National Commission on Rural Labour (1991) endorsed a similar concept of three consumption units.

Variable DA and Price Adjustments

12.253 Though there is no definition for the term minimum wage in the Act, its section 4(1) states that the minimum rates of wages fixed or revised by the appropriate authority for the scheduled employments shall take into account the following:

- (i) a basic rate of wages and a special allowance at a rate to be adjusted at intervals with the variation in the cost of living index number applicable to such workers; or
- (ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or

- (iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

12.254 That means that the minimum wage consists of (1) a basic rate of wage (2) cost of living allowance, and/or (3) cash value of concessions or (4) a combination of all the three components. It also means that the cost of living allowance varies with changes in prices.

12.255 The Minimum Wages Advisory Board (1981) observed that it would be desirable to attach a variable DA formula to the minimum wages so that it may be adjusted as and when necessary to protect the real wages of the workers. The Subcommittee 'D' of the Standing Committee of Labour Ministers (1981) also recommended that the variable DA should be an element of minimum wage wherever possible. The Report of the Committee of Secretaries of States (1981) said that the DA might be revised once in six months based on the average All India Consumer Price Index numbers of the series 1960=100. The Gurudas Dasgupta Committee (1988) recommended that

the minimum wages should be linked to the movement of consumer price index (CPI) to account for the cost of living. To protect the minimum wage from falling below subsistence level, the National Commission on Rural Labour (1991) suggested that the cost of living element (DA) should be linked to the minimum wage and adjusted every six months.

Revision of Minimum Wages

12.256 The Minimum Wages Act stipulates that review/revision of minimum wages in the scheduled employments should be undertaken at intervals not exceeding 5 years. However, the first National Commission on Labour (1969) recommended that the period should be reduced to three years. At the 31st session of the Labour Ministers Conference held in July 1980, it was decided that the minimum rates of wages may be reviewed and revised if necessary, within a period not exceeding two years, or on a rise of 50 points in the CPI numbers, whichever is earlier. The 36th Labour Ministers Conference held in May 1987 also reiterated these recommendations. The Gurudas Dasgupta Committee (1988)

recommended a revision every two years or on a rise of 50 points in the CPI. The Umbrella legislation should provide a separate facility within the body to be instituted for the unorganised sector workers, to undertake a constant review of wages as and when needed, as for example with changes in prices. We feel that the wages may be revised after an interval of 2 to 3 years. It will be difficult to administer if too frequent revisions take place.

12.257 The 31st Labour Ministers' Conference had recommended in July 1980 that both the Central and State Governments should bring down the periodicity of fixation of wages from 5 years to 2 years and should link the variable dearness allowance. Despite these recommendations, we are told that many State Governments have not been able to bring down the periodicity of fixation of minimum wages from 5 years to 2 years while only 19 out of 32 states and union territories have been able to link minimum wages to dearness allowance.

12.258 The Shramshakti report (pg. 100) proposes the panchayat or block level administrative set-up for

the execution of provisions of different labour laws, especially on payments and claims, as far as possible. The Report says that it would be necessary to have authorities like the claims authority under section 15 of the Payment of Wages Act 1936 or section 20 of the Minimum Wages Act 1948, or the authority under section 39 (2) of the Bidi and Cigar Workers (Conditions of Employment) Act 1966, at levels not higher than that of the Block or Panchayat Samiti. It also says that already some State Governments have amended the central laws to provide for appointment of claims authorities under the Payment of Wages Act and the Minimum Wages Act at these levels, for example, Minimum Wages (Maharashtra Amendment) Act 1975, and the Wage Laws (Rajasthan Amendment) Act, 1976. We agree that it is necessary and important to take an effective settlement machinery down to the local level.

12.259 The involvement and mediation of local bodies including village panchayats in the enforcement of the rates and payment of wages is important. The prevailing government enforcement machinery

cannot redress their grievances. The fixation of minimum rates of wages and the widespread awareness of these rates would become a great basis of protection to the workers. The moment the rates fixed are known to the working people, voluntary organisations and workers' organisations and the public at large, they will mount vigil, and the implementation of the minimum rates will become easy. In cases of dispute, the local bodies and panchayats can provide relief through persuasion, mediation and Lok Adalats etc. to which we have referred in our earlier Chapters.

Non-Implementation of Minimum Wages

12.260 A number of States that have reviewed and revised minimum wages in scheduled employments for which they are the appropriate governments show disturbing results. In Sikkim, the Minimum Wages Act is yet to be extended and enforced. Only 19 states/union territories have made provision for Variable Dearness Allowance as a part of the minimum wage for a few or all of the scheduled employments. The wages vary from state to state; the disparity is so wide that one has to conclude that

different appropriate Governments are following different criteria for the fixation of minimum wages. The adjustment of Variable Dearness Allowance is also very irregular. The lowest among the minimum wages, meant most probably for unskilled workers, was below Rs.30 in some states and union territories, as on October 1, 2000: Rs.19.25 in Pondicherry, Rs.20.63 in Tripura, Rs.21 in Goa, Rs.26 in Himachal Pradesh and Karnataka, and Rs.27 in Andhra Pradesh (see Table 12.16). The daily minimum wages for different occupations vary widely within the States. The Table carries both the minimum and maximum payment from among the variety of occupation-specific wages fixed as Minimum Wages within each State.

Table: 12.16 Daily Minimum Wages (in Rs.) as on 01/10/2000

Centre/ States/Union Territories	Minimum	Maximum
Central Sphere	80.74	90.19
Andhra Pradesh	27.00	63.19
Arunachal Pradesh	35.60	37.60
Assam	32.80	55.70
Bihar	49.19	61.59
Goa	21.00	125.00
Gujarat	34.00	92.40
Haryana	70.30	74.30
Himachal Pradesh	26.00	51.00
Jammu & Kashmir	30.00	-
Karnataka	26.00	74.03
Kerala	30.00	164.77
Madhya Pradesh	50.46	56.46
Maharashtra	42.46	108.95
Manipur	44.65	55.00
Meghalaya	50.00	-
Mizoram	70.00	-
Nagaland	40.00	-
Orissa	42.50	-
Punjab	69.25	151.32
Rajasthan	47.05	60.00
Sikkim (Minimum Wages Act, 1948 not yet extended and enforced)		
Tamil Nadu	35.00	115.80
Tripura	20.63	45.00
Uttar Pradesh	42.02	70.62
West Bengal	48.21	87.28
Andaman & Nicobar Islands	50.00	86.76
Chandigarh	81.65	-
Dadar & Nagar Haveli	60.00	71.00
Daman & Diu	50.00	60.00
Delhi	93.00	-
Lakshadweep	46.80	-
Pondicherry	19.25	65.00

Source: Ministry of Labour, Annual Report 2000-2001, p. 50.

12.261 An evaluation study conducted by the Labour Bureau, Ministry of Labour, on the implementation of Minimum wages in the agricultural sector in selected States shows that agricultural workers are not receiving full minimum wages

in the surveyed States. The surveyed States were Karnataka, Rajasthan, Andhra Pradesh, Uttar Pradesh, Bihar and Gujarat. The situation is similar in the low technology labour intensive sectors like forestry, fisheries, cottage industries and artisanry, and in urban

employments like vending and slum based and home based productions.

Need for Minimum Wages in the Unorganised Sector

12.262 The character and nature of the informal or unorganised sector are undergoing fundamental changes. The movement is from permanent to casual, contractual, temporary employment; from establishment based to home-based production; from time-rate to piece-rate work; male dominated to female intensive work situation; regulated to unregulated forms of labour. Meanwhile, the labour market, in particular, the rural labour market, is experiencing the influx of casual labour from the traditional subsistence occupations like forestry, fisheries, agriculture, handlooms, etc. as a result of dispossession of assets, and the integration of these sectors into the market economy. At the same time, researchers point out that the labour force is highly segmented due to factors like sectoral disparities, variations in skills, education, caste, religion, and regional and linguistic differences. In such a situation, workers cannot be given minimum protection unless minimum wages are prescribed and enforced in the unorganised sector.

12.263 India signed the ILO Convention 26 of 1928 (Concerning the Creation of Minimum Wage-Fixing Machinery) as early as in 1955. India accepted the commitment to offer minimum wages to its workers.

12.264 The minimum wages are different for different industries. The following table shows the number of schedules of employment each state government has notified. We feel that the state government should specify a minimum wage for all unskilled category workers and these wages should be the same for all industries. This is a need-based minimum wage and it has to be the same for all workers irrespective of where they are employed. This has to be paid irrespective of the capacity to pay. Hence it is not necessary to fix different types of wages for different industries or professions. In other words, we recommend that the distinction between scheduled and unscheduled employment should be given up, and whatever the employment, the notification should prescribe the same minimum wage to all. Perhaps the Minimum Wage Committee may fix the minimum wage for a region and then the Governments can notify these, and the minimum wage for the region can be made applicable to all employments in that region.

Table: 12.17**No. of Scheduled Employments in Different States:**

Sl.No.	Centre/States/UTs	No. of Scheduled Employments
1.	Central Sphere	44
2.	Andhra Pradesh	72*
3.	Arunachal Pradesh	25
4.	Assam	72*
5.	Bihar	74
6.	Goa	23
7.	Gujarat	49
8.	Haryana	50
9.	Himachal Pradesh	24
10.	Jammu & Kashmir	18
11.	Karnataka	59
12.	Kerala	46*
13.	Madhya Pradesh	36
14.	Maharashtra	62
15.	Manipur	5
16.	Meghalaya	21
17.	Mizoram	3
18.	Nagaland	36
19.	Orissa	83
20.	Punjab	60
21.	Rajasthan	38
22.	Sikkim	Minimum Wages Act, 1948 have not yet been extended and enforced.
23.	Tamil Nadu	62*
24.	Tripura	9
25.	Uttar Pradesh	65
26.	West Bengal	55*
	UNION TERRITORIES	
27.	Andaman & Nicobar Islands	4
28.	Chandigarh	44
29.	Dadra & Nagar Haveli	43
30.	Daman & Diu	72
31.	Delhi	29
32.	Lakshadweep	9
33.	Pondicherry	6*
	TOTAL	1254**

* Also includes scheduled employments for which minimum wages have not been fixed yet.

**Includes 44 scheduled employments under State Sphere for which minimum wages have not been fixed yet.

12.265 The irregularities committed under the Minimum Wages Act are on the increase. In 1997, 1,05,639 irregularities were brought to notice. This number went up to 1,41,913 in 1998. A study could be undertaken of such irregularities to find out why such large numbers of irregularities take place. On the basis of the study, either the law or practices, can be modified.

Procedure for Fixation/Revision

12.266 In Section 5 of the Minimum Wages Act, 1948, two methods have been provided for fixation/revision of minimum wages. These are the Committee method and the Notification method.

(a) Committee Method

Under this method, committees and sub-committees are set up by the appropriate Governments to hold enquiries and make recommendations with regard to the fixation and revision of minimum wages, as the case may be.

(b) Notification method

In this method, the Government publishes its proposals in the Official Gazette for information of the persons likely to be affected thereby,

and specifies a date not less than two months from the date of the notification for taking the proposals into consideration.

12.267 After considering the advice of the Committee/Sub-committees and all the representations received by the specified date, the appropriate Government will, by notification in the Official Gazette, fix/revise the minimum wage in respect of the concerned scheduled employment, and that will come into force on the expiry of three months from the date of issue of the notification.

12.268 We feel that the second alternative is better because it gives an opportunity to all concerned to have a say in the matter. Mutual consultations and understanding the difficulties and problems of both are possible in this method.

Productivity – Wage Relation

12.269 Though we have been talking of the relation between productivity and wage, the country has not yet evolved or adopted a policy of linking wages to productivity. We have not been able to find an acceptable method of linking the two. As a result there has been a mismatch between wages and productivity in the Indian Economy. According to a

study made by Dr. Pramod Verma, of the Indian Institute of Management, Ahmedabad, the wage index overtook the productivity index in 1977-78 and wages have increased thereafter at a higher rate than productivity. Wage is an important component of the cost of product/services, hence the increase in wages without increase in productivity does make products uncompetitive.

Productivity in India

12.270 Table 12.18 compares India's performance in recent years with that of the USA, the world economic leader

with the highest levels of labour productivity. For this purpose the national output has been measured in terms of market values as well as after adjusting for variations in Purchasing Power Parity (PPP).

12.271 India's Labour productivity is distressingly low, the GDP per person employed being as low as 1.39% of that in USA. GDP per person hour employed is even lower at 1.18 % obviously implying that the hours of work per person in India is higher than in the USA.

Table 12.18

LABOUR PRODUCTIVITY LEVELS IN INDIA AND USA IN 2000 (US \$)

	Actual		PPP Adjusted		Indias Labour Productivity as percentage to USA's	
	India	USA	India	USA	Actual	PPP Adjusted
GDP per person employed	1033	73888	5452	69193	1.39	7.90
GDP per person employed per hour	0.458	38.52	2.42	36.08	1.18	6.70
GDP per person employed in Agriculture	501	51695	2696	48410	0.96	5.57
GDP per person employed in Industry	2110	85911	11267	8451	2.46	14.00
GDP per person employed in Services	2116	70930	11833	66422	2.98	17.81

Source: Based on IMD (2001)

12.272 In Table 12.19, we have figures of labour productivity growth in India in the nineties in the manufacturing sector vis-à-vis in other countries from both the developing and the developed world. We have relied on the ILO's latest key Indicators of the Labour Markets 2001-02. It is found that though labour productivity in India has grown at a rate higher than that of many in the developed west (Germany 2.2,

UK:2.0, against India's 3.5, all percent per annum compound, during the nineties), we have been lagging significantly behind our Asian competitors. For instance, China recorded a high productivity growth rate, as high as 6.1% per annum (on the basis of official figures). Taiwan and Korea also made rapid progress in productivity, at 4.8% and 8.9% per annum respectively.

Table 12.19
Labour Productivity in India and other Countries

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Annual Compound rate of Growth (%)
USA	51148	51259	53222	54948	58276	61519	63161	65775	68168	72228	3.5
France	39798	40777	42309	42518	45924	48185	48461	51915	52657	53833	3.1
Canada	41360	40975	43118	45525	48348	48594	48191	50178	49709	51347	2.2
Germany	36791	37623	37238	36434	38457	40278	41686	42722	-----	-----	2.2
Australia	29655	30286	30932	32135	32140	32899	33187	33551	33596	38227	2.6
Taiwan	16766	18277	19114	20377	21569	23175	24548	24686	25102	26857	4.8
Netherlands	38370	38407	38693	38854	42845	44890	45824	46289	47422	48439	2.4
Sweden	35746	36169	39393	42326	48970	50471	51647	55227	56325	58120	5.0
Japan	44695	45592	44462	43624	44220	47838	51071	53223	51662	53126	1.7
U.K.	31764	32814	35282	36622	38136	37763	37256	37562	37423	38648	2.0
Korea	12659	13548	14751	16152	27756	19413	21194	23644	25164	29824	8.9
(Rep. Of)	12659	13548	14751	16152	27756	19413	21194	23644	25164	29824	8.9
Indonesia	3651	3908	4145	4339	3950	4688	4918	4972	4947	4361	1.8
China	3644	2797	3148	3608	4167	5357	5070	5530	-----	-----	6.1
India	2719	2481	2538	2702	2972	3328	3529	3526	3590	-----	3.5
India as	5.32	4.84	4.77	4.92	5.10	5.41	5.59	5.36	5.27	---	---
% to US											

Source: Based on ILO2002

12.273 Tables 12.20 give the comparison of labour productivity amongst Asian countries. A comparison of labour productivity indices of Asian Countries for the period 1988 to 1995 reveals that the rate of growth in labour productivity has been highest in Malaysia, followed

by China, Singapore, Korea, Nepal, Hong Kong, India, Pakistan, Japan, Phillipines and Iran. India's position is 7th among the 11 Asian countries. Average productivity of the Chinese worker seems to be about 20 % higher than that of the Indian worker.

Table: 12.20

LABOUR PRODUCTIVITY IN ASIAN COUNTRIES:

SL.No:	Country	1987	1988	1989	1990	1991	1992	1993	1994	1995
1.	Malaysia	100	105.55	111.24	116.66	122.91	128.67	133.75	141.85	151.25
2.	Republic of China	100	106.71	113.38	119.14	125.77	131.28	137.76	143.58	150.50
3.	Singapore	100	106.10	111.24	113.34	118.61	121.85	133.21	141.66	149.53
4.	Republic of Korea	100	107.88	110.24	116.91	124.33	128.20	133.05	140.64	149.24
5.	Nepal	100	106.24	111.18	115.79	122.34	127.05	130.25	139.50	142.47
6.	Hong Kong	100	105.99	109.10	113.23	117.23	125.03	128.92	131.24	134.93
7.	India	100	100.73	111.78	115.73	117.12	114.42	119.05	120.42	125.61
8.	Pakistan	100	105.39	106.92	108.66	118.54	122.65	121.29	123.02	125.29
9.	Japan	100	104.40	110.13	114.06	116.18	116.24	115.25	116.20	117.97
10.	Phillipines	100	103.27	107.90	107.82	105.10	101.32	101.25	102.66	105.53
11.	Iran	100	89.28	89.02	96.51	103.37	105.28	106.32	104.04	104.58

Comparison of Labour Productivity and Overall Productivity in 49 countries:

Table: 12.21

Labour Productivity (PPP)
Estimate: GDP(PPP) per person
employed per hour. US\$

Ranking	Country	US\$
1.	Luxembourg	41.90
2.	Belgium	39.95
3.	France	73.72
4.	Italy	36.64
5.	USA	36.08
6.	Ireland	34.75
7.	Denmark	34.72
8.	Norway	33.75
9.	Austria	33.19
10.	Germany	32.76
11.	Finland	31.63
12.	Australia	30.97
13.	Netherlands	30.45
14.	Spain	30.01
15.	Canada	29.75
16.	Switzerland	27.73
17.	Sweden	27.02
18.	Japan	26.69
19.	U.K.	26.63
20.	Iceland	26.34
21.	Israel	24.89
22.	Greece	24.11
23.	Taiwan	23.93
24.	Hong Kong	23.37
25.	New Zealand	22.73
26.	Singapore	21.66
27.	Portugal	20.55
28.	South Africa	19.65
29.	Argentina	18.49

Table: 12.22

Overall Productivity (PPP)
Estimate: GDP(PPP) per person
employed US\$

Ranking	Country	US\$
1.	Luxembourg	73,999
2.	USA	69,193
3.	Belgium	68,402
4.	Italy	63,460
5.	Ireland	62,486
6.	France	59,856
7.	Denmark	58,570
8.	Norway	58,389
9.	Austria	56,389
10.	Canada	56,262
11.	Germany	55,297
12.	Finland	54,497
13.	Australia	54,174
14.	Taiwan	52,072
15.	Spain	51,731
16.	Switzerland	51,446
17.	Netherlands	51,342
18.	Iceland	51,117
19.	Hong Kong	50,971
20.	Sweden	50,262
21.	Japan	49,741
22.	Israel	49,558
23.	U.K.	48,811
24.	Singapore	43,056
25.	Greece	42,914
26.	New Zealand	42,571
27.	South Africa	42,040
28.	Korea	38,034
29.	Argentina	37,067

Ranking	Country	US\$	Ranking	Country	US\$
30.	Korea	18.35	30.	Portugal	35,710
31.	Slovenia	17.36	31.	Slovenia	35,564
32.	Hungary	15.69	32.	Hungary	31,182
33.	Czech Republic	14.38	33.	Czech Republic	29,312
34.	Slovak Republic	13.11	34.	Slovak Republic	27,626
35.	Poland	12.63	35.	Chile	25,767
36.	Chile	11.48	36.	Poland	23,618
37.	Estonia	10.83	37.	Malaysia	21,159
38.	Turkey	9.96	38.	Estonia	21,065
39.	Russia	9.93	39.	Turkey	20,663
40.	Malaysia	9.64	40.	Mexico	20,511
41.	Brazil	9.33	41.	Russia	18,104
42.	Mexico	8.66	42.	Brazil	16,493
43.	Venezuela	7.29	43.	Columbia	15,212
44.	Columbia	6.97	44.	Venezuela	14,258
45.	Thailand	5.59	45.	Thailand	11,696
46.	Philippines	4.94	46.	Philippines	10,694
47.	China	3.47	47.	China	6,884
48.	Indonesia	3.14	48.	Indonesia	6,660
49.	India	2.42	49.	India	5,452

12.274 Tables 12.21 and 12.22 are from the World Competitive Year Book 2001. They indicate the comparison of Labour Productivity (PPP) and Overall Productivity (PPP) in 49 countries. The comparison reveals that in India Labour Productivity as well as Overall Productivity (PPP) are the lowest, i.e. we are in the 49th position.

12.275 If we continue to be at the lower end of labour productivity and overall productivity, we will not be able to hold our own in global competition. Our companies will continue to incur losses and there will be growing industrial sickness leading to the closure of a large number of unviable units causing loss of jobs to millions of workers.

12.276 We have therefore to make our industries competitive by adopting suitable changes in the existing policies.

Wages and Productivity

12.277 The wages in the organised sector are decided mostly by collective bargaining. Wherever necessary, the government intervenes in the wage determination process. The government has been fixing minimum wages for different occupations and also linking these wages to dearness allowance.

12.278 An ideal wage policy should aim at a minimum wage and progressive rise in real wages. But any sustained improvement in real wages cannot be brought about unless it is accompanied by corresponding improvements in productivity. Hence linking of wages to productivity is of the utmost importance. There are various misconceptions about productivity and therefore it is necessary to have a clear idea about productivity.

12.279 The Seventh Plan (1987-92) summarised the objectives of a wage policy as "a rise in the level of real income in consonance with an increase in productivity, promotion of

productive employment, improvement in skills, sectoral shift in desired directions and reduction in wage disparities".

Single and Total Factor Productivity

12.280 Productivity is the ratio of output to inputs and is a measure of efficiency of production. Productivity can be total factor productivity or single factor productivity. Single factor productivity refers to output per unit of an individual input such as labour or capital. A commonly used measure is labour productivity which can be defined as –

$$\text{Labour Productivity} = \frac{\text{Output}}{\text{Labour units}}$$

12.281 Similarly we can define the productivity of capital or any other input. It may be possible that labour productivity may be increasing, as a result of infusion of more capital inputs, therefore it is useful to look at the productivity of the entire bundle of inputs. This is called Total Factor Productivity (TFP) and is defined as

$$\text{TFP} = \frac{\text{Output}}{\text{Entire bundle of inputs}}$$

12.282 For technical reasons, we generally look at the Total Factor Productivity Growth or TFPG. This is defined as the difference between the growth of output and the growth of inputs (suitably weighted).

12.283 Thus TFPG is that part of output growth which is not explained by an increase in input use. In this sense, positive TFPG reflects technical change and any other improvements in the management of resources. At the level of the firm, improvements in productivity lead to lower costs and possibly higher profits. The workers will also get a share in productivity gains in the form of higher wages or higher profit sharing bonus or both. If we take the economy as a whole, increased productivity means lesser costs and proper utilisation of resources. There will be more goods available in the market at a reasonable price, with enhanced income, workers will have opportunities to consume more and of course a greater variety of products to choose from. In the long run, this will ensure higher standards of living to all. Thus,

TFPG = (Growth of output) – (Growth of weighted inputs)

In the short run, increased efficiency results from improvements in managerial efficiency and organisational competence, innovation, fuller utilisation of capacity, economies of scale, and improvement in labour management and skills. This is not an exhaustive list and anything leading to more efficient resource management is identified as productivity gain. Much depends upon the innovative skills of the management and the willing cooperation of workers.

Relations between Liberalisation and Productivity

12.284 During the last two decades, several developing and socialist economies that had followed highly interventionist and import substituting policy regimes implemented a radical policy shift in terms of reducing government intervention and opening up of their economies to international trade and investment. Some of these economies have achieved rapid economic progress during the post-reform period. Therefore, it is generally believed that developing economies benefit from free international trade and flow of investment from developed economies, free flow of technology,

access to international markets and internal and external competition.

12.285 An increase in competition puts a downward pressure on prices and profits thereby providing a challenge to which firms have to respond. They have to increase their technical efficiency, reduce their costs, improve managerial efficiency, have higher productivity of labour, better capacity utilisation and more innovations. The resultant increase in the efficiency of use of resources can be interpreted as increase in productivity.

12.286 Liberalisation enables cheaper and easier access to foreign technologies, global capital, imported inputs, and makes possible greater international exchange of information.

12.287 However, it is not an automatic process. A developing economy needs to have a certain level of human capital, and technological and industrial endowments in order to reap the benefits of free trade and liberalisation. The ability to put new ideas and technology into productive activities requires resources and skills and right kind of incentives.

Post-Liberalisation Effects in India

12.288 What is the effect of the policy of liberalisation on productivity improvement in Indian industries? Have we gained as a result?

12.289 Researchers and academicians appear to be divided on this issue. The National Council of Applied Economic Research undertook a special study on "The impact of India's economic reforms on industrial productivity, efficiency and competitiveness". This study was sponsored by the IDBI, and the NCAER had taken 3000 firms as the sample size. According to this study, there is some evidence that suggests that even the limited reforms of the mid-seventies and the mid to late eighties engendered higher Total Factor Productivity Growth (TFPG), and that this was conducive for higher economic growth. Further, the available evidence also suggests that the positive impact of liberalisation on firm level productivity and efficiency depend on factors such as the availability of long term finance, access to imported inputs and the ability to export.

12.290 At the same time, the NCAER Study has drawn the conclusion that productivity and efficiency of Indian industry during the nineties has been worse than in

the eighties. The total factor productivity growth rate during the 1990s is lower than during the 1980s. NCAER has also drawn the conclusion that there are certain exogeneous factors that are relevant in this context. The study mentions the poor quality and slow growth of infrastructure facilities such as power, roads, ports, transport and communications acting as a serious drag on industrial productivity and growth. In spite of these factors some sectors of industry have recorded increased TFPG than others.

12.291 Mrs. I.J. Ahluwalia⁴, in her study observes that the improved productivity performance of the 1980s was a consequence of policy changes of liberalisation, initiated in the mid 1970s. Her cross country analysis indicates that both import substitution and capital intensity have had a negative effect on productivity while output growth and scale have had a positive effect. Mr. P. Balkrishna and K. Pushpangadan⁵ have taken objection to these conclusions. According to them establishing accelerated productivity growth in the 1980s is contingent on the use of single deflation, a procedure which is flawed in principle. According to them

there is no credible option to double deflation when working with value added as the output measure in physical terms. Mr. B. Golder found that both competition and greater availability of imported inputs had a positive impact on productivity.⁶

12.292 All these analyses relate to the organised manufacturing sector of Indian industry. There are very few studies that have analysed productivity trends in the small-scale or unorganised sector of manufacturing industry in India. This is obviously because of the inadequacy of data.

12.293 J. Unni, N. Lalitha and Uma Rani have attempted an analysis of trends in total factor productivity in both organised and unorganised sectors of Indian industry.⁷ Following is their summary table.

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⁴ Ahluwalia I.J (1991) Productivity and Growth in Indian Manufacturing, Oxford University Press, New Delhi
⁵ P. Balkrishnan & K. Pushpangadan: TFPG in Manufacturing. The 80s visited EP Weekly Jan. 26,2002
⁶ Golder B (2000): Productivity Measurement in Indian Manufacturing: A Brief review A paper presented at the workshop on Productivity measurement in India – Institute of Eco. Growth, New Delhi Dec.20-22, 2000
⁷ Economic Reforms and Productivity Trends in Indian Manufacturing: J. Unni, N. Lalitha, Uma Rani, E.P Weekly October 13, 2001 P3914

**Growth of Total Factor Productivity Labour Productivity in
Organised and Unorganised Manufacturing Sector in India**

Table: 12.23

Years	Organised		Unorganised	
	TFPG	Labour	TFPG	Labour
1978-85	-0.26	4.2	-14.57	7.6
1985-90	4	7.9	11.37	-6.8
1990-95	-1.28	11.9	-3.13	7.5
1978-90	1.13	5.9	-2.66	1.1
1978-95	-0.1	7.8	-2.47	3.1

12.294 According to the table cited above, during the period 1978-85, India has experienced a decline in TFP in both organised and unorganised sectors at the All India level. The TFPG was high in the pre-reforms period, but appeared to decline in the reforms period. During the entire period the growth of employment was higher in the unorganised sector, and this has resulted in lower labour productivity growth compared to the organised sector.

12.295 The growth of value added, employment and capital in the organised manufacturing sector in the country as a whole moved forward

after the introduction of economic reforms. However, this growth was achieved with an inefficient use of resources as reflected in the declining and negative total factor productivity. This is the conclusion that the Study has drawn.

12.296 There is another angle to this. Murli Patibandla and B. V. Phani have addressed the issue of explaining industrial productivity by micro level factors.⁸ They do not discuss whether the productivity has

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Murli Patibandla & B V Phani: Market Reforms and Industrial Productivity E P Weekly Jan.5, 2002 p. 59

increased or decreased after the reforms. According to them, the studies that show increase in productivity at the aggregate level, are theoretically flawed. In any given industry, some firms could adjust more efficiently to the changed market conditions; and others who could not adjust, remain inefficient and slowly die out. In the short run, the inefficient remain or exist in the industry. In such a case, the average productivity of the industries may not show any increase owing to the existence of both efficient and inefficient firms. The opening up of the economy has certainly helped some firms who have more exposure to international trade. They are open to the free flow of new ideas and technologies, and as a result the idea gap is reduced. They have also the ability to adjust to the changed market conditions.

12.297 Thus one can say that the policy of economic liberalisation has certainly helped some Indian firms who have the ability to face international competition. They would always, try to reduce the cost, use the inputs more efficiently, try to innovate and such firms are likely to have more total factor productivity growth. Indian industry can be

efficient only if we have more firms of this type in any industry.

12.298 We have already seen that wages in the organised sector are decided mostly by collective bargaining, and much depends upon the bargaining strength of the management and trade unions. Generally, the practice has been to revise wages, allowances of all types and other facilities given to workers every three years. Now some enterprises are signing agreements for five years. But this has been the recent trend. So far wage rises have not been linked to productivity and profitability conditions. This had worked well because we were not facing competitive conditions. Now after the introduction of policies of economic liberalisation, these conditions have changed. Indian industry has suddenly become cost conscious and any effort to reduce cost and increase the efficiency of an organisation are now welcome. As a result a large number of industrial undertakings are resorting to cost cutting exercises and are resorting to reducing the number of workers by resorting to VRS and outsourcing. This raises the question of the links between productivity or cost reduction and wages or wage increases.

12.299 One extreme way of linking wages to productivity is to introduce a "share contract" system for giving compensation to workers. The share contract wage moves down with poor earnings so that labour costs adjust quickly without resort to lay offs.

12.300 But this system will introduce a lot of uncertainty about the incomes of workers. Moreover, workers and their unions may not believe the employers and the truthfulness and transparency of their book-keeping practices. This will lead to disputes about the profitability or otherwise of the company. Therefore, this practice of share contract does not seem practicable in a country like India today.

12.301 We are still left with the question, how can wages and productivity be linked?

12.302 An ILO-National Tripartite Workshop (1996) observed that there was no operationally effective mechanism for linking wage changes to changes in productivity or profitability. It was suggested by the Tripartite Workshop that income stability for employees in the organised sector should be ensured

through full indexation of the basic wage while bonus and wage revisions should be related to productivity and profitability.

12.303 Productivity of labour (net value added per worker) in the organised sector was generally found to vary with changes in capital intensity and the ratio of salaried staff to total employees. In addition to productivity, wages were influenced by capital intensity, the ratio of salaried staff to total employees, the ratio of wages to value added, and the consumer price index.

Productivity Linked Wages⁹

12.304 If a productivity linked wage system is to succeed, it would need the involvement and commitment of all the parties, particularly the employers and the unions in coming up with a productivity linked wage system acceptable to all. As we have pointed out, productivity emerges from an integrated approach and hence all, from the top management to the bottom rung of workers, should

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⁹ A Note prepared by National Productivity Council for National Commission on Labour on linking of wages and productivity.

share the gains from increased productivity. Wages for various jobs reflect differences in skills and provide necessary incentives for skill upgradation. The variable wage element can be determined with the participation of employees at the individual, group, company, or national level.

12.305 In a productivity linked wage system, the wage structure will consist of a basic wage and a variable component. The former reflects the value of the job within the market, while the variable component provides the flexible linkage with a measure of performance based on either the performance of the economy, the company or the individual. The wage structure will then be:

Total wage = Basic Wage + Variable component (Depending upon productivity)

12.306 The key elements of fixed and variable components include:
Basic Wage

- Annual Increment (wherever mentioned in the agreement)
- Contractual Bonus (where applicable)

Variable component

- Wage increases based on the productivity/profit sharing formula

Basic Principles of productivity wage reform should include the following:

- Wages should aim at providing an adequate standard of living to workers.
- Wage increase must take into account the company's ability to pay and the performance of the employees.
- Wage must reflect the value of the job.
- There must be variable components to accommodate business cycles.
- Wage increase must be commensurate with productivity growth.

12.307 The methodology to be applied for deciding the variable part has to be negotiated and decided by mutual agreement by unions and management, and will involve technical time and motion studies. There are various methods available and there are also expert industrial engineers to undertake such studies and evolve a commonly acceptable solution. The local Productivity Councils do provide training to trade union leaders on greater details about these techniques.

12.308 The methodology to link wages with productivity will depend on the nature of the enterprise, and the formulae used can be determined by consensus between employers and the employees. The following are important for successful implementation:

- (i) Wage reform at the macro level must be a tripartite effort among the Government, the Unions and Employers.
- (ii) There must be allowances for a phasing period, during which adjustments and changes could be made.
- (iii) Real built-in wage increases should be tuned to productivity growth.
- (iv) At the micro level, there must be satisfactory labour management relations and mutual trust and understanding.
- (v) There should be sharing of relevant information.

12.309 The productivity wage system may be applied company-wise.

12.310 The typical characteristics of the system are:

- Employee involvement
- Linkage of a portion of wages with performance at individual, group and company level
- Improvement of work culture
- Recognition of job differentials and skill development

12.311 Indian experience reveals that linkages between wages and productivity can at best be partial. If the objective of the linkage is to limit inflationary pressures then wage increases should be restricted to improvements in labour productivity, making the unit cost constant. The linkages can be used for making wages more flexible in tandem with the market conditions. Wage productivity linkage can also improve the economic performance through paying higher wages or bonus for making extra efforts to achieve the performance goals.

12.312 Wage – productivity linkages vary depending on the objective viz., labour cost containment, wage flexibility, or worker motivation etc. When wage cost containment is the paramount concern, a conventional measure of labour productivity is generally used, i.e., output divided by

a measure of labour input. When wage flexibility is the objective, and when the objective is worker motivation, wages linked with productivity can take a number of forms.

12.313 The most common method used involves worker incentive schemes, the traditional payment-by-results schemes (piece-work etc.) rating or performance appraisal systems. Motivation may also be enhanced through a variety of bonus schemes based on measures of collective performance. Other performance measures used for calculating collective bonus incentives are based on quality, machine utilisation, or savings in raw materials, energy, or other costs. Increases may also be granted in anticipation of productivity improvements linked with changes agreed upon in work methods, as specified in so-called productivity bargaining. The feasibility of identifying suitable performance measures will obviously vary with the circumstances of individual enterprises and groups of workers.

12.314 In the foregoing paragraphs, we have tried briefly to state some of the considerations that have been

urged on the question of linking productivity and wages. We have not put forward any formula because the time and resources at our disposal did not permit an exhaustive and satisfactory study, and because there was no specific mandate to us to propose such a formula.

Productivity Agreements

12.315 Our attention has been drawn to the fact that, in a good number of industries now productivity agreements have been signed.

12.316 We have already seen that productivity is not merely labour productivity. Labour productivity can be improved without economising on the use of labour as an input. By seeking the co-operation and commitment of workers and by sharpening their skills and attitudes, employers can raise productivity through better use of other resources. This is what some of these agreements have proposed to do. We shall cite a few of them.

12.317 The common interpretations of productivity in recent years include the following:

1. Waste reduction in all forms.
2. Working intelligently, not merely putting in hard work.

3. People will take action for productivity improvement only when they are convinced about the rationale and usefulness of the action.
4. Positive involvement and commitment of workers and unions.
5. Change as a continuous process in terms of technology, materials, products, processes, etc.,
6. Productivity is a multi-dimensional concept. It depends on quantity, quality and features of products and the efficiency and effectiveness with which they are produced.

12.318 The productivity linked wages settlement by Southern India Textile Association is a unique example of joint agreement of systematic assessment of work loads and the principle of sharing by workers of 50% of the savings by the total category of basic workers. 30 Mills were party to the agreement.

12.319 The TI Cycles entered into an agreement, during the period it was faring badly, providing for DA linked to productivity instead of inflation. After three years, however,

the DA's linkage with inflation was restored.

12.320 INDAL's Belur Unit links bonus not to profit, but to overall plant efficiency and output.

12.321 In juxtaposition, Madura Coats agreed for higher bonus prospectively for the next three years, and ONGC started the practice of giving ad hoc fixed performance and productivity allowances.

12.322 Incentive schemes are increasingly being calculated on the basis of pre-determined plant efficiency parameters. Eicher Goodearth scrapped its incentive scheme and introduced, in its place, Total Quality Allowance (TQA) based on 13 parameters.

12.323 Kirloskar Oil Engines Ltd. entered into an agreement whereby the management would demonstrate actual working of a job and time taken to complete a job in case there is a difference over the attainability of the standards prescribed.

12.324 Bombay Mills have agreed to pay 4% allowance for 7 days working, 3% allowance for working during recess period and 1.5 times the wages for working on holidays.

12.325 Many agreements begin with opening paragraphs about productivity, work culture and the role to be played by the union and the management. The agreement that Bajaj Auto entered into is an example:

“PRODUCTIVITY, QUALITY, WORK CULTURE, TIME STUDY AND EXPECTED PRODUCTION OUTPUT

“The Union and the Company agree that in view of the increased competitive environment in the domestic and global markets, the company can survive, let alone prosper, only by gaining competitiveness and improving levels of production, productivity and ensuring better quality in all its operations and activities by means of maximum utilisation of plant, machinery, equipment, human and other resources at its disposal. Therefore, both the parties agree to achieve higher output and man/machine utilisation by continuously reducing cycle time, work simplification, up-to-date maintenance, upkeep of machines and tools, toolings, gauges, fixtures, reduction in consumption of consumables and energy and by use of improved and latest technology. The Union and the

Company also agree to ensure continuous improvement in productivity and quality in all the operations of the Company. Further, the Company and the Union acknowledge that the conditions in two and three-wheeler industry are fast changing due to improvements in technology and the emergence of competitive markets where the buyer dictates the terms and therefore it is absolutely imperative that higher quality products are to be consistently produced at lower costs.

“The Union agrees that the company will continue to conduct time studies to decide the rate of production (output rates) and all workmen shall give the production as per the output rates fixed by the Company. The Union also agrees that these output rates may change from time to time by retime study, depending on changes in work methods, raw material, jigs, fixtures etc¹⁰.”

12.326 Similar provisions can be found in many agreements signed recently.

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¹⁰ Dr. C.S. Venkatratnam: Collective Bargaining 2001 – A research project sponsored by Planning Commission, Govt. of India

12.327 "In view of the globalisation of the economy leading to a competitive environment the union and the company recognise the need to improve production and productivity".

12.328 "Survival in the demanding business environment calls for a greater degree of working together and sharing together to bring about higher and higher degree of qualitative performance".

12.329 "Workers shall extend wholehearted cooperation for optimising performance of the company at all levels".

12.330 "Purpose of the agreement is to increase the level of productivity and to improve it further".

12.331 "Purpose is to become more versatile, more flexible and more innovative so that the company can be more competitive".

12.332 All these indicate that both managements and workers are aware of the changed economic environment and the need for working together to enhance productivity.

Special Provisions in Collective Bargaining

12.333 Collective bargaining provisions in wage agreements have come to provide for an element on contingency based on individual/group/organisational performance. They are manifested in one or more of the following ways:¹¹

- a) managerial discretion in setting new norms of production/productivity;
 - b) Proportionate deductions if standard output is not achieved;
 - c) two – tier wage agreements;
 - d) linking dearness allowance to cost of production rather than to cost of living;
 - e) wage cuts/freezes in sick enterprises and
 - f) arbitration.
- (a) Managerial discretion in setting new norms:

Several collective agreements provide for incentive schemes, but few attempt to link wages with productivity and/or bonus. Very few companies – Eicher Goodearth, in New Delhi,

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¹¹ Agreements of Industrial Companies

pioneered it in 1990 – withdrew incentive schemes altogether, clubbed average incentives for the past three years with salary, and announced that workers must do what management asks them to do. The agreement in Bajaj Tempo Ltd., Akurdi, Pune (19th April 1993) provides that: (a) Union will be provided information regarding the issuance of new norms; (b) workers who fail to achieve the norms are liable for disciplinary action and denial of all allowances; and (c) management decision with regard to work norms and work-load will be final and binding on all concerned daily and monthly-rated workmen.

- (b) Proportionate deductions if standard output is not achieved:

The agreement in Asian Paints Ltd., Cochin (Kerala) provides that, “———wages agreed upon in this settlement are for standard output..... and any persistent shortfall in the output will attract proportionate deduction in the wages payable for the period.”

- (c) Two – tier wage agreements:

When existing collective agreements are revised, some

companies have created new grades which start at a lower basic wage than is provided to similar jobs/grades as per earlier statements. This does not seem to conflict with the Equal Remuneration Act in India which is concerned solely with gender based discrimination. However, recognising the impact of such discrimination on team work, many agreements provide for tapering off the differences over a three year period. There are exceptions as the agreement in Mahindra and Mahindra and Larsen and Toubro reveal.

In Mahindra and Mahindra Limited, Igatpur Plant, Nasik the agreement dated 24th April 1995 provides for increase in effective working time by 10 minutes per shift/person: “The Union and the workmen have agreed to work for 420 man minutes as Effective Working Time” per shift. In addition to the above, the union and the workmen have agreed to carry out work related activities such as filing of production/pre-control charts, minor setting, minor maintenance including oiling, greasing and cleaning of

respective machines, equipments and jigs-fixtures etc., in each shift and for this purpose they will work for an additional 10 minutes on average per shift. Thus in the first and second shifts of 480 minutes duration there will be effective utilisation of 430 (420+10) minutes.

It was agreed in the agreement in Larsen & Toubro Limited, Powai Works, Mumbai (30 December 1993) covering daily rated workmen and monthly rated technical staff that "effective working hours for the Day shift (General/First shift) shall be reduced to 45 hours per week (from 48 hours).

Flexi-time is yet to be introduced through collective agreements. The problem that many employers face concern utilisation of the agreed working hours. In the past guaranteed overtime agreements were not uncommon. In recent years, agreements provide that such overtime will be paid only if people are physically present. Interestingly, the thrust is on presence, not work. It confirms that in the past, it was

possible, due to norms established through collective bargaining, to claim predetermined overtime without being physically present, let alone working, for the extra hours.

The main thrust of the agreements on working hours concerns punctuality and regularity in attendance. With the result, many companies have begun to link payment of a variety of benefits like canteen allowance, conveyance allowance, etc., to attendance on top of the attendance bonus. In rare cases even house rent allowance and children's education allowance are linked to employee's attendance. A few firms have also given attendance bonus if any employee does not avail any leave for the first three years; (a) from the company's point of view a fresh worker takes at least three years before he or she rises to peak performance on the learning curve; (b) from the union's point of view, loyal, long serving members should have better reward than fresh employees who may or may not have joined the union yet.

- (d) Linking dearness allowance (cost of living allowance) to cost of production:

This is done on an exceptional basis in chronically sick companies. For example, T.I. Cycles in Madras attempted this in 1984 for a couple of years. Once the company began to earn profits the union requested the management to link dearness allowance back to cost of living index which the management accepted. In quite a few sick companies dearness allowance was frozen for a limited period.

- (e) Wage Cuts/freezes:

Wage cuts and temporary freezes on employee benefits and allowances are common in sick companies deep in debt or facing funds crisis. Wage cuts upto 30% are usually regarded as a trade off against job cuts. Freezes are considered as a temporary contribution to tide over a financial crisis. In the Fifth round of wage negotiations in the public sector during 1993-95, nearly one-fourth of the 240 central public sector undertakings (CPSUs) did not have wage revision agreements even though

most of the existing agreements expired on 31 December 1991. Such companies lost one round of wage revision covering the period 1992-96. The Sixth round of wage revisions covering the period 1997-2006 will also be skipped in these 'sick' companies because of the increases in wage cost. Wage cuts and freezes take place in the sick private sector units too.

- (f) Arbitration:

Wherever there is any dispute between trade unions and management on time study and work measurement, disputes are not settled through courts, but through technical experts. In many agreements in the Pune region, these disputes are referred to industrial engineers of the Poona Division Productivity Council whose decision is binding on both the parties. This willingness to abide by the verdicts of technical experts is something new.

12.334 In linking wages with productivity and in effectively implementing such a scheme, the

primary responsibility lies on the management. Technology, processes and people are the major sources of productivity. The scope of technology has extended far beyond production, to cover materials, processes, packaging, energy, maintenance, transportation, logistics, dispensing, recycling etc. Secondly, various processes can also contribute to productivity. Industrial Engineering, Operation Research Technique, SQC, TQM, ERP, CRM, SCM and simple techniques like Quality Circles all add up to improve productivity. The third factor is people. If they are handled properly people can unlock the productivity latent in themselves.

12.335 Such a change cannot be brought about without co-operation between unions and management. The co-operation of workers is crucial in all efforts to increase productivity. It is the responsibility of the management as well as the union to bring about the culture of co-operation on which productivity depends. The Government too has its share of responsibility to ensure the infrastructure that is needed to assure and improve productivity – roads, power supply, communications, quick administrative responses, elimination of corruption, transparency and so on.

Wage Determination:

12.336 Thus, the factors that are relevant to wage determination can be briefly recounted:

- a) Recommendations of various Committees appointed by the Government for the purpose.
- b) Various judicial pronouncements and the principles enunciated therein from time to time.
- c) Capacity of an industry to pay.
- d) Bargaining strength of the negotiating union of workers.
- e) Regional wages prevailing in that region.
- f) Prices, profits and productivity.

Recommendation:

12.337 We therefore, strongly recommend that, in view of the

- a) Constitutional commitments to a fair wage;
- b) The international agreements or Declarations that we have accepted on the social need and responsibility for a fair wage;
- c) The reports of Committees and Commissions and the judgments of the Supreme Court on minimum wages, fair wages and related matters,

- d) The economic link between a fair wage and the capacity to pay;
 - e) The relation between the capacity to pay, prices, profit and productivity;
 - f) The new methods that have emerged to promote as well as to assess productivity;
 - g) The gradual withdrawal or weakening of the control of the state in economic matters (including wage fixation) that has followed globalisation;
 - h) The crucial and continuing importance of the quantum and regular payment of minimum wages in the vast and dispersed areas of the unorganised sector where more than 90% of the working population are engaged, and where weak organisation and poor public awareness further weaken the bargaining power of workers;
 - i) The experience that all social partners have gathered in this field in the last half century;
 - j) The view that the diversity in conditions within States and between States makes it necessary for us to approach a national uniform minimum wage through effective enforcement of regional minima within regions in the States, and States in proximate regions;
 - k) The view that with globalisation, market forces will increasingly influence wages; and
 - l) The countervailing (opposite) view that globalisation and the consequent job uncertainty have made it all the more necessary to ensure fair and just wages and social security through the intervention of legislation and the machinery of the State and public bodies;
- The Government should appoint a high power committee consisting of representative of Trade Unions, entrepreneurs, State and Central Governments, academicians, social activists, and other concerned and competent groups to study the question of fair wages and minimum wages and make recommendations on methods of determination and revision, quanta, methods of enforcement, relation to capacity to pay, the socially desirable linkages with productivity, and other relevant matters.

- IV -

LABOUR STATISTICS AND RESEARCH

12.358 In these days of information revolution, it is hardly necessary to emphasise the need for collecting statistical information on labour related matters, gathering intelligence and undertaking research on these subjects. Statistics emanate as a byproduct of administration of labour laws or are collected directly by sample surveys or census operations. The information is basically utilized for:

- Framing suitable labour policies
- Understanding working and living conditions such as safety, health, social security, welfare of labour etc.
- Formulating policies in respect of such target groups as women, child labour and workers in the unorganised sector
- Monitoring industrial relations and industrial disputes
- Enforcing labour laws and dealing with difficulties encountered by employers and employees

- Assessing the nature of employment and unemployment, the skills required for different jobs, gaps in the skills development programs etc.

12.359 The Government plays the role of protector, facilitator and regulator in the economic development, and in order to play this role effectively, it requires a comprehensive, up-to-date, reliable and authentic data base.

12.360 The collection of statistics is the primary responsibility of the Government and it cannot be delegated to NGOs and private individuals.

Recommendations by various Committees

12.361 A number of Commissions and Committees have emphasized the need for regular collection and publication of labour statistics. The Royal Commission on Labour (1931) underlined the need for collection of reliable and representative data on labour related matters. It also recommended the enactment of a Statistics Act for collection of data from employers, merchants and others.

12.362 The recommendation was acted upon in 1942, when the Industrial Statistics Act was passed to enable the systematic collection of data about factory workers. The Government of India had already set up the Rau Court of Inquiry in 1940 under the Trade Disputes Act. It recommended the compilation and maintenance of cost of living index (CLI) numbers so that demands for higher wages could be considered on the basis of C.L.I. Accordingly, the Directorate of Cost of Living Index Numbers was set up in Shimla in 1941. This Directorate was reincarnated as the "Labour Bureau" in October 1946 to collect, compile and publish labour statistics on an all India level. The Bureau was also entrusted with the work of construction of consumer price index numbers for selected centres, and also at all India level.

12.363 The first National Commission on Labour also made a number of suggestions to improve labour statistics. It emphasised the need for carrying on research on all aspects of labour and industrial relations, and recommended the setting up of a Central Institute of Labour Research. Accordingly, the Govt. of India set up

the National Labour Institute in the year 1974.

12.364 The Government of India has made attempts to review the system of labour statistics in the country from time to time. In 1975, the Labour Ministry constituted a small working group under the chairmanship of Shri T. S. Sankaran, the then Joint Secretary for simplifying and rationalising the various registers, returns and reports prescribed under various Labour Laws. Another Committee was constituted in 1981 under the chairmanship of Dr. K. C. Seal, Director General, Central Statistical Organisation (CSO) to look into the procedures followed in compiling the primary statistics as well as simplification and rationalisation of returns. These Committees have made important recommendations. However, the implementation of these recommendations have been partial, and many of them remain unimplemented.

12.365 In January 1999, a Study Group on Labour Statistics was set up by the Ministry of Labour under the chairmanship of Professor L.K. Deshpande to review the whole area

relating to collection of labour statistics by different Ministries and Departments. The Study Group undertook a comprehensive review of the problems and existing gaps in labour statistics, and made a set of recommendations to the Government.

12.366 In August 2001, the National Statistical Commission was appointed by the Government of India under the chairmanship of Shri S. Rangarajan, ex-Governor of the Reserve Bank of India. In a separate chapter on Labour and Employment Statistics, that Commission has dealt with the subject and has made a number of recommendations to improve the timeliness, credibility and adequacy of labour and employment statistics. Labour being a subject in the concurrent list of the Constitution, without the cooperation of the State Governments, modifications and improvements in labour statistics cannot be undertaken.

12.367 On two occasions, our Commission had detailed interactions with the officers of the Labour Bureau, Shimla. We have also had discussions with officials from the

Ministry of Labour and its various attached and subordinate offices, officers of the V.V. Giri National Labour Institute, State Labour Commissioners and some academicians working in the field of labour studies. While formulating our recommendations, the Commission has given due consideration to their suggestions.

Current Status of Labour Statistics

12.368 The Labour Statistics available today broadly relate to:

1. Labour Force, Employment and Unemployment
 - Classification by industries
 - Classification by age, sex, education
 - Classification by occupation
 - Classification by status
2. Family living studies and consumer price index centrewise
3. Data on Wages
 - Wage structure and distribution
 - Minimum wages
 - Average earnings & hours of work
 - Equal remuneration
 - Labour cost

- | | |
|--|--|
| <p>4. Industrial Relations</p> <p>Industrial disputes and man-days lost by strikes, lockouts etc.</p> <p>Nature of disputes</p> <p>Regionwise, industrywise classification</p> | <p>a) Labour Bureau</p> <p>b) Directorate General of Employment and Training</p> <p>c) Directorate General of Mines Safety</p> <p>d) Directorate General of Factory Advisory Services and Central Labour Institute (DGFASLI)</p> |
| <p>5. Social Security like ESI, PF, bonus, workmen's compensation, gratuity etc.</p> | <p>e) Employees State Insurance Corporation</p> |
| <p>6. Productivity and productivity indices</p> | <p>f) Employees Provident Fund Organisation</p> |
| <p>7. Workers in the Rural Area and in the Informal Sector</p> | <p>2. Agencies other than Ministry of Labour:</p> |
| <p>8. Bonded Labour</p> | <p>a) Office of the Registrar General of India</p> |
| <p>9. Emigration of Workers</p> | <p>b) National Sample Survey Organisation</p> |
| <p>10. Report on the Working of various Labour Acts every year</p> | <p>c) Planning Commission</p> |
| <p>11. Working and Living Conditions of Workers in specific areas or industries</p> | <p>d) State Governments</p> |

Agencies for collecting statistics

12.369 There are a number of Government agencies which are engaged in collection, compilation and dissemination of labour statistics in the country. They are as follows:

1. Ministry of Labour and its affiliates:

Labour Bureau

12.370 The Labour Bureau is the main agency in the country engaged in collecting statistics on different facets of labour since its inception in 1946. It has its headquarters at Chandigarh. Another main wing continues to be at Shimla. The Bureau has four regional offices at

Ahmedabad, Kanpur, Kolkata and Chennai, and a sub-regional office at Mumbai. It is headed by a Director General, assisted by a team of professionals from Indian Economic Service (IES) and Indian Statistical Service (ISS), and has a sanctioned staff strength of 597. The regional offices supervise collection of price data. The Kanpur regional office (Northern-Region) organises training programmes for primary level functionaries engaged in filing returns under various labour laws. The main functions of the Bureau include labour intelligence, which includes construction and maintenance of : a) consumer price index number for industrial, rural and agricultural workers, b) wage rate indices in respect of industries covered under occupational wage survey, c) index number of money income and real income, d) productivity indices and, e) retail price indices for 31 essential commodities in urban areas.

12.371 The Labour Intelligence also provides serial statistics on : a) occupational wage rates in mining, plantation and factory sectors and b) absenteeism, labour turnover, employment, and earnings.

12.372 The second main activity of the Bureau is 'Labour Research' by way of studies and surveys covering:

1. Unorganised sector, SC/ST labour in Urban Areas, Women Workers; Contract Labour
2. Occupational Wage Survey in the organised sector
3. Family Budget Enquiries
4. Rural Labour Enquiry
5. Annual Survey of Industries
6. Digest of Indian Labour Research

12.373 Monitoring and evaluation by collecting, compiling and disseminating data from statutory and voluntary returns under different labour laws and surveys is an important activity of the Bureau.

12.374 Evaluation studies under Minimum Wages Act have also been conducted.

12.375 Publication is another very important activity of the Labour Bureau. Their publications include Indian Labour Journal (Monthly), Indian Labour Statistics (Annual), Pocket Book of Labour Statistics (Annual), Indian Labour Year Book (Annual).

Labour Intelligence : Price Statistics

Consumer Price Index Numbers

12.376 The Consumer Price Index Numbers measure relative changes in prices over a period of time. The Consumer Price Index Numbers for industrial workers are used for neutralising effects of increase in cost of living in the organised sector. The Consumer Price Index Numbers for rural, agricultural workers are used for raising minimum wages of agricultural workers to ensure that their real wages are not eroded. The Labour Bureau publishes these data regularly for the working class on an all India basis, and also for Centres.

Consumer Price Index Numbers for Industrial Workers

12.377 Initially, the price data were collected only from a few industrial centres since after the First World War. After Independence, the family living surveys were conducted in 50 important industrial centers during 1958-59. Thereafter the centre-wise all-India Consumer Price Index Numbers for industrial workers on base year 1960 were compiled and

maintained. Presently, the base year is 1982, and 70 centres and 226 markets are taken into account. The Bureau is presently in the process of updating the base of the existing series of CPI. The price collection machinery has now been set up in 78 centres covering 291 markets. The collection of house-rent data is also undertaken.

12.378 The retail prices are collected on fixed days by part-time price collectors, generally taken from the State Governments' Directorates of Statistics/Labour Departments. The index numbers are released on the last working day of the month through press releases, nic-net and internet. The revision of D.A. is calculated on the basis of the CPI. Similarly, the minimum wage is revised by adding and recalculating special allowances on the basis of the CPI. Besides, the movement of administered interest rate is also regulated linking it to the CPI. Thus, the index number affects the labour cost as well as capital cost and indirectly it affects investment decisions.

12.379 There are many problems in constructing index numbers; a few

which are given below.

1. The delay in revising the base year in contravention of ILO Convention No. 160 and Recommendation No. 170 is a serious problem. The ILO Convention requires us to update the base year once in five years and not later than 10 years. Thus, the survey of household expenditure should be conducted every 10 years so that changes in consumption patterns and non-availability of specified items are effectively taken care of. Timely revision of the base year for index numbers has a corrective impact on the weights of various groups of expenditure. The current series is based on the base year 1982. If the on-going work relating to the tabulation of income and expenditure data, etc. go on smoothly, the base year would be revised only in May, 2003. We learn that this abnormal delay is caused by staff shortage and administrative problems, etc.
2. Revision of the present poor remuneration to price collectors/

price supervisors by the Bureau is essential to ensure the effective involvement of these field workers.

3. Inadequate training of price collectors and supervisors is another shortcoming considering the changes in the market, impact of globalisation and fierce competition.

Consumer Price Index Numbers for Rural / Agriculture Labour

12.380 Rural and agricultural workers get only wage protection under the Minimum Wages Act (MW Act), and the minimum wages are revised on the basis of CPI numbers for rural and agricultural workers by adding special allowances or D.A. to compensate increase in prices or cost of living. These CPI numbers for rural and agricultural labour are used by 20 States for fixing and revising minimum rates of wages. The Bureau releases CPI Numbers (base year 1986-87 is equal to 100). The CPI Numbers are constructed on the basis of consumer expenditure data collected by NSSO during their 38th round.

Problems and Gaps

12.381 The base year 1986-87 is too old, and does not conform to the ILO Convention. Besides, some of the items included in the consumption basket in the base year have disappeared from the market long ago, and new items have emerged in their basket. Thus, the series has become defective. Indices based on these numbers would not therefore be able to compensate rise in prices.

Wage Rate Index Numbers

12.382 The Labour Bureau compiles the wage rate index numbers since 1969 in respect of selected occupations in 21 selected industries in manufacturing, mining and plantations. The base year is 1963-65 = 100. Occupational wage survey data are utilised to build up base year, wage rates and base. The Bureau disseminates information on absolute wage rate and wage rate index numbers annually.

Problems in the WRI

12.383 The main problems in this area are: 1) Outdated base year, and 2) Limited coverage in terms of number of industries and occupations.

Retail Price Index

12.384 The Labour Bureau also compiles price indices of 31 selected essential commodities for urban areas basing results on family budgets of industrial workers (81-82). These index numbers are supplied to the Ministry of Food and Civil Supplies every month for monitoring the prices of essential commodities so as to take timely remedial action and to regulate prices. We feel it is desirable to conduct such surveys and compilation for rural areas as well.

Productivity Indices

12.385 The Bureau constructs/maintains data on productivity basing 1970-71 = 100 as base year, in respect of 35 industries. The indices are based on data contained in ASI Summary Report. Under the revised scheme, indices for 35 selected industries have been compiled upto 1988-89 and for 30 industries (due to introduction of NIC-87) upto the year 1995-96.

The series of productivity indices compiled by the Bureau has following serious limitations:

- Base Year 1970-71 of labour productivity indices is very old.

- Input-output data in respect of individual industries are not available.
- Productivity indices are not available for the economy as a whole.
- Introducing new National Industrial Classification (NIC 98) requires identification of new groups of industries as one to one concordances with industries covered in NIC 87 is difficult, and not possible.
- Faulty data and methodological problems show negative productivity indices.
- Changing geographical coverage affects comparability of data.
- The indices do not reflect differences in education, physique and psychological differences of workers as also technological changes.

Labour Research

12.386 Labour Bureau conducts research in various fields such as level of employment, technical skill, wages, etc. Studies on specific target group of workers and specific area based workers are also undertaken. There

is a research division and an implementation evaluation division in the Ministry of Labour. The National Labour Institute also conducts research. State Governments too have their research studies. However, there seems to be hardly any coordination in the research efforts. The Labour Bureau also undertakes surveys either on its own or through the NSSO.

Rural Labour Enquiry (RLE)

12.387 The data collected by the National Sample Survey Organisation (NSSO) on consumer expenditure are used for updating the base year of CPI number for agricultural/rural labour. The Bureau has been compiling and analysing data collected during these enquiries. The results are published in the reports on five different aspects viz. indebtedness, consumption expenditure, wages and earnings, and employment and unemployment after every five years. This information is used to assess the impact of programmes on rural labour. Besides, daily wage rate statistics for 18 agricultural and non-agricultural occupations are also compiled and published monthly. The index numbers are used by the

Planning Commission for estimating poverty.

Problems and Gaps.

12.388 The report on employment and unemployment does not show the overall picture of unemployment in the rural areas of the country. Further, the RLE is silent on information relating to the interregnum period of two successive rounds of enquiry. This is a handicap for policy formulation.

12.389 The wage rate indices for 18 agricultural and non-agricultural occupations should also be constructed by the Bureau as they would provide important indicators of economic developments measured in terms of the GDP, per capita growth rate etc.

Working Class Family Income and Expenditure Surveys (Family Budget Enquiries)

12.390 Among the major achievements of the Labour Bureau during the last 55 years is the compilation of CPI numbers on the basis of Family Budget Enquiries. The first Family Budget Survey was conducted by the Directorate of Cost of Living Index Numbers at 24 selected centres,

some of which are now in Pakistan or in Bangladesh. The Directorate was later rechristened as the Labour Bureau which conducted Family Living Surveys on scientific basis at 50 centres during 1958-59. These surveys are required to be conducted periodically. Accordingly, in 1970-71 surveys were conducted at 60 industrial centres. Again in 1981-82, a country-wide survey was conducted at 70 centres with extended coverage of additional sectors. The existing CPI number is based on the base year 1982:100. The Bureau has completed the Family Budget Survey in 78 centers and the work is continuing. The Bureau hopes to release the new series by mid 2003. The survey encompasses collection of information on a wide range of commodities, income and expenditure. The Commission feels that such data need to be collected frequently and regularly on a mandatory basis after every 5 years so that the base year of the CPI number may be updated in accordance with relevant ILO Convention.

Annual Survey of Industries (ASI)

12.391 The annual survey of

industries is the prime source of industrial statistics in the country. However, till 1998, the survey covered only factories, bidi and cigar manufacturing units and all electricity generating transmitting and distributing establishments, which are registered under the law. Under the Collection of Statistics Act, the survey for ASI is conducted by the field operation division of the NSSO through its network of zonal, regional and sub-regional offices.

12.392 The Labour Bureau disseminates data collected under Annual Survey of Industries Part-II of ASI Schedule which includes data on absenteeism, labour turnover, employment, mandays worked and paid, earnings and various components of labour cost, was added due to the efforts of the Labour Bureau. Presently, coverage under the census sector includes (i) units, employing 100 or more workers, (ii) all units located in less industrialised States/Union Territories Other units which are not covered under the census sector are covered under the sample sector.

12.393 In September, 1999, the ASI scheme was reviewed, and it was

decided to strengthen it by augmenting the resources of the NSSO so that the time lag in primary data collection was reduced. There are two main problems/data gaps: (i) data on earnings need to be collected every year instead of in 4 years. There is need to collect data on wages in addition to the total labour cost of units covered under the survey, (ii) the electricity establishments registered under the Central Electricity Authority were excluded from the ASI survey w.e.f. 1998-99 as data on different aspects of industry were available with the Central Electricity Authority. However, data on labour turnover, absenteeism, mandays worked, wages, earnings etc. may not be available with the Central Electricity Authority.

Occupational Wage Surveys

12.394 The industry level statistics on wages collected under the Payment of Wages Act and ASI show that wages are not uniform in the organized sector, and in different occupations. Wage statistics conceal intra-industry differences. Therefore, the Labour Bureau has been conducting Occupational Wage

Surveys (OWS). These data are of immense importance for conducting scientific studies on wage patterns and formulation of wage policy. Occupational wage surveys are the only authentic wage data by occupations in selected industries and the service sector which have importance, in national economy. This scheme is in operation since 1958-59, and satisfies the obligation of the ILO recommendations and Convention No.160. It is also the source data for evaluation of implementation of the Equal Remuneration (ER) Act. The Bureau is presently conducting the fifth round of OWS covering 57 industries with the objectives:

(i) for obtaining occupation-wise data of employment, wage rates, D.A. and for building wage rate index numbers, (ii) for obtaining data on different components on payroll earnings for different occupations to study intra- industry and inter-industry differentials, (iii) for evaluating implementation of ER Act.

12.395 The data on employment, occupation wage rate, earnings, D.A. collected by occupation, sex/age and system of payment are very exhaustive. These data are collected

by the staff of the Bureau through personal visits on scientific sampling and estimation methodology.

12.396 The main problems in the OWS are: (i) it takes eight to ten years to complete one round of the survey which is a very long period, (ii) the delay or the long period for generating data in respect of wage and employment has caused delay in revising the base year of WRI Numbers, (iii) there are large and varying gaps between consecutive rounds, and (iv) the surveys do not include all categories of workers.

Socio-Economic Surveys of Different Segments of Labour

12.397 The Labour Bureau conducts surveys on living and working conditions, on women workers, SC/ST workers, unorganised workers, contract labour, etc. However, these surveys do not give all-India estimates. Besides, the sample coverage is very limited and some are even centre specific.

Monitoring and Evaluation.

12.398 The Labour Bureau receives data in periodic returns from State

and Central Government Labour Departments. All returns except those relating to industrial disputes, closures, lay off and retrenchment are furnished by the concerned authorities on statutory basis. The returns received by the Labour Bureau contain vital information in respect of average daily employment, mandays worked, mandays lost, hours of work, leave with wages, health, safety, welfare, minimum wages, per capita daily earnings, etc.

Voluntary Returns.

12.399 The data/returns on industrial relations contain nature and causes of work stoppages, duration of work stoppages, workers affected, mandays lost, wage loss and production loss and method of termination, number of workers affected by closures, reasons for closure, etc.

12.400 An in-depth examination of the information reveals the following deficiencies: time lag in submission of returns upto 35 months: low response in return submission, varying response: some set of units do not respond every year, variety of definitions under different labour laws

problems in filling the returns, multiplicity of returns required to be submitted by units, inadequate coverage, i.e; no information on certain legislations like ER Act, CL (R&A) Act, PG Act, etc. low wage ceilings excluding large number of workforce.

Directorate General of Employment & Training (DGE&T)

12.401 There are 25 field institutions/offices of the DGE&T. The DGE&T was set up in 1945 for the purpose of resettling demobilised defence service personnel and discharged war workers. It was subsequently extended to provide employment service to all categories of job seekers in 1948 and training services to civilians in 1952. The major work of the DGE&T in regard to the provision of employment includes setting up of standards and procedures to be followed by States for implementation of employment service in consultation with the State Governments, co-ordinating and continuous evaluation of policies, procedures and working of employment exchanges and developing vocational training programmes at the national level.

12.402 The DGE&T is generating valuable statistics relating to employment situation and job seekers in the country through the administration of the employment exchanges under various provisions of the Employment Exchanges (Compulsory Notification of Vacancies Act, 1959) and its Employment Market Information Programme (EMIP). The data collected is disseminated through the following publications:

- a) Quick Estimates of Employment
- b) Quarterly Employment Review
- c) Annual Employment Review
- d) Occupational and Educational patterns of Employment

12.403 These data provide estimates of the utilisation of the labour force in different sectors, industries and occupations in the economy and help to find the surpluses and shortages of manpower in various industries and the present level of employment generation in different industries. However, this programme has a lacuna as it does not give complete picture of employment and unemployment scenario.

12.404 At present, many private placement agencies in urban and

metropolitan cities are rendering services both for overseas and for domestic employment. However, there is need to integrate the private agencies in the national employment service by licensing or charging certain registration and annual fees from these private agencies so that they cannot cheat the unemployed youth.

12.405 The Shortcomings of the data generated by the DGE&T. are as below:

1. The data doesn't include data of private recruitment agencies
2. No periodic updating of the employers and job seekers registers
3. Poor and low response from the employers
4. Lack of computerization of data resulting in delayed retrievals
5. Contract labour not on payrolls of employers escape enumeration in the employment exchange statistics
6. Medium and small units are not responsive and prompt in furnishing information
7. Lack of periodic revision results in the over estimation of

unemployment level and under estimation of employment level

8. Employment exchanges do not give data on the unemployment level in rural areas

12.406 It is important to redefine the role of the employment exchanges to meet the new challenges.

Directorate General of Mines Safety (DGMS)

12.407 The DGMS is an enforcing agency under the Mines Act, 1952 and the rules and regulations framed thereunder. Under the Act, the mines managements submits to the DGMS periodical returns containing detailed information on labour, output, accident, mechanisation, welfare, etc. The data gaps relate to:

- i) Non-availability of data regarding organised and unorganised sector due to definitional problems.
- ii) Low response rate in metalliferrous mines
- iii) Outdated base year for index numbers for wages of the workers in mines
- iv) Old format of the statutory returns

- v) Index numbers for wages of the workers in mines need to be revised/updated periodically.

Directorate General of Factory Advice Services and Labour Institute (DGFASLI)

12.408 DGFASLI is a technical arm of the Ministry of Labour advising the Government of India on all technical matters relating to occupational safety and health policies and programmes. The data on safety, health and welfare provisions in factories is received and compiled by the Labour Bureau. The amendments to the Factories Act in 1987 also aim at collecting more statistics such as state and regionwise distribution of factories engaged in hazardous processes, the number of persons employed therein, the routine and emergency control procedures, the number of workers exposed to the hazardous process in a unit, details of availability of factory medical officers, the details of occupational health centres in hazardous process factories, the type of medical examination carried out and result of such examination.

12.409 DGFASLI is also responsible

for enforcing the Dock Workers (Safety, Health and Welfare) Act, 1986 and the regulations made thereunder at the major ports. It collects information such as number of accidents and dangerous occurrences on board ships and onshore, cause-wise and cargo-wise, frequency rate, incidence rate, number of ship inspections, gear inspections, dock inspections and accident and complaint investigations, etc.

12.410 It provides statistics to tripartite industrial committees constituted by Government in respect of 13 industries wherein safety and health is a regular item of agenda.

12.411 Under the Dock Workers (Safety, Health and Welfare) Act, 1986, the port authorities and employers submit monthly statement of reportable accidents which is brought out in the form of annual report every year by dock safety division of DGFASLI.

12.412 In order to avoid the delay in publication of data by Labour Bureau and to have the latest information for use, DGFASLI collects data from State Chief Inspectors of Factories on quarterly basis.

12.413 However, the present system suffers from a problem. It is not obligatory on the part of Chief Inspector of Factories to submit returns and data is processed manually which sometimes makes the available data faulty and inaccurate. What is required is to make it obligatory to submit the returns and to computerize the system. Also there is a need to establish/strengthen the statistical unit.

Employees State Insurance Corporation. (ESIC)

12.414 The ESI Corporation implements the scheme with the objective of providing protection to the employees in the contingencies of sickness, maternity, employment, injury, etc. under the ESI Act, 1948. The organisation compiles the statistics through:

- i) Periodical returns
- ii) Periodic/ad hoc surveys
- iii) Research

12.415 The periodic returns are received from the Regional Offices of the Corporation and State Governments. The data compiled include number of factory employees

and employers state-wise and industry-wise, number of coverable employees state-wise and industry-wise, number of ESI dispensaries and beds available, contribution to the fund, assistance given for medical care, sickness, maternity benefit, injury etc. However, adequate data regarding factories and establishments and wage level of industry in areas where the scheme is not in force is not available.

12.416 The main sources of statistics on medical aspects are the state governments. However, due to lack of accuracy and delay of submission of returns, the quality of data is not satisfactory. There is need to enhance the scope and coverage of the ESI scheme for better and reliable statistics.

Employees Provident Fund Organization (EPFO).

12.417 The EPFO has been established under the administrative control of the Ministry of Labour with a view to administer various social security schemes under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The organization has 17 regional offices and 58 sub-regional offices.

The various social security schemes administered by the EPFO include the Employees Provident Fund Scheme, Employees Family Pension Scheme and the Employees Deposit Linked Insurance Scheme.

12.418 The information flows from Regional Offices to the Head Office in the form of periodical MIS returns on monthly and quarterly basis. The information that is sent to the Labour Bureau for compilation includes the following:

- Number of factories, number of subscribers – industry-wise and state-wise, number of coal mines and ancillary organisations covered, employees covered and amount of contribution received, number of exempted factories and number of subscribers in exempted factories.
- Investment of funds and interest allowed to EPF members, refunds including loans and advances granted under EPF scheme region-wise/state-wise.
- Claims settled and amount paid – region-wise/state-wise, etc.
- Data Management

12.419 The data management system on under the social security should be computerised so as to ensure better management of the Employees State Insurance, the Employees Provident Fund and other social security Acts.

Office of the Registrar General of India.

12.420 The Census Commissioner of India and office of the Registrar General of India conducts population census following ILO definition of economic activity every ten years. It provides data on various demographic characteristics of labour force for the country as a whole.

12.421 The data collected under the Census on Workers are collected mainly for male workers including cultivators and agricultural labourers, migrant workers, workers belonging to SC/ST, marginal workers by age, sex, educational and economic level and for female workers by marital status and sector of employment, etc.

12.422 The census data is the only source in India providing labour force by sex, age, industrial category, occupation and employment status at

national state and district level. The data could be used for drawing samples to study various aspects of labour. The census data have the following limitations:

1. It does not capture seasonal and intermittent nature of work characteristics of India
2. The definition of workers in census is liberal as it defines a person as worker who has worked at any time in the preceding 365 days
3. By excluding activities like growing of plantation crops, vegetables, flowers for home consumption and on account of production of fixed asset, census under estimates the female participation rate
4. The census results are published with considerable delay as data is collected and tabulated by the Regional Offices of the census located in States and Union Territories and the results cannot be released to the public before the all India data is compiled

National Sample Survey Organisation.

12.423 The NSSO is an organization under the Central Statistical Organisation. The NSSO collects data on different parameters of employment and unemployment through its quinquennial surveys since 1972-73. So far it has conducted six surveys. The NSSO has adopted the same definition of work as that of ILO except work related to processing of primary commodities for home consumption. The NSSO measures the time dimension of work by using three reference periods viz. the year, the week and every day of the week preceding enumeration in order to capture the intermittent work.

12.424 The labour force data from NSSO is available once after 5 years. The NSSO has computerized its data processing thereby reducing the delays in the publication of results. The limitations of data are as under:

- i) The data does not capture informal sector workers, home workers, child labour and bonded labour.
- ii) More probing questions seeking information from the informants on subsidiary work in NSSO's quinquennial survey would enable the capturing of

information on part-time and intermittent work, which is likely to become very common in the near future.

- iii) The NSSO should provide standard error of estimates of employment related variables so that the differences in the estimates projected by annual and quinquennial rounds are explained.
- iv) The NSSO classifies an individual who works for an hour on any day of the reference week as worker by weekly status. To study the intensity of unemployment (or employment) during the reference week, NSSO should publish data on distribution of persons by number of days at work and total intensity of work during the reference week
- v) Annual statistics relating to work- force by age and sex, level of literacy, state, industry, sector/ sphere is not available with NSSO.

Labour Departments of State Governments.

12.425 The Labour Departments of

the State Governments also do generate lot of data in respect of labour matters. The data relating to manufacturing establishments under the Factories Act, labour disputes, strikes, lock-outs, wage agreements etc. are all available with the State Governments. Some compile and publish this data, while others do not.

District Administration

12.426 At local level, the District Administrations also generate data regarding industrial profile, nature and types of industries, workers both in organised and unorganised sector, unemployment, etc. This information is available with the District Administrations and local Government bodies, and sometimes with local employers' associations. The data is not regularly published and therefore, not easily available to others.

Gaps in the Data Collected.

12.427 There are certain areas in which no data is being collected in India. We propose to list some such areas and feel that efforts should be made to collect data in these areas. The Government has to decide as to which agency will collect this data and

also decide upon the methodology of such collection.

Wage, Compensation and Benefits.

12.428 At present data on wages are collected in respect of some sectors. The emphasis is more on the minimum wages and occupational wages. The Commission feels that collection and systematisation of data on compensation to workers in general would be necessary. This would include not only data on wages and dearness allowance but data on all allowances paid and monetisation of the various benefits given to workers. It is necessary to compile industry-wise or region-wise data on the total compensation paid to the workers in the organized sector. Instead of collecting this data at all India level [and again involving another Government organisation], the local employers' associations should also be encouraged to collect this data.

Collection of Wage Agreements.

12.429 A majority of wage agreements are normally filed in the office of the Labour Commissioner.

Anyone can have access to this data by paying a nominal fee. If the Government either publishes these wage agreements periodically or encourages any private institution to do so, this will be a valuable source of information. We are told that some Chambers of Commerce or industry associations undertake this work regularly. This effort should be encouraged. The data available through the wage agreements can be a great source of information for arriving at future agreements and also to know the wages and other facilities enjoyed by workers in an industry or a region.

12.430 Where there are industry wise agreements on all India level such as cement industry, banking, insurance, etc., this data can also be collected and published either by the Labour Bureau or by some Institute like the NLI. Local and regional associations may also be encouraged to undertake this work.

Education, Training and Tracer studies.

12.431 Studies of what happens to the graduates of educational institutions and training programs –

so-called tracer studies – should be promoted as the best way to obtain information on the connection, or lack of them, between the activities that create human capital and the realization of their benefits in labour markets.

12.432 Such studies can be done relatively quickly and inexpensively and can provide a rich picture of current labour market status, employment history, and educational and training background. They could provide insights on the extent of misallocation of education and training resources.

12.433 With respect to the inter-relationship of education system and the labour market, a major shortcoming of studies has been that the educational institutions or authorities rarely obtain information about what happens to their graduates and dropouts after they leave the institution. In recent years, researchers in many countries have mounted a series of what are called "tracer studies". These studies follow the graduates or dropouts of particular institutions and determine their status in the labour market. Tracer studies are an important

method of gaining a picture of the dynamics of the labour force. Information from such studies should be fed back to educational authorities so that they can make better decisions regarding the structure of the system and content of their curricula, and better allocate the resources in the system. Retrospective tracer studies can often be carried out quite quickly and cheaply.

12.434 Special evaluation studies of training and employment programmes are another type of study that has been undertaken in many countries. Much like tracer studies, program evaluation attempts are made to evaluate the impact of the training or employment program by following the people who had been involved in it and observing their subsequent labour market experience. In developed countries the procedures for doing such evaluation studies have become increasingly sophisticated and have yielded much better information about the effectiveness of alternative training and employment programs. Of particular importance is the development of a comparison group that can be used to estimate what would have happened to the

participants had they not entered the programme.

12.435 A complete unique study in this regard is the Labour Force Turnover Study of the Malaysian Ministry of Labour. This is made up of a panel of firms that periodically report on their vacancies, hires, and promotions. This type of data gives a unique opportunity to measure the extent of the labour market shortages and surpluses and how the market for different occupations evolves over time. Increasingly labour economists have looked at the characteristics of firms in terms of labour force turnover, job security, and the costs of hiring and firing. Obtaining better data on such events in a consistent time-series would give a much better picture of how labour markets operate and the extent to which, in particular situations, labour markets may be said to be malfunctioning.

Special Purpose Studies of the informal sector.

12.436 The very nature of the informal sector means that many of its activities are unlikely to appear in regular data collection efforts, and

also probably in the household surveys. Therefore, more data has to be generated on informal sector. Most of such studies will have to be special purpose studies probably of a particular sector in a specific region.

12.437 Studies at all India level may not be of much use. The Commission has suggested an umbrella legislation for the informal sector. As and when the Welfare Boards are set up under this legislation, probably such studies can be conducted in the different regions for those occupations.

Migration Studies

12.438 In India, the workers are migrating from rural to urban areas and from poor states to the states where there are more employment opportunities. In addition, there has been rural to rural migration. Where there are regular labour force surveys, it is not difficult periodically to add short modules dealing with migration questions to the labour force survey and obtain better migration data. The problem is, however, that the sample of migrants is likely to be a relatively small proportion of the total sample. Specialised migration data collections

yield a great deal more information about migration processes. In the 1970s, the International Labour Office (ILO) had developed a protocol for doing inexpensive and quick migration studies.

Rural Non-Agricultural Employment

12.439 It is necessary to collect sufficient data on rural non-agricultural employment. We feel that this is a largely unresearched area. Substantial proportion of the rural labour force are employed in non-agricultural work and rural households do earn some though not substantial part of the income from these activities. If we want to shift labour from farm to non-farm activities, we have to have adequate information about non-farm employment.

Impact of economic changes

12.440 Whenever the Commission visited various States, we asked the officers of the State Labour Departments as to the impact of new economic policies of globalisation and liberalisation on labour. There was a general consensus that there was large-scale retrenchment, and

introduction of Voluntary Retirement Scheme (VRS), and industries were being closed and that no significant employment was being generated in the organised sector etc. But none had any correct figures. When such sweeping changes are taking place, the policy makers must have correct perception of such problems. We would urge either the Labour Bureau or the National Labour Institute or the affected State Governments to undertake such studies. We can hardly afford to neglect this area. There are a number of labour research institutes in the country. Government can assign them work of collecting data on this subject.

12.441 Along with this some specialised studies as to what happens to a worker after he takes VRS needs to be undertaken. Private Research Institutes may be encouraged to undertake such studies in their respective regions.

Data on Emigrant Workers

12.442 A good number of Indian workers are working in countries in the Middle East. Some have gone to other countries like the United States, U.K., Germany, countries in South East Asia

etc. Statistics of such workers are given in the Annual Report of the Ministry of Labour. But we feel that there are significant gaps in the collection of data and its presentation.

12.443 The primary source of information on migration from India is the data published by the Protectorate General of Emigrants, Ministry of Labour, Government of India. This annual data depict the number of those who require and had actually obtained emigration clearances from the Protector General of Emigrants while migrating abroad to seek employment. For several reasons, this data provides only a partial information as to the magnitude of migrating population from India. Section 22 of the Emigration Act, 1983 provides that no citizen of India shall emigrate unless he obtains emigration clearance from the Protector of Emigrants. However, the Act exempts some categories of people for whom the Emigration Check is Not Required (ECNR category). The ECNR category of migrants affects the reliability of the data, as their numbers are not captured by the emigration data. Over and above, outflow of this proportion of the labour force (ECNR

Category) to the Middle East has been on an increase. Now instead of unskilled workers, the demand composition in the Middle East labour market is (a) in favour of skilled labour and (b) bringing in of more and more sections of people under the ECNR category.

12.444 The partial nature of this data is further compounded on account of illegal migration which does not get reflected in the statistical figures of migrant labour. The main modus operandi of this is through the manipulation of tourist and business visas. Those persons, whose passports have been endorsed under the category emigrant check required, have to obtain 'suspension' from the requirement of obtaining emigration clearances if they intend to travel abroad for non-employment purposes. While provisions have been made to safeguard against the misuse of 'suspension', it is a matter of common knowledge that considerable number of people who obtain suspension to visit the Middle East, do not return and manage to secure a job there with the help of their relatives or acquaintances.

12.445 One of the areas requiring

immediate intervention is with respect to the creation of an appropriate information system on the international labour migration phenomenon from India. The creation of an information system/data bank which monitors the inflow and outflow of migrants along with their profile is an important pre-requisite to make future contract labour export strategy more purposeful and also to formulate effective reabsorption/rehabilitation schemes both under conditions of stability and instability.

12.446 The status of migrant in data can be improved drastically by making the registration of entry by migrant workers mandatory in the Indian missions operating in labour importing countries. The registers should also contain adequate information relating to work status and living conditions of the migrants so as to enable policy makers to frame appropriate measures for their welfare.

12.447 The nature of outflow data at home can be strengthened by a fuller utilisation of the data already available with Government departments and recruitment

agencies. A main requirement in this connection would be the strengthening of the statistical wings of the concerned Government departments. Apart from this, establishment of computerised counters of the Protectorate of Emigrants at all international airports in India will go a long way in strengthening database on migration. The required software should be developed incorporating the relevant migration related variables keeping in view the lacunae that exist in the necessary data presently.

12.448 The data relating to return migration can be strengthened by proper use of the disembarkation cards in the major airports. Disembarkation cards can also be used to obtain the information as to whether the migrant worker is returning permanently or for a short duration.

12.449 In a country like India in which the States have important responsibilities and functions to perform in respect of education and manpower development programmes, employment schemes and development policies, data on migration are as much essential at the state level as they are at the national

level. To ensure that the migrant-sending states obtain information on key aspects of migration taking place from their state, the data collected at the national levels need to be classified state wise. Apart from this, it would be desirable if the National Sample Survey Organization (NSSO) conduct detailed surveys on international contract migration periodically, say once in five years in all the migrant-sending states.

Employment Statistics

12.450 At present, the Director General of employment and Training collects information relating to employment, occurrence of vacancies and modes of filling vacancies by the organised sector on quarterly basis. Economic Census is carried out once in five years and gives a broad picture about the employment situation in the establishments both in the organized and unorganized sectors. The National Sample Survey Organisation (NSSO) carries out employment and unemployment surveys once in 5 years and on sample basis every year.

12.451 Our country is facing acute problems of underemployment in

terms of the income level of the workers already working in various sectors. Therefore, we have to develop a system through which availability of skill and wage movement at household level are studied in detail on periodic basis.

12.452 The Ministry of Labour will have to develop a system with the help of the State Governments for data collection. Since the data is to be collected periodically from the households, it will be necessary to involve the Panchayats, Blocks, Districts, Municipalities, Labour and Manpower Departments of State Governments etc. The data is to be collected basically by the State Governments through their network of Panchayats. The Ministry of Labour may suitably chalk out a programme in consultation with various State Governments to develop the database on occupation specific wage movement and skill development.

12.453 This was one recommendation made by the Task Force on Employment of the Planning Commission. The Commission endorses this recommendation and requests the Ministry of Labour to act upon.

Data Gaps in relation to ILO requirements

12.454 India is an active founder-member of the International Labour Organisation. The ILO has laid down certain standards concerning content and coverage of statistics relating to different subjects through various conventions. The Convention Number 160 lays down standards of various kinds of Labour Statistics, which a member country is required to compile and report to the ILO. Data gaps relating to various ILO conventions including Convention Number 160 have been analysed in the Report of the Study Group on Labour Statistics, chaired by Professor L.K. Deshpande and valuable suggestions have been given for bridging the data gaps. The Labour Bureau in consultation with the Ministry of Labour should formulate a plan to meet the requirements of different conventions with priority to the Convention Number 160 for ratifying the same.

Need for Local Level Data

12.455 After the 73rd Constitutional amendment, localisation of economic development has been strengthened

by political decentralisation and greater decision making powers are given to the local bodies and stake holders. These local bodies are now expected to draw up district or local level employment plans. But they are hindered by paucity of reliable information on demographic patterns, labour market variables, growth potential of different sectors and social and economic infrastructural development. Since local or district level employment planning is to be accorded high priority in future, it is necessary that local level data is collected. Such data would include:

- (i) Estimates of unemployment & underemployment
- (ii) Breakdown of employed labour force by sector, occupation, education and skill levels
- (iii) Facilities of skill development training at local level
- (iv) Ensuring effectiveness of skills training in terms of employability
- (v) Institutional framework that exists at the local level to provide support services to self-employed persons, artisans, micro enterprise development etc.

- (vi) Programmes of development of infrastructure such as roads, irrigation, watershed development etc.
- (vii) While state level economic data handbooks will provide statistical and other information, qualitative information can be had from the stake holders such as District Administration officials, skill development institutions, association of employers, financial institutions, private training institutions, panchayat institutions etc.

Shortcomings of Labour Statistics

12.456 We regret to say that the Labour Statistics as it stands today is not dependable. The industries do not have an obligation to submit the returns prescribed under the law. The collectors of data do not have any obligation to publish the data on time. In some cases there is a gap of more than 32 months in the publication of the data. Some State Governments have a gap of 3 to 4 years before the data is released. As a result of this poor quality and unreliable frequency of data, policy makers do not find it easy to rely on them or make use of them. Thus,

one is left to wonder who benefits from all the effort and expense incurred to keep these surveys going.

12.457 Take for instance, the Labour Bureau. The Labour Bureau receives periodic returns under the following Acts:

- (i) The Factories Act, 1948
- (ii) The Trade Unions Act, 1926
- (iii) The Minimum Wages Act, 1948
- (iv) The Payment of Wages Act, 1936
- (v) The Workmen's Compensation Act, 1923
- (vi) The Motor Transport Workers Act, 1961
- (vii) The Plantation Labour Act, 1951
- (viii) The Industrial Employment (Standing Orders) Act, 1946
- (ix) The Maternity Benefit Act, 1961
- (x) The Collection of Statistics Act, 1953
- (xi) The Industrial Disputes Act, 1947.

12.458 The primary responsibility for reporting and submitting these returns is on the occupiers of the primary units and primary agencies

which collect data from them are state level Labour Commissioners, Registrars of Trade Unions, Directorate of Economics & Statistics etc. The practice differs from state of state and accordingly these authorities are notified. These states make a consolidated annual return on each act and send to the Labour Bureau. The states usually take a lot of time to submit the consolidated annual returns to the Bureau. The time lag varies from 2 months to 35 months. Some states like those in the North East region and Jammu & Kashmir region do not submit any return at all. Even some of the advanced states like Maharashtra, Andhra Pradesh, Uttar Pradesh, Bihar etc. do not submit any return under Trade Union Act. The Minimum wage data (due in May 1999) has not been received from 14 states. Apart from the time lag, there is very poor response for submitting these returns. Trade Unions (who are very critical of the Govt. policies) are themselves defaulters. Since 1994, the percentage of response of submission of returns from trade unions has never been above 17%. In 1998, this response percentage was just 7.91%. Such a poor response makes statistics useless for

any analytical research on public policy relating to industrial relations. This is because the registration of trade unions itself is voluntary. The measures our commission has recommended for Trade Unions may improve the present situation.

12.459 Labour Bureau conducts occupational wage surveys. It takes about 8 to 10 years to complete one round of such a survey to cover all industries in the scheme. Thus annual wage data or time series data by occupation, wage, sex, sector, state etc. on wages and earnings are not generated through this survey. Due to this, it has not been possible to revise the base year of Wage Rate Index (WRI) numbers since long. Moreover, the occupational wage surveys do not include all categories of workers and therefore it is of not much relevance.

12.460 The Director General of Employment & Training publishes 8 publications to provide employment and training related statistics. But most of these publications are brought out with considerable time lag.

12.461 The Employment Market Information Programme (EMIP) does

not cover employment in the unorganized sector, self-employment, part-time employment, employment in agriculture, defence establishments, small enterprises below 10 workers etc. and therefore this data published by DGET is of not much significance.

12.462 There are also limitations in data collection by the National Employment Service. There is limited role of employment exchanges in placement service. There is also an urban bias to the data. There is continued registration of the unemployed people even after they are employed. As a result, there are serious limitations in this form of data processing.

12.463 Limitations of census data and NSS data have also been explained earlier.

Returns Prescribed under Laws

12.464 One of the major irritants in data collection and compilation is the requirement on the part of an industrial enterprise to submit a large number of returns under different labour enactments. This requires huge resources on the part of the

unit. Many of them, unless coerced, find it more convenient to default rather than to submit these returns. Most of the returns are complicated and thus, there is a need to simplify and consolidate various returns into a few forms. The complexity of forms and the duplication of some information on a number of forms are the major reasons for both poor response and poor quality of data being collected.

Problems of Definitions

12.465 In the field of labour, a number of laws have been enacted to safeguard the interest of the workers and old laws have either been repealed or have been amended to meet the changing needs of time. In the process of formulation of labour laws, the scope and meaning of important items have been redefined to meet the requirements of the law in question. To quote a few examples terms like 'child', 'family', 'wages' are defined differently in different Acts. The prevalence of some terms with varying scope pose a problem especially to those filling and submitting the returns prescribed under the law. It also leads to confusion among the data users while

comparing data from different sources.

12.462 The above two points of simplification of forms and variety of definitions under different laws have been made by different Committees since 1980. But the Government has so far not acted upon these recommendations. Our Commission has proposed uniform definitions of terms under different laws. We hope the Government will accept these recommendations and pave the way for improvement of our statistical system. Thus, looking at the present database in respect of labour statistics it is found that the database that is available suffers from serious deficiencies such as:

- a) Inadequacy of data
- b) Absence of fixed periodicity of getting the information
- c) Low/varying and delayed response of the returns under various Acts
- d) Poor quality and incomplete information
- e) Surveys/studies not reflecting the current economic scenario
- f) Non-availability of micro level/ dis-segregated information

Measures for Improvements

12.467 The general impression that one gets after going through the way the system is in operation is that the Government has not so far given much importance for improving the present system of labour statistics. Committees have been appointed from time to time, they have made important recommendations, some of the organisations connected with collecting statistical information and academicians in the labour field have also been making representations to the Government. We do not want to repeat all the valuable suggestions made by the earlier Committees. But we can only say that these Committees and especially recommendations made by the recently appointed Committee under the chairmanship of Prof. L.K. Deshpande (1999) and the National Statistical Commission (2002) should be carefully examined by the Ministry of Labour and action should be taken on them as early as possible.

Role of State Governments

12.468 We do not think that without the cooperation of the State Governments, it would be possible for

the Labour Bureau to collect statistics. The efforts therefore should be to have a dialogue with the State Governments, encourage them to have a special department or officer looking after labour statistics. Once common definitions are introduced and a common form of return is introduced, it should be easier to get response from the industries. If required legal provisions should be strengthened and penalties for non-submission of returns should be made more stringent to act as deterrent.

12.469 The renewal of license of the units can also be subject to satisfactory submission of returns in the past.

12.470 Even after this, the State Government officers have to be active, they have to persuade and follow up with the units for submission of returns. This they can do while on routine inspection. Therefore, the statistical system in the labour departments in the states should be strengthened from district level onwards. These officers should be specially trained for gathering the information and either the Labour Bureau or the National Labour Institute should organise special training programmes in different

states for their district officers. The Commission attaches a lot of importance to the role of the State Government officials in improvement of the statistical system at the district or state levels.

Need for a Study Group

12.471 We also feel that the Government should appoint a Technical Study Group to study the present activities of the Labour Bureau and other agencies like DGET, DGFASLI, etc. and improve the contents of the studies that they are undertaking and the statistics that they are collecting. Such a group should be composed of statisticians, labour economists and academicians.

12.472 The Group can suggest changes in the methodology in respect of construction of productivity indices. At present the base year is very old, the problem of single or double deflator is to be solved, productivity indices are not available for the country as a whole, ASI data on which these indices are based are not comparable. The Group can also make recommendations regarding continuance or otherwise of occupational wage survey in its present form, inclusion of various

economic activities under NSSO's survey and so on.

12.473 The existing labour information system is heavily oriented towards quantitative parameters and indices which have become redundant in the present context. The divorce between quantitative indicators and qualitative information has increased leading sometimes to serious problems. The Study Group can find a way to reconcile these diverse interests.

Need for Revision of Index Numbers

12.474 The present series of consumer price index numbers for industrial workers for 70 centres at All India level and 6 additional centres has base year of 1982 and this is based on Working Class Family Income and Expenditure Survey conducted during 1981-82. As per ILO recommendation (Convention No.160) Household Expenditure Surveys are to be conducted every ten years. The work has been initiated in 1999-2000 and on the basis of this survey new CPI (IW) series is likely to be released in 2003. This time lag is too long. Hence the Commission recommends that a legislation like the Census Act,

1948 be introduced so that such surveys can be conducted throughout the country at fixed intervals.

Use of Information Technology and Developing a Digital Labour Information System

12.475 Keeping in view the expanse of our country and the vast data to be collected from various sources, it is necessary to discard the present manual system of handling data compilation and transmission. In fact this system has already broken down and is unable to cope up with the size and complexity of data. Hence massive computerisation and introduction of digital labour information system is absolutely necessary. The data should be available on line and the computer network should connect various Divisions in the Ministry of Labour, Labour and Employment Division of the Planning Commission, Labour Departments of State Governments different wings of the Labour Bureau, NLI and various research institutes. This labour networking will ensure speedier dissemination of information. Thus it is necessary that labour related information is made available in a structured, comprehensive and meaningful manner.

12.476 Such a data base or information system should include:

- a) Inventory of all available sources of existing labour information systems
- b) Identifying the users and their requirements
- c) Designing an integrated system of collection, storage and retrieval of all the information available
- d) Designing appropriate indices and monitoring mechanism

12.477 For this purpose, availability of data with minimum possible time lag and saving of time and effort by duplicating of entry and improvement of the present quality of data would be absolutely necessary.

12.478 Towards this end necessary expertise will have to be built up at both the level of the Labour Bureau which may be a nodal agency to operate this system and also at state level (including district). For this purpose, special training programmes, workshops etc. will have to be organised at district and state levels to train staff in the use of hardware and software.

APPENDIX - I
(Employment Scenario in the Country)
TSA 2001-2011
India in Comparison with Competitors

	INDIA	CHINA	THAILAND	MALAYSIA	SINGAPORE
I PERSONAL TRAVEL & TOURISM (US\$m)					
Year 2001	16258 (19)	56651 (8)	6115 (33)	4095 (38)	3791 (43)
Year 2001 (% of total)	4.6 (132)	9.9 (49)	8.6 (62)	9.0 (57)	9.3 (54)
Year 2011	51008 (14)	157980 (7)	20023 (26)	8741 (39)	7765 (40)
Year 2011(% of total)	5.7 (113)	10.2 (49)	8.6 (69)	8.7 (66)	9.4 (57)
Real growth between 2001-2011 (% annualised)	9.7 (2)	8.5 (4)	5.5 (31)	4.3 (63)	4.8 (44)
II BUSINESS TRAVEL & TOURISM (US\$m)					
1 Year 2001	2564 (27)	7371 (12)	1799 (33)	1070 (41)	1101 (40)
2 Year 2011	6350 (24)	19815 (9)	5773 (26)	2320 (39)	2223 (41)
3 Real growth between 2001-2011 (% annualised)	7.1 (8)	8.1 (2)	5.3 (20)	4.4 (48)	4.7 (36)
III GOVERNMENT TRAVEL & TOURISM EXPENDITURE (US\$m)					
1 Year 2001	599 (34)	6228 (8)	381 (38)	559 (35)	891 (29)
2 Year 2001 (% of total)	0.9 (153)	3.8 (84)	2.6 (112)	5.1 (58)	9.1 (31)
3 Real growth (%)	4.6	16.1	4.4	1.9	14
4 Year 2011	1206	17465	993	1195	1712
5 Year 2011 (% of total)	1	4	2.7	5.3	9.5

	INDIA	CHINA	THAILAND	MALAYSIA	SINGAPORE
6 Real growth between 2001-2011 (% annualised)	4.9	8.6	3.1	4.3	4.2
Indonesia 8.0					
Mauritius 8.0					
Nepal 6.2					
Egypt 5.4					
Hongkong 7.3					
Kenya 10.7					
IV TRAVEL & TOURISM CAPITAL INVESTMENT (US\$m)					
Year 2001	7328	40685	2049	2593	3110
Year 2001 (% of total)	6.1	8.9	8.5	8.4	8.9
Year 2011	18979	113760	6919	6640	7094
Real growth between 2001-2011 (% annualised)	7.6 (10)	8.5 (7)	5.8 (22)	6.2 (18)	6 (21)
V VISITOR EXPORTS (US\$m)					
Year 2001	5315 (25)	17252 (7)	10067 (16)	5006 (27)	6962 (23)
Year 2001 (% of total)	7.7 (96)	6.3 (107)	11.1 (77)	4.0 (130)	3.9 (132)
Real growth (%)	23.6 (9)	18.4 (20)	17.3 (23)	8.0 (70)	14.1 (37)
Year 2011	27091	56956	42546	13584	17544
Year 2011 (% of total)	8.4 (91)	6.6 (99)	16.1 (55)	4.2 (127)	4.6 (123)
Real growth between 2001-2011(% annualised)	15.2 (1)	10.3 (2)	8.2 (10)	6.8 (26)	7.0 (20)
V TRAVEL & TOURISM DEMAND (US\$m)					
Year 2001	33299 (22)	140233 (7)	22086 (32)	16016 (36)	19946 (33)
Real Growth (%)	9.7 (36)	10.6 (29)	11.3 (21)	9.9 (35)	10.9 (24)
Year 2011	108810 (16)	403222 (6)	79155 (22)	39486 (36)	46376 (34)
Real growth between 2001-2011 (% annualised)	10.1 (1)	8.8 (4)	6.4 (16)	5.8 (29)	6.2 (20)

	INDIA	CHINA	THAILAND	MALAYSIA	SINGAPORE
VII TRAVEL & TOURISM INDUSTRY GDP (US\$ m)					
Year 2001	13422 (15)	32824 (9)	9497 (20)	3905 (39)	4675 (34)
Real growth (%)	11.3 (19)	9.0 (37)	10.9 (23)	7.5 (42)	11.2 (20)
Year 2011	43295 (11)	95516 (8)	37462 (13)	9937 (35)	11378 (32)
Real growth between 2001-2011(% annualised)	10.0 (1)	9.0 (3)	7.5 (9)	6.1 (20)	6.7 (14)
VIII TRAVEL & TOURISM ECONOMY GDP (US\$m)					
Year 2001	27428 (17)	119041 (7)	16934 (29)	9333 (41)	10319 (37)
Real Growth (%)	10.0 (28)	9.5 (32)	7.5 (48)	7.2 (51)	5.0 (75)
Year 2011	81602 (15)	340695 (4)	65382 (17)	23305 (37)	25469 (34)
Real growth between 2001-2011(% annualised)	9.1 (3)	8.8 (4)	7.2 (10)	5.9 (25)	6.8 (13)
IX TRAVEL & TOURISM EMPLOYMENT GDP (US\$m)					
Year 2001	12298 (2)	15299 (1)	1831 (8)	358 (37)	17.29 (85)
Year 2011	17568 (2)	18654 (1)	2469 (7)	504 (34)	99.6 (84)
Real growth between 2001-2011 (% annualised)	3.6 (41)	2.0 (101)	3.0 (62)	3.5 (47)	3.2 (55)
X TRAVEL & TOURISM ECONOMY EMPLOYMENT					
(000's JOBS)					
Year 2001	24981.9 (2)	51959.2 (1)	3617.2 (8)	1059.8 (32)	199.8 (88)
Year 2001 (% of total)	6.0 (140)	7.2 (124)	11.3 (69)	11.0 (73)	9.9 (84)
Real growth (%)	4.7 (55)	2.4 (92)	5.1 (49)	4.6 (56)	2.3 (150)
Year 2011	32914.6 (2)	62309.1 (1)	4773.8 (9)	1466.7 (28)	277.0 (84)
Year 2011 (% of total)	7.0 (133)	7.9 (119)	13.7 (55)	11.4 (74)	12.2 (71)
Real growth between 2001-2011 (% annualised)	2.8 (73)	1.8 (113)	2.8 (70)	3.3 (50)	3.3 (49)