

CONCLUSIONS AND RECOMMENDATIONS

CHAPTER - I

THE TERMS OF REFERENCE

- 1.1* 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 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 identified these factors as 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 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, 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 protection and welfare of labour.
- 1.4 Factors shaping the need for an urgent review arise 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. All three partners have complained that the laws are unsatisfactory. All wanted a comprehensive review, and reformulation of the legal framework, the administrative framework and the institutional structures in the field of social security. Demands for reforms have been voiced in the Labour Conferences for many years.
- 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, are only to give precision and focus to the area in which we have been asked to make recommendations. The paragraphs of the Resolution that refer to the context give ample scope for a comprehensive survey and study. In fact, it is not possible or desirable to make specific recommendations without a comprehensive study.

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* The figure indicates the Chapter and Paragraph number in the body of the Report.

- 1.9 The Terms of Reference talk of 'rationalisation' of existing laws. In our understanding, rationalisation means only making laws more consistent with the context, more consistent with each other, less cumbersome, simpler and more transparent.
- 1.11 We 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, as well as those rendered incapable by debilitating disease, accidents or old age.
- 1.12 Protection includes the ability to meet the essential requirements of life, as well as protection of the rights that are essential to 'protect' one's bargaining power and social status.
- 1.13 We are aware that the degree of protection will depend on the resources available to the State/society and the contributions that citizens/beneficiaries themselves can make.
- 1.14 A scheme of protection and welfare has to include assistance to meet exigencies as a result of unemployment, temporary unemployment, under-employment, accidents at places of work; insurance 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 and the constant upgradation of the skills necessary for continued employment.
- 1.19 The context makes a special mention of the need to attain and retain the degree of 'international competitiveness' that our economy needs in the era of globalisation. Competitiveness should not be regarded as the need of any single sector of our society or economy.
- 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 be high. 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.
- 1.21 The crucial link between productivity and industrial efficiency cannot be denied. The level of wages depends on the economic efficiency of an undertaking or industry. Workers have to be as interested in productivity as the management is.
- 1.22 The Resolution wants the Commission to give special attention to the problems and potential of women workers. Any society that ignores the resources or potential that one half of it holds, will fail in mobilising its human resources to the full. The Commission has given special attention to the problems and potential of women members of the workforce.
- 1.23 The future will require concurrent training in multiple skills, and the constant updating and upgradation of skills.
- 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. Bilateralism is an essential ingredient of industrial relations, and both parties should rely on it as far as possible. But 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.

- 1.29 The laws that the State formulates have to be relevant to the context of social life in the country. The State conceives or formulates these laws on the basis of the fundamental beliefs on which it has come into being. 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.
- 1.30 Our Constitution describes our State as a Sovereign, Secular, Democratic and Socialist Republic.
- 1.31 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). The Directive Principles are not justiciable in a court of law, but they are both for the guidance of the State and a covenant with the people.
- 1.70 There is another set of factors. They are the new concepts of Human Rights and the Conventions and Standards that have emerged from the United Nations and the International Labour Organisation (ILO).
- 1.71 The rights that the Universal Declaration of Human Rights talks of include 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); and Right to Standard of Living adequate for the health and well being (Article 25).
- 1.73 India as a member has accepted and ratified many of the ILO's Conventions and accepted many of the standards set by it; these have acquired the status of inviolable commitments. Any law that we make in our country should not be such as violate or dilute the solemn commitments made by us.
- 1.78 Globalisation is both a consequence and a reminder of the paradigms of inter-dependence within which humanity lives, survives and prospers. The paradigms of inter-dependence impose limits on the role of competition.
- 1.80 Both workers and employers, therefore, depend on industry and the cooperation each gives to the other.
- 1.81 Our economic security and the success of our efforts 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 Attitudes of confrontation must give place to an attitude of genuine partnership. 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.

CHAPTER - II

INTRODUCTORY REVIEW

- 2.44* One of the major concerns of developmental planning in the country has been the unabated population growth. 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 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. Provisional results for the Census of 2001 have indicated a welcome reversal of this trend. 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. These trends have a bearing on the quantum of labour supply. The country is nowhere near the goal of universal literacy. The situation is even worse in the case of females. In 1991, 56.7 % of the population had less than 3 years of schooling, 23.7 % had 3 to 6 years, 11.0 % had 7 to 11 years, and 6.8% had 12 to 14 years of schooling.
- 2.46 There has been a steady increase in the proportion of population in the working age group of 15-59. This has resulted in a rapid growth in labour force over the years.
- 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%. The growth rate in urban labour force was 2.4 % per annum, and in the rural areas it was only 0.4%.
- 2.48 Beginning with the Fifth Five Year Plan (1974—79), the gross domestic product 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.
- 2.49 The Net National Product per capita 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 Half a century of planned development has transformed the structure of the Indian economy. The share of agriculture and allied activities and 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. The tertiary sector, accounted for an increasingly large share of the GDP over the period.
- 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.

- 2.53 Widespread inequalities in income persist. Over a quarter of the population lives below the poverty line in both urban and rural areas, but the poverty ratios have been coming down.
- 2.55 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. After 1993-94, there seems to be a decline in the work participation rate both in the rural and the urban areas, being more marked in the rural areas and sharper in the case of females.
- 2.56 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.
- 2.57 The surveys of the National Sample Survey Organisation (NSSO) shows that 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 percentages for the urban areas were 42.2, 40.0 and 17.8 respectively. The 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).
- 2.58 In 1999-2000, the Usual Principal Status unemployment rate of the unemployed persons among the labour force was 1.9 in the rural areas and 5.2 in the urban areas. If 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.
- 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 was asked "to review the changes in conditions of labour since Independence". However, our Commission has not been asked to undertake such a 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. We propose a quick and brief review of the situation in the Plantations and Forestry, Mining and Quarrying, Construction, Textiles, Chemicals,

- Agriculture, Engineering and other industries. The review that we present is by no means comprehensive or exhaustive.
- 2.68 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 or roughly 13%. The number of looms shows a decline of about 8% from 3.78 million to 3.49 million though the number of weavers/workers is virtually stagnant, at 6.55 million.
- 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.
- 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.
- 2.74 The growth of the textile industry, which slowed down during the seventies, picked up again and, spearheaded by the spinning and man-made fibre in the organised sector, particularly in the post-liberalisation years. A conspicuous exception is the case of production of cloth in the mill sector, which has suffered substantially. The fall has become steeper in the post-reform period.
- 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. With the structural transformation in the mill sector, and the competition faced from powerlooms, 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. 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. 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.
- 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. It is estimated that more than 2.50 lakh textile workers have been affected adversely due to closure and curtailment of activities. Powerlooms were considered to be viable propositions. But due to the vast expansion of capacity, they are also becoming uneconomical.
- 2.88 India continued to be the 10th largest steel producing country in the world during 1999-2000. This sector directly provides employment to over 5 lakh people.
- 2.91 The world steel industry has witnessed major ups and downs in the last few decades, especially over the past five years.
- 2.93 It is in this global context that the Indian steel industry will have to identify its future role.
- 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.

- 2.99 The factors affecting production and productivity are labour, material, technology and capital. The most important factor for the improvement of productivity is the workforce. High productivity is necessary for the survival of the industry.
- 2.108 The total number of workers employed by all tea plantations has since risen from 7.31 lakhs in 1967 to 11.38 lakhs in 1999-2000.
- 2.109 The number of workers employed in coffee plantations has since risen from 2.60 lakhs in 1967 to 5.35 lakhs in the year 1999-2000.
- 2.110 In the year 1999-2000 the total employment in rubber plantations has risen from 1.22 lakhs in 1967 to 3.48 lakhs.
- 2.111 In the year 1999-2000 cardamom plantations were employing 30,000 workers.
- 2.113 Plantation operations are carried out in open fields. Employment depends upon the intensity of operations and crop availability. The industry can be described as seasonal. Because of the humid conditions workers are often exposed to malaria. Every plantation is required to provide medical facilities such as dispensaries for the workers and their families. The Commission had opportunities to see the medical facilities and dispensaries maintained by some plantations. We realise that there has been some improvement in the past decades. But more attention has to be devoted to make the facilities adequate and satisfactory.
- 2.114 The minimum wages fixed for agricultural workers apply to plantation workers as well. The workers are mostly paid the minimum wages fixed by the State Government for agricultural workers. In Kerala, wages are fixed through negotiated settlements or under conciliation settlements.
- 2.118 The plantation industry is at present facing a severe crisis. The prices of coffee have come down almost by 50%.
- 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 was 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 of tea to Russia have come down drastically. 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.
- 2.124 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 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 a strong case for reducing the tax burden on the industry.

- 2.127 The overall existing employment in the chemical 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 the chemical industry will continue to offer high job opportunities.
- 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.
- 2.132 Sixty per cent of synthetic detergents 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. The small-scale industries in the drugs and pharmaceutical industry provide employment to more than 1,70,000 workers directly and in the plastic processing industry to 1,65,000 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 has more than 15,000 units in the small-scale sector.
- 2.138 The chemical industry carries out many hazardous processes and operations. Workers in chemical factories are often exposed to dangerous chemicals, fumes, and gases. 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.
- 2.142 There is hardly any industry or productive activity which does not depend on minerals or mineral products.
- 2.143 At the time of independence in 1947, a total number of 3,21,537 people were employed in the coal mining industry. In the year 1999-2000 the Coal Industry employed about 5,50,000 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. The housing satisfaction in percentage terms has increased from 21.71% to 75.05%. There is considerable increase in the number of hospitals. The number of schools and colleges too has increased.
- 2.146 Globalisation has had an adverse impact on the coal industry in India. . Low ash coking coal required for making steel is not available in the country to the extent that is required. 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. The cost of production of coal in India is very high. 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 In the year 1947, non-coal mines employed 85,726 persons in about 1,074 non-coal mines. According to 1998 figures, the non-coal mine industry including oil employed about 1,95,000 persons.
- 2.151 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.
- 2.157 Construction industry covers a wide field of activities and provides employment for workers of various levels of skills. Much of the work in this field goes on under conditions that are often very strenuous and hazardous.
- 2.159 Construction industry is the second largest economic activity in India. Construction has accounted for about 40% of the investment in the country during the last 45 years. An estimated 14.6 million persons were directly employed in construction work in 1995-96.
- 2.162 A recent study 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 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.
- 2.164 There are constraints on the modernisation of construction activity. These are inherent in the technology itself, and due to the social linkages of technology. 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.
- 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.'
- 2.167 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. They should be encouraged wherever they are competitive with capital-intensive construction.
- 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 unionise themselves 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. The worker wants improvement in his economic and social situation in the construction labour market. Skills and organisations are what can strengthen workers in the construction industry.
- 2.176 Studies have found that construction labour is dominated by young, married, illiterate and unskilled males, often rural migrants who were mostly landless labour moving to cities in search of work, or who are helped to do so by jamadars and mistris. About half of the total workers start as unskilled labour.
- 2.177 Some laws 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. The problem is that the laws are not implemented in the construction industry. Construction labour does not get the benefits of the ESI Act, but is covered by the Workmen's 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. While the Maternity Benefit Act 1961 applies, the number of beneficiaries is likely to be limited due to the intermittent nature of employment. 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.

- 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 Wages in the industry are by and large at the minimum or sub-minimum level. The nature of the industry proves to be a deterrent for wage negotiations. The industry functions in the open. Workers are exposed to scorching heat, rain, cold, dust, hazardous molten materials etc. They, and their family, live in huts or under canvas which lack toilet facilities. There is no access to clean drinking water.
- 2.199 Subtle differences in theory have often led to a mix of economic and political motivations, with their perceptible impact on methods of "industrial action" 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.
- 2.228 A number of contributory causes have been identified by analysts for the growth in industrial unrest and strikes in the decade from the mid-sixties: 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. 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. 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 resultant conditions became so grave, that the High Court of West Bengal (in 1968) and the High Court of Kerala (in 1997) delivered judgements that held that these forms of

- protests or 'struggle' were illegal and an infringement of the Fundamental Rights that the Constitution guarantees to the citizens of the country. Experience shows that industrial action that deteriorate into or gets transferred into law and order situations, does not benefit those who go on strike.
- 2.229 Another aspect that cannot be ignored is public support which cannot be gained by alienating 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. 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.
- 2.231 Trade Unions that lead and represent workers have to reflect on the current situation. 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. 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.
- 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 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. 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) that Indian Industry has seen.
- 2.243 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 Datta Samant, although they were aware that his style and tactics were unconventional.
- 2.245 The textile industry, the single largest manufacturing industry of India has had a strong impact on the development of the labour and trade union movement in India.
- 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. These changes had a profound impact on the origin and course of the Strike of 1982. 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 persistent absence of modernisation and under-utilisation of the installed capacity contributed to the problems.

- 2.247 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 expansion outside the old traditional organised industries like textiles, and in sectors like engineering, pharmaceuticals, and chemical products. The annual average emoluments per worker in the textile industry (Rs. 7120) was roughly half of what was paid in the chemical industries (Rs.14,363).
- 2.248 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.
- 2.249 During the late 1970s, the 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. His strikes were characterised by long strikes, substantial, sometimes overreaching economic demands, complete bypassing of legalistic struggle and significant use of violence against recalcitrant workers or opposing Trade Union Centres. The changing industrial relations 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. It is estimated that between 75,000 to 1,00,000 workers were dismissed, retrenched or simply never taken back. The strike seemed to have immensely strengthened the hands of the mill owners.
- 2.252 Another grave threat to the authentic trade union movement seems to be emerging from the underworld. There are also reports of some cases where such unions have succeeded through other means. 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 has therefore, become necessary to protect the workers as well as managements from such forces.
- 2.253 There are Trade Union Leaders who ask for the abolition of 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.
- 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.

- 2.257 The Trade Union Movement in India has now come to be characterised by multiplicity of unions, fragmentation, politicisation, and a reaction that shows a desire to stay away from politically oriented Central Federations of Trade Unions and searches for methods and struggle for co-operation and joint action.
- 2.258 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.
- 2.259 There are 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. It did not confine itself to the traditional method of presenting demands and resorting to industrial action in pursuit of them. It took up the work of organising the women workers, who were engaged in unorganised sector of employment, combining other constructive activities like marketing, the provision of micro-credit, banking, training, representing the views and interests of workers.
- 2.261 There is yet another development on the Trade Union scene to which we must refer - the increasing tendency on the part of Trade Unions, to get together in ad hoc struggle committees to launch struggles, or to support a struggle that one of them has launched.
- 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 objective 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.
- 2.266 Throughout the period between the setting up of the first Chamber of Commerce in Calcutta 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.
- 2.267 There were many areas of conflict between British business interests and Indian businessmen.
- 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, the then British Government refused to permit the use of state funds for matters like setting up Departments of Industries and Public Sector Development. As a result of this attitude Indian Chambers of Commerce aligned with the Indian National Congress and Congress leaders, and participated actively in the national movement.

CHAPTER - III

INDUSTRIAL DEVELOPMENT & PROGRESS AFTER INDEPENDENCE

- 3.7* India used its import policy for the healthy development of local industries. A good number of restrictions were put on the import of industrial goods, and the effort was to encourage the production of these goods indigenously.
- 3.8 Levying higher tariffs and a total or partial physical ban on the imports of such products gave a much-needed sheltered market for Indian goods. But as years went by, industries acquired experience in manufacturing and turned out quality products.
- 3.9 During the Second and Third plans, the emphasis was on the development of capital goods industries. Encouragement was given to import technical know-how and to enter into foreign collaborations to undertake manufacture of capital equipment locally. This gave a fillip to industrial development.
- 3.10 The Government gave encouragement to industries to import parts and components required for indigenous production. Actual users of imported raw materials or products were given preference over the category of established importers i.e. traders. Items that were scarce were channelised through the State Trading Corporation, Mines & Minerals Trading Corporation and such other Government bodies. Imports were strictly controlled by the import policy announced every year by the Government of India.
- 3.11 Customs tariffs were raised in some cases to 200 to 300% on imported products. This gave protection to local industries. 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 manufacture or assemble final products in India.
- 3.12 To Provide the financial infrastructure necessary for industry, 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. The National Small Industries Corporation was also established at the Centre and a Small Industries Development Bank of India was established in 1989.
- 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.
- 3.15 Encouragement to small-scale industry by providing a number of support measures covered industrial extension services, factory space in industrial estates, credit facilities at

concessional rates of interest, low margins for technician entrepreneurs, supply of scarce raw materials through special quotas and import licenses, training facilities, subsidised power tariffs and exemption of electricity duties, machinery on hire purchase basis, assistance for marketing, incentives for setting up units in backward areas, differential central excise levies for the small-scale sector, preference for products produced in small-scale industries in Government purchases, reservation of products for exclusive manufacture in the small-scale sector, creation of institutions to help small enterprises, and training in entrepreneurship development.

- 3.17 The Central and State Governments made huge investments in providing such infrastructure facilities like power generation and distribution, roads, communications, creation of port facilities etc. Various State Governments made developed plots of land or industrial estates available to entrepreneurs.
- 3.23 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. It also set up Indian Institutes of Technology, Management Institutes and Engineering Colleges to train persons with higher management and technical skills.
- 3.25 The Government of India set up 48 national laboratories to undertake applied research in chemistry, physics, electronics, botany, etc.
- 3.27 The Central Government and the State Governments followed a 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.
- 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. Industries like life insurance, civil aviation, banks were nationalized and were included in public sector.
- 3.31 The policy of the British Government was against encouraging industrial development in India. There were many hurdles placed in the way of the growth of Indian industry.
- 3.35 In 1951, the Industrial (Development and Regulation) Act was passed by the Parliament. The main provisions of the Act were that all existing undertakings at the commencement of the Act, except those owned by the Central Government were required to register with the designated authority; 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 by the Central Government"; such a licence or permission prescribed a variety of conditions, such as, location, minimum standards in respect of size and techniques to be used; such licenses were also required in cases of 'substantial expansion'; the industries to be brought under regulation were divided into two parts, Part I and II in the Schedule to the Act. (In regard to the industries listed in Part I of the Schedule, the Central Government could issue necessary directions in respect of quality production, prices etc., and could transfer industries specified in one part to another.)

- 3.37 The IDR Act resulted in more or less complete control by the bureaucracy on the industrial development of the country.
- 3.39 A new Industrial policy was announced in 1956.
- 3.40 This Policy divided industries into three categories. All basic and strategic industries were to be set up in the public sector, called category A type of industries. In category B industries, private enterprise could participate along with public enterprises and 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 providing employment, equitable distribution of national income and the effective mobilisation of resources.
- 3.42 In April 1964, the Government of India appointed a Monopolies Inquiry Commission. This Commission drafted a law to control monopolies and recommended the setting up of a permanent Monopolies and Restrictive Trade Practices Commission. An Act was passed and a Monopolies Commission was appointed by the Government in 1969.
- 3.43 In July 1969, an Industrial Licensing Policy Inquiry Committee was appointed to examine the shortcomings in licensing policy. Following the report of the 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 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 firms were not allowed more than 40% of equity. 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 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. 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 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. 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.
- 3.47 Within the SSI sector, a new concept of tiny sector was introduced. This tiny sector was to be given special attention and extended help.
- 3.48 The policy statement considerably expanded the list of reserved items for exclusive manufacture in the small-scale sector. This concept recommended by the Karve Committee 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 After 1980, an era of liberalisation started. The trend was to dilute the strict licensing system and allow more freedom. The steps taken included: re-endorsement of licenses (1984), automatic re-endorsement of licensed capacities (1988), broad banding and selective delicensing (1985-86) extended to 25 industries, exemption from licensing for all new units and those having an investment of Rs.2.5 crores in fixed assets, investment of foreign equity up to 40% freely and removal of locational restrictions and investment ceiling for small industries (May, 1990).
- 3.50 The enactment of the IDR Act acted as a great deterrent to the growth of industries in the country. The bureaucracy acquired unprecedented powers over industrial activities. A number of other Acts acted as obstacles and retarded the industrial development of the country. Despite industrial licensing, an entrepreneur had to obtain clearance from many Agencies.
- 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.
- 3.52 Our industries were suddenly required to face international competition. Many of these industries allowed their foreign collaborators to take over. Those who remain in the field are trying to downsize. It is becoming increasingly difficult not only to face competition in the world, but also competition at home with the products of multinationals.

CHAPTER - IV

IMPACT OF GLOBALISATION

- 4.3 We 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 the minimum level of protection and welfare for workers in all sections of the economy – organised as well as unorganised.
- 4.4 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 harmonious industrial relations, machinery for the speedy and just solution of equality and social security. For the rest, whatever we say in our review is only meant to outline the context and the factors that contributed to the dynamic nature of the context.
- 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. As a result, India found it difficult to raise funds in the international markets. India was on the verge of default on external payment liabilities. Under these circumstances, it was felt that there was no alternative but to undertake drastic economic reforms.
- 4.31 The broad features of the economic reforms:
- (a) The Government opened major sectors of the economy to the private sector.

- (b) Foreign investment was invited in all these sectors.
 - (c) All restrictions on the entry of the private sector into the field of infrastructure and strategic industries were removed.
 - (d) There is more freedom for financial institutions.
 - (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) 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.
 - (h) Import restrictions have been reduced
 - (i) Subsidies are being cut, tax rates are being reduced and the entire fiscal system is being streamlined.
 - (j) The Controller of Capital Issues stands abolished.
- 4.34 The post-reform growth has been at least marginally better than the average rate of growth achieved during the pre-reform period.
- 4.38 The wide fluctuations in our national income growth have been curbed in the nineties.
- 4.52 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.
- 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.
- 4.59 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.
- 4.60 The Government was interested in augmenting the country's foreign exchange reserves, so that such an eventuality should not occur in future. On 30th December 2001, these resources touched a figure of 48.11 billion dollars. By the week ending 1 March 2002, we found that the reserves have jumped by as much as \$ 299 million, and they stood at \$ 50.744 billion. This is a significant achievement of the new economic policy.
- 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.
- 4.67 Indian exports have remained stagnant at around 5% of the GNP for almost a decade.
- 4.69 If exports remain stagnant, the overall economic growth of the country is likely to be affected.

- 4.73 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 The new economic policy has not succeeded in promoting exports on a sustainable basis and improving our international competitiveness.
- 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.
- 4.79 Foreign collaborators first increased their shares from 40% to 51%, and then took over the entire management of the company.
- 4.82 Therefore, gradually the management of the majority of foreign collaborated companies went into the hands of foreign investors.
- 4.83 In recent years, there is a substantial amount of growth in Mergers & Acquisitions activities in India.
- 4.84 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.
- 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 the trend has been very much in evidence.
- 4.91 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.
- 4.98 A large MNC can perhaps acquire most of our large Indian companies.
- 4.99 What is important is that the trans-national companies seem to be more interested in consolidating their stakes in existing joint ventures in India rather than investing in fresh green-field projects.
- 4.110 These overseas investors can manipulate and also create problems for the Indian economy.
- 4.115 Thus, the new economic policy seems to be resulting 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.
- 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.
- 4.118 During the last few years multinational companies (MNCs) have started acquiring the entire equity of their Indian subsidiaries through open offers and then de-listing from the stock exchanges.
- 4.121 With their exit, the markets will be poorer. The Indian shareholders will no longer be able to participate in the prosperity of these MNCs.
- 4.122 From 1997, India's share is declining and has come down from 2% in 1997 to 1% in 1999.
- 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.
- 4.128 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 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.
- 4.131 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 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.
- 4.133 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. We can refer to the Shanghai Municipal Regulations of Labour and Personnel Management in Foreign Invested Enterprises.
- 4.135 Article 2 - "This regulation is applied to all the foreign invested establishments in the Shanghai Municipality and their staff and workers".
- 4.137 Article 3 - "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 - "The foreign invested enterprise can determine its own organisation structure and personnel system in accordance with the need of production and business operation.
- 4.139 Article 5 talks of methods or procedures for recruitment of staff.
- 4.143 Article 11 – 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.
- 4.145 The labour contract, when concluded, is a legal document and binding upon both parties.
- 4.148 Article 13, 14 and 18 lay down conditions under which an employee can be terminated.
- 4.149 The labour contract is automatically dissolved in certain circumstances.
- 4.150 When dismissed by the foreign invested enterprise, the worker shall get economic compensation from the enterprise in accordance with the employee's length of service in the enterprise.
- 4.152 Article 15 talks of codes under which the labour contract cannot be dissolved.
- 4.156 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 and; 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 country where the enterprise is located within 15 days upon the reception of the adjudication.
- 4.157 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 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.
- 4.160 Enterprises of any kind have to fulfill certain stipulated conditions before firing or laying off or retrenching.
- 4.163 It is clear that the law does not contemplate or permit "hire and fire".
- 4.164 We were told that the number of industrial disputes had increased by leaps and bounds in the last few years.
- 4.165 With the transition to the Socialist Market economy, the concept of jobs has changed. The basic changes that come about where jobs are strictly contractual, and the lay-off and retrenchments have resulted in increase in disputes.
- 4.166 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.
- 4.167 There is only one trade union in China, the ACFTU.
- 4.168 Globalisation, and the consequent downsizing of its enterprises have also affected Chinese economy.
- 4.169 Various Social Security Schemes :-
1. Old Age Pension Scheme

2. Medical Insurance
 3. Workers Injury Scheme
 4. Maternity Benefits
 5. Unemployment Insurance
- 4.171 Perhaps those who advised us to recommend labour laws similar to what China has, may have 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 perception of freedom and fundamental rights that we have in India, in our Constitution and our Society, is different from what prevails in China.
- 4.208 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 immunisation
 - 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."
- 4.210 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 state them without going into pros and cons.
- 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.
 - c) China followed a policy of competition rather than ownership for higher productivity.
 - d) China did not give too much importance to balanced regional development.
 - e) China gave lot of importance to provide excellent infrastructure of international standard in Shanghai, Shenzhen and Guangdong provinces and attracted foreign enterprises over there.
 - f) Overseas, Chinese have played a very important role in attracting foreign investments.
 - g) China followed proper sequence of reforms. China, instead of initiating reforms with foreign trade and exchange rate liberalisation, started with agriculture. Then, China introduced export orientation for Township and Village enterprises. Then, special economic zones were opened which offered foreign investors excellent infrastructure, special fiscal and financial incentives and flexible labour relations by their innovative contract system.
 - h) A new policy was first tried in a small region, and after gaining experience of such a policy and the difficulties encountered, this policy with modifications was introduced in a wider area.
 - (i) The administration in China is completely decentralised. Local municipal corporations can also take a decision regarding foreign investment up to a limit. The laws are simple.
 - (j) China allowed its companies to grow. Chinese companies are much bigger in size than Indian companies. In India, because of our different ideas of monopolies, industrial licensing, etc., Indian companies were never allowed to grow in the licence permit regime and even the largest companies in India are pigmies as compared to global players. As a result, they cannot effectively compete.
- 4.211 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.
- 4.215 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.
- 4.217 There are some signs of recovery in the intermediate and consumer durable goods industry, the performance of the capital goods sector has been disappointing.
- 4.224 The value-added growth after 1991 has not been substantially better than that achieved during the first 15 years of Indian planning.
- 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.
- 4.227 Indian textile firms lack economies of scale. India's wage costs are also 50% higher at 60 cents than the rates in China.

- 4.228 The iron and steel industry is affected because of global trends. There is a glut in the global steel market.
- 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. 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 coming at a cheaper price from China.
- 4.231 Indian mining industry is also affected because of globalisation. But for many coastal states the cost of transportation of this coal is very high. Moreover, the cost of production of coal is very high in India. Because of reduction in tariff and other factors, imported copper is much cheaper than indigenously produced copper. 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 project 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. 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. Their very survival seems to be at stake.
- 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.
- 4.235 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.
- 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. There is hardly any evidence to show that the Government thinks that a reformed public sector can play an effective role in economic recovery.
- 4.237 The Indian stock market is one of the oldest and is operating since 1875. 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 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.
- 4.239 With 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.
- 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.
- 4.241 The Government policy during the 1990s was aimed at attracting foreign investment of all varieties. 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.
- 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.
- 4.244 Since insufficient investment is made in agriculture and rural areas, agricultural production has been affected adversely. 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.
- 4.246 Agriculture and allied activities still contribute about 25% of GDP and increase of even 5% in its output would make an incremental contribution of 1.3% to real growth of GDP.
- 4.248 Another area of concern is the declining level of capital formation in Indian agriculture. The inadequacy of new capital formation has slowed down the pace and pattern of technological change in agriculture with adverse effect on productivity.
- 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.
- 4.253 It will be interesting to note that :-
 While foodgrain production is stagnating, procurement operations are increasing.
 While food procurement is rising, PDS sales are falling.
 Supply demand mismatch is leading to build up of huge food stocks.
 At current levels of annual PDS sales, food stocks can as well last for the next four years.
- 4.254 It is not that there is no demand for grain under PDS. But rural poor do not have enough purchasing power to buy foodgrains.
- 4.259 Small entrepreneurs had hoped 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 no concrete steps seem to have been taken to implement these policies.

- 4.261 It was only on 30 August, 2000, 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.
- 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 Dr. Abid Hussain Committee. Since then, 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.
- 4.270 With the entry into the WTO, it is doubtful whether there will be any encouragement to ancillary industries.
- 4.271 The SSI units, which are producing independent products of their own, are in deep difficulties because of the large-scale imports from other countries.
- 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. This report contains many valueable recommendations. We were told that implementation of these recommendations could help healthy growth of small enterprises in India.
- 4.274 Trends in employment, unemployment rates, industrial distribution of total workforce :-
- a) Overall employment is estimated to have grown at around 1.01% per annum in 1990s compared to 1.55% per annum in 1980s.
 - b) The number of unemployed in 1997 more than the number employed in organised sector.
 - c) About 7% to 8% of the workforce in the organised sector is protected while 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. 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%.
 - e) Employment is not growing in the organised sector.
 - f) Forty four percent of the labour force in 1999-2000 was illiterate. 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.
- 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).
- 4.278 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 benefited 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.

4.280 A review of industrial relations in the pre-reform decade (1981-90) reveals that as against 402.1 million man-days lost during the decade (1981-90) i.e. in the pre-reform period, the number of man days lost declined to 210 million during 1991 to 2000 - i.e. the post-reform period. But more man-days have been lost in lockouts than in strikes.

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.

4.284 We have received a large number of complaints on VR schemes. 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.

4.285 We shall make a few other general observations on matters that have come 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.
- 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.

- 6) Recovery proceedings against employers who could not pay heavy dues of workers are not being seriously pursued 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.
- 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.
- 4.287 The 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.
- 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.
- 4.303 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.
- 4.305 In some industries like chemicals, plantation, household goods, toys, etc. products have been imported in a big way and are out-pricing 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.
- 4.306 Many countries are dumping their goods in Indian markets at a cheap price. 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.
- 4.308 In the new regime, we have to encourage foreign investment and give them treatment on par with local investors. A large number of multinationals have entered the field of low technology; high volume products and this will close an area of opportunity to small entrepreneurs.
- 4.310 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.
- 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.
- 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.

- 4.313 In such a context, it is imperative that attempts are made to examine the implications of the contemporary migration flows so as to evolve a more purposeful migration policy framework aimed at the maximization 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. The second type of migration is the flow of unskilled workers and semi-skilled workers in manual or clerical occupations to the oil exporting countries of the Middle East.
- 4.315 The basic characteristics of the labour-flows from India to the industrialised countries :-
- Such outflows are made up almost entirely of permanent migration.
 - A large proportion of these migrants are persons with professional expertise, technical qualifications or other skills.
 - The destinations have been the United States, Canada, and the United Kingdom, and in recent times some countries in Europe.
- 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. This sudden spurt in the demand for labour was met by drawing labour from labour surplus economies like India.
- 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.
- 4.321 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.
- 4.325 The employment of Indian workers helps to earn foreign exchange and leads to augmentation of the foreign exchange reserves of the country.
- 4.326 The closure of industrial units and bankruptcies are a normal feature in the developed economies all over the world. Developed economies with their well-established social security systems, easily take care of workers displaced by such closures. 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. 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.
- 4.329 The major issue that emerges is how the industrial units, which are sick or closed or under liquidation, need to be dealt within India, particularly the displaced workers and locked assets of these units.

- 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.
- 4.333 In spite of impressive increase in labour productivity in 90s, India's labour productivity is lowest amongst 47 countries covered by the World Competitive Year Book 2000.
- 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.
- 4.339 There is some evidence to show that growth has favoured urban India, the organised sector, the richer states and property 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.
- 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.
- 4.342 Though a number of changes have taken place in the Indian economy, bureaucratic systems and procedures seem to retain their role.
- 4.343 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.
- 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 have overtaken India.
- 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.
- 4.346 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.
- 4.348 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.
- 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.

- 4.360 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.
- 4.362 Whereas China's industrial production-growth has been forging ahead, India's growth-rate of manufacturing is stagnating.
- 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.
- 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 have increased access to all types and a large variety of international brands of goods in the market.
- 4.366 Globalisation has also had negative impacts on a variety of sectors of Indian economy.

CHAPTER - V

APPROACH TO REVIEW OF LAWS

- 5.1 One has to accept the fact that we have travelled quite some distance along the road to full-scale globalisation. It is technology that has made globalisation possible. It has generated new hopes and given rise to new dangers and temptations. Its impact can already be seen in many fields of human activity. Old mindsets may prove a handicap in responding the new situations and factors that have emerged.
- 5.2 Industry is not an end in itself. It is a social activity undertaken to meet the needs of society. All economic activity is the result of interdependent interests, and co-operation among the various factors that together constitute the cycle of economic activity. Globalisation has not altered this fundamental; it has underlined its importance for communities that choose to enter the arena of competition.
- 5.3 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. This competitiveness cannot be acquired without harmonious relations or at least peaceful relations in industry. 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.
- 5.5 It is an overstatement to say that labour, or labour laws are the only cause of our unsatisfactory economic development. There are other factors that affect the efficiency of industry like managerial skills, integrity and honesty, efficient and reliable infrastructure, etc. If there are many causes, and one deals only with one, and ignores all others, one cannot overcome the disease or hope for cure. All these reasons make it necessary for us to place labour laws in perspective, as a part of what we have to look at.

- 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 before the Commission, talked of the imperative need to evolve a new work culture in our country.
- 5.8 It has 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 have to be looked upon as incomes that are earned through hard work, not merely monetary payment but also a balance of responsibilities and rights.
- 5.9 The individual worker's attitude to work has to include, (i) pride in maximising his own productivity to repay his debt to society and (ii) pride in his commitment to excellence, as reflected in the quality of his work.
- 5.10 In the evidence tendered before the Commission, many witnesses pointed out that many workers in private and public undertakings work only 4 or 5 hours a day. This is not only true of Government or administrative offices, but true of factory workers as well.
- 5.11 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 same payment. The loss in time and output caused by the underutilisation of resources, and the atmosphere that we create with the resultant fall in efficiency even during working hours, further compounds loss of output.
- 5.12 Our reputation abroad 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 should seriously reflect on how he/she can contribute to the transformation of our work culture.
- 5.14 We must make a few observations on the contribution that managements can make to improve our work culture. Industrial relations relate to the relations between management and the workforce employed in the undertaking. In the ultimate analysis industrial relations are a branch of human relations. Human beings like to be treated as human beings. 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.
- 5.15 In the ultimate analysis, the level of work culture in any undertaking will depend on the level of awareness or realisation of identity, of interest, or, in the least, the sense of belonging, and the sense of interdependence.
- 5.16 The systemic arrangements that will help us to maintain a high level of work culture, includes: fair wages, equitable profit sharing, effective organs of participatory management at all levels and opportunities to interact.
- 5.18 Many witnesses drew our attention to 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. It must be accepted that one needs to find measures to correct this situation.

- 5.19 Over manned organisations are also a cause of poor work culture. It lowers normal levels of work efficiency and the work hours per employee.
- 5.20 The work environment also plays a role in promoting good work culture. A vibrant work environment will result in greater output.
- 5.24 We have the maximum number of holidays. A study reveals that three out of every seven days are holidays for an average Government servant. 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.
- 5.29 We recommended that: the Central Government and all State Governments should have a uniform policy on holidays, only 3 national holidays be gazetted – viz. Independence Day, Republic Day and Gandhi Jayanti Day (October 2), two more days may be added to be determined by each state according to its own tradition and apart from these each person must be allowed to avail of 10 restricted holidays in the year, Government holidays should be delinked from holidays under the Negotiable Instruments Act, in case of the option of a five-day week, if a holiday occurs during the week, Saturday should be a working day, and the movement of quality circles should be encouraged. 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.
- 5.32 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.
- 5.34 Most 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. This introduces a basic or fundamental change in the current system in vogue in most kinds of employments. While we understand that non-permanent jobs or temporary assignments can be on contract for specified periods, we are accustomed to look upon employment against permanent jobs as permanent service. Attempt to change the basis of tenure in all jobs (permanent as well as non-permanent) to contractual, and for stipulated periods, involves a basic change in attitudes and notions. 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.
- 5.35 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-one, an individual contract, and two, a collective contract with the workers' union.
- 5.36 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.'

- 5.38 Most of the developed countries where the majority of jobs are contracts have elaborate and effective systems of social security. 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. In India, we do not have such legal provisions or practices. We are convinced that social justice as well as the benefit of the economic returns that accrue from a moderately assured 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.
- 5.40 The mindset that was rooted in faith in the power and resilience of private initiative and industry to take over the role of the State in economic matters was shaken by September 11, 2001 and the crash of Enron have altered the scenario in many ways. The "centrality" of the state in ensuring security – security against forces of disintegration and terrorism, and social security – has had to be acknowledged again. Human beings and families are not mere statistical entities. Unless backed by adequate compensation and security system, starvation and suffering can become causes of acute and explosive social unrest.

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. 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. ...My economic security plan can be summed up in one word: jobs."

"...Good jobs must be the aim of welfare reform... the goal is to reduce depending on government."

"...economic security can vanish in an instant. I ask Congress ...to give uninsured workers credits to help buy health-coverage..."

"A good job should lead to security in retirement...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"

We need not point out that these are as necessary in our country as in America. Those who look to America as a model should see the need for policies oriented to the creation of jobs and the provision of basic social security.

The crash of the Energy giant Enron has exposed many of the weaknesses and the socially harmful effects of the Corporate system. It has administered a severe shock, and created apprehensions about mechanisms that were meant to assure accountability and keep vigil. We should learn from the experience.

The new mindset that the new context calls for must be reflected in all attitudes and activities in industrial relations or employer employee relationships. 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. Where differences persist 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.

Processes of adjudication must be quick, expeditious and inexpensive. They should not involve delays that cripple the worker. Workers should be encouraged to organise themselves with the awareness that struggles on the basis of extraneous issues may divide and weaken them.

CHAPTER - VI

REVIEW OF LAWS

6.1* We 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.

6. 2 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 to respect, to promote and to realise 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 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 goal is not just the creation of jobs but the creation of jobs, of acceptable quality.

6. 7 Government of India ratified Convention 122 on Employment and Social Policy in 1998. Article 1 of the Convention lays down:

"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 This convention was ratified by India at a time when unemployment levels are high. 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 the commitments of the Government of India, 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 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 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 organized sector as consisting of establishments which have a minimum employment limit
6. 16 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 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 financial burdens that affect the viability of their enterprises or compel them to work under irksome conditions. Balancing both these factors, the Commission feels that a limit of 19 workers should be accepted as the socially defensible mean.

6. 18 The Commission considered the question whether there should be any salary limit above which the protection of the labour laws will not be available or there should not be any such limit for coverage of workers under the labour laws.
6. 19 Relatively better off section of 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. We, therefore, recommend that Government may lay down a list of such highly paid jobs who 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 cut-off 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".
6. 20 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. 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 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.
6. 22 The Commission agrees with the Study Group that it is necessary to provide a minimum level of protection to Managerial and other (excluded) employees too, against unfair dismissals or removals. This has to be through adjudication by labour court or Labour Relations Commission or arbitration.
6. 23 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.
6. 24 There is no need for different definitions of the term 'appropriate government'. There must be a single definition of the term, applicable to all labour laws. 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, such a codification may have to be done in stages and what we have proposed is, hopefully, the first step.
 6. 26 Central laws relating to the subject of Labour Relations 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. 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. However, we would carve out a section of those 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. 28 We would recommend the enactment of a special law for small scale units. We have come to the conclusion that the reasonable threshold limit will be 19 workers. Any establishment with workers above that number cannot be regarded as small. The composite law suggested by us for small enterprises has provisions for registration of establishments, (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. 31 We are adopting certain approaches in drafting the Law on Labour Management Relations.
 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
 6. 34 Thirdly, 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. Where 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. 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.
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, the Commission is of the view that changes in the labour laws be accompanied by a well defined social security package 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.
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'. 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'. After examining all aspects of the question, we have come to the conclusion that the persons engaged in domestic service 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 Likewise, we define establishment as a place or places where some activity is carried on with the help and cooperation of workers.
6. 40 It is desirable to define two terms, 'wages' and 'remuneration', the former to include only basic wages and dearness allowance and no other for the purpose of contribution to social security and for calculations of bonus and gratuity and all other payments including other allowances as well as overtime payment together with wages as defined above will be 'remuneration'.
6. 41 We also discussed the question whether any distinction should be made between 'strike' and 'work stoppage' and came to the conclusion 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. 43 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.
6. 45 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 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 where the effects of industrial action create situations which threaten the lives and normal and essential needs and activities of the vast majority. 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. 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).
6. 49 We are recommending the withdrawal of the Essential Services Maintenance Act.
6. 50 Coming to the question of Trade Union Act 1926, 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 shall not apply in their case.
6. 51 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. We have come to the conclusion that the present system of eligibility for registration may continue. All 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. 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.
6. 53 Any such dispute, which currently goes under the appellation of interunion or intraunion 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.
6. 54 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. An unregistered organisation shall not be entitled to any privileges, immunities, and rights.

6. 56 Other provisions of the Trade Unions Act 1926 including the provision to set up a separate political fund may be allowed to continue and appropriately included in the proposed integrated law. However, care must be taken to ensure that the general funds of trade unions are not used for political purposes.
6. 59 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. Our Trade Union movement today is fragmented. 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. One of the ways to strengthen the incentives for consolidation can lie in the field of registration and recognition, where the criteria for eligibility can be upgraded or at least proportionately upgraded.
6. 66 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.
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.
6. 70 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.
6. 71 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, 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.
6. 73 Check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions;
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. 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 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.
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 Establishments employing 20 or more workers should have standing orders or regulations. There is no need to delimit the issues on which standing orders can or need be framed. 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. 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. 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 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, should be entitled to 50% of his wages as subsistence allowance, and at 75% of wages for the period beyond 90 days if the period of suspension exceeds 90 days, for no fault of the worker, 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 shall establish a Grievance Redressal Committee consisting of equal number of workers' and employers' 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.
6. 82 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 of the ID Act. 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.
6. 83 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. 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. 85 We are aware that Chapter VB of the ID Act has aroused intense debate. We will approach this question from the point of view of society as a whole. 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. 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.
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 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. 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. Precisely it is for this reason that the provision for prior permission was incorporated. 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 force to carry. Permission for closure are kept pending for months and years and employers kept waiting. Sometimes managements try to seek some such subterfuges to close the enterprise and disappear from the scene without paying compensation, dues, etc. to workers. 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.

6. 88 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 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. We 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. 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 principle 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.
6. 90 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 referred to arbitration or adjudication for determining disputes between management and labour. We feel arbitration is the better of the two and would like the system of arbitration to 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, 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.
- 6.93 A panel of arbitrators may be 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, labour lawyers, trade union functionaries, employers, managers, officials of the labour department, both serving and retired, academics, retired judicial officials 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. We envisage a system of labour courts, lok adalats and Labour Relations Commissions as the integrated adjudicatory system in labour matters. This system will not only deal with matters arising out of employment relations but also trade disputes in matters such as wages, social security, safety and health, welfare and working conditions and so on. 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 fulfils the qualifications for being appointed as a High Court judge. 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 fulfils the qualification for being appointed as a Supreme Court Judge. 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. 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 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.
- 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. Officials of labour departments at the Centre and the States 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, may be 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. The National Commission should be empowered with the powers of the Supreme Court of India.
- 6.96 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. Section 2A of the Industrial Disputes Act 1947 may be amended. 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. 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. 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. Section 11A of the ID Act 1947 may be retained. 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 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. More than 11400 pending labour cases, which constituted two third of the total pending cases had been disposed off in three rounds of Lok Adalats. It should, however, be ensured that Lok 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. However, the system of Lok Adalats on labour matters appears promising, and should be pursued.
- 6.98 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.
- 6.99 Jurisdiction of civil courts be banned in respect of all matters for which provision is contained in the relevant labour laws. The existing provisions regarding consent of the other party for the appearance of legal practitioner should remain. In the case of conciliation and before 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.
- 6.101 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 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 We feel that the time has come now to legislatively provide for a scheme of workers participation in management. It may be initially applicable to all establishments employing 300 or more persons. For the smaller establishments, a non-statutory scheme may be provided. 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 would 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 In the enforcement of labour laws, there is discrimination between the private sector and public sector, the latter allegedly being handled leniently. 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 The provisions in respect of small 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. As may be seen from the draft law given at Appendix, 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.
- 6.109 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 organisation for all time to come. Organisations must have the flexibility to adjust the number of this workforce based on economic efficiency. It is essential to focus on core competencies if an enterprise wants

to remain competitive. 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 payrolls 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 of the enterprise, 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 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 centers 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 appropriate social security fund.

- 6.110 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.
- 6.112 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 recommendations made in the Judgment of the Supreme Court in the Raptakos Brett & Co case. 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.
- 6.113 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 Onam or Puja 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. 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.7500/- and Rs.3500/- for entitlement and calculation respectively.
- 6.114 There should be 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.

- 6.115 Where wages are fixed purely on piece rate basis the employer should pay at least 75% of the notified time rate wages to the piece rated worker if the employer is not able to provide him with work.
- 6.116 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 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. There is a case to distinguish between regular wage employment or food or remuneration in return for some token work for which opportunities are created under relief works. 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. We recommend that this distinction may be borne in mind in determining whether the law on minimum wages should be deemed applicable to this situation. If there is a dispute in this regard, it can be raised before the National Labour Relations Commission.
6. 118 There is no need for any wage board, statutory or otherwise, for fixing wage rates for workers in any industry.
6. 120 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.
6. 121 We would recommend 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 on Labour Administration). Such general law on working conditions etc. may provide for the following: -
- a) The law 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.
 - b) It should specify the maximum number of working hours in a day/week, and payment of overtime at double the rates of wages. The limitation on employing workers on overtime needs to be relaxed, and we recommend that the present ceilings be increased to double to enable greater flexibility in meeting the challenges of the market. Sub section (2) of Section 64 of the Factories Act contains a provision that the State Government can give exemptions in certain circumstances. 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. 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) There should be 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 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 from labour laws.
 - 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.
 - g) Each establishment having an employment size 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) Crèches should not be dependent on the number of women workers or the number of children. Every establishment employing 20 or more workers must run a crèche.
 - k) There should be provision for holidays, earned leave, sick leave and casual leave at an appropriate scale to the workers, apart from maternity benefits for women workers. We do not approve of the practice of declaring a holiday on the death of a person. 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.
6. 123 We would say that the present laws on welfare outside the workplace should be integrated as far as possible with the laws on social security.
6. 124 As regards Workmen's Compensation (Amendment) Act 2000, the deletion of words 'and who is employed otherwise than for the purpose of the employer's trade or business may cause unintended hardship. 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 That Schedule II to the Act though long is not complete. 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 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.
6. 128 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.
6. 131 (i) The Commission regards the implementation of Bonded Labour System (Abolition) Act by the Ministry of Labour as appropriate,
- (ii) The Commission has suggested a new law on the subject of Child Labour to substitute the provisions of the existing law to the benefit of children which would also aid the abolition of child labour.
- (iii) We are shocked at the proviso to the definition of 'an agreement of pledge of the labour of child' in Children (Pledging of Labour) Act, 1933. 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. and would, therefore, recommend the repeal of this law.
- (iv) 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,
- (v) We feel that a strict and imaginative implementation of Employment Exchanges Act 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. Salary level of rupees sixty per month, above which alone vacancies will have to be notified, be raised suitably.
- (vi) Manual Scavengers and Construction of Dry Latrines Act applies in the first instance to the states of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to all Union Territories. The law be made universally applicable without further delay with deterrent penalties for infringement.

- (vii) In our suggested law on wages, we have incorporated the provision of equal pay for equal work. 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 or wages law.
 - (viii) We feel that the Government may not be in a position to legislate separately for interstate migrant workers who migrate on their own 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). 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. 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 for work in the unskilled category.
 - (ix) 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, essentially for statistical purposes and in some cases for information on compliance with safety regulations. 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 As per the evidence received by the Commission with regard to the Mathadi Workers in Maharashtra and Head load workers in Kerala, though advantageous, 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, 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 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. The State may consider assisting new enterprises in other ways.
- 6.134 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 the functions are not so very discreet and include other activities the matter may 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.
- 6.135 We 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 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 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. Any offence that is not merely a violation of labour laws but also a violation of basic human rights should attract more stringent punishment.
- 6.137 Law may provide for compounding; such compounding may be permitted. We 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. 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 In an offence coming up for hearing if 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.
6. 139 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. 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, 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. 141 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.
6. 142 Rules and Regulations first be 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 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 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, employers and their organisations, rather than be a policeman. 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 our emphasis on diminishing the role of the State qua state, we strongly recommend that every large State and groups of small States set up Institutions for training and research in labour matters. 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 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.
- 6.147 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 or arbitration should be dealt with by appropriate Labour Relation Commission. This will need considerable increase in the number of labour courts. 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.
- 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 recognised that the bulk of the labour administration in the States and union territories relates to implementation and enforcement of labour laws. 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 the State and the Centre 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.
- 6.149 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 should be taken as our indicative draft, and not the 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.

CHAPTER - VII

UNORGANISED SECTOR

- 7.1* One of the two main tasks entrusted to the Commission is to propose an Umbrella Legislation for workers in the Unorganised Sector to ensure at least a minimum protection and welfare to the workers in this sector. This task is more difficult and complicated because of the dimension and the variety of the workforce in the sector.
- 7.2 Unlike the organised sector in this sector we are dealing with the workers who have not acquired a high profile, tasted the benefits that can be gained from organisations, or derived the advantages flowing from the high visibility.
- 7.3 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 protection and welfare of the workers in this sector.
- 7.4 We preface our observation by saying that on account of the variety, complexity and the dimension of the sector and the paucity of information about the conditions of work of workers in this sector, our work may bear the marks of 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. It could not be defined solely on the basis of the nature of work of the workers or on the basis of the number of employees in the undertaking and also not on the basis of the level of organisation.
- 7.6 It is equally difficult to identify an employer in some of the areas of the unorganised sector, and hence, an employer-employee relationship.
- 7.15 The unorganised sector is too vast to remain within the confines of conceptual definition. Hence, descriptive means are used to identify the unorganised sector.
- 7.17 In official records the unorganised sector is defined as residual of the organised sector, problems of underestimation and insufficient coverage lead to problems in deriving the residual estimate of the unorganised sector. The definition based on this approach which considers the organised sector as that employing 10 or more workers and the unorganised sector on the residual, is not dependable.
- 7.18 Many efforts have been made to identify the characteristics of employments in this sector. It will be useful to list some of the characteristics namely, low level of organisation, casual labour relations, small own account or family-owned enterprises or micro enterprises, ownership of fixed and other assets by self, involvement of family members, easy entry and exit, free mobility, use of indigenous resources and technology, absence of fixed working hours, unregulated and unprotected nature of work, lack of employment security and social security, use of labour intensive technology, lack of support from Government, etc.

- 7.22 The unorganised sector is in no way independent or exclusive sector but is dependent on the organised sector and the rest of the economy through variety of linkages such as raw material, capital, generation of employment, market facilities and so on.
- 7.23 Despite existence of labour laws, the workers in this sector do not get social security and other benefits for various reasons and there is hardly any trade union or institutional mechanism to fight for them.
- 7.24 In the organised sector too permanent workers are getting casualised and contractualised as a consequence of new economic and industrial policies. Such workers (casual or contract) in the organised sector as well as unionised workers in the unorganised sector can be considered to be included in the unorganised sector.
- 7.25 All workers who are not covered under the social security laws can be considered as part of the unorganised sector.
- 7.26 The term-unorganised sector eludes definition. Its main features can be identified and the sectors and processes where unorganised labour is used can be listed though not exhaustively. Apprentices, casual and contract workers, home-based artisans, a section of self-employed persons involved in jobs such as vending, rag picking and rickshaw pulling, agricultural workers, migrant labour and those who perform manual and helper jobs come under this sector, as well as those who depend on natural resources that are open or common property.
- 7.28 The official definition of the informal sector enterprises consists of directory establishments that employ between 6 and 9 persons and non-directory establishments which employ 5 persons or less and own account enterprises.
- 7.30 The study group appointed by the Commission has brought out certain general characteristics of enterprises or employment in this sector such as low wages and low earnings, high percentage of employment of women, employment of family labour, child labour and migrant labour, piece-rate payments, home-based work or contractual work, seasonal or intermittent employment, lack of organisation into trade unions, casual and multiple jobs, existence of debt bondage, existence of cooperatives of self-employed workers, dependence on others for supply of raw material, less access to capital, existence of health hazards, etc.
- 7.32 We may look at some of the specific groups of employment and problems confronted by them.
- 7.33 Home-based workers fall within a grey area between the employed workers and self-employed workers. There are self-employed workers as well as employed workers amongst the home-based workers.
- 7.37 Article 4 of the ILO Convention No. 177 of 1996 on home-based work calls for promotion of equality of treatment for home workers including right to organise, to protection against discrimination, to occupational safety and health, remuneration, social security, access to training, etc. The Commission feels that ratification of this Convention will offer substantial safeguards to millions of workers.

- 7.38 In the National Consultation held on the 17th January, 2000 the paper presented by the Ministry of Labour defined the home-based workers as 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 home-based worker is thus a self-employed person conducting his activity for a person or an organisation as there is no direct employer-employee relationship between a home-based worker and the person or organisation for whom he works.
- 7.39 Among the home workers there are some for whom this is the main economic activity while for others it is a supplementary source of income.
- 7.40 In many cases the head of the family or the member of the family does the work himself with the help of other members of the family. It is a collective self-employment effort and there is neither an employee nor an employer.
- 7.41 The paper presented by Ministry of Labour further mentions that the absence of specific data on home-based workers in official statistics is a reflection of lack of recognition of their legitimacy as workers and also of a refusal to acknowledge their economic contribution. Their contribution to national income in quantifiable terms is yet hazy but substantial. Studies point out that female workers constitute the majority of home-based workers.
- 7.44 The National Consultation was of the view that terms like home worker, self-employed person and own account worker should be defined and policies formulated to cover them.
- 7.45 Recommendations from the National Consultation suggested that the home-based workers should be limited to wage earners working for outside employers, they should be included under the Minimum Wages Act and the welfare schemes and provisions existing under some of the labour laws should be extended to them and the existing provisions pertaining to the organised sector should not be transplanted to home-based workers.
- 7.47 There is no reliable estimate of number of persons engaged as domestic workers. Though somewhat visible in urban areas, they are also engaged in households all over the country even in most distant and intractable areas. An estimate made by College of Social Work in Mumbai claims that 80% of domestic workers are women.
- 7.48 The work does not require any special skill. The persons employed as domestic workers are extremely poor, illiterate and come mostly from rural areas.
- 7.49 There is no system of social security on which the domestic workers can fall back. They work for long hours and do variety of work and sometimes get few hours of undisturbed sleep. In many cases they are not provided with safe and clean places where they can rest or sleep. Since many domestic servants are women and children they run the risk of sexual harassment and exploitation in many houses.
- 7.52 There is need to ensure satisfactory conditions of work, humane treatment and acceptable level of social security, issue of identity cards and payment of minimum wages to domestic workers.
- 7.55 In the interest of public health, sex workers should be subject to periodic health checks, should be registered and should be treated as self-employed for the purpose of protection or welfare.

- 7.58 They should be entitled to benefit of all the schemes that we are recommending for self-employed workers. Children of sex workers should not be denied opportunities for education.
- 7.59 At present no worker in plantations is covered under the Plantation Labour Act which stipulates the wage limit of Rs. 750 p.m. We were told that large number of casual and contract workers are employed in plantations even on jobs which are regular and not seasonal. All plantation workers should be provided with gumboots to protect them from insect and snake bites. The workers employed on handling fertilisers and spraying of pesticides should be trained and provided with safety equipments.
- 7.62 Plantation workers should be paid wages as per settlements or notified under the Minimum Wages Act and the middlemen should not be allowed to siphon away the part of wages of these workers.
- 7.63 The existing facilities for plantation workers should be continued and made more satisfactory in plantations located at inaccessible places. The facilities may be provided by a group of plantations on cost sharing basis. It will involve efforts on the part of the State Governments to persuade employers to set up joint hospitals, schools, crèches, etc.
- 7.64 We are of the opinion that the plantation industry should be helped to be competitive by reducing the tax burden and the cost of production.
- 7.71 The working conditions of the workers working in underground mines are full of hazards and the workers are at the risk of losing limbs or lives due to flooding, fire, collapse of roof, emission of gases, failure of ventilation or collapse of sides. There is high incidence of lung diseases like TB and pneumoconiosis in mines. The workers above ground are also exposed to risk of being injured by fall of sides, flying or falling objects, moving of vehicles, material handling equipments and injuries due to blasting. The rate of accident in India in mining activities is very high as compared to other countries.
- 7.72 The unorganised small mines and quarries which fall in the 3rd category of mines, do not have the benefit of any welfare measures. The employers try to avoid implementing social security and other labour laws by circumventing the laws in various ways. There is high incidence of child labour and bonded labour in small mines and quarries.
- 7.78 Allocation of labour on the basis of caste is one of the fundamental tenets of caste system. As per Government estimates 1 millions dalits are scavengers who clean public toilets and dispose off the dead animals.
- 7.83 The National Commission for Safai Karmcharies in its report in 1997 claimed that many scavengers are totally cut off from the mainstream of progress and are subjected to the worst kind of oppression and indignities.
- 7.100 Given the insignificant amount of remuneration and the need to engage several family members in the work assigned to one, it comes as a little surprise that many families of scavengers borrow money from their upper caste neighbours and consequently go into bondage.
- 7.101 Though the employment of manual scavengers and construction of dry latrine (Prohibition) Act, 1993 punishes the employment of scavengers or construction of dry latrines with imprisonment of one year and fine of Rs. 2000, the practice is continuing. The

- Government launched a national scheme that called for identification, training and rehabilitation of safai karamcharies throughout the country.
- 7.102 According to National Commission for Safai Karamchari the scheme has benefited only a handful of safai karamcharies and their dependents due to inadequate attention paid to it by the State Governments and concerned agencies.
- 7.103 Ship-breaking industry in Alang- Sosia ship-breaking yard is the biggest yard of its kind in Asia.
- 7.104 The industry dismantles 300 odd ships per year and employs about 17000 (1999-2000) workers which has now come down to about 7000 workers purportedly due to competition from other Asian countries. We find it difficult to believe that this is the only cause.
- 7.106 Between the periods 1993-94 till 1999-2000 the average number of deaths in the industry has been 28 and the number of ships broken has ranged from 183 in 1995-96 to 348 (1999-2000). About one fourth of the total deaths have been on account of fire, 10% deaths have occurred on account of gassing and strike against objects each and about 18-19% of deaths have taken place due to fall from heights and from falling objects each. It is obvious that the safety standard is not what it should be. There has been no satisfactory effort to enforce what is necessary in such an inherently risk-prone activity.
- 7.108 In the ship breaking yards the workforce is largely migrant from UP, Bihar, and Orrisa and to some extent from Maharashtra and other states.
- 7.109 The ship breaking industry needs support from the Government for making provision of water hydrant system for fire fighting, piped potable water, LPG/oxygen pipeline, land fill site and waste management, setting up a safety institute, improved road connections, stable water supply, etc. There is need to raise productivity of the industry to meet competition from countries like China, Pakistan and Bangladesh. The Commission is of the view that the regulations that relate to safety and health of the worker were meant not only for safety and welfare of the workers but also to ensure health of the industry itself.
- 7.110 Most of the workers in construction industry are employed on casual basis. Unstable employment/earnings and shifting of workplaces are the basic characteristic of work for construction workers. Though child labour is prohibited, children are engaged in unskilled jobs.
- 7.111 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 and education. In most cases safety norms are violated. They are often not given maternity benefits, though obligatory.
- 7.112 Temporary residential sheds put up for construction workers lack minimum facilities. Crèche facilities are not available at work sites and social security benefits are virtually non-existent because of various constraints such as lack of stable nexus between employer and employee, instability of employment, poor and uncertain earnings of workers, unreliable duration of work, etc.
- 7.113 There is violation of laws on minimum wages, equal wages, child labour, contract labour and interstate migrant workers. Construction workers remain invisible, vulnerable, voiceless and ununionised.

- 7.114 A system of bondage exists and gets extended from one generation to the next through child labour in construction industry.
- 7.116 In the post-liberalisation period the construction industry in the country is witnessing many structural changes which will radically transform the industry as well as construction labour market. The industry, which hitherto has been based on labour intensive technology providing ready source of employment will become technology intensive and mechanised leading to elimination of large numbers of the workforce.
- 7.127 Rag picking and scrap collection have a bearing on the urban economy. Many production enterprises depend upon recycling of the wastes.
- 7.128 As per available estimates there are about 50 lakh scrap collectors in the country. Illiterates, unskilled persons, illegal aliens and the poorest of the poor are pushed into this occupation as they are not able to find any other kind of employment. There is generally no employer-employee relationship in this trade and the waste collectors are, therefore, categorised as self-employed. No social security benefits are available to them.
- 7.131 Between scrap collectors and reprocessors various levels of traders such as retailers, stockists and wholesalers exists.
- 7.132 A study shows that about 92% of scrap collectors are women in the age group of 19-50 with the mean age of entry between 9-10 years.
- 7.135 The Commission recognises the useful role played by 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 by measures like providing identity cards, receipts for transaction, minimum wages if employed, health facilities, creation of welfare funds, prohibition of child labour. The municipal bodies should also give thought to the questions we have raised (in our report) and make appropriate regulations and arrangements.
- 7.142 The Commission feels that there should not be any prejudice against the direct engagement of migrant workers by fish processing units of other states on terms and conditions that the state authorities may like to lay down to ensure compliance by the employer.
- 7.143 The Commission finds that there is urgent need to ensure that fish processing units acknowledge their legal obligations on wages, overtime, maximum hours, and amenities. The contracts of work with the contract workers may be reduced to writing and signed with free and informed consent of all parties and the workers may be provided with a copy of the same. The employers should maintain proper records of wages, overtime etc. and the workers should be provided with protective equipment necessary for safety such as apron, gloves and gumboots, clean and hygienic quarters/dormitories and facilities of drinking water, toilets etc. It should be ensured that the movement of workers is not restricted after working hours and they are not coerced to restrict their movement to the precincts of factory complex. Workers should be able to form their own associations and associate with people outside without fear or intimidation.
- 7.144 The provisions of the Inter-State Migrant Workers Act, Contract Workers Act, and the Minimum Wages Act should be strictly implemented in fish processing units and welfare

- boards should be set up to look after the needs of social security and health security of workers in the fishing sector.
- 7.145 India has tremendous potential for development of fish processing. The Commission feels that while creating conditions for growth and health of the industry, the interest of the workers engaged in it should also receive equal attention.
- 7.151 According to rough estimates 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 marine sector, fresh water sector, captive fisheries sector, inland captive fisheries sector, costal aqua culture sector and post harvest sector. The employment in fishing sector includes net making, processing industry, marketing of fish products, boat building, fishing in sea water, related workshops etc.
- 7.169 The total working population in fisheries (marine and inland) is estimated to be around 6 million, the largest proportion (66%) being in the harvesting activity which is composed of mainly men, though women are sometimes involved in inland fishing. Women dominate the handling and processing activity accounting for about 70% of the workforce.
- 7.171 Harvesting of fish is conditioned by the weather and availability of fish in the aquatic terrain. A fisherman gets about 150-200 days of work in the year.
- 7.172 Seasonality of employment in other sectors is also related to weather at sea. The range of days of employment in handling, processing and marketing sectors is from 100-250 in the year.
- 7.175 Wages are paid by piece-rate, daily rate or as a share of net income. The last form is most common in harvesting activity.
- 7.176 The earnings of workers in fisheries sector as a whole are rather low and marked by very wide day-to-day fluctuations.
- 7.187 The fisheries sector of Kerala is noted for migration of workers within the state as well as migration of skilled workforce to the fisheries sector of other maritime states of India.
- 7.193 Risk of accidents is especially high amongst the workers in harvesting activities particularly on mechanised boats and the artisanal, fisherman using non-mechanised crafts in the coastal waters.
- 7.195 Social security and welfare measures in fishing industry are of two distinct types i.e. those that have been evolved from traditional community caring and sharing systems and those that are instituted as part of the organised obligations towards workers on the part of the employers and the state.
- 7.197 The Government of Kerala has measures to cover accident, risk to life and equipment, educational scholarship to children of fish workers, grants and subsidies for housing, relief measures during the monsoon season and so on.
- 7.198 The social security and welfare measures provided by employers like owners of mechanised boats, peeling sheds, processing firms, etc. leave much to be desired.

- 7.199 Maharashtra is one of the states where traditional fishing community have benefited greatly by establishment and effective functioning of cooperatives that play a role in all three sectors of activity i.e. catching, chilling, processing and marketing. In most of the other areas the record of performance of cooperative movement and quasi-Governmental organisations has been inadequate.
- 7.201 In Kerala the small, vocal and militant unions are not found among wage workers but among largely self-employed fish workers involved in fishing and marketing.
- 7.202 The glass bangle industry in Ferozabad in UP is a technically backward industry employing obsolete technology. The working conditions in most of the units in the industry are inhuman.
- 7.204 A large number of children are working in this industry, the estimates of which vary from 5000 to over 1 lakh. The industry exploits the exemption of family labour from the provisions of the Child Labour Act and increasingly resorts to sub-contracting forms of production.
- 7.205 The bangle industry as it is operating poses serious health hazards to workers. Temperatures inside the factories are very high and very often cause burn injuries. The environment in factories is highly polluted with emission of chemical fumes and coal dust leading to respiratory disorders and TB.
- 7.206 No security and safety measures are available in this industry to the workers, specially in household and unregistered factories. In each household, the traditional furnaces may be seen with large number of children working on them.
- 7.207 58% of the children work in family run units. Only compulsory enrolment of children in schools can prevent exploitation of children in sweatshops.
- 7.208 A research study conducted by the Centre for Operations Research & Training in 1998 has recommended that to improve existing unhealthy working conditions in the industry, it is necessary to improve its production technology and work environment besides training and equipping the workers with higher skills.
- 7.209 The brassware industry in Moradabad employs about 1,50,000 workers directly and many more indirectly. About 45% of workers are children in the age group of 8–12 years and 50% of the workers engaged in moulding and finishing workshops are children below the age of 14 years. There is increasing practice of sub-contracting of jobs which gives scope for free use of cheap child labour.
- 7.210 Many units are unregistered and the workers have no rights for entitlements like ESI, PF, etc.
- 7.211 According to one estimate, women constitute about 50% of the total workforce in the brassware industry. Apart from respiratory disorders and TB the children also suffer from eye burns.
- 7.212 75% of the carpet looms in the country are located in the Mirzapur–Bhadohi area of UP which holds a very important position in manufacturing and exporting of hand-knotted woollen carpets.

- 7.213 Hand-knotted woollen carpet industry has a share of more than 15% in the handcraft exports.
- 7.214 The carpet industry is full of potential for generating employment as well as foreign exchange for the country.
- 7.216 In order to avert the demands from organised labour sub-contracting system was introduced even for in-house activities, clipping, washing, binding and packaging, etc.
- 7.217 The carpet industry is full of all kinds of middlemen who make fortunes from the cuts from wage components. These powerful intermediaries control loom-holders/weavers and use different methods to recover advances and material if not supplied in time. There are reported instances of unlawful behaviour met out to poor loom-holders and weavers.
- 7.219 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. Landless weavers having no other means of income are involved as full-time weavers while those who do not entirely depend on weaving are engaged as part-time weavers. Being indebted to the middlemen because of advances taken, they do not have freedom to cross to other middlemen.
- 7.220 Dyes and chemicals used in the carpet industry for colour fastening are of high health hazards. The environmental pollution caused by the industry is becoming higher increasingly in and around carpet industry.
- 7.221 Although estimates of child labour vary, still it remains a fact that the industry is most child-labour endemic.
- 7.223 Street vendors and hawkers are among the most visible category of workers 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 villages and enter the occupation with small amounts of capital. They not only create employment for themselves but also generate upstream employment in agriculture and small-scale industry. They are a vital link between consumers and producers, thus making a valuable contribution to the economy.
- 7.225 Hawkers and vendors of various cities have fought long drawn battles, both in the streets as well as in the courts, to assert their right to an honest and dignified livelihood. The apex court has in some cases directed the city administrators to facilitate hawkers in acquiring legal status and providing spaces for their hawking.
- 7.226 With the exception of Kolkata, most municipalities provide licences for hawking. Kolkata municipality not only considers street vending as illegal but also provides stringent punishment for hawking which is a cognisable and non-bailable offence.
- 7.229 Street vending is looked upon as a nuisance or frowned upon by law and gives a lever to municipal authorities and police to extort money from vendors. Municipalities should seriously think of alternative solutions. Legalising vending and providing licences may solve many problems. Bribery and corruption will decrease and it will provide municipalities with extra earnings through licence fee. The street vending will also get more orderly, disciplined and regulated.

- 7.232 Vendors who resist paying bribe are often beaten up and have their goods confiscated. Sometimes even those who have licences are not spared. In a public hearing held by 'Manushi' it was contended that 5 lakh vendors of Delhi are paying bribes to the tune of Rs. 40 crores in a month.
- 7.233 A study conducted in Ahmedabad indicated that while the legal fees paid by street vendors in 1998 was Rs. 5.6 crores, illegal fees paid was Rs.5.5 crores.
- 7.235 Vendors have to deal with many authorities, municipal authorities, police, district administration, regional development authority, etc. Policy makers seem oblivious of the positive impact of street vendors on the social life of a city.
- 7.236 It is necessary to evolve national and state policies on street vendors and these could be borne in view while determining urban plans and schemes.
- 7.239 The Bellagio International Declaration of Street Vendors adopted in November, 1995 while highlighting the importance of street vendors, the harassment caused to them by authorities and the absence of public policies in this regard, urged upon Governments to form a National Policy on Hawkers and Vendors giving them legal status by issuing licences, enacting laws and providing appropriate hawking zones in urban plans etc. and sought for setting up of participative multipartite mechanism and fora with representation of street vendors to look into their problems.
- 7.240 Rickshaw pullers, particularly in the north, are mostly migrants from the states of Bihar, UP, Orissa, MP and Rajasthan. Most of them are small peasants and landless workers who were forced to migrate to the cities due to feudal oppression or exploitation by land mafia, or natural calamities like recurring floods.
- 7.242 Rickshaw pulling is one of the most preferred avenues of employment in the cities for the unskilled and illiterate but able-bodied persons providing instant source of employment.
- 7.243 Besides unregulated conditions the rickshaw pullers' vulnerability is further accentuated by the fact that majority of those who pull rickshaws do not own the rickshaws themselves.
- 7.244 Though in principle, in most cities only the rickshaw owner can be the rickshaw puller, in practice this happens only as an exception.
- 7.245 The nature of work of rickshaw pullers has a number of hardships built into it such as badly maintained roads, pulling rickshaw in chilling winter, blistering heat, and rains when the roads are waterlogged.
- 7.246 The rickshaw pullers have no scheme of social security to take care of them during sickness. Most municipalities and Governmental authorities treat rickshaw pullers as a hindrance rather than an agency which is performing irreplaceable and useful work for the citizens and make it difficult for the individual rickshaw pullers to obtain licences.
- 7.252 Apart from providing direct employment, rickshaw pulling provides indirect employment to several others such as manufacturers and to those engaged in rickshaw repair activities.
- 7.253 Recently the Prime Minister intervened to help rickshaw pullers and wrote to the Lt. Governor of Delhi stressing the need to recognise street hawking and cycle rickshaw pulling

- as legitimate occupations which help reduce poverty and facilitate their integration into formal economy.
- 7.254 A good number of workers depend on natural resources for their livelihood such as forest wasteland, water bodies and mineral/stone deposits. The ownership of some of these resources has been taken over by the State through legislation or by village Panchayats. The new players who are given lease to exploit these resources do not depend upon these resources for their livelihood and therefore, do not mind exploiting these resources to their exhaustion at the cost of social assets.
- 7.255 Society and State will have to give thought to the remedial strategies advocated by the effected people including involvement of communities in sustenance of these resources like village commons, grazing lands, the sources of wood, fuel and other food items which are on the decline, pushing people who are dependent on these into further degrees of impoverishment and poverty.
- 7.259 The Adivasis and other pastoral groups who depend on forests are increasingly losing their livelihood or getting displaced because of lopsided policies and depleting forest cover.
- 7.262 Traditional artisans such as basket weavers and rope makers depend on resources taken from forest and village commons. Forest and village commons are also source of food, fodder and fuels for the poor villagers.
- 7.263 All workers depending on common property resources whether employed or self-employed have low earnings mainly due to depletion of resources and lack of work. Debt bondage is prevalent amongst them.
- 7.266 Piece-rate system of payment is rampant in the unorganised sector. Many among the home-based workers, contract workers, earth diggers, brick workers, etc. fall in this category. Though the Minimum Wages Act has provisions for time-rates and piece-rates, the mechanism for fixing piece-rates is not clearly spelt out.
- 7.267 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 the law.
- 7.268 Agricultural workers get employment for less than 6 months in a year and they have to often migrate to other avenues of employment like construction and similar other occupations during the off-season. Circumstances force most agricultural workers to borrow money from time to time from private sources.
- 7.269 Though agriculture is the single largest contributor to the GDP and also the biggest sector for employment, the agricultural workers are badly exploited and oppressed class of the rural society. Powerful Zamindars often treat them as slaves and pay wages in kind. They have been unable to organise themselves despite being a distinct class because of absolute dependence on land owners. Most of the labourers are from lower castes and tribes.
- 7.270 The National Commission on Rural Labour (NCRL) had observed that there was acute indebtedness amongst the rural and agricultural workers and mentioned that 16.08 million rural households including those of agricultural labourers were indebted.
- 7.271 The NCRL further observed that approximately 40% of agricultural workers are migrants

ranging from inter-district to inter-state migration. Workers from Bihar migrate to Punjab and UP and workers from Chattisgarh migrate to Punjab, Maharashtra and Gujarat. The problems of all migrant workers are very severe. Working as they do 12 hours a day and getting no weekly rest, they are hardly provided any housing facility and their payments are delayed and defaulted. The Inter-state Migrant Workmen's Act has proved ineffective because of reluctance of the state labour departments to cooperate with labour departments of originating states, ineffective enforcement and ignorance of the workers. Trade unions also have not given much attention to the plight of the migrant workers. The most severely affected migrant workers are women and children. The agriculture of prosperous state like Punjab depends on migrant workers and therefore, they should legitimately meet out fair treatment, ensure fair housing, adequate wages and social security benefits.

- 7.272 Though the employment in agriculture is covered under the Minimum Wages Act, the minimum wages fixed by the different States range from Rs. 20 per day to Rs. 60 per day. The wide variations raise questions on the criteria that is followed in fixing the minimum wages. The enforcement of minimum wages is a real problem because inspectors are generally reluctant to visit farms and fields and employers are reluctant to cooperate with them. Ignorance and illiteracy of workers further puts them at receiving end.
- 7.274 The Commission believes that agriculture can offer job opportunities to lakhs of unemployed if it is given due priority and the states do not neglect it. Countries like china, Japan, and USA could grow on a strong base and at a faster rate only after giving priority to agriculture. The areas requiring special policies and programmes in agriculture include agro-based food processing industry, cash crops of medicinal plants, floriculture, aquaculture, poultry, horticulture, natural resource management, farm management, technological improvement, bio-technology, multi-dimensional research, development of agriculture financing network, development of markets, etc. The improvement in agriculture could generate employment in agricultural machinery production, fertiliser distribution, construction and in small-scale industry. It is all the more urgent because globalisation has reduced job opportunities in the organised secondary sector particularly in industries and mining.
- 7.275 There are large number of laws which apply to agricultural sector such as the Workmen's Compensation Act, Minimum Wages Act, Personal Injuries (Compensation Insurance) Act, 1973, Bonded Labour System (Abolition) Act, Inter-State Migrant Workmen Act, Insecticide Act and Dangerous Machine Regulation Act. Government has also implemented several schemes and programmes for the welfare of rural and agricultural workers. Considering inadequacy of these measures and welfare schemes, attempts have been made to enact a separate comprehensive law for agricultural workers. However, the efforts of the Central Government have not succeeded so far in this regard because of the opposition of some of the states.
- 7.279 We have neglected the agricultural sector during the last 50 years although it has been the backbone of our society and economy. It holds the promise of prosperity. It is time that effective framework of laws and social security was put in place for workers in this sector/

- 7.280 Traditional forest-based agriculturists, mostly adivasis, are facing a livelihood crisis following the legislation on forests that has vested monopoly rights in the state over the forest. Today the forest people do not have property rights over their traditional habitat in the forest.
- 7.281 Forests provide a large number of non-timber products which have been the means of livelihood for millions of people. These products are firewood, tendu leaves, fruits, sal seeds, mahua petals, gum, tamarind, amla, medicinal herbs and roots, honey, etc. Though trading in these items is a big business, the collectors of these products do not get adequately paid. Though in some states there are state sponsored bodies like Forest Development Corporations who work as buyers, but they too buy the products at prices that are kept inordinately low.
- 7.282 The curtailment of rights of forest dwellers and nearby people over the reserved forests has impacted lives of hundred million forests dwellers and another 275 million for whom forests constitute an important source of livelihood. Non-timber forest produce has huge potential in processing industries, particularly for women. Studies have shown that non-monetised consumption from forest products is about 10% of the per capita income, and inclusive of firewood and grazing facility, the benefits tend to equal the per capita income levels. Though the State initiatives have increased the forest cover in the country and reversed the earlier trend, in some areas like state monopoly in non-timber forest produce which has led to monopoly state operations in collection and sale involving a large complement of Government/public sector staff and large overheads, there is scope for reducing the grip and opening up the sector to private initiatives especially for forest people and those dependent on forests like tribals and women-folk.
- 7.296 We feel that Taungya workers are entitled to considerate treatment and should be rehabilitated with alternative jobs/ land, and their villages should be treated as revenue villages.
- 7.298 Pastoral Toilers like shepherds and nomads who depend on domestic animal herds and animal graziers, utilising village commons and forest lands are another category of self-employed group who often live below subsistence level.
- 7.300 When earnings and wages are below the statutory minimum wage, and workers have to live by borrowing, the conditions of workers slide into bondage. When the worker is paid below the dignified wage and the farmer does not get justifiable price for his produce it attracts Article 23 of the constitution as interpreted by the Apex Court.
- 7.304 The Apex Court ruling in the Asiad Case has added an important dimension to the definition of bonded labour when the court ruled that the force arising out of the economic compulsions to make one volunteer to work below minimum wages, is also forced labour.
- 7.306 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.
- 7.307 Aganwari and balwari workers are getting only nominal wages called honoraria. These, and other similar workers, are considered part of the unorganised sector. They are entitled to minimum wages and relevant social security measures which we propose in the legislation for these workers.
- 7.308 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 the male labour. The NSSO round of 1993-94 showed that while 56.8% of female workforce was self-employed the figure for males was only 53.7% and amongst casual labour the percentage of females was 37 against 29.6 for males.
- 7.309 The Annual Report of the Ministry of Labour for 1999-2000 which is based on 1991 census gives the following information about unorganised workers. Out of the total workforce of 340 million, 286 million are main workers and 28 million are marginal workers. Out of the 286 million main workers, 259 millions are in the unorganised sector. In relative terms, unorganised labour accounts for 90.6%. Out of 191 million workers engaged in agriculture, forestry, fisheries and plantations, 190 million (99.2%) are in unorganised sector. Out of 28.92 millions workers in the manufacturing sector, 21.62 (75%) are in the unorganised sector. In building and construction, 78% are in the unorganised sector. In trade & commerce, 98% are in the unorganised sector and in the transport, storage and communication, 61.5% are in the unorganised sector.
- 7.311 If we find that 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.
- 7.313 The alternatives are whether to extend the protection and security by amending the existing laws or by providing an umbrella law that provides a minimum protection, access to social security, and redressal of grievances while retaining the existing sub-sectoral laws and sub-sectoral systems.
- 7.314 It is necessary for us to examine the laws which are on the Statute Book.
- 7.316 The Factories Act is applicable only to manufacturing units organised as factories and its provisions do not apply to vast masses of workers in the unorganised sector.
- 7.317 The Minimum wages Act is the most important law enacted for the benefit of unorganised labour. The Act is meant to ensure that the market forces and the law of demand and supply are not allowed to determine the wages of workers covered by this Law.
- 7.319 60% of the workforce in the unorganised sector is self-employed or home-based and thus remain outside the purview of the Minimum Wages Act.
- 7.322 Under the Workmens' Compensation Act the employer is liable to provide monetary compensation to workers or dependents in the case of death provided it occurs out of and in the course of employment. The relief under the Act is not available in case the injury takes place when the worker is not actually engaged in discharging duties related to employer's trade or business.
- 7.323 The method of claiming compensation for disability is so long and tortuous that one rarely gets compensation to which one is entitled by law. Workers often find it difficult to prove employership and as a result cases are prolonged and often workers die without receiving compensation.
- 7.328 All migrant workers are not inter-state migrant workers as defined by law and cannot therefore enjoy the benefit of Inter-State Migrant Workers Act. To prove the applicability of the Act it has to be established that the workman was recruited from another state through a contractor.

- 7.329 The Commission has, therefore, been urged by many witnesses to recommend amendments to make the Inter-State Migrant Workers Act more effective by recommending application of the Act to all inter-state migrant workers.
- 7.330 We have made recommendations on the Act in the Chapter on Review of Laws.
- 7.331 The Building & Other Construction Workers Act 1996 was enacted to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare.
- 7.332 Any worker between 18 and 60 year can get registered with the welfare board to become eligible for the benefits of the Act if he or she has put in 90 days of work in the previous year.
- 7.333 Under the above Act a fund has to be created with revenue from cess collected from the employers and contributions by the workers. The benefits include assistance in case of accidents, payment of pension, house building loans, assistance in education of children and maternity and for treatment in case of major ailment. In practice the Act is not beneficial to the workers, as they do not work with a construction establishment continuously. It is not possible for unskilled and illiterate casual workers to make regular contributions to the fund. The responsibility for collection of contributions from workers and remitting the same to the fund should be entrusted to the employer. Some of the voluntary organisations have alleged that the states have not collected cess because the rules have not been prescribed and several thousand crore rupees of cess have been saved by the builders. They have demanded that the cess should be increased from 1% to 2% and the Act should be applicable to all residential houses without limit of cost of construction. They have also demanded that the board should have powers to regulate the employment of construction workers on the lines of Maharashtra Mathadi Workers Boards.
- 7.334 The Contract Labour Act has many loopholes and is not applicable to a contractor who employs less than 20 workers which leads to manipulations by employers and contractors.
- 7.335 The Beedi and Cigar Workers Act provides for licensing of all premises, provision of health and welfare measures at the workplace, and provides for hours of work, intervals of rest, weekly holidays and also prohibits employment of child labour, nightshifts for women and adolescents.
- 7.336 The employees who are given raw material by an employer or a contractor for making beedis and cigar at home are covered under the Act. But the Act does not cover the self-employed persons. None of these laws mentioned above provide protection to the vast majority of unorganised workers, self-employed workers or home-based workers.
- 7.337 There are a number of legislations and welfare measure that provide social security to workers in the organised sector. Some of these are applicable to certain categories of unorganised sector workers.
- 7.338 The EPF Act is applicable to factories & establishments that employ 20 or more persons. A large number of workers working in small units remain out of the ambit of the Act. Though contract workers in bigger establishments are covered, they are often denied the benefits. The Payment of Gratuity Act is applicable to all establishments employing 10 or

- more employees but it requires a continuous service of 5 years or more with one employer to be eligible for gratuity. It is obvious that a large number of workers do not meet this eligibility condition. The Maternity Benefits Act confers benefits only if a woman completes at least 80 days of work prior to delivery.
- 7.340 The Central Government has set up welfare funds for workers in some of the mining sectors, cine workers, and beedi workers. For building & construction workers the welfare boards and welfare funds are required to be set up by the State Governments (under the Central Act). Among the states, Kerala has the maximum number of welfare funds numbering 20 for the benefit of workers in the unorganised sector. Mathadi Boards exists for various groups of headload workers in Maharashtra.
- 7.341 Under the Beedi Workers Welfare Fund Act, a fixed cess is levied per thousand beedi manufactured. Similarly there is also a cess for building and construction workers. Cess is levied on the mica mines and under other welfare laws on mine products on the basis of quantum of production. Under the Cine Workers Welfare Cess Act, the cess is levied on the basis of production of films and not on the basis of collection.
- 7.342 The Welfare funds fall broadly in two groups; tax-based and contributory. While the Central Government funds are tax-based, the funds set up by the Kerala Government are mostly contributory which are more akin to social insurance. A combination of contributory and tax-based schemes can bring in resources and also encourage the participation of the actors involved, particularly the workers.
- 7.343 The Central Welfare Funds are used for improvement of public health, sanitation, medical facilities, water supply, education and prevention of disease. In actual practice, most of the expenditure from welfare funds has been on health, education and housing.
- 7.344 The Central Welfare Funds have adopted integrated model of healthcare and have undertaken to provide medical services directly. However, this approach of developing its own chain of hospitals does not help the boards or to the needy patients. The Funds could have done better if they had assigned the responsibility to agencies specialising in health.
- 7.347 The central funds have no provision for meeting expenditure on any of the branches of social security such as occupational injury benefit, invalidity benefit, old age benefit, survivor benefit, unemployment benefit, etc.
- 7.351 The Tamil Nadu Welfare Fund established under the State law for manual workers has established labour welfare centres which consists of childcare centres and tailoring classes for wives and wards of the workers.
- 7.352 In childcare section, free primary education is provided to children apart from midday meals.
- 7.353 The Board established under the scheme maintains holiday homes for workers and their families. It has separate TB wards constructed in different Government hospitals and TB sanatoriums.
- 7.355 For construction workers a welfare fund has been constituted under Tamil Nadu Manual Workers (Regulations of Employment & conditions of Work) Act, 1982. The employers engaged in construction work are required to pay 0.3% of the total cost of construction

- to the fund and the workers have also to pay registration fee of Rs. 25 which is renewable every two years by paying Rs. 10 p.a.
- 7.356 The Tamil Nadu Welfare Board for construction workers provides educational assistance, assistance in case of marriages, maternity assistance and assistance in case of death and provides for group personal accident insurance.
- 7.358 The Tamil Nadu Manual Workers Social Security and Welfare Scheme was formulated in 1999. It provides for the establishment of the Tamil Nadu Manual Workers Social Security and Welfare Fund.
- 7.359 The scheme provides for group personal accident relief, a maternity benefit scheme and a terminal benefit scheme. Workers are entitled to benefits after 12 months of their registration. Besides a grant of Rs. 40 lakhs given by the Government, the Boards received Rs. 47 lakhs from collection of 1% of the Motor Vehicle Tax (till 2.3.2000).
- 7.360 The Government of Tamil Nadu has announced a number of new separate boards such as for auto and taxi drivers, for tailors, barbers, dhobis, palm tree climbers and handicraft workers. A fee of Rs. 25 for registration and a monthly contribution of Rs. 20 are charged from the workers. Now there is a one-time contribution of Rs. 100 including the registration fee. A terminal gratuity and accident death insurance are part of the scheme.
- 7.361 Kerala state has set up more than 20 welfare funds for unorganised workers like toddy workers, agricultural workers, handloom workers, auto-rickshaw workers, cashew workers, construction workers, motor transport workers, some artisans and others. These provide 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.
- 7.365 The Central and the Kerala models represent two extremes, one the minimalist approach and the other the maximalist approach. None of these can be considered ideal for 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.
- 7.375 Mathadi Boards in Maharashtra have been successful in decasualising the head load workers to a great extent.
- 7.376 Though many witnesses who appeared before us in Maharashtra as well as in other States extolled the work done by Mathadi Boards 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. Some representatives of the management also felt that this system created a monopoly and resulted in arbitrary fixation of wages.
- 7.378 There are around 50,000 registered employers with almost 1.5 lakh workers registered under 30 different boards in Maharashtra.
- 7.379 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. Wages fluctuate from less than Rs. 1000 to Rs. 10,000 per month. Besides better health facilities and social security,

housing and education are also taken care of with the help of the *mathadi* boards. 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 welfare boards in both the States tells us that a motherboard that can accommodate variety serves as a better model. An unnecessary multiplicity of Funds has led to administrative problems in Kerala and proved uneconomical. Cost of administration of central welfare funds has varied from 0.83% of the total benefit expenditure in the case of cine workers fund to 22.1% in the case of the Limestone and Dolomite Labour Welfare Fund. Average of administrative cost of central welfare funds was 7.96%. In some cases, it will be better to levy cess as a percentage of the sale at various points of transactions like the wholesale, retail, etc. 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. The model of the health service provision has proved to be neither popular nor viable. Better benefits can be achieved by adopting the alternative model of reimbursing expenditure, or providing services indirectly by entering into agreement with the providers of the service. Studies show that workers have to spend more on health problems in the unorganised sector and therefore health care must form a component of social security. Central Welfare Funds have 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. 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 we are suggesting will overcome these problems. Welfare Boards at the State and Central levels 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. The concept of a mother board seems relevant in the light of our experience with the Central and State Boards.

- 7.382 Fifty years after Independence and the promulgation of the Constitution, if the 90% of the labour force do not enjoy 'guaranteed' rights, there is every reason to say that we have not practised what we have preached. 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. One, if not the most important, of the ways of reversing this trend 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.
- 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. 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 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. 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.' 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.
- 7.387 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 (to which India acceded in 1992).
- 7.390 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 child (Article 24). 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.'
- 7.392 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. This Act also justifies the need for legislation in favour of workers who are not yet covered by existing legislation.
- 7.394 ILO Conventions are codifications of universally applicable labour standards and have led many countries to accept labour rights as basic rights. Its Conventions protect children from

- labour, women from night shifts, and all workers from forced labour. In 1998, the ILO adopted the 'Declaration on the Fundamental Principles and Rights at Work'; These fundamental principles lay down (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 the fact whether the concerned state has ratified the Conventions or not and 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 new and separate umbrella legislation is imperative to protect the workers in the unorganised sector. Labour laws do not offer protection and welfare to workers in the unorganised sector. Whatever exists is inadequate. Our Constitution and the international agreements we have entered into give us the mandate to secure their protection. The Unorganised Sector including the agricultural sector account for more than 92% of the total workforce, i.e., around one-third of India's population. In absolute terms, this sector contributes more to the economy and employment in India. National Accounts Statistics Report of 1995 confirms that nearly 65% of the national income is contributed by the Unorganised Sector. These workers, particularly women, have not been able to organise themselves and are further discriminated against. 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. If properly conceived and effectively implemented, a law for unorganised sector workers will make a definite contribution to the eradication of poverty. The unorganised sector cannot be wished away. 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. Legislation cannot be effective unless it integrates their needs for protection and welfare with those of the rest of our society and economy.
- 7.398 Workers in the Unorganised Sector are not recognised as workers. The first objective should be recognition of these workers by including them in official surveys.
- 7.399 To achieve recognition as a worker each person who is actually working should be given an official identity card. The identity card gives the worker a definite legal identity and recognition.
- 7.400 It is 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 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.
- 7.403 Workers in this sector are entitled to protection and welfare 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. 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.
- 7.405 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 strengthens productivity
- 7.406 Suggestions of and recommendations of various committees or Commissions have exercised considerable influence on the concept of minimum wages. The criteria for calculating minimum wages came 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.
- 7.408 The Report of the first National Commission on Labour devotes attention to labour in the unorganised sector and suggested that there should be detailed surveys from time to time to understand the problems of different categories of such labour. There should be protection by the state for unorganised/unprotected labour and their education and organisation should be improved.
- 7.409 The Commission on Self-Employed Women (Shram Shakti) enlarged its scope to include women workers in the unorganised sector and looked into the status of self-employed women with special reference to their employment, health, education and social status, and constraints that affect productivity; the impact of various labour laws, especially those on maternity benefits and health insurance, on self-employed women; gaps in training, credit, upgradation of skills and marketing; employment patterns including production relations and their impact on wages, and the effect of macro level policies on the health, and productive and reproductive role of self-employed women.
- 7.412 The 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.
- 7.413 The Commission noted flagrant violation of statutory provisions regarding payment of wages, safety regulations, provision of housing and medical facilities, accident compensation, etc. 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.

- 7.414 For domestic workers, the Commission recommended the introduction of a system of registration.
- 7.415 Though 51% of the working women are engaged in farm labour, their contribution is not recognised. Women involved in seasonal agriculture should be helped to diversify into horticulture, fruit processing, vegetable growing, animal husbandry and dairying.
- 7.416 The Commission observed that the rates of minimum wage were low and would have to be increased keeping in view the requirements of the woman worker. 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. Despite the Equal Remuneration Act 1976, wage discrimination was widely prevalent.
- 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 setting up of an Equal Opportunities Commission under a central law, and also recommended that the Commission should have wide powers of investigation, direction, advice and monitoring.
- 7.419 The Commission recommended setting up of Tripartite Boards which 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.
- 7.420 It recommended setting up of a Central Fund from which welfare and social security measures for women workers should be financed.
- 7.421 Another recommendation of the Commission was that a separate wing should be set up in the Labour Departments for unorganised workers with adequate number of women employees
- 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 tackled through maternity benefit and childcare. 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. If the employer was not identifiable, the responsibility for providing maternity benefits must lie with the state.
- 7.424 The Commission underlined 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 such as inadequate nutrition, non-accessibility to healthcare, water, housing, sanitation, maternity benefits and childcare among others.
- 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 and suggested that a multi-dimensional strategy was needed to lift agricultural workers from the vortex of poverty. It also suggested that an infrastructure had to be created for irrigation, drainage, flood control and rural electric supply; it was essential to enforce minimum wages and social security; it was necessary to introduce central legislation for agricultural labour providing security of employment, prescribed hours of

- work, payment and that a Welfare Fund should be set up with employers' contribution in the form of a cess which would make provisions for (a) maternity leave for women agricultural labour, (b) old age pension at a minimum of Rs. 100 per month
- 7.430 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 sector in a phased manner.
- 7.431 The ILC recommended 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 which would go a long way in meeting the bare minimum welfare needs of the unorganised workers.
- 7.433 We have to address the question, what is the minimum that the Umbrella legislation for workers in the Unorganised Sector should ensure. There should be 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 payment of wages, etc. The system of Welfare should include access to compensation for injuries sustained while engaged in work; provident fund; medical care; pensionary benefits maternity benefits and childcare
- 7.434 The law should be capable of being implemented and monitored easily. 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.
- 7.435 The system for Social Security must be such that the worker can make a commensurate contribution to the cost, consistent with as many of his needs as possible, and deliver the services as near his place. The machinery should not be cumbersome, costly, centralised, and burdened with many administrative layers and overheads.
- 7.438 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.
- 7.441 An important aspect of labour policy outlined in the Seventh Plan relates 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 was crucial for enhancement of the status of labour. The Plan laid emphasis on the enforcement of labour laws especially laws relating to unorganised labour and women and child labour.
- 7.444 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.
- 7.445 A major obstacle to introducing contributory social insurance schemes for the unorganised sector is the difficulty in identifying the employer. 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. The needs

- of these workers often vary from those of workers in the organised sector.
- 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. We should not lose sight of the fact that in this sector social security should have promotional and preventive aspects addressing employment and income security and covering healthcare, childcare and old age.
- 7.448 The Social Security measures for the Unorganised Workers should include healthcare, maternity and early child care, provident fund benefits, family benefits, amenities benefits including housing, drinking water, sanitation, etc. compensation or employment injury, retirement and post-retirement benefits, cover in cases of loss of earning or the capacity to earn, 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 elimination of child labour, forced labour, and unfair labour relations and practices.
- 7.457 Before going into modalities of setting up of an Unorganised Sector Workers Board it is necessary to classify the occupation in the unorganised sector.
- 7.458 Minimum wages legalisations have listed certain employments/occupations.
- 7.459 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.
- 7.460 The factors considered for classification are recruitment, payment, unionsation, casual nature, relation to child labour, family labour, migrant labour, wage and earning levels, skill levels, home-based activities, source of raw material, access to capital, nature of output, occupational hazards.
- 7.461 We have classified workers in this sector on the above basis.
- 7.463 National industrial classification of economic activities is on the basis of nature of economic activity carried out in an establishment. The National Classification of Occupation 1968 bases its report on the nature of occupation. In the unorganised sector both these principles can be used but combined with other elements.
- 7.464 If the classification is based on the distinction between the workers and a producer it will be more or less equivalent to distinction between the employed and the self-employed. In our analysis, no substantial group emerged as merely self-employed or employed. In almost all occupations we can find both self-employed and employed workers.
- 7.466 In some cases the same person is employed in different occupations. For example a marginal farmer is working as producer, own account worker and also self-employed. Further the same person gets employed as agricultural workers/and also as construction worker.
- 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 time the group can be removed when sufficient improvement is reported in the incidence of child labour in that group. There should also be flexibility to accommodate newer classes and eliminate existing classes.
- 7.469 We are suggesting a tentative but a comprehensive list of groups that can be useful in wage fixation and in undertaking studies to assess the undergoing changes in respective

- groups of industry and occupation. For the purpose of social security measures and cess collection, separate group-based consideration would be necessary.
7. 472 It is clear to us that crucial guarantees of justice lie in minimum wages, job security, safety and social security.
7. 473 To meet these crucial requirement we propose the constitution of unorganised sector workers board with constituent bodies that will extend to the level of Panchayats.
7. 474 The employers employing more than 5 workers shall ensure that the workers engaged by them are registered with the board and issued identities cards by the boards and the employing less than 5 workers shall help the workers in securing the registration and identity cards.
7. 475 An indicative bill for the workers in the unorganised sector to ensure their minimum protection and welfare has been appended in our report.

CHAPTER - VIII

SOCIAL SECURITY

- 8.30 Our Commission accepts the need to consider social security as a fundamental human right.
- 8.32 We 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.
- 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, will be adequate. The problem has to be addressed by a multi-pronged approach that would be relevant in the Indian context.
- 8.78 The Study Group on Social Security constituted by our Commission felt that it might not be possible to ratify all the Conventions of the ILO immediately, but it is desirable to plan for their eventual ratification by upgrading laws and practices, beginning with the Minimum Standard Convention. The Commission endorses the view of the Study Group.
- 8.93 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'. The Commission also agrees with it.
- 8.96 The term 'workman' may be replaced by the term 'employee' so as to make the Workers' Compensation Act applicable to all categories of employees; the term 'employee' may be

- defined to mean any person employed in any employment specified in Schedule II; the entries in Schedule II may be revised so as to make it applicable to all classes of employees progressively; and restrictive clauses, wherever they occur in the Schedule, may be omitted.
- 8.97 The Workmen's Compensation 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.
- 8.100 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.
- 8.101 There are many 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.
- 8.102 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.
- 8.103 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 de-link 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.
- 8.106 The Study Group on Social Security 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 suggested 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.
- 8.108 When the constraints on extension of the ESI Scheme are removed, there would be no justification for retaining the other restrictions on the application of the Act. If necessary there may be a ceiling on wages for purposes of contributions and benefits.
- 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.
- 8.111 Exemptions may be granted from the ESI, in cases where establishments provide similar or superior benefits.

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.

- 8.112 The Study Group has suggested a review of the decision to impose a ceiling for purposes of reimbursement, and the level of the ceiling, and to consider the desirability of its withdrawal. The Commission agrees with this suggestion.
- 8.113 The management of the ESI 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.
- 8.114 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.
- 8.115 A law to place all the provident funds under a common regime seems to be called for.
- 8.117 The P.F. Act be made applicable to all classes of establishments, subject to such exceptions as may be considered necessary for specified reasons.
- 8.118 Regarding applicability of the P.F. Act, the Task Force on Social Security has recommended that the employment threshold should be brought down to 10 immediately, to 5 during the next 3-5 years, and to one within a short time-frame thereafter. The Commission agrees with these suggestions.
- 8.120 Our Study Group has suggested that the special dispensation granted to co-operatives is not warranted, and should be removed. We endorse this view.
- 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.

Although the EPF Scheme requires that every employee should be provided with a passbook, the Organisation has failed to supply the passbooks. But with the introduction of computerisation such problems can be tackled.

- 8.124 We 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.
- 8.126 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.
- 8.128 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.

- 8.129 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 The EPFO should streamline the procedure for tackling the defaulting employers speedily and to recover the arrears promptly.
- 8.132 We suggest that the EPFO should have its own mechanism for investment of its balances; investment patterns should be liberalised and government may consider issuing of indexed bonds for investment of PF balances.
- 8.136 The Commission is of the opinion that the provision for premature withdrawal of funds should be restricted.
- 8.137 There can be no justification for permitting premature final withdrawals in case of resignation.
- 8.138 Proposals to integrate the Payment of Gratuity Act with the Employee Deposit Linked ??????? Scheme and also to introduce an Unemployment Insurance Scheme as part of the Scheme should be implemented soon.
- 8.147 It is desirable that an independent valuer and not the Actuary who designed the Employee ??????? Scheme, does three yearly or five yearly valuations.
- 8.148 All the ambiguities in the interpretation of the Employee Pension Scheme be referred to the Actuary and the Scheme be amended suitably as per his advice.
- 8.149 The Payment of Gratuity Act may be integrated with the EPF Act and converted into a social insurance scheme.
- 8.150 Integration of the Payment of Gratuity Act and the EPF Act will ensure automatic extension of the Payment of Gratuity Act to all establishments to which the EPF Act applies.
- 8.152 The scope of the Payment of Gratuity Act should be co-extensive with that of the EPF Act.
- 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.
- 8.175 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.
- 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.
- 8.177 The unemployment scheme should be financed by a tripartite contribution to be determined actuarially.

- 8.179 The National Renewal Fund (NRF) was established in February 1992 to provide a form of a wage guarantee which had to be used for re-training, re-deployment, counselling etc. 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.
- 8.182 A provision be made for payment of education allowance to all employees by amending the existing laws regulating employment and conditions of service of employees.
- 8.212 The welfare funds will 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.
- 8.222 The task force to review the working of welfare funds 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 Welfare funds can be transformed into instruments of social security by expanding the coverage of the funds; broadening the range of benefits; modifying the financial arrangements for providing benefits and decentralising the administration of the funds.
- 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.
- 8.242 The Insurance Companies be required to develop two or more plans providing coverage for the major risks faced by people leaving it to individuals to choose from among them according to their capacity.
- 8.244 The IRDA has decreed that every insurance organisation must provide social insurance cover to a prescribed number of persons belonging to the weaker sections in the unorganised sector every year. Our Study Group 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.
- 8.246 The cost of subsidy should be augmented by earmarking a part of service tax being levied on insurance business.
- 8.247 A reasonable alternative to the various occupations-based schemes would be to design a scheme on area basis. 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. 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 may be comprehensive. In case of disability the compensatory payment may be made periodically.

- 8.251 Under old age benefits, a pension based on a savings-linked scheme may be evolved.
- 8.252 The funding of the scheme is envisaged to be from contributions from members and from other sources.
- 8.253 The project is conceived as a state level project.
- 8.254 The area-based scheme appears to be suitable for application to the workers in the unorganised sector.
- 8.259 Self Help Groups have emerged as a promising partner of 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.
- 8.266 Unorganised workers may be mobilised to form Self Help Groups; local workers economic organisations; district level cooperatives and village based mahila mandals or yuvak mandals or kisan sanghs.
- 8.267 These organisations could be actively involved in provision of credit; micro insurance by linking with savings and credit supplying groups or organisations and social security services through the area-based approach.
- 8.271 National Social Assistance Programme (NSAP) has served the long felt need for uniform national minimum standards for providing social assistance to weaker sections of the Society. More benefits may be added to this programme in due course of time.
- 8.273 The need to provide some form of public assistance to meet the distressing consequences of unemployment has become more urgent after globalisation. 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.
- 8.275 Apart from NSAP, there are several schemes under which social assistance is being provided.
- 8.276 All such programmes should be integrated to maximise coverage, avoid over-lapping and ensure a basic minimum to all.
- 8.277 There are a number of pension schemes in our country – old age pension; widows pension; pension for physically handicapped; national pension scheme and other pension schemes.
- 8.280 The quantum of maternity benefits may be raised to a minimum of Rs. 2,000/-.
- 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.
- 8.286 The food security policy calls for a review and rationalisation.
- 8.287 The Central Government should devise a scheme similar to the targeted PDS for foodgrains, to supply cloth free to destitutes, and at subsidised prices to the people below the poverty line.

- 8.292 Effort to implement a National Employment Assurance Scheme is of considerable importance. Such a Scheme would not be unfeasible and should be given a fair trial.
- 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.
- 8.296 Land is critical for rural people. Institutions and policy reforms are needed to give better access and secure rights to all the critical assets that are unevenly distributed.
- 8.316 While basic health security has to be provided by the primary health care infrastructure, it may be supplemented by one or more of the various options. 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.
- 8.332 Our Study Group has suggested the introduction of a National Widow Pension Scheme coupled with a training programme to help the younger ones to be self-sufficient.
- 8.340 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.
- 8.347 We reiterate the need for a national policy for older persons. There is no alternative to the Central and State Governments taking the initiative to set up their own homes in sufficient numbers.
- 8.351 Appropriate schemes would need to be designed for the health care as well as long term care of the elderly.
- 8.356 Ceiling on the amount to be paid for maintenance of dependants, under the Cr. P. C., may be removed 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 be utilised in various activities of the community for which they may be paid appropriate remuneration.
- 8.364 A comprehensive plan of action for social protection of disabled is necessary. It should include removal of the disabilities; reservation of jobs – the feasibility of extending this to employment in private sector may be considered; adequate job opportunities; in case of persons who cannot work, the State should provide a safety net and there should be a proper assessment of the numbers involved and the schemes prepared to cover them.
- 8.365 A National Scheme for Pensions for Physically Handicapped be introduced.
- 8.372 We welcome the initiative taken by the Government in introducing a new Social Security Scheme for agricultural workers called the Khetihar Mazdoor Bima 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 these proposals may also be revived and implemented early.
- 8.380 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.

- 8.382 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.
- 8.386 Able-bodied beggars should be given training and help to get employment. Persons who may not be able to work would have to be provided the means of livelihood by the State by maintaining them in beggars homes or by giving them pension. A National Scheme may be drawn up for the purpose.
- 8.389 Effective measures be taken for weaning people engaged in manual handling of night soil and for rehabilitating them in other employments.
- 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.
- 8.391 An appropriate National Scheme for providing relief and rehabilitation to people affected by economic and social distress, including natural disasters, may be designed.
- 8.393 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.
- 8.406 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.
- 8.407 The system envisaged by the Commission comprises of four tiers, (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.
- 8.414 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 evolved.
- It is necessary to create a small but strong agency in the Central Government which will be concerned with the horizontal and vertical coordination of social security planning, monitoring and review.
- 8.415 We strongly recommend the constitution of a high-powered National Social Security Authority, preferably under the chairmanship of the Prime Minister of India. 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.

- 8.416 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 among various Ministries and the States. Similar arrangements can be made in the States.
- 8.417 We feel that the unification of administrative responsibility, in respect of the existing social security legislation, is both necessary and desirable.
- 8.418 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.
- 8.421 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 We recommend constitution of District/Area Level Committees, which may be tripartite or multi-partite as the need demands with necessary secretarial assistance.
- 8.423 Services should be delivered at the doorstep of the beneficiaries.
- 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. 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.
- 8.427 Social insurance schemes are contributory, and their viability depends upon the rate/s of contributions received and the quanta of benefits paid out. Different packages of benefits with different rates of contributions should be designed to suit the capacity of the contributors to pay.
- 8.429 A scheme may be contribution-defined or benefit-defined.
- 8.430 The Commission feels that the Schemes should be benefit-defined.
- 8.433 A Social Security Fund of India and a Social Security Fund of each State may be set up.
- 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.

CHAPTER - IX

WOMEN & CHILD LABOUR

- 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 is, therefore, necessary to ensure equal opportunities and protection from indignities.

- 9.3 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.
- 9.5 The Commission is strongly of the opinion that our laws and systems of social security should prevent and eliminate discriminatory attitudes and practices.
- 9.6 The detailed recommendations that the Commission proposes to make to amend and improve the laws are included in the Chapter on 'Review of Laws.'
- 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,' alongwith our recommendation for a comprehensive social security system for the entire workforce.
- 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.
- 9.12 None of the definitions has fully captured the extent and degree of women's participation in the workforce.
- 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. (Of Human Development Report of 1990)
- 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.
- 9.21 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.
- 9.43 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 been made in the Chapter on Globalisation.
- 9.47 Variation in new 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.

- 9.50 If there are major policy changes in forestry 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 The main policy implication in the livestock 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 tasks performed exclusively by women are usually the most back-breaking and low paying. 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.
- 9.54 Beedi rolling 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.
- 9.55 Women are concentrated in certain crafts; in recent years they are entering male-dominated crafts like brassware. For women artisans, there is a need to promote skill upgradation along with a more market-oriented approach to production.
- 9.56 Industrial sub-contracting has increased work opportunities for women, but it is unfortunate that the earnings are very low, sometimes well below the minimum wage. 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 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 is a major employer of women. 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. Linking of handloom weavers to market requirements and skill upgradation of the weavers, will improve their employment prospects.
- 9.59 In garment factories women earn more than as 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.
- 9.60 The challenges in construction sector is to improve the working conditions and the social security support to women construction workers, and to undertake rapid skill upgradation and policy measures, to accelerate employment opportunities for women workers in the scenario of changing technologies.
- 9.61 In order to preserve and expand employment of street vendors, 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.
- 9.63 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.
- 9.66 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. 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.
- 9.68 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 When liberalisation policies are being formulated, their effect on employment is rarely calculated or taken into account by economists and policy makers.
- 9.70 There is evidence to show that these policies have led to loss of existing employment; changes in employment; changes due to informalisation of work and creation of new employment opportunities.
- 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.
- 9.97 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. Some rehabilitation schemes may, in fact, not even be costly, but may only need some modifications in policy.
- 9.99 To deal with the shrinkage of employment that results from mechanisation and introduction of new technology, we recommend skill training and upgradation of skills for women on a widespread and continuous scale; identification and promotion of technologies which increase the productivity of workers, but which at the same time have the least negative effect on employment.
- 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. 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. Very strict implementation of the Minimum Wages Act with high penalties for breaches is called for. All trades should be included in the Act, regardless of existing schedules. The Act should be extended to include workers under piece-rates, regardless of whether employer-employee relationships can be proved or not. There should be identification of all workers and they should be issued identity cards. Social security should be ensured to all workers. We have proposed laws and policies for certain categories of workers like home-based workers, agricultural workers, domestic workers, manual workers and vendors.

- 9.103 General recommendations for increasing employment opportunities are - increasing micro-finance; direct access to markets and training and skill development.
- 9.104 Childcare is a major investment in the protection and development of human resources. The mechanisms of childcare should be multi-dimensional. Labour legislation should include provisions for crèches where there are 20 or more workers irrespective of the gender of the worker. Childcare should find a place in the Integrated Child Development Services (ICDS) programme. It should be recognised as part of the policy on education. low-cost community based approaches should be encouraged and multiplied and the important role of the childcare worker should be recognised, and compensated.
- 9.106 In the absence of adequate childcare facilities, a working mother has often no option but to leave the child with a 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.
- 9.108 ICDS 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. However, ICDS is not programmed to cater to the needs of working women, as it provides services for only 3-4 hours per day. Its total dependence on the government for funds, further leads to lack of sustainability.
- 9.109 Several laws make it obligatory for employers to provide crèches for the children of women workers.
- 9.110 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.
- 9.111 The burden of childcare must be shared equally between both the parents. There should be a provision for crèches where 20 or more workers are employed irrespective of the gender of the worker. 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 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 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.
- 9.115 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.

- 9.116 The NGO sector in India is a good source of innovative, effective and low-cost approaches. 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 Accra Market Women's Association in Ghana developed a childcare programme that kept children safe while mothers conducted business.
- 9.118 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.
- 9.121 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.
- 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.
- 9.125 The main international convention covering maternity benefits is the ILO's Maternity Entitlement Convention, 2000.
- 9.129 It is universally acknowledged that there are inadequacies in both the ESI and Maternity Benefits 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. 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.
- 9.130 Apart from these two Acts, there are several government schemes available for maternity benefits.
- 9.131 The population policy, particularly the two-child norm has an intimate relationship with the maternity benefits and entitlements issue.
- 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. It has been seen that better educated women have smaller families. The Commission recommends full baskets of maternity entitlements for the two live children, and a policy that discourages having more children.

- 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.
- 9.136 The access to this scheme should be through multiple channels and agencies. 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.
- 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.
- 9.141 Women workers constitute the most vulnerable group in the economy.
- 9.143 Women are also physically vulnerable.
- 9.144 All recommendations for policies for women workers must be combined with an enhancement of their own strength, or what is called their 'empowerment.' 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.
- 9.151 Women had also been active in the growth of the labour movement.
- 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.
- 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.
- 9.156 Today there are many different types of organisations that work with or for women workers.
- 9.166 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.
- 9.168 The process of acquiring and maintaining recognition for an organisation in the unorganised sector is long and tedious, and full of struggle.
- 9.170 Organising women workers in the informal economy has been in practice in several parts of the country with varying degrees of success.

- 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.
- 9.180 Organisations often face resistance against recognition when they apply for registration. 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.
- 9.182 Co-operatives too face multiple problems while seeking registration.
- 9.183 The major problem that co-operatives face in registration is the amount of paper work and procedures involved.
- 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.
- 9.186 The main success of most organisations lies in their capacity to mobilise workers, to raise awareness and to run campaigns.
- 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 conducted by the Study Group 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.
- 9.194 The Rules and Regulations of the Government can encourage or discourage these efforts to organise. 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.
- 9.195 We recommend that the Governments should allow widespread registration of MBOs of women workers under the Trade Unions Act; promote Mutually Aided Co-operative Acts in each State and issue special guidelines for the registration of such co-operatives of women workers; frame and enact a special law for micro-finance organisations; ensure that the economic demands and struggles of women workers' organisations are not in routine fashion treated as 'law-and-order' problems; issue identity cards to all women workers; wherever possible, recognise MBOs as implementing agencies for Government schemes; recognise MBOs in Export Promotion Zones (EPZs) to protect women workers in this zone; set-up Voice Representation Systems for MBOs of women; invest in training and research organisations for building up capacity for MBOs and 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 Apart from MBOs, other agencies including NGOs, trade unions and various organisations can play a 'promotive' and 'supportive' role for MBOs; support mobilising efforts of MBOs, especially to increase awareness and membership; support the setting up of capacity building systems including many types of training programmes; support the attempts of MBOs to enter markets and advocate and assist in the setting up of various forms of Voice Representation for MBOs;
- 9.197 The MBOs themselves should try to aim at financial and managerial sustainability; recognise that growth and up scaling are important; try to develop second and third levels leadership; take the support of Government and NGOs including TUs to build strength and work for Systems of Voice Representation.

- 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.
- 9.200 It is universally accepted that children should not be made to work.
- 9.201 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. 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.
- 9.203 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 a better future to them" (ILO 1983).
- 9.204 The other definition of child labour put forward by groups critical of the conventional definition argues that all forms of work are bad for children.
- 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.
- 9.210 There are children who actually work in factories and workshops of different industries. While some of them work for wages, a sizeable section of these children work in industries and factories as bonded labourers.
- 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.
- 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.
- 9.218 Besides the children who actually work in factories and workshops, a number of working children are also found in home-based work, helping their parents.
- 9.219 Children work in the agricultural sector as well.
- 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.
- 9.222 Urban metropolitan centres and semi-urban areas are home to another category of working children viz., street children.
- 9.223 Working children are often found amongst migrant families as well.

- 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.
- 9.226 As for education, it has been observed that child workers in India are largely illiterate.
- 9.227 Few children outside of agriculture and traditional crafts can be said to be apprentices, learning traditional family skills.
- 9.228 The approach of the Study 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. The Commission endorses this approach.
- 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 needs to be put into place.
- 9.234 Public action must be mobilised along all fronts to change attitudes towards child labour and to build public pressure against hiring children.
- 9.235 Significant consideration is to see the link between eliminating child labour and universalising elementary education. One cannot be achieved without achieving the other.
- 9.236 The entire strategy would have to be based on promoting the norm that no child should work, and all children should be in schools.
- 9.254 The Child Labour (Prohibition & Regulation) Act, 1986 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.
- 9.255 Whether the child is employed in enterprise and industry outside the home, or at home, for wages or to help in domestic chores or family occupations, it results in the forfeiture of opportunities for education.
- 9.257 The law does not say what should happen to the child labourer once the employer is prosecuted.
- 9.258 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.
- 9.259 Education is referred to in three different types of Laws. 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.
- 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.
- 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.
- 9.265 We recommend that the Government incorporates the suggestions contained in various judicial pronouncements in relevant laws or guidelines.
- 9.270 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.
- 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. 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.

CHAPTER - X

SKILL DEVELOPMENT

- 10.1 There is an increasing demand of skilled labour. This is on account of globalisation, changes in technology as well as work processes.
- 10.2 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.
- 10.18 The lacunae in the present trade apprenticeship training are inadequate coverage of skill requirements; mismatch in demand and supply relation; lack of flexibility in the engagement of trade apprentices within the same trade group; lengthy and clumsy administrative procedures of record keeping and filling up of return; lack of incentives to encourage industries to modernise their training facilities and inadequate and poor quality of training facilities as well as training staff.
- 10.19 The seven key existing and future challenges for Indian labour are challenge of globalisation; of labour competitiveness vis-à-vis China and other nations; of redeployment of surplus manpower from agriculture and manufacturing to services and trade; of recognising labour as human capital rather than as a cost; of continuous employability of labour; of enlarging and utilising effectively the infrastructure for education and training; and of absorption of new technologies by labour using education and training.

- 10.21 Training targeted at achieving global competitiveness can be successful only through a sense of shared purpose between employers and the employed.
- 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.
- 10.36 Training shall take a new format and consist of small result oriented modules. This permits timely induction of new and need based modular curricula in consonance with the needs of the target group. By undergoing such modular courses, the trainee also becomes more versatile/multi-skilled.
- 10.37 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 persons 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.
- 10.47 The competency based training system is applicable to the labour force both in the organised and the unorganised sectors. 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.
- 10.51 We 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.
- 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.
- 10.55 The credits will be valid for a predefined 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.

- 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.
- 10.59 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.
- 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 unorganised and organised labour market.
- 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.
- 10.64 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.
- 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.
- 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. NGO's provide the most conducive means for providing training at the small and micro level.
- 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, NGO's 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.
- 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 run market-driven courses; review, and if necessary, revise curriculum every 5 years to keep it contemporary; give refresher training on new technologies and tools to teachers at ITIs and 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.
- 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.
- 10.80 Vocational education should be integrated at the school level.
- 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.
- 10.82 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.
- 10.84 In order to provide for retraining of workers rendered surplus/obsolete by lay-offs, retrenchment and Voluntary Retirement Schemes/Early Separation Schemes, and training of labour in the unorganised sector, we recommend the establishment of a Skill Development Fund (SDF).
- 10.85 The key features of the Skill Development Fund are the funds will be contributed by organisations which are eligible to contribute Provident Fund either through the Provident Fund office or through their own trust; 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; for the purpose of collection of the contribution, we propose that it be routed and administered through the Regional Provident Fund (PF) Office so as to avoid extra administrative burden. No new collection mechanism involving additional government machinery should be devised; the respective individuals/ organisations making this contribution to the SDF will be given tax concession; at all points of time, 25% of the total amount in the SDF will be invested in a corpus.; 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; 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 For granting the amounts to be paid by the Fund as an incentive to the organisations, certain norms may be required to be set.

- 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.
- 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.
- 10.91 A comprehensive programme of education of workers has to be established with the key objectives to instil a sense of belonging in the workers vis-à-vis their work and organisation, through a better understanding of their work and the work organisation; to improve the bargaining power of the workers; to assist the worker in identifying skills he/she needs to pick up and to encourage the workers to look at alternatives in organisation of their work.
- 10.92 The education programme should not be a mechanical approach of skill development towards a changing job market.
- 10.93 The education process should specifically focus on an understanding of the economy, industry and the business organisation of which the worker is 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.
- 10.95 The programmes should also discuss organisation of workers, and the history of collective bargaining.
- 10.96 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.
- 10.97 Trade unions at the national, regional, industry and plant level should all have a say in the running of the programme.
- 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.
- 10.101 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. A suitable mechanism needs to be devised for regular training programmes through the trainers trained by the CBWE. 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. The CBWE should become more focused and should organise specialised, need-based programmes for the various target groups in the unorganised and rural sectors. The Board may give suitable training programmes to the workers in the co-operative sector. The functionaries of the Panchayati Raj institutions may be trained on a regular basis by the CBWE. There is a need for more follow-up programmes to repeat the training programmes for the same target groups by the Board.

- 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.
- 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. The State governments must also participate in the Workers Education programmes.
- 10.105 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.

CHAPTER - XI

LABOUR ADMINISTRATION

- 11.3 Those who lead and 'man' the Ministry should have the highest degree of competence, vision, empathy, tact, skills in the arts of persuasion and inducing introspection, and activating social and group consciences. These qualities should govern the recruitment and placement of officers and staff at every level, and every department of the Ministry of Labour, in the Centre as well as States.
- 11.4 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.
- 11.25 It is necessary to have a clear and unambiguous definition of the 'appropriate government'.
- 11.26 There is a need to have uniformity in the definition of the term 'workman' which appears in many labour laws.
- 11.27 The ambiguity in the definition of 'appropriate government' and the multiplicity of the term 'workman' will be resolved if the amendments that we have suggested in Chapter VI are adopted.
- 11.30 In the Chapter on Review of Labour Laws, we have recommended 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.
- 11.31 The employer should be required to maintain registers and display notices at the work-spot and not elsewhere.

- 11.32 The procedure for prosecution for non-payment of wages and payment of less than minimum rates of wages should be simplified.
- 11.33 To make enforcement effective, there should be commensurately deterrent punishment under all enactments.
- 11.34 Laws like Payment of Wages Act and Minimum Wages Act should contain a provision for recovery officers to be appointed by the Labour Department, as has been done in Section 8-B of the Employees' Provident Fund & Miscellaneous Provisions Act 1952.
- 11.35 Provisions to grant exemptions from various laws, in case of extreme emergency or hardship, should vest with the appropriate Government, and should be exercised by officers not below the rank of the Joint Secretary.
- 11.36 Minimum Wages Act should apply to all establishments and not be confined only to certain scheduled employments.
- 11.37 Criminal cases under labour laws be tried by Labour Courts, as is being done in Madhya Pradesh.
- 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.
- 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 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.
- 11.43 All employing Ministries should 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.
- 11.59 Qualifications for appointment of Presiding Officers of Labour Courts, be relaxed to enable Conciliation Officers to be considered for appointment.
- 11.60 Labour Courts be given powers to issue decrees or initiate contempt proceedings for non-implementation or non-compliance of awards.
- 11.61 A Central Labour Relations Commission should be set up for Central sphere establishments, and State Labour Relations Commission 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 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.

- 11.69 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. 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, 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. There should be access to information on all matters concerning industrial relations. 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. 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.
- 11.74 State Governments should pay due attention to the professionalisation and empowerment of Labour Department because of the crucial role that it has to play in strengthening the economy.
- 11.75 The Central Government should lay down some norms for the laws – inspector ratio and the infrastructure of the Labour Departments.
- 11.76 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.
- 11.77 All inspecting officers charged with the responsibility of the enforcement of multiple enactments should be of adequately high status. Their knowledge and experience should be updated through short-term and long-term training and refresher courses.
- 11.78 Labour Inspectorate should draw its programme of selective inspections based on returns submitted by the employing units. Returns with self-certification can be treated as self-

- inspection report from the establishments. The Labour Inspectorate has to be free to check the correctness of information received whenever they have doubts or on the basis of random sampling or complaints. Considering the limitations of the inspection machinery, routine inspections in the organised sector 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.
- 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.
- 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 Voluntary resolution of disputes should be encouraged over legalistic approach of settlement of disputes through adjudication. Labour Administration should encourage better human resource management practices.
- 11.83 There should be a legislative framework for voluntary dispute settlement. A basic pre-requisite is to place a system of recognition of negotiating agency on the statute. The responsibility of conducting verification of trade union membership for recognition of trade unions should be vested in the Central Labour Relations Commission and the State Labour Relations Commission. The Works Committee required to be constituted under Section 3 of the Industrial Disputes Act should be substituted by an Industrial Relations Committee to promote in-house dispute settlement.
- 11.84 The National Labour Relations Commission should function as the appellate authority in respect of the decisions of the Central and State LRCs.
- 11.86 The Indian Labour Conference should be an effective forum for review, consultation and formulation or evolution of perspective and policies.
- 11.87 The Indian Labour Conference has to be as representative as possible. Some means must be found to include representatives from the unorganised sector and from central organisations that are not affiliated to central trade union federations.
- 11.88 We are in general agreement with the proposals in the Draft Indian Labour Code for the strengthening of the Indian Labour Conference. The ILC can be used as a sounding board for proposals of legislations.

- 11.89 Suggested functions of the Indian Labour Conference would include review of labour situation; consideration of Conventions and Recommendations of the ILO for adoption; sounding board for legislative proposals, etc.
- 11.90 The Standing Labour Committee should prepare the agenda for ILC. There should be a Director General of the ILC having specific functions.
- 11.91 The ILC should set up Tripartite Standing Committees to consider and review problems, legislations and implementation into main areas.
- 11.92 Tripartite National and State level Councils of Employment should be set up to monitor and plan matters related to employment.
- 11.93 There are 41 Tripartite Committees/Board and the Central Ministry of Labour. The Committees constituted under specific labour laws have special roles and require a certain degree of expertise. The non-statutory committees examine and deliberate on a variety of issues. The Labour Ministry should scrutinise the necessity, utility and the efficiencies of these Committees. Members of these Committees should be chosen for their expertise, experience and/or representative capacity.
- 11.115 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. 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.
- 11.120 Workers engaged in the agricultural sector have to be educated about potential hazards by imparting knowledge of the work, means to identify work related risk factors and information on first-aid.
- 11.127 We need to reflect and evolve a system that permits flexibility in employment patterns and at the same time assures rigorous standards for protection of safety and health requirements. Regardless of whether the production take place in the main enterprise or in the establishment of the contractor, strict standards of the safety should be maintained.
- 11.128 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 policy should promote collaborative and supportive arrangements for OSH management systems at the organisation level by inspectorates. 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, perhaps on the lines of Occupational Safety and Health Commission of the USA, should be nominated to formulate, implement and periodically

- review a coherent national policy for the establishment and promotion of OSH Management Systems in organisations.
- 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.
- 11.131 Occupational Safety and Health have to be the responsibility and duty of the employer. The employer should make appropriate arrangements for the establishment of OSH Management Systems. The system should contain the main elements of policy, organising, planning implementation, evaluation and means of improvement.
- 11.132 The employer in consultation with workers should set out in writing an OSH policy specific to his organisation. The policy must be communicated and be readily accessible to all workers. The policy should be reviewed for effectiveness and adequacy.
- 11.133 The employer should ensure establishment and efficient functioning of a Safety and Health Committee.
- 11.134 The employer should allocate responsibility, accountability and authority for the development, implementation and performance of the OSH management system.
- 11.135 OSH competence requirements should be defined by the employer and it should be ensured that all persons carry out their duties and responsibilities.
- 11.137 OSH documentation system should be established and maintained.
- 11.138 The organisation's existing OSH management system and relevant arrangements should be evaluated by an initial review.
- 11.139 The OSH management system should support at the minimum, compliance with national laws and continuous improvement in OSH performance.
- 11.141 Measurable OSH objectives, specific to the organisation should be established.
- 11.142 Hazards and risks to workers' safety and health should be identified and assessed on a continuous basis.
- 11.143 Emergency prevention, preparedness and response arrangements should be established and maintained. These arrangements should provide relevant information and training to all members of the organisation. Regular exercises and rehearsals must be conducted.
- 11.144 A disaster management plan must be formulated at every unit and industrial estate, and at the city, district, state and national level. The concept of Mutual Aid Response Group (MARG) provides that workers working in a factory are given information about the hazardous nature of operations in other factories in their vicinity so that workers working in neighbouring factories would be in a position to render assistance during emergency. Similarly, doctors working in major hospitals should be informed of the hazards involved in the factories in their vicinity.
- 11.145 Procedures to monitor measures and record OSH performance on a regular basis should be developed and reviewed.

- 11.148 The investigation of the origin and underlying causes of work related injuries, etc. should identify failures and shortcomings in OSH management system, and these should be documented.
- 11.150 Results of these investigations should be communicated to the safety and health committee.
- 11.151 The results of investigations, recommendations of the safety and health committee should be communicated to appropriate persons for corrective action.
- 11.154 Arrangements to conduct periodic safety or OSH audits should be established.
- 11.155 A safety audit policy and programme should be developed.
- 11.156 The National Accreditation Agency should approve auditors, after conducting examinations.
- 11.157 Management reviews should evaluate the overall strategy of the OSH management system to determine whether it meets planned performance objectives.
- 11.160 The working group on OSH set up by the Planning Commission had recommended evolution of a National Policy on OSH, Umbrella Legislation on OSH, Apex Body on OSH, etc.
- 11.162 The need for safety awareness is becoming increasingly critical necessitating constant safety awareness and observance of safety standards in all sectors and activities. This can be achieved by ensuring that safety related information reaches the young as part of the academic curriculum starting from primary school level.
- 11.188 The number of inspecting officers in the office of DGMS is about 22 per cent lower than the sanctioned strength due to procedural delays in filling up vacancies. Further there has hardly been any increase in the strength of inspecting officers since 1971, although the mining industry has increased manifold.
- 11.189 The DGMS is an organisation that handles emergency distress situations, but most of the offices do not even have STD facilities. We cannot understand how they can be expected to respond to emergency situations when they do not have access even to telephone facilities.
- 11.195 The inadequacy of staff in the DGMS, is telling upon the work of enquiry even into serious and reportable accidents. Hardly one per cent of serious accidents are being investigated. This is not an acceptable situation and immediate steps should be taken to put an adequate number of officers in place.
- 11.196 Illegal mining is thriving in the States of West Bengal and Jharkhand and is also present in Meghalaya and Bihar.
- 11.200 Illegal mining has been going on for a long time, but a policy to tackle it was formulated only in 1978-1979 by the Committee on Illegal Coal Mining.
- 11.207 The present strength of inspecting officers cannot take the existing load of mines to be inspected. Recommendations of earlier committees, on the subject, have not been acted

- upon. The possible reason may be shortage of budgetary support for creation of posts. To ease this situation, the DGMS should be allowed to levy service charges. DGMS may be permitted to hire services of retired engineers, engineering firms, surveyors, etc. to get the mines inspected statutorily and pay them contractual amounts.
- 11.210 The provisions under the Mines Act 1952 must be amended to provide for deterrent punishments including imprisonment and special courts or designated courts must be set up to expedite trial. The Central Government Standing Counsels are unable to influence the courts to do justice to the Government's submissions. The remuneration paid to them is low. The needs of safety require that this state of affairs is corrected without delay.
- 11.219 The Central Labour Institute and Regional Labour Institute should be accorded greater functional autonomy. They should be conferred with more financial authority and powers to retain their earnings.
- 11.221 The DGFASLI has to play a pro-active role in administering the Factories Act. This has necessarily to involve intensive and mandatory training of factory inspectors and preparation of manuals. It will perhaps be worthwhile to examine the earmarking of a certain part of the State Inspectorate budget as well as that of DGFASLI for the purpose of training personnel. 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.
- 11.224 We have recommended the formation of a National Board to bring about necessary coordination amongst various organisations functioning under different Ministries that deal with the area of safety and occupational health.
- 11.225 Till such time the Board becomes functional, the activities of the Board can be undertaken by the DGFASLI.
- 11.226 In view of the increasing pace of industrialisation, there is an urgent need to strengthen measures for occupational, safety and health in industries. The DGFASLI may be asked to devote special attention to hazardous chemical industry.
- 11.228 We endorse the proposal that a Commission on Occupational Safety and Health should be set up by the Central and State Governments. A draft bill for establishment of such a Commission is given in appendix-III.
- 11.229 A Model Safety and Health Policy for organisations is given in appendix – IV to this Chapter.
- 11.236 It is necessary to undertake a comprehensive review of the work of the V.V. Giri National Labour Institute.
- 11.237 Research projects of the V.V. Giri NLI should be formulated by a competent Research Committee set up by the Institute.
- 11.238 The Government should examine whether it will be advantageous if the V.V. Giri National Labour Institute and Labour Bureau, Shimla should be merged.

- 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.
- 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.
- 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.
- 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.
- 11.245 Adequate attention needs to be paid to the pay scales and infrastructure provided to the officials of the CBWE.
- 11.246 We, thus, envisage a more pro-active role for the CBWE, specially in times when workers and industry are facing grave challenges.

CHAPTER - XII

OTHER MATTERS

WORKERS PARTICIPATION IN MANAGEMENT

- 12.1* The Royal Commission on Labour (1929-31) had said that "We believe that if these committees (Joint 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 The Industrial Disputes Act provides that the appropriate Government may require employers employing 100 or more workers in any industrial establishment to constitute Works Committees consisting of total number of members not exceeding 20, and that the number of representatives of workers should not be less than that of the employer. The functions assigned to these committees were to promote measures for securing and preserving amity and good relations between employers and workmen and to that end comment upon matters of common interest or concern; and to endeavour to compose any material difference of opinion between the employers.
- 12.6 17th session of Indian Labour Conference held in 1959 discussed the functions of the works committee and approved a list of functions which could be assigned to the works committees such as conditions of work, ventilation, lighting, drinking water, canteens, safety and accident prevention, occupational diseases, adjustment of festival and national holidays, administration of welfare and funds, educational and recreational activities, promotion of thrift and savings. The conference also laid down the issues with which the works committees should not normally deal such as Wages and allowances, bonus and

- profit sharing schemes, rationalisation, matters connected with the fixation of the standard labour force, programmes of planning and development, retrenchment and lay-off, matters of victimisation, provident fund, gratuity schemes, quantum of leave, and national and festival holiday, incentive schemes, housing and transport.
- 12.7 The Industrial Policy Resolution adopted by the Government in 1956 declared that in a socialist democracy, labour was a partner. 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 Joint Management Councils.
- 12.8 National Commission on Labour (1966-69), observed that there was not much support for the institutions of the JMCs. It said that when the system of recognition of Trade Unions becomes an accepted practice both management and unions would themselves gravitate towards greater cooperation.
- 12.9 The tripartite committee which approved the draft model for establishment of joint management councils unanimously agreed in selecting the undertakings in which Joint Councils should be established. Such establishments should have well-established strong trade unions, there should be willingness among the parties to try out the experiment, size of the undertakings in terms of employment should be such as employ at least 500 workers, the employer in the private sector should be a member of one of the leading employers' organisation and the trade union should be affiliated to one of the central federations and the undertaking should have a fair record of industrial relations.
- 12.10 On the suggestion of the Assam Government, a committee was formed which recommended that the councils may have sub committees if the parties so desire, workers nominees on the councils may be nominated by trade unions with the bulk of nominees from workers, outsiders should be limited to 25% or less depending on local conditions., If it is decided to constitute technical committees, their constitution should be laid down and on these committees outsiders be allowed to be nominated., Tthe size of the councils should be limited to 12 persons., mMembers of the councils should be compensated for loss of earnings., tThere should be provisions for recall,. nNecessary facilities for the work of the councils should be provided by the employer,. A the percentage of minimum wages or income or profits to be given to council for welfare work, should be decided at the undertaking level, decisions should be taken in the council by agreement.
- 12.12 The Machinery for Joint Consultation (JCM) in Government was set up on the model of Whitely Councils in U.K. with the objective of 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 of increasing the efficiency of public service.
- 12.13 The objectives of JCM are an amalgam of the objectives of the Works Committees, Joint Management Councils and agencies of collective bargaining.
- 12.14 JCM 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 No outsider can participate in the

- discussions in these bodies but an honourably retired employee of the Government can be a member.
- 12.15 The council have 3 tier or level e.g. office level, councils, departmental level and national level councils.
- 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 In case of difference of opinion on any issue at the office level council the matter can be taken up by concerned party in the departmental level 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.
- 12.22 1997, Tata Iron and Steel Commission Company at Jamshedpur has set up Joint Councils.
- 12.23 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. There is also a joint Town and Medical Council for dealing with matters relating to the township, medical, health and education matters 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. The functioning of the joint councils in TISCOs reviewed in consultation with the Trade Union from time to time.
- 12.24 Nationalised Banks (management and miscellaneous) Scheme 1970 was notified for the appointment of a Workman Director and a Director representing the Officers' cadre to be nominated by unions/associations identified as the representative union/association after verification of membership on the board of the management of each Public Sector Bank.
- 12.25 Article 43A was inserted in the Constitution with the purpose to raise productivity, promoting industrial peace and create a sense of involvement amongst workers making it incumbent on the State to secure effective participation of workers in the management of enterprises.
- 12.26 Scheme of workers participation in industry notified in 1975 required setting up of shop floor and plant level councils to be implemented in the first instance in enterprises in the manufacturing and mining industries, whether these were in the public or private sector consisting of equal number of representatives of employers and workers. The employers'

- representatives were required to be nominated by the management and the representatives of workers were required to be from amongst the workers engaged in the shop or department or establishment concerned.
- 12.27 Decisions were to be based on consensus and a decision once taken was required to be implemented within one month.
- 12.29 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 measure and it was expected to ensure a two way flow of communication between the management and the workers.
- 12.30 In The Scheme notified in 1977, scheme for participation of workers in which 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 and for other service industries was introduced.
- 12.31 Scheme was to cover organisations employing 100 or more persons in these activities. 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. The scheme also emphasised on discipline, elimination of pilferage and all forms of corruption.
- 12.32 While both the schemes (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. The schemes became controversial because for reasons of lack of the criteria for determining representation, 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., tThe indifference of the management and, the involvement of second rung union officialdom which also contributed to ineffective functioning of many forums and their eventual decline.
- 12.33 Another scheme notified in December 1983 was made applicable to central public sector undertakings was announced. All undertakings of the central government, which are departmentally run, were excluded from the scheme because of availability of JCM.
- 12.35 The functions (of council to be set up under 1983 scheme) included consultation on production facilities, storage facilities, material, economy, operational problems, wastage control, safety issues, quality improvement, planning, implementation and fulfilment of monthly targets, development of new products, encouragement to and consideration of suggestions, works system, welfare measures, profit and loss statement, balance sheet, operational expenses, absenteeism, administration of social security schemes, workers training programmes, issues pertaining to women, welfare issues like housing, medical benefits, transport facility, safety measures, canteen.
- 12.36 In pursuance of recommendations of Tripartite Labour Conference held in May 1977 Tthe 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 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 committee in its report noted that despite the agreement that there should be effective participation of workers in the management of undertakings 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 committee recommended that a scheme for workers participation should provide for free flow of information, augmentation of productivity and production, effective machinery for resolution of conflict, democratisation of work process, safeguarding of the interest of workers and training of workers and managerial personnel in the art of participative management sector. Any scheme of workers participation should develop industrial efficiency, create a sense of involvement in the work process, generate a sense of discipline, democratise decision-making and foster closer relationship between the workers and the management. A representative of the public sector mentioned that participation was essential for proper involvement of workers. The participation should be such as would create a society which ensured social justice. It was agreed that the Trade Unions had a very important role to play in protecting and furthering the rights and economic advantages of the workers. Any institutional arrangement should not ignore the vital role of Trade Unions. The committee by consensus felt that there was need to introduce the scheme by statute. No distinction should be made between the public, private and cooperative sectors. The Majority of the members favoured adoption of a three-tier system of participation namely, at corporate level, plant level and shop floor level. The Committee also suggested the functions for different level of councils.
- 12.38 Taking into account the shortcomings of the various schemes implemented from time to time and the experience gained 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. The Participation of Workers in Management Bill was, therefore, drawn up and introduced in the Rajya Sabha on 30th May, 1990.
- 12.39 It covers all the industrial establishments or undertakings as defined under the Industrial Disputes Act, 1947. Government will have the power to notify the classes of industrial establishments to which the law Act will apply. 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 including the manner of representation of workmen at all the three levels and of other workers. The bill proposed constitution of one or more Councils at the Shop Floor Level and a unit level Council and envisaged 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%. The bill was referred to Parliamentary Standing Committee on Labour & Welfare.

- 12.41 The first five-year document plan contained a number of references about collaboration between the employers and the workers. It held the view that the employer employee relationship is essentially of a partnership and calls and for closest collaboration at all levels between the employer and the employees for increased production, improvement of quality, reduction of cost and elimination of waste.
- 12.42 The second plan document said that envisaged 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.
- 12.43 The third plan provided that the works committees would be strengthened and made active agencies for democratic administration.
- 12.44 The sixth plan laid down that there should be emphasis on promotion of cooperation between the workers and the employers through participation in management.
- 12.45 The eighth five plan emphasised that participation in management was a means of achieving industrial democracy. There is need for introducing the workers participation in management by law as many voluntary efforts made since independence had fallen short of the expectations.
- 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. The committee which was set up in that session recommended 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. The main function of the councils may include provision of means of communication, improvement of working and living conditions, and improvement in productivity. It would be desirable to consult the councils in matters like alterations in standing orders, retrenchment, rationalisation, closure, reduction in or cessation of operations and introduction of new methods, It would be preferable to exclude wages and bonus and individual grievances from the purview of joint bodies. 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, etc. It would be advisable to devise some methods for closely associating the trade unions in the selection of workers' representatives. It is necessary to enlist the willing cooperation of the management at the middle level,. Government should provide advisory service to councils on personnel management, organising a sustained educational campaign for creating the necessary atmosphere.
- 12.47 The issue was discussed again in 28th, 29th, 32nd and 33rd Session of ILC. It was envisaged that the statutory framework should be flexible enabling the Government to introduce the scheme in a phased manner beginning with the establishments above a certain number of employees. The mode of representation of the workers should be decided in consultation with the recognised Trade Union wherever recognised under the law and in other cases by secret ballot. Dismissed employees whose cases are subjudice should

- not be eligible for participation. 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 wanted it to be confined only to one representative. State labour ministers were of the view that at board level the representation of workers should be limited to 25%. In the 32nd session of the ILC also deliberated on issue wherein the workers representatives by and large favoured a legal framework for workers participation in management, but the employers' representatives expressed their opposition to the same.
12. 48 We have seen that the workers participation in management introduced statutorily through the institution of Works Committees has not been successful perhaps because of the method of constitution of works committees and the functions assigned to these committees. Three voluntary schemes introduced also did not find many takers. Central Trade Union Organisations have been demanding introduction of workers participation in management by statute and the employers' organisations have been against introducing schemes of workers participation in management by law.
12. 49 While looking e may look at the institutions of workers participation in management set-up in various countries like Germany, Japan and now the member nations of European Union we find that . 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. 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, ensure the introduction of new technology, improve production processes, achieve production targets, smoothen retrenchment and welcome introduction of new technologies, to make the enterprises capable of standing up to global competition.
- 12.50 Our efforts made in this regard during more than half century underline the extreme importance of a cooperative approach. Almost all the economically advanced nations have worked out their own variants of industrial co-operation and co-determination. 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.
- 12.51 It has also improved human relations which has led to improved industrial relations.
- 12.52 Content of work has undergone a sea change in many essential processes and all production processes are no longer carried out under one roof. The knowledge worker has taken the place of the old unskilled worker. Collective excellence, it has been found, depends very much on cooperation, voluntary vigilance and coordination,
- 12.53 India cannot 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.
- 12.54 With globalisation the time has come when we cannot leave the question of participative management to be determined by the management or the trade unions. We believe therefore, that the time has come for the Government to enact a law to provide for

participatory forums 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.

EMPLOYMENT SCENARIO IN THE COUNTRY

12. 55 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. Commission observed a continuous downsizing of workers in the organised sector and the miseries that it is causing to the retrenched working population. Without work, all talk about providing protection, improving conditions, and assuring a minimum wage and all talk of social welfare is futile. If there are no jobs, there is no economic stability.
12. 56 The economy is expanding, but it is hardly creating any new jobs. Most of the existing industrial units are shedding, excess labour, and in order to be competitive are resorting to sophisticated machinery and automation. 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%. 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.
12. 57 There is a reduction in the proportion of the workforce to the total population in both urban and rural areas. Out of 1000 persons, 418 were part of the workforce in 1.1.1994. But now only 395 persons are part of the workforce. There is a beneficial rise in the student population ratio indicating a rising participation in secondary and higher level education.
- 12.58 The growth of employment should not be compared with growth of population and it must be viewed in the context of growth rate of workforce.
- 12.60 The growth of employment has declined sharply from 2.43% in 1987-88 to mere 0.98% in 1999-2000 but the growth of Labour Force Participation Rate (LFPR) has declined from 2.29% to 1.03% during the same period. The growth rate of GNP has gone up from 5.25% to 6.60% during this period.
- 12.62 The number of persons employed in agriculture has declined from 68.5% in 1983 to 64.5% in 1993-94, and further to 59.9% in 1999-2000. Employment in sectors like construction, trade, financial services, and transport, storage and communication has grown faster than average along with growth of GDP.
- 12.67 High rate of unemployment among the educated youth is a very serious problem.
- 12.68 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 and unemployment rate among technically qualified persons is almost constant.
- 12.69 As in 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.

- 12.72 During the last few years there has been considerable talk of downsizing either through voluntary retirement schemes or through retrenchment. 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. Staff accounts for 65-70% of total costs in public sector Banks. National Textile Mills has introduced VRS in six units in Tamilnadu. During the last one-year, 15,000 jobs have been cut between March 2000 and June 2001.
- 12.73 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. Telco got downsized by 9,375 workers, Bajaj Auto by about 4,785 workers and Hindustan Motors by 1500 jobs. Escorts, Daewoo India, LML Ltd and Maruti Udyog have all cut the jobs. 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. Indian Railways are 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 only a glimpse of the grave situation (and not a complete list).
- 12.74 The proportion of self-employed has come down from 58.9% in 1977-78 to 52.9% and the number of casual workers has gone up substantially from 27.2% to 33.2%. Organised sector employment grew relatively slowly at 1.20% per annum during the 1983-94 period and has further slid down to only 0.53% between 1994 and 1999. Since there is a general preference for jobs in organised sector, this trend is of great concern. 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. There is therefore large-scale unemployment and at the same time shortage of skill. The fact of being employed is obviously no guarantee for escaping poverty because of the underemployment. It is estimated that 6.5% of the total employed (397 million in 1999-2000) i.e. around 25.74 million are underemployed.
- 12.75 The Task Force appointed by Planning Commission has recommended acceleration of the rate of growth of GDP, with particular emphasis sectors that ensure spread of income, pursuing appropriate sectoral policies in individual sectors which are important for employment generation; implementing focussed special programmes for creating additional employment for vulnerable groups that may not be sufficiently benefited by the more general policies for promoting growth; pursuing suitable policies for education and skill development, which would upgrade the quality of the labour force, the policy and legal environment governing the labour market that encourages labour absorption; accelerated GDP growth to a range between 8% and 9% (continuation with GDP growth of about 6.5% will not help) to achieve our objective of generating enough additional employment. The Task Force has further recommended lowering of import tariffs to ensure competition and increasing efficiency; allowing agro companies to buy, develop, cultivate and sell degraded and wastelands after detailed delimitations and taking these lands out of outpurview of tenancy law; freedom of conversion of rural land into urban use; active involvement of large industrial units and MNCs in food-processing; de-reservation and increasing FDI in the SSI sector, expediting grant of necessary permission for setting up of good quality hotels, switchover to modern retailing; emergence of modern and large transport companies; and removing present bias against large

- construction firms. Central Government should completely withdraw from the delivery of vocational training and labour reforms should be undertaken.
- 12.76 Recommendations of the Task Force were criticized by the Swadeshi Jagran Manch, Bhartiya Mazdoor Sangh, Khadi & Village Industries Board.
- 12.77 Therefore, in order to undertake a review of these recommendations Planning Commission has now set up another expert committee headed by Planning Commission Member Sh. S.P. Gupta. New committee is considering an agricultural driven job creation to be placed in the broad policy framework of second generation reforms. . It is understood that using the latest census figures the committee has observed that unemployment is much higher at an estimated 10%. If the total work force is 400 million, the unemployed will account 40 million. The new emphasis may be on some of the sectors in agriculture such as watershed development, minor irrigation, fruit processing and many other diversified activities in agriculture and creating jobs in the small and medium sectors of industries.
- 12.79 Advisory Panel set up by the Commission constituted to Review the constitution has emphasised 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 such as sustained agricultural growth, on both farm and non-farm employment, setting up of primary processing of agricultural products, development of rural community assets, encouraging activities like horticulture, floriculture, sericulture.
- 12.80 According to the Panel, rural activities can create an additional 80 million jobs.
- 12.81 All these estimates are based on various specific studies by the International Commission on Peace and Food, NDDDB, NCAER etc. These estimates therefore have a sound basis.
- 12.82 According to the Panel, operationalization of this plan will result in improved living standard for the rural poor in terms of nutrition, health and education.
- 12.83 These recommendations appear practical, and have a practical base. It is worthwhile examining these suggestions seriously.
- 12.85 We discussed this subject with many social activists working rural areas who have carried out a number of experiments, some of which have been successful. Their experiences can be good guide for planning future models of employment growth.
- 12.87 If we consider the general trend of employment in different countries in South Asia, we find some common features such as slow down of economic growth and growth in employment, casualisation of employment, non-declining share of the informal sector in the total employment, stable or rising unemployment, increasing incidence of long-term unemployment, declining labour force participation and low level of education and skills of labour force.
- 12.89 Casual workers are increasing in both the urban and rural sectors.
- 12.91 The major contributors to employment in 1999-2000 were agriculture (60%), manufacturing (12%), trade (9%), community, social and personal services (8%).

- 12.92 In manufacturing sector large and medium scale units together have contributed to 14% of employment while 86% of employment is in the small-scale industries. Owing to persistent pursuit of market driven development and increasing emphasis on efficiency of production activities, the large and medium scale industries have adopted capital intensive technologies which has resulted in the displacement of labour.
- 12.93 A GDP growth of about 4.80% was achieved in 1983 to 1986-87 but the employment growth during this period approximately was 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%.
- 12.95 Employment has been continuously growing in the small scale sector and this has gone up from 12.53 million in 1990-91 to 18.56 million having cumulative annual growth in employment of 4.19%.
- 12.96 There were 33.70 lakh small units in 2000-2001 (as against 19.40 lakh in 1990-91) with total production of Rs.6,39,024 crore employing about 18million persons and exporting goods worth Rs.59.978 crore.
- 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. The committee made recommendations regarding enhancing availability of credit, improvement in technology and the marketing of products. The small entrepreneurs have been complaining of harassment by inspectors and the rigidity of labour laws. While the large corporate sector employed a total number of 67.4 lakh persons, the small-scale sector employed 171.6 lakh persons in 1999-2000, which has gone up to 177 lakhs in 2000.
- 12.99 Except a few industries like garments or leather goods which are labour intensive, most of the manufacturing industries are highly mechanised employing very few workers. In comparison the services sector is much more labour intensive.
- 12.100 In manufacturing companies labour intensity, the highest being in Tata Steel, with labour costs of 15.3% of total sales. Compared to manufacturing companies, hotels have more than 22% of costs as wages to sales; Infotech companies have 42% of costs as wages. The service sector accounted for 49% of our GDP. The services sector includes trade, hotels and restaurants, banking, transport, communications, insurance.
- 12.101 The efforts of the Govt. will have to be in creation of a congenial atmosphere for the services sector to grow.
- 12.102 Urban Informal sector comprises very small units producing and distributing goods and services, and mostly consists of largely independent self-employed persons. This sector is also heterogeneous, and comprises of small scale modern manufacturing and service enterprises and consists of street vendors, shoe shiners, hawkers, rickshaw pullers, rag pickers, small commercial enterprises, repair shops, road side dhabas, paan shops, bakeries, food processing units, leather goods manufacturers, etc.
- 12.104 Though unorganised sector 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 operate

at low economic levels and are not wanted by urban society. The municipal authorities remove them very often from their places of work, their work places are demolished and goods confiscated.

- 12.106 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. 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.
- 12.107 We cannot depend on industrialization alone for creating new jobs. One has to turn to the rural sector and give emphasis on agriculture, and allied occupations including agri business and processing.
- 12.108 The scheme based on the study by M.S. Swaminathan which spelled out strategy for creation of 100 million jobs and incorporated in 8th Plan needs to be revived and reworked to eradicate poverty and unemployment in India.
- 12.109 Some non-Government organizations in Maharashtra have made successful experiments in utilizing community common water resources and its equitable distribution among the rural communities. . The Green revolution which took place, comparatively in a small area of the country seems to have become unsustainable. NGOs advocate and practice water management on a scientific basis, organic farming, and low capital-intensive agro-processing, and organise training programmes resulting in reverse migration from cities to villages in some cases. 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.
- 12.110 Agriculture productivity can be Improved by use of fertilizers, soil health care, realignment of cropping patterns, water management including drainage, integrated horticulture, floriculture, medicinal plant production, production of seeds and planting materials, animal husbandry programmes, integrated program of intensive aquaculture, sericulture, wasteland development, soil conservation, water conservation and tank rehabilitation, compost preparation, vermiculture and organic farming, establishment of agro-industrial complexes, development of rural infrastructure (e.g. roads, health services, schools).
- 12.111 These improvements in agriculture will create jobs on a large scale.
- 12.112 The forestry sector holds large potential for creation of employment there is a large potential in agro-forestry on private agricultural holdings and also private sector plantations on Govt. lands lying barren/ wastelands. In addition to generating employment it will improve soil conservation, environmental protection, raw material supply for industries, ground water replenishment.
- 12.113 The overall budgetary allocations under the State sector for various programmes are not commensurate with the size and magnitude of the problem of maintenance and sustenance of forest wealth. The forest provide nutrition, food security in lean season, source of supplementary income and range of household items from fodder for livestock, fuel wood to construction material, medicinal plants and so on.

- 12.114 A new thrust for the creation of employment can be by way of encouraging large-scale private sector investment in forestry and promotion of agro forestry on agricultural 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 and therefore these came under the control of the State Revenue Departments and cannot be leased and Forest Conservation Act applies to them. Though very often these lands do not have any canopy cover but some undergrowth or bushes in some areas which is deemed to be forest lands. When the State is unable to fully look after the lands classified as forestland and which are under the direct control of the State, there is perhaps need to review the provisions of the Act. Permitting private activities and initiatives will ensure that the areas would have canopy cover for medium term conferring benefits of soil and moisture conservation, groundwater recharging, arresting of monsoon and biosphere improvement benefiting surrounding agricultural land.
- 12.115 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 accounting for 40% of the country's industrial employment, It is worthwhile to study the organization of these enterprises, the types of products manufactured by these units and marketed by them.
- 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.
- 12.118 In rural areas there is a dominance of casual workers and self-employed persons who are in large numbers. New economic changes will provide opportunities and not 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.
- 12.119 There was no Ministry or Department responsible for executing plans for employment promotion. 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 the Parliament.
- 12.120 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.
- 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. If it is promoted there will be resultant spin-offs like revitalization of arts and crafts, including the performing arts.
- 12.123 The specific components of development which are under way as per Tenth Plan include infrastructure development, product development and diversification, promotion of entrepreneurship and self employment, human resources development, promotion and marketing thrust with public and private partnership with the Government working as facilitator. Specific development initiatives include development of Mega tourism resorts, targeted approach towards development of tourism circuits, and promotion and marketing initiatives.

- 12.124 Promotion of domestic tourism has mostly been taken up by the State Governments 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.
- 12.125 The developments in the field of telecommunication, the Internet revolution and associated IT enabled 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 has been in the forefront of profound changes.
- 12.133 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. The present level of about 1,06,000 personnel employed in the IT enabled services is likely to grow to ten times by 2008. Domestic sector also offers a large potential for all such services with improvement in the infrastructure like assured electricity, better communication links, etc.
- 12.127 The health care sector is another area which offers considerable potential for the creation of sustainable jobs throughout the length and the breadth of the country. 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 would suggest pooling of medical practitioners including from alternative forms of medicine. 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.
- 12.128 With increasing affluence leading to changes in the lifestyle and the health and the health concerns associated with this 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
- 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. There is considerable scope for absorption of medical and paramedical personnel for catering to the backlog and expanding requirements of this sector.

REVIEW OF WAGES & WAGE POLICY

- 12.131 The resources to pay wages have also to be created. They have to come from the economic viability and profit of undertakings.
- 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'.

- 12.150 Committee on Fair Wages has influenced the principles of wage fixation, the form of wage fixation machinery and other matters for a long time.
- 12.151 The First and Second Five Year Plans gave importance to (a) laying down principles to bring wages in conformity with the aspirations of the working class and (b) setting up appropriate machinery for the application of these principles.
- 12.158 We have suggested elsewhere that the Government should appoint a high level committee with technically competent people including economists, trade unionists, entrepreneurs, to go into all aspects of the inter-related questions and to formulate a national wage policy.
- 12.161 A wage policy will also have to aim at a progressive rise in real wages. Wage increases can come on a count of increase in cost of living and improvement in standard of living.
- 12.162 In 1978, Government of India appointed a Committee on Consumer Price Index Numbers under the chairmanship of Dr. N.Rath.
- 12.163 There is a considerable delay in conducting the consumption survey and in constructing the new series of index numbers.
- 12.165 It is necessary that the consumption surveys are conducted with a 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 so that new index series will be undertaken as per fixed time schedule. The Commission endorses this suggestion.
- 12.167 A national wage policy must bring within its purview problems of workers in the unorganised sectors who are not unionized and, therefore, who have no bargaining strength. The entire emphasis of Government wage policy should be on fixing minimum wages and implementing them for the workers in the unorganised sector.
- 12.168 Objectives of a rational wage policy are :-
- (a) Do we need a national minimum wage in order to ensure minimum necessities of life?
 - (b) Do we need a wage policy under which we have to secure as much employment as possible?
 - (c) Do we need a wage policy as part of total anti-poverty programme?
 - (d) Do we want to remove the differentials of wages?
 - (e) Is it possible to standardize wages in the same type of industry?
 - (f) Should we give more emphasis on prescribing wages for unorganised sector and leave the wages in organised sector to be decided by collective bargaining?
 - (g) What best we can do to ensure at least a minimum income to the workers in unorganised sector?
 - (h) Can the wage rise be linked to increase in productivity?
 - (i) Can we have wage, income and price policy?

- 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.
- 12.178 Till such time as a National Minimum Wage Policy is evolved; the floor level wage may be treated as the current national minimum wage.
- 12.179 Our Commission feels that the Government of India should appoint an expert Committee to study the pros and cons of the national minimum wage and make suitable recommendations for construction of such a current national minimum wage.
- 12.180 In determining such a national minimum wage, the recommendations of different Committees, the 15th Session of the ILC, and the judgements of the Supreme Court should be used as guidelines.
- 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 for the worker at the lowest rung of the ladder.
- 12.197 The country needs to reward persons who have put in more efforts to acquire specialized skills.
- 12.198 The differentials in wages are bound to persist and there is no way to eliminate them. Their differential ratio perhaps can be brought down by judicious wage policies to be pursued at the enterprise level. The Commission feels that Government cannot do much in this process to reduce these difficulties.
- 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 has hardly any say in the matter.
- 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.
- 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.
- 12.210 The organised sector which accounts for less than 8% of the total labour force of India enjoys privileges and perquisites which are considerably more than that in the rest of the country.
- 12.211 The principles of wage determination have been greatly influenced by Court decisions from time to time.
- 12.230 Differentials between different sectors of the economy are bound to exist in a dynamic society. They are indicative of differences in skills formation, capital endowments, risk taking abilities, forecasting skills.
- 12.247 Our Study Group on Unorganised Labour has recommended that the minimum wage prescribed by the Fifth Pay Commission for the lowest category of Government employees (Rs. 2400 + Rs. 2100 DA = Rs. 45000/-) should be the minimum wage for a worker in the unorganised sector.

- 12.248 We fully appreciate the considerations that have prompted the Study Group to make this (para) recommendation. But we regret that we do not find it possible to accept and endorse this suggestion.
- 12.250 We feel that we should legislate only what is capable of being put into practice.
- 12.258 We agree that it is necessary and important to take the 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.
- 12.262 Workers cannot be given minimum protection unless minimum wages are prescribed and enforced in the unorganised sector.
- 12.264 We feel that the state government should specify minimum wages for an unskilled category of worker and these wages should be the same for all industries. We recommend that the distinction between scheduled and unscheduled employment should be given up. Whatever the employment, notification should prescribe the same minimum wage to all. The Minimum Wage Committee may fix minimum wage for a region and the minimum wage for a region can be made applicable to all employments in that region.
- 12.269 We feel that the second alternative (notification method of fixing minimum wage) is better because it given an opportunity to all concerned to have a say in the matter.
- 12.275 We have to make our industries competitive by adopting suitable changes in the existing policies.
- 12.296 The policy of economic liberalisation has certainly helped some Indian firms who have the ability to face international competition.
- 12.303 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 union in coming up with productivity linked wage system acceptable to all.
- 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.

LABOUR STATISTICS AND RESEARCH

- 12.338 Statistical information on labour related matters is basically utilized for framing labour policies, understanding working and living conditions, formulating policies in respect of target groups, monitoring industrial relations, enforcing labour laws and assessing the nature of employment and unemployment, the skills required for different jobs, gaps in the skills development programmes etc.
- 12.339 The Government requires a comprehensive, up-to-date, reliable and authentic data base.
- 12.340 The collection of statistics is the primary responsibility of the Government and it cannot be delegated to NGOs and private individuals.

- 12.344 The Government of India has made attempts to review the system of labour statistics. In 1975, the Labour Ministry constituted a small working group for simplifying and rationalising the various registers, returns and reports prescribed under various Labour Laws. Another Committee was constituted in 1981 to look into the procedures followed in compiling the primary statistics as well as simplification and rationalisation of returns. Many important recommendations made by these bodies remain unimplemented.
- 12.359 There are many problems in constructing Consumer Price Index Numbers for Industrial Workers.: 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 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. We learn that this abnormal delay is caused by staff shortage and administrative problems, etc., revision of the present poor remuneration to price collectors/price supervisors essential to ensure effective involvement of these field workers and inadequate training of price collectors and supervisors areis another shortcomings.
- 12.361 The base year 1986-87 for Consumer Price Index for rural and agricultural workers is too old., sSome of the items included in the consumption basket have disappeared long ago, and new items have emerged in their basket. The series has become defective. Indices based on these numbers would not therefore be able to compensate rise in prices.
- 12.363 The main problems in the area of wage rate index are outdated base year and limited coverage in terms of number of industries and occupations.
- 12.364 The Labour Bureau also compiles price indices of 31 selected essential commodities for urban areas. These index numbers are supplied to the Ministry of Food and Civil Supplies every month for monitoring the prices of essential commodities. We feel it is desirable to conduct such surveys and compilation for rural areas as well.
- 12.365 The series of productivity indices compiled by the Bureau has serious limitations which include old Base year of 1970-71, non-availability of input-output data in respect of individual industries, lack of comparability due to changes in classification and methodologies, etc.
- 12.366 There seems to be hardly any coordination in the research efforts by various Government bodies like the Labour Bureau, National Labour Institute, the Central and State Governments, etc.
- 12.368 The report on employment and unemployment prepared by the Labour Bureau based on data on consumption expenditure in rural areas does not show the overall picture of unemployment in the rural areas. The Rural Labour Enquiry (RLE) is silent on information relating to the interregnum period of two successive rounds of enquiry. This is a handicap for policy formulation.
- 12.369 The wage rate indices for 18 agricultural and non-agricultural occupations should also be constructed by the Labour Bureau.

- 12.370 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 Commission feels that such Family Budget Survey data need to be collected frequently and regularly on a mandatory basis in accordance with the relevant ILO Convention.
- 12.373 There are two main problems/data gaps in the Annual Survey of Industries: (i) data on earnings need to be collected every year instead of in 4 years and. T there is need to collect data on wages in addition to the total labour cost of units, and (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.
- 12.374 Occupational Wage Survey (OWS) data are of immense importance for conducting scientific studies on wage patterns and formulation of wage policy.
- 12.376 The main problems in the OWS are: it takes eight to ten years to complete one round of the survey which is a very long period, the delay has caused delay in revising the base year of Wage Rate Index (WRI) Numbers, there are large and varying gaps between consecutive rounds, and the surveys do not include all categories of workers.
- 12.380 An in-depth examination of the information compiled through voluntary returns reveals the deficiencies such as: time lag in submission of returns upto 35 months, : low response in return submission, varying response, : variety of definitions under different labour laws, problems in filling the returns, inadequate coverage, low wage ceilings excluding large number of workforce, etc.
- 12.383 The data generated by the Directorate General of Employment and Training provide estimates of the utilization 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. However, has a lacuna as it does not give complete picture of employment and unemployment scenario.
- 12.384 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.
- 12.385 The shortcomings of the data generated by the DGE&T include: non-inclusion of data of private recruitment agencies, no periodic updating of the employers and job seekers registers, poor and low response from the employers, lack of computerisation of data, lack of periodic revision resulting in the overestimation of unemployment level and underestimation of the employment level, lack of data on the unemployment level in rural areas, etc.
- 12.386 It is important to redefine the role of the employment exchanges to meet the new challenges.
- 12.387 The Directorate General of Mines Safety (DGMS) is an enforcing agency under the Mines Act 1952., tThe mangements submit to the DGMS periodical returns containing detailed information on labour, output, accident, mechanisation, welfare, etc. The data gaps relate to: non-availability of data regarding organized and unorganized sector due to definitional

problems, low response rate in metalliferrous mines, outdated base year for index numbers for wages of the workers in mines, old format of the statutory returns and non-updation of index numbers for wages of the workers in mines need to be revised/updated periodically.

- 12.392 In order to avoid the delay in publication of data by Labour Bureau and to have the latest information for use, Directorate General Factory Advisory Services and Labour Institute (DGFASLI) DGFASLI collects data from State Chief Inspectors of Factories on quarterly basis.
- 12.393 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 areis 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 computerise the system. Also there is a need to establish/strengthen the statistical unit.
- 12.394 Employees State Insurance Corporation compiles the statistics: through periodical returns and regular publications, periodic/adhoc surveys and research.
- 12.395-396 However, adequate data regarding factories and establishments and wage level of industry in areas where the scheme is not in force is not available. 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.
- 12.399 The data management system under the social security schemes should be computerised so as to ensure better management of the Employees State Insurance, the Employees Provident Fund and other social security Acts.
- 12.402 The census data have the limitations of seasonal and intermittent nature of work characteristics of India, the liberal definition of workers, under-estimation of the female participation rate and considerable delay in release of data to the public.
- 12.403 National Sample Survey Organisation (NSSO) collects data on different parameters of employment and unemployment through its quinquennial surveys since 1972-73.
- 12.404 The limitations of data are: the data does not capture informal sector workers, need forMore probing questions seeking information from the informants on subsidiary work in NSSO's quinquennial survey which would enable the capturing of information on part- time and intermittent work, the need for the NSSO toshould provide standard error of estimates of employment related variables, and tothe NSSO should publish data on distribution of persons by number of days at work and total intensity of work during the reference week, non-availability of and annual statistics relating to work force by age and sex, level of literacy, state, industry, sector sphere is not available with NSSO.
- 12.405 The Labour Departments of the State Governments also do generate lot of data in respect of labour matters. Some compile and publish this data, while others do not.
- 12.407 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 the methodology of such collection.

- 12.408 The Commission feels that collection and systematisation of data on compensation to workers in general would be necessary. This would include 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 organised sector.
- 12.409 A majority of wage agreements are normally filed in the office of the Labour Commissioner. If the Government either publishes these wages agreements periodically or encourages any private institution to do so, this will be a valuable source of information.
- 12.410 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 Labour Bureau or by some Institute like the NLI.
- 12.411 Studies of what happens to the graduates of educational institutions and training programmes – so-called tracer studies – should be promoted to obtain information on the connection, or lack of them, between the activities that create human capital and the realisation of their benefits in labour markets.
- 12.412 They could provide insights on the extent of misallocation of education and training resources.
- 12.413 A major shortcoming has been that the educational institutions or authorities rarely obtain information about what happens to their graduates and dropouts after they leave the institution. 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.
- 12.414 Special evaluation studies of training and employment programmes can be made to evaluate the impact of the training or employment programmes by following the people who had been involved in it and observing their subsequent labour market experience. In developed countries such evaluation studies have yielded much better information about the effectiveness of alternative training and employment programmes.
- 12.415 A complete unique study in this regard is the Labour Force Turnover Study of the Malaysian Ministry of Labour. 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. 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 way 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.
- 12.416 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 not in the household surveys. Therefore, more data has to be generated on informal sector. Such studies will have to be special purpose studies probably of a particular sector in a specific region.

- 12.417 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.
- 12.418 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 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.
- 12.420 Whenever the Commission visited various States, we asked the officers of the State Labour Departments as to the impact of new economic policies of globalization and liberalization on labour. There was a general consensus that there was large-scale retrenchment, Voluntary Retirement Schemes (VRS), and industries were being closed. But none had any correct figures. We would urge either the Labour Bureau or the National Labour Institute or the affected State Governments to undertake such studies. There are a number of labour research institutes in the country. Government can assign them work of collecting data on this subject.
- 12.421 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
- 12.422 A good number of Indian workers are working in countries in the Middle East and other countries. Statistics of such workers are given in the Annual Report of the Ministry of Labour. We feel that there are significant gaps in the collection of data and its presentation.
- 12.423 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. 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.
- 12.424 The partial nature of this data is further compounded on account of illegal migration is through the manipulation of tourist and business visas.
- 12.425 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. This is an important pre-requisite to make future contract labour export strategy more purposeful and also to formulate effective reabsorption/rehabilitation schemes.
- 12.426 The status of migration 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.

- 12.427 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. 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.
- 12.428 The data relating to return migration can be strengthened by proper use of the disembarkation cards in the major airports.
- 12.429 Data on migration are as much essential at the state level as they are at the national level. The data collected at the national levels need to be classified state- wise. It would be desirable if the National Sample Survey Organisation (NSSO) conducts detailed surveys on international contract migration periodically, in all the migrant-sending states.
- 12.431 Our country is facing acute underemployment. We have to develop a system through which availability of skill and wage movement at household level are studied in detail on periodic basis.
- 12.432 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 Panchayat, Blocks, Districts, Municipalities, Labour and Manpower Departments of State Governments etc. 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.
- 12.433 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 the same.
- 12.434 The ILO has laid down certain standards concerning content and coverage of statistics relating to different subjects through various conventions. 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.
- 12.435 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. But they are hindered by paucity of reliable information. 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: estimates of unemployment & underemployment, breakdown of employed labour force by sector, occupation, education and skill levels, facilities of skill development training at local level, institutional framework that exists at the local level to provide support services to self-employed persons, programmes of development of infrastructure such as roads, irrigation, watershed development, etc.
- 12.436 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. 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.

- 12.438 The states usually takes a lot of time to submit the consolidated annual returns in respect of various Labour Acts to the Bureau. The time lag varies from 2 months to 35 months. Some states do not submit any return at all. Apart from the time lag, there is very poor response for submitting these returns. Trade Unions 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. The measures our Commission has recommended for trade unions may improve the present situation.
- 12.439 The Labour Bureau conducts occupational wage surveys. It takes about 8 to 10 years to complete one round of such a 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 does not include all categories of workers and therefore it is of not much relevance.
- 12.440 The Director General of Employment & Training publishes 8 publications. But most of these publications are brought out with considerable time lag.
- 12.441 The Employment Market Information Programme (EMIP) does not cover employment in many sectors and therefore this data published by DGET is of not much significance.
- 12.444 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. There is a need to simplify and consolidate various returns into a few forms. The complexity of forms leads to poor response and poor quality of data being collected.
- 12.445 The prevalence of some terms with varying scope pose a problem especially to those filling and submitting the return. It also leads to confusion among the data users.
- 12.446 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. The present labour statistics suffers from serious deficiencies such as inadequacy of data, absence of fixed periodicity of getting the information, low/varying and delayed response of the returns under various Acts, poor quality and incomplete information, surveys/studies not reflecting the current economic scenario and non-availability of micro level/dis-segregated information.
- 12.447 The 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.
- 12.448 We do not think that without the cooperation of the State Governments, it would be possible for the Labour Bureau to collect statistics.
- 12.450 The statistical system in the labour departments in the states should be strengthened from district level onwards.

- 12.451 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.
- 12.452 The Group can suggest changes in the methodology in respect of construction of productivity indices. 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.
- 12.453 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 to serious problems. The Study Group can find a way to reconcile these diverse interests.
- 12.454 The present series of consumer price index numbers for industrial workers is based on Working Class Family Income and Expenditure Survey conducted in 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 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.
- 12.455 It is necessary to discard the present manual system of handling data compilation and transmission. 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. This labour networking will ensure speedier dissemination of information. It is necessary that labour related information is made available in a structured, comprehensive and meaningful manner.
- 12.456 Such a data base or information system should include inventory of all available sources of existing labour information systems, identifying the users and their requirements, designing an integrated system of collection, storage and retrieval of all the information available and designing appropriate indices and monitoring mechanism.
- 12.457 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). Special training programmes will have to be organised at district and state levels to train staff in the use of hardware and software.

