Annexure - XVIII

Note of Dissent by Shri C. K. Saji Narayanan, Part-time Member

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To,

Sri Ravindra Varmaji
The Honorable Chairman,
2nd National Commission on Labour,
New Delhi.

Sadar Namaskar,

I hope we are almost at the fag end of our mission. As clarified by you, we have completed our discussions on the Chapter on Review of Laws. I express my deep satisfaction on the overall recommendations in other Chapters. Many of the issues on which the members had divergent views were sorted out by your excellent Chairmanship and mastery over the subject. But there are still certain issues upon which I had to dissent, since I do not agree with the direction of the thought process and basic philosophy of the reforms that leads to the recommendations in the Chapter on review of laws.

Last time you had suggested that the dissent will be noted at the recommendation part. On going through the revised chapter, I feel that the reasoning on which my disagreement is based also should form a part of the report, apart from noting it in the recommendation part. Other wise those who go through the report will not comprehend the dissenting part. Hence I am sending the final Note of Dissent with a request to incorporate it completely in the report of the Commission at the appropriate part, specifying the name of the member who has submitted the Note of Dissent.

While submitting this Note of Dissent, I cannot but express my deep sense of gratitude for Shri Ravindra Varmaji, who has helped us in every possible way in the course of this work. He is very well conversant with industrial field, labour problems, labour psychology as well as the total requirements of our national economy. But I am aware that as Chairman of the Commission, he was required to accommodate all the various views of different members. This was the constraint he had to work under, while finalizing the Report. I am aware of this; nevertheless, as views of Indian Labour especially on many controversial issues, appear not to have been fully incorporated in the report and recommendations, I am presenting my views here in the form of a Note of Dissent.

I always look forward for your valuable guidance in the matter. If necessary we may discuss about it in the next sitting of the Commission, only if it is required and the time permits.

Thrissur, Kerala.
21.05.02

Brotherly Yours,

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Note of Dissent on Chapter on Review of laws

Conceptual changes a pre-requisite

Most of our concepts and terminology in labour laws are brought over from the British industrial law. The history and the development of the subject in Britain are entirely different from that in India. Our terminology should be consistent with our culture and therefore western terms should be replaced by Bharathiya terms. There has to be basic clarity on concepts when we approach the changes to be brought about in labour scenario. Commission has rightly advanced in saying that instead of the name industrial "disputes" act it should be renamed as 'labour cooperation/relations act'. Defective concepts like labour market (where workers are undignified as mere commodity like vegetables in vegetable market), employment market, bargaining, industrial disputes act, adversary, class feeling, class conflict (and the consequential class enemy feeling) etc. are still ruling the industrial relations in the country. These terms undermine the basic concepts and attitudes towards a healthy and harmonious environment of work culture in the labour sector. Employers are not ready to accept the concept of "**industrial family**". Conceptual changes are pre- requisite for any other change. In the west only two parties are recognized for the purpose of the law, ie., the employers and the employees. Our tradition considers society as a whole as a more important factor. Therefore the term collective bargaining is inappropriate in Indian atmosphere. Whenever employers and employees arrive at an agreement it has to be the commitment of both to the society as a whole. Therefore the word collective bargaining be replaced by National commitment.

Previous reports and insecurity of labour

The economic reforms and the consequential labour reforms for the last decade had been in a totally wrong direction. Capitalist ideology has swallowed the thought process at the helm of affairs. It discusses how much rights of workers are to be curtailed and why not employers be given unfettered rights against workers. Previously several reports which are controversial like Montek Singh Ahluwalia Committee report on 'employment opportunity', Geetha Krishnan Committee report on expenditure reforms, Rakesh Mohan Committee report on privatisation in Railways, planning commission sub committee report etc. have been instrumental to propagating this Capitalist ideology while making their recommendations.

This assumes great seriousness in the context when labour all over the country feel their protection is being taken away in the name of over protection and globalisation, and when Trade Unions are on a warpath to protect worker's rights against the so called 'reforms'.

Globalisation and insecurity of labour

In the new era of globalisation, workers are looking upon every change proposed in labour laws with caution. In the age of globalisation workers are on the defensive and worker's rights are at stake. Hence because of globalisation and anti-labour reforms, trade union unity is getting

strengthened. In labour sector the accepted method of implementing changes is through negotiations. Those who are asked to change should be convinced of the rationale behind the reforms, and should have an opportunity to ventilate their claims and objections. But Government did not pursue this method while talking about reforms. Wherever there is discussion on changes that is affecting worker's rights, it has to be discussed or negotiated with Unions.

Now a days globalisation is an excuse to hurt the workers. Globalisation has caused damages to the workers in many ways. Globalisation has placed workers in a highly insecure situation. The impact of globalisation on labour is that it wants to take worker on ransom for their insecurity. Reform of labour laws is fear based, i.e., fear of closure, recession etc. Hence this capitalist ideology will necessarily lead to chaos, destruction of industrial peace and loss of production resulting in industrial loss as workers deprived of their rights will have to resist.

One of the impacts of globalisation is that it downsized the organized sector and pushed many into unorganised sector. In the same way the reforms are primarily downsizing the rights of workers in the organised sector and pushing their position to that of those in the unorganised sector.

Our ten years' experiment with globalisation has proved that it has not "brought about macro economic discipline" as the claim goes, but had reverse impact on the economy. We have identified that globalisation had mainly shown an ugly face with its negative impacts. Hence we are not to accept the package of law reforms put forward by the advocates of globalisation, which later was pushed forward by employer's organisation. Globalisation cannot be accepted as an order or ideology of future. It is only an unwanted eventuality.

Chapter. V B of I.D. Act (Para. 38)

Intention of Ch. VB is to discourage closure etc. that is detrimental even to the society. Not only the workman but the society is also concerned about non-functioning of an industrial establishment. That is why provision for Government scrutiny in to unscrupulous and malafide closure, retrenchment and lay off is made in the form of Ch. VB. Still at present this is only in a limited way. This idea should be further modified by –

1. Removing the limit of even 100 workers
2. Applying Ch. VB to all establishments in which employer-employee relations exist apart from the present position of application only to factories, plantations and mines.
3. Workers are protected well in the event of unavoidable retrenchment or closure, by adequate compensation and provision for re-employment.

In changed situations, 10 years after the introduction of new economic policy of 1991 and consequent exit policy, number of establishments having even 100 employees is getting reduced. In the changed situations due to downsizing even the limit of 100 is on the higher side. Therefore, what Chapter VB has given to the workers is a right of hearing and such a right of hearing is a necessity as the aim of the Act is to maintain **industrial peace**. What is contemplated is only a limited right of the workers to look into the employer's honesty in taking action adversely affecting the interests of workers.

What does flexibility mean?

In this context it is necessary to cite the example of China. During the evidence taking process of the Commission in various places in the country, employers' organizations submitted that China should be taken as a model for labour law reforms in India. Because in China there is high degree

of flexibility in labour sector as well as in labour laws. They submitted that in China, Special economic zones are exempted from labour laws, working hours per day is higher, holidays are less etc. This was proved to be totally wrong during our visit to China. (Chinese law on holidays and working hours is appended here with). It is our experience during our visit to China that what are depicted regarding flexibility and exemption from labour laws to Special economic zones is a false propaganda. In fact the Deputy Labour Minister and other officials in China told us that there are no exemption to MNCs or any sector from labour laws, which was found to be true after our visit to Shenzen, a Special economic zone. In special economic zones of China foreign investors want flexible licence procedures and not flexible labour laws. So in successful Chinese industrial sectors flexibility has a positive meaning. But in India the word "flexibility" has an entirely different and negative meaning.

Indian industrial circle want to shift their failure mainly due to mal-administration to the shoulders of workers. According to the philosophy of this unsuccessful industrialists, flexibility means right of management to "adjust" their labour force from time to time according to their whims and fancy in the name of "changing needs of the industry" or "to meet the exigencies caused by genuine economic reasons" or "in the best interest of the undertaking" etc. The closure-maniacs in business lobby are trying to take the idea of flexibility in a reverse gear. Instead of saying "we want to run industry" they demand "we want closure of industry and retrenchment of workers". This is detrimental to the society also. They want to apply their agenda of failure even to profit making units.

Some employers propagate only this can put them in a position to compete in a world market opened up by the phenomenon of globalisation. Such industrialists also believe that 'consequent on the current situation of globalisation and increasing competitiveness and frequently changing technology, all economic activities become subject to market pressures, compelling the employers to do different levels of adjustments, including the size of the labour force if he wishes to continue his business' (as referred in Para. 36). So they believe that only by changes accordingly in the labour laws will save Indian industries. They accuse labour laws are always stumbling blocks in the creation of employment. There is absolutely no force or rationale in these assertions. They forget the basic fact that the law is meant for erring employers. In fact our existing laws would not be complete nor achieve deserved results unless they have provisions like Omnibus Act of 1988, wherein provisions like super 301 and special 301 secure protection to US indigenous industries and agriculture against the invasion of imported goods.

Philosophy of unsuccessful employers

Repeal Ch.VB is the slogan of unsuccessful employers. Such industrial failure should not be encouraged or given statutory recognition. Workers cannot be silent spectators and put their neck as scapegoats to such foolish ideas of "saving" the industries. In India attempt in the name of flexibility of labour laws is to close establishments as seen by the proposed amendment for Ch.VB, which is against the society. This is mercy Killing ie., showing mercy at the time of death alone.

Amendment to Ch. V B in this fashion means, for the failure of management, worker is to suffer. The demand of many employers' organisations that for even closing an establishment, worker should be deprived of his right to have Governmental scrutiny to see whether the closure is genuine, is something highly irrational.

We find the philosophy of unsuccessful people in closures, exit policy, VRS, downsizing (or the deceptive term –"right sizing") ban on recruitment, NRF, closing PSUs or privatization, thoughtless

mechanization or computerization, shifting regular jobs to contract system, 'hire and fire' slogan etc. Still they raise meaningless and deceptive slogans that "these are for employment generation". It is a paradox how these two situations will go together. The so-called advocates of reforms have to explain this.

Implication of repeal of Ch. VB

By proposing to raise the limit of Chapter VB to 300 workers it is encouraging closure in majority of industries. Inhuman attitudes like that of the erstwhile feudal lords have come back to Indian employers in the form of hire and fire etc. Removing the restrictions on retrenchment is to accept the principle of "hire and fire" as demanded by the Employer's organisations. Lay off and retrenchment are the initial steps of closure. If no restrictions are placed on either lay off or retrenchment, the closure would be very easy. By permitting retrenchment, the employers can reduce the strength of workers below the minimum level and overcome other legal restrictions also. These are all done when unemployment insurance is not an inseparable package with retrenchment, closure and lay off. Principal employer should be responsible for giving alternate employment to workers retrenched on account of new technology.

Our National economy badly requires employment-generating technologies. In the west they have more capital and less number of workers. In India it is otherwise. Considering the large army of unemployed in the waiting, all our planning and reforms should be **labour intensive** and not labour displacing.

There should be constituted a Technological Ombudsman to determine what technology should be introduced in which particular industry taking simultaneously into consideration the peculiar characteristics of the industry and the total requisite of National economy.

The remedy

The remedy lies elsewhere. The employers have got to make out a case against the existing labour laws by saying that the industrial sickness in attributed to defective or even over protective labour laws or the agitation of workers. This theory is totally false. Reserve Bank of India is conducting yearly surveys on sickness of industries, and has come out with the finding that about 65% of the cause is contributed by management failure. Contribution by labour or strike is only 3%. Those who are less competitive are getting sick. Blaming others for one's own fault is now the psychology of employers who are blaming workers. Blaming workers is escapism for the management associations. Sickness is not due to labour laws. This is a pointer to the need to reform the attitude or skills of management to improve industrial health. Indian industries are still shy of accepting these realities. At present workers have no say when they face gross mismanagement in the industry. In such a situation, workers should not be asked to sacrifice for the fault of employer. Worker's participation in management should be a rule.

When the Commission is attempting to codify and simplify the various provisions of labour laws of the country with a common norm of applicability to establishments of more than 20 workers, Ch. VB also should be made applicable to all establishments to which general labour laws apply. The reverse process is totally unjustifiable. The principle shall be that labour laws should have uniform applicability. Any exemption or deviation will only be disadvantageous to workers.

Permission procedure under Ch. VB

On going through the demand from employers about Ch. VB, the only point worth considering is that there is inordinate delay and hurdles in the permission procedure under Ch. VB. This problem

has to be addressed in a different angle. The procedure can be simplified and time limit can be prescribed without sacrificing the objectives of the provisions in Ch. VB.

Conclusion

So the following proposals are devoid of any rationale-1. Total removal of prior permission for lay off and retrenchment. 2. Raising the limit from 100 workers to 300 for applicability for closure. 3. Ch. VB is to be repealed progressively 4. Post facto permission after 1 month of lay off in establishments with more than 300 workers 5. Varying scale of compensation for sick units and profit making units 6. If the Government within 60 days of the receipt of application does not grant permission, the permission will be deemed to have been granted. I do not agree with any of these proposals.

Contract Labour (Para. 53-55)

Human side of the problem

In the place of old methods of exploitations, new methods of exploitations like contract labour system is spreading. The direction should be to do away with modern method of human trafficking in the name of contract labour as pointed out by Supreme Court in Gujarat Electricity Board case. Dictum laid down in this case is not overruled even in the recent SAIL case. Other wise we will be in the primitive or feudal philosophy of least concern for human side of an issue. Nothing, not even globalisation is a justification for such anti-human concepts. Extracting labour out of worker without pain is an art and a part of management skill. Many brilliant employers in the country perform this. Insecurity brought by contract system is not the method to create efficiency. This method is a part of the fundamental philosophy of exploitation of capitalism, which is slowly gaining respect in our country also.

Commission has rightly recommended that after 2 years of working a worker should be treated as permanent worker. Job security is an important right of the worker accepted for a long period of time. But in many industries workers are retained in the name as casual workers, badali, temporary workers, contract workers etc. for even beyond 10 years. This is a clear abuse that is to be totally curtailed and penalized even though some legislations contains certain provisions.

Economic efficiency is not labour cost alone

It is a wrong idea to say that "in the fast changing scenario and changes in technology and management to meet the challenges of the same, there cannot be a fixed number of posts in any organization for all time to come, and organization must have the flexibility to adjust the number of its work force based on 'economic efficiency' ". According to unsuccessful employers economic efficiency means nothing but labour cost. Their perception militates against other factors that influence economic efficiency.

Ground realities

The employers' organizations want to give legal and social status to contract labour in the name of globalisation. The discussion on the ill effects of globalisation squarely applies to this issue as well. The ground realities are that the employers favour contract labour, as exploitation of worker becomes easy. Trade unions have pointed out that from the point of view of employers the advantages in employing contract labour are innumerable like-

a) low wages (in many cases paying less than minimum wages and employing workmen on very low wages compared to that of permanent workers);

b) non necessity of payment of fringe and other benefits etc.
c) easy dispensability by termination of contract,
d) absence of trade union,
e) squeezing of worker for increased production under force, coercion and fear of insecurity.
f) minimum litigation,

Hence contract labour is a system that should be progressively abolished on the background of ground realities.

Non-core activity

Any attempt to shift any of the regular work to contract system should be totally rejected. The trend should be to progressively convert contract works to regular work. There is no justification to make any new category in perennial (permanent) jobs viz. 'non-core activity' for the purpose of introducing contract labour. Abolition of contract labour should not be replaced by encouragement of contract labour. This is legalising an illegal activity. Non-core activities also cover a vast field of industrial activity and if a distinction is made, a large number of employees will loose the existing protection under the law. The terminology of core and non-core sector is thoroughly unrealistic. This differentiation should be dispensed with. Both are part and parcel of the same activity.

Absorption

In appropriate cases the judicial body should have power to order absorption of such contract labour as regular employee. Study group of our Commission had rightly recommended that the body vested with the responsibility for making recommendation on abolition of contract labour should also be empowered to order absorption by principal employer such number of contract labour as is considered just and reasonable. There is nothing wrong for the Commission to independently looking at the problem and reverse the dictum of the SAIL judgement. The fear that if we do not follow the principles laid down in SAIL judgement it would result into defeating the judgement is baseless. Because the SAIL judgement has failed to consider the realities of situation. If we adopt a different approach than one recognised by SAIL judgement, it would not be wrong as in the past, Supreme Court judgement in Shah Banu case was given a burial by enacting a new law.

Equal pay and benefits

Equal pay for equal work should be the basic principle that should apply to all types of exploited categories of workers including women, badli, casual, temporary, part time, apprentice, migrant labour, etc. and also for the other exploited categories to be abolished like child labour, bonded labour, contract labour etc. till they are abolished. Some of the exceptions to equal pay shall be seniority, merit, overtime etc. Payment includes all benefits incidental to the particular work enjoyed by regular workers. Contract labour and other exploited categories like women, badli, casual etc. cited above should be given the wage and all other benefits which a regular worker gets, so that the employer will not engage contract labour for the purpose of monetary gain. Hence the words "equal wages" should be substituted by "equal wages **and all other benefits**".

Work culture

There has to be a detailed mention about work culture to change the misconception among employers. Work culture is mistaken as worker's culture alone and increased working hours and decreased holidays. It is not a one-way traffic. Work Culture is not worker's culture alone, it

includes employer's attitude as well. Work Culture is nothing but attitude of all the partners of the industrial activity and not concerned with merely working hours or holidays of workers. Work culture is an attitude that cannot be enforced through legislations. Only contented and satisfied workers can contribute to the development of industry. Work culture should start from above.

Leisure, rather than being a right, is a basic necessity of human beings. In the name of work culture you cannot expect workers to be workaholic. Law cannot and should not compel workers to be workaholic by over work. We cannot expect our workers to have psychological abnormality like "Karoshi" (death by overwork) prevalent in Japan. Mechanistic view looks upon man as a part of machine. Even machines and computers gets heated or tired up by over work. Instead of reducing holidays (by saying that Indian workers have addiction to holidays), working overtime, encashment of holiday or extra wages, we should encourage additional employment as a part of our labour-intensive planning suitable for a country like India. Where as in countries like Japan where there is shortage of appropriate manpower, labour displacing planning or technology is suitable. But recently in Japan due to recession, unemployment increased and work has decreased. Japanese Government immediately shifted their policy by encouraging workers to avail holidays and carrying on the propaganda about the benefit of taking holidays and spending time with families.

Working Hours

Commission has rightly attempted to bring about codification and uniformity in labour laws. Then it is also possible to bring about uniformity in daily and weekly hours of work and holidays (Para. 62). China has shown a good example by accepting maximum 8 hours of work per day uniformly for all employment including Government jobs so that extra work can be assigned to the large number of unemployed people waiting for job. The regulation of the State Council of China governing working hours and weekly rest for workers was adopted on 17-2-1995 (Act No. 17). (The Chinese law on this aspect is appended herewith). As per Article 3, working hours are fixed at 8 hours a day and 40 hours a week. Article 2 says, it applies to all establishments including Governmental agency. According to Article 6, only in an emergency shall these working hours be extended, subject to regulations of the concerned State.

This vision has not yet dawned in the minds our reformers. It is shameful that many of the Central statutes and some State statutes still prescribe 9 hours working per day. 8 hours working per day is universally accepted. Advocates of flexibility of working hours want to increase it; that again on the plea of global competition and technological changes. It is something against common sense to connect work culture with working hours and holidays. Basic principle that we have to bear in mind is that the level of human endurance and physical tolerance does not change or increase. Squeezing a worker by overwork will not help the industry ultimately. Even in the existing framework, in banking sector ATM and 24 hours banking etc. are working successfully. First National Commission has suggested that working hours should be reduced from 48 hours to 40 hours. This Commission should not put reverse gear to this proposal, which again in the name of changed circumstances.

Modern technology and working hours

When technology advances the fruits of technology should be shared by employer in the form of profits, worker in the form of higher wages and reduction in working hours, and consumers in the form of reduction in prices. Arrival of a new machine should help workers to reduce their working hours and burden rather than displacing the workers out of work. Machines and computers are to assist human beings and not to displace them, nor become their masters. In reality what happens

is that by the introduction of mechanisation or modern technology employer reduces the number of employees thereby reaping more profits for him and adding to unemployment in general in the society without any benefit to the society by way of reduction of price. This is the reason why the trade unions and workers are opposed to thoughtless mechanisation or modernisation.

IT industry

IT industry also poses health and mental problems to those who work continuously before computers. Still employers demand flexible working hours i.e. increase in working hours, so that worker be exposed to continuous radiation. The radiation from computers adversely affects the health of such worker. It also affects the worker by way of muscular-skeleton diseases (MSD) and monotony. Without a scientific study on ergonomics, it is dangerous to suggest this idea.

Overtime

India is a country that requires labour intensive technology, labour intensive planning and labour intensive deployment of labour. So instead of same person working overtime, the labour intensive approach requires the overtime work to be distributed to more people.

Monthly and quarterly ceiling on overtime work is prescribed with a specific objective. Workers should not be subject to overwork exploiting their craze for money (Para. 62). Secondly, instead of same worker doing overtime work it should be distributed as regular work to the large army of unemployed in our country. These high social objectives should not be forgotten while considering the demand of the employers for flexibility.

Conclusion

Hence I request the Commission to recommend that-

1. Maximum of 8 hours daily working to be made uniform especially in many of the central statutes.
2. For industrial establishments weekly hours should be reduced from 48 hours to 40 hours a week and for commercial establishments from 48 hours to 36 1/2 to 40 hours a week.
3. Interval of rest shall be one hour.
4. Maximum spread over, overtime work etc. should not be changed adversely to the workers.
5. A new branch of ergonomics is to be introduced in labour laws, especially with regard to the newly developing I T industry. In order to reduce stress and strain, and to generate more employment it is necessary to reduce working hours.

Holidays (Para. 62)

China has more holidays. According to Article 7 of the Chinese law mentioned earlier (Act 17) both Saturdays and Sundays are weekly rest days. (See the Chinese law appended hereto). So there are 104 weekly holidays in China apart from other holidays and leaves. Thus in spite of more holidays and lesser working hours China could claim that it is progressing very fast in industrial and other sectors. 5 days a week as in China should be introduced in our country also in all establishments.

Attempt can be to ensure a fixed number of working days per year say 265 days of work which is to be done by every employee, so that there can be flexibility in remaining holidays. Commission's recommendation for reducing polling days to half a day holiday is not suitable for Indian village conditions, where people have to travel long distance to polling station and also to the workplace.

This will not do good either to the democratic system or to the employment.

Accumulation and encashment of earned leave if any should be without any ceiling and up to the option of the worker.

Bargaining agent (Para. 26)

About the procedure for recognition and registration, Trade Unions should have a say. Recognition procedure should not end in elimination of Trade Unions. It is not correct to say that "upgrading the criteria for eligibility for registration and recognition will be an incentive for consolidation and strengthening workers unity". Determining frequency of recognition is also important.

Division of collective and individual disputes between sole bargaining agent and other Trade Unions also further adds to the complexity.

Composite bargaining agency

Composite bargaining agency is the most feasible and democratic method of giving representation to all Trade Unions working in the industry. Voting and proportional representation should determine this. Other complicated procedures of determination of sole bargaining agent and then determining the bargaining agency etc. should be avoided. Concept of sole bargaining agent is encouraging or creating monopoly of Trade Union. The belief that sole bargaining agent will create industrial harmony is basically unrealistic and imaginary.

Therefore instead of sole bargaining agent, the system of composite bargaining agency should be evolved. The sole bargaining agency can be an exception in a situation where all other unions get less than say 15% votes and the larger union getting more than say 70% votes in the secret ballot.

With regard to Composite Bargaining Agent-

a. There should be secret ballot of all unionised workers.
b. Composite bargaining agency should be constituted on the basis of proportional representation.
c. Unions getting less than 15% votes should be excluded.

Abuses

Abuses in the field of trade union are not only a headache to employers but also to the trade union movement as well. Abuses include proxy or benami works, sale of jobs by workers, closed shop system, dadagiri trade unionism, professional trade unionism, politicisation of trade unions, criminalisation, Trade Union leader taking up contract work to earn money etc. These issues should be addressed directly and prohibited. Instead many a times these issues are generalised and wrong remedies are proposed like taking away normal trade union rights, right to strike etc.

Outside leadership

Trade union movement has progressed because of the initiative of outside leaders. Whatever idealism trade union movement had in the past and has even today is due to outside leadership. So outside leadership should not be progressively diminished, but a healthy proportion between outsiders and insiders in leadership has to be maintained. Otherwise trade unions will deteriorate itself to mere 'bread butter trade unionism'. Outside political leadership or interference should be curtailed. If the objective is to curtail dadagiri trade unionism the remedy lies elsewhere.

Political fund (para.26)

At the same time the recommendation to continue legal provision for political fund is some thing encouraging out side political involvement. Trade union should be totally above politics in the interest of workers and there shall not be any legal provision for political fund. Most of the Trade

Unions have accepted this in public at least in principle. Trade unions should not be used for political motives. Sc. 16 Of Trade Union Act should be amended to prohibit political funds.

Check off and secret ballot (Para. 26)
Check-off system has its own inherent defects. The system initially helps in securing the contributions of members to the union thereby saving energies of union activists for collection of subscription. But in the long run it creates distance between members and the union thereby making the union to loose its grip over its members. A strong workers' organization is a necessity for sound and healthy industrial relations. Adoption of secret ballot is the correct system of confirming the membership of a trade union. Such secret ballot shall be conducted after a regular period of time.

Strike **(Para.20)**
Any move to restrict the right to strike is undemocratic. No nationalist worker or Union would attempt to hamper production or services. Hence Government should evolve a mechanism that would render the right to strike a superfluity.

Any restriction on right to strike should be preceded by a 'self-restrictive, alternate and effective redressal mechanism' evolved through consultation with trade unions. Then the strike can be the last resort. The effectiveness of such a mechanism will be such as to render the strike superfluous. Recent Kerala Government employees strike (in February, 2002) is an example of how society will suffer if there is no effective redressal mechanism. Ultimately the society was the loser.

In countries like Japan where employers show a high level of work culture strike is almost a superfluity. There token protests by workers are heavily honoured. But the situation in India is just the reverse. During the recent Kerala Government employees strike, only after nearly one month of strike Government was ready for even to talk to the striking employees, that also under heavy public pressure. How can such Government be given the power to prohibit strike?

Any constraint over strike without a "self restrictive, alternate and effective redressal mechanism" will only destroy industrial peace. Strike ballot (Para. 20) is an attempt to restrain strike. Considering strike ballot and consequent majority support as "the equivalent of a successful strike" in the Commission's report, will not serve the purpose. The idea that "the result of strike ballot too be considered as strike" is unrealistic, unless in subsequent period the employer also is made disentitled to his profits out of fruits of production. Workers use strike as a pressure tactics and method of redressal. Token strike has relevance only in a world where conscientious employers show high moral level. Unfortunately that is miserably lacking in our country. Main purpose of strike is to pressurize the employer, which will not be achieved by token or symbolic strike.

Whenever we talk of restricting strike or give exemption to certain sectors from labour laws, necessarily there should be provision for an effective alternate grievance redressal mechanism. In public utility services, imposing restrictions only on workers and nothing upon employers or the state is unwise (Para. 48) as is seen in the case of the strike of Kerala Government employees. By restraint on strike in many public utility services (termed in some places in the report as socially essential services) the employer's benefit or profit is safe where as only worker's rights are affected. Government should not have the authority to prohibit a strike as that will only ignite the

emotions of the workers and strike will there by be shrouded with sacrifice. This is also what was seen from the recent Government employees' strikes in Kerala. Those who were arrested under ESMA became heroes.

Strike does not in normal case lead to the use of hired goondas etc. by employers, or anti-social forces or gherao or destruction of machinery or other acts of violence on the part of workers as mentioned in the report. These are only exceptions and the penal law of the country is capable of meeting such anti social activities. In the name of these strike should not be restrained. Employers in many places use Goondas against workers to break the strike.

Any formula that militates against unionization has to be opposed. Even smaller unrecognized Trade Unions should not be deprived of the right to strike and right to bargain, as reiterated by the Supreme Court in its latest decision in State Bank of India case. It is the basic right of the worker to raise his voice to establish his own rights, Supreme Court said. Recognition should not be used as a weapon to deregister smaller unions or punish its members. Illegal strike should be identified by the illegitimate demands and methods used. Smaller trade unions that are merely agitating should not be accused of as doing illegal strike, and be punished (Para. 26).

Exemptions (Para. 62)
Commission was right in rejecting the demand for exempting export processing zones and special economic zones from the purview of labour laws. While denying the said demand the Commission has rightly pointed out the example of China. The labour laws being prescribing minimum conditions, they must govern all the Industrial activities relating to workers. Exemption from this can be granted only where the person works in an activity not for satisfying his material needs but for rendering spiritual service or free service voluntarily to the organization. The question of exemption from labour laws to certain categories is devoid of any merit. Once we accept the principle of discrimination to some section, we have also have to accept discrimination in attitudes and dedication on the part of workers also. Government should not be given the arbitrary power to grant exemptions for the above reasons. The model legislations appended to various chapters of the report of the commission should not contain such arbitrary powers given to the Government.

Already supervisory and managerial staff is exempted (beyond a salary level) under certain laws. Supervisory category need not be clubbed with managerial personnel for exemption from laws. In many smaller establishments supervisors are paid as low as workers. It is not correct to say that management will take care of the interests of supervisory staff, as there is no concept of fraternity in industrial management. The only principle now being commonly followed is "*labham subham*". So proposal for "only adjudication by labour court or arbitration" and no other legal remedy is injustice to that category of workers. They are put to jungle law now. They should have right to redressal with regard to many of their wage and service conditions.

Some section of workers like security and watch and ward staff, confidential staff etc., should also not be brought under exemption (Para. 22).

Relief workers (Para. 58) who have no other source to earn a livelihood for themselves and their family should be treated on par with other workers. Free service cannot be thrust upon such workers. They are not a category of their own. Free doles or food or monetary compensation is

not sufficient for them. Government has to be a model employer for them if they are working for Government schemes. The case of voluntary workers who volunteer themselves out of dedication to serve the people is different.

Similarly is the case of KVIC. For those who depend upon it entirely for their livelihood, it is an employment and wages are very important for them.

Legislation for Small scale sector

The principle shall be that labour laws should have uniform applicability. Any exemption or deviation will only be disadvantageous to workers and nothing else. That is why even a separate law for small-scale sector is apprehended to be reducing some of the existing workers' rights.

The main object of the new legislation on the small scale establishments being reduction of procedural aspects and simplification of law as applicable to them and not curtailing the existing rights of the workers, the following important clause shall be added in the new Act:- "Notwithstanding anything contained in this Act, any existing provision in any of the laws which is more favourable to the worker shall continue to apply to them." Otherwise the new legislation will be objected to as forfeiting the existing rights of workers as applicable to many regions or States. Commission is not to put reverse gear to the rights enjoyed by workers under certain laws in certain areas.

Principle of unity of establishment for small scale should be included in the new Act. For the purpose of circumventing the provisions of law, if the employer divides its activities to bring its strength of workers below 20, principle of unity of establishment shall be presumed and sum total of all the workers together in all the establishments so divided shall be taken into account.

Court Fees **(Para. 46)**

Once the provision for Court Fees is brought in to the arena of labour disputes, then within no time it will ripe into the Court Fee provisions akin to civil disputes. Then again the worker will be the looser in the game. So it is always proper to keep Court Fees completely out of industrial adjudication. Otherwise the employer should be asked to bear the court expenses of the workers also from the beginning itself.

Further Recommendations

Right to work as a constitutional right

Commission should recommend that right to work should be included as a fundamental right in our Constitution.

Rights of workers-(Para 6)

In Paragraph 6 Commission has rightly mentioned some of the accepted rights of workers as per ILO conventions like No 122. Following are certain other rights to be added-

1. Right to job security
2. Right to professional advancement and promotion
3. Right to safe and healthy environment
4. Right to leisure, leave and optimal working hours

5. Right against unfair labour practices
6. Right to unemployment allowance
7. Right to education, training and skill development

Bifurcation of conciliation and inspecting Officers

Many TU have requested while giving evidence before the Commission that there should be a bifurcation between conciliation officers and enforcing or inspecting officers. This is to be recommended by the Commission.

Bilateral negotiation

Report should make a special mentioning (In Para. 26 & 38) of the principle that bilateral negotiations or interactions shall be permitted only when workers are well organised. Other wise management can take advantage of the helplessness of the workers.

Bonus

Bonus is a differed wage until the gap between the living wage and the actual wage is removed. It assumes the form of profit sharing only after actual wage attains the level of living wage. Hence the recommendations should be-

1. 8 1/3% should be the minimum bonus even for the small enterprises
2. There shall not be a ceiling on maximum percentage of bonus payable. Employers' discretion to share his profits with workers as a token of their contribution to the success of the establishment should not be curtailed by such an irrational ceilings.
3. Ceiling of eligibility limit (Rs. 3500 now) and calculation limit (Rs. 2500 now) of salary also should be raised to the level of living wages.

Wages

For the purpose of calculating need-based wages, the consumption units of a worker are fixed as 3 units by the 15th Indian Labour Conference. This is cited and reiterated by the Supreme Court in Raptakos Brett case. But this 3-unit formula (Para. 56) does not tally with Indian situation where village families are still not nuclear families. It consists of aged parents and more number of children. So consumption units should be fixed at 5 at least to be nearer to reality. Even the calorie calculation needs updating. For a worker the concept of wages should not be to 'satisfy only bare needs and a little more' as mentioned in the report.

The purpose of bringing about changes in definitions is to consolidate, simplify and to bring about uniformity. So it is against this spirit to have two separate definitions on "wages" and "remuneration" (Para. 19). It is wrong to include only basic wages and DA and avoiding all other monetary benefits from the definition of wages. Only the definition of wages shall be retained integrating the definition of remuneration also in it.

Wages should be defined as 'all remuneration capable of being expressed in terms of money' as defined in Sc.2(rr) of I.D.Act, 2(h) of M.W.Act, Sc.2(21) of Bonus Act and Sc. 2(vi) of Payment of Wages Act. In the matter of payment of minimum wages Courts in India have adopted the Australian approach and rightly rejected the principle of 'capacity of industries to pay'. We should also discuss about calculation of D A, Fringe benefits, wage differentials, methods of wage fixation, wage policy, income policy etc. and make appropriate recommendations since many Trade unions have requested in their evidence regarding the same.

Productivity

There shall not be any linkage of wage with productivity as production and productivity are the results of many inputs like machines, capital, raw materials, land etc. of which labour is only one. Productivity is not merely labour productivity. So the commission shall recommend that-

1. No minimum wage to be linked with productivity.
2. Beyond minimum wages productivity shall be a subject for negotiation with Unions.

Compulsory attendance in Conciliation

Trade unions have given evidence before the Commission that many conciliations fail because the management do not participate in response to the notice of conciliation issued by the conciliation officer. So Commission should recommend that conciliation officer should have power for compulsory attendance of parties as in Civil Procedure Code.

Inter-state migrant workmen Act, 1979- **(Para. 70(viii))**

Interstate migrant workers are one of the largest exploited sections of workers even in advanced states like Punjab, Kerala etc. The object of the Act should be 'to prevent exploitation of workers and to give them equal protection in a different State'. This object has to be mentioned in the Act immediately after the title of the Act. It should be clarified that the Act is not intended to give special rights over and above what is enjoyed by the local workers, as doubted by Supreme Court. Then Art. 19 will not stand in the way of the implementation of the Act.

Ratification of many of the I.L.O. conventions is necessary.

India still is a country that has not ratified many of the important ILO conventions. There should be improvement to the functioning of the existing tripartite body to look into the matter. The working of the body should be expedited and see, which all conventions should be ratified, and in what priority.

Miscellaneous

1. Amendment of any law or codification of a group of laws shall be subject to the clause that it shall be subject to any provisions of existing law that gives more benefit to the workers. For e.g., "Notwithstanding anything contained in this Act, any existing provision in any of the laws which is more favourable to the worker shall continue to apply to them."
2. The Commission has recommended (in Para.10) that "Government may lay down a list of such highly paid jobs who are presently deemed as workmen as being outside the purview of laws relating to workmen and included in the proposed law for protection of non-workmen". The division should be either on the pecuniary basis or on the nature of duties and not on a third basis of arbitrary Government listing. This should be clarified.
3. The term 'retrenchment' has been defined to exclude all other cases except surplusage of workers. Then some remedy should be proposed for other types of terminations.
4. Workers participation in management and equity should apply to all establishments to which general labour laws apply i.e. to establishment having strength of more than 20 workers, and not merely to more than 300 workers (Para. 49).
5. Just like social security and Safety and health, Welfare and working conditions are to be separated. Welfare provisions should not be clubbed with law of wages (See Para 62).
6. As we are attempting to codify and simplify labour laws, we need not propose a new law on child labour (Para. 70). At the most we can propose changes or amendments in the existing

legislation.

7. Registration of establishments should be made very simple just like registration of large number of workers under welfare schemes. It shall apply to all establishments and not only to establishments of more than 10 workers. Already under the Shop Acts all establishments irrespective of its number of workers are being registered. Commission should not put reverse gear to the system existing in at least some of the States.

8. System of self-certification (Para. 52) is not the right method to offset the criticism of "inspector raj". Law and inspectorate are meant for erring employers. There is a case for the employers, especially in small-scale sector for demanding reduction of inspectorate. If one person were vested with the powers of various inspectors designated in various Acts purpose would be served. It requires creation of common cadre for such inspectors. But it should not mean total elimination of inspectorate as minimum periodic inspection is necessary to protect workers who are not properly organised. Similarly the present large number of forms and returns can be reduced to the minimum. So self-certification should not be permitted to replace totally the existing inspectorate where workers or Trade union can initiate action against violation of labour laws.

Appendix- Regulation of the State Council of China governing working hours and weekly rest for workers adopted on 17-2-1995 (Act No. 17).

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