

*Report of the
Working Group on*

Labour Laws
And
Other Labour Regulations



Government of India
Planning Commission
New Delhi

In the context of preparation of the Eleventh Five Year Plan (2007-2012), the Planning Commission set up a Working Group on Labour Laws and Other Labour Regulations under the Chairmanship of Secretary, Ministry of Labour & Employment, Government of India, laying down the terms of reference.

The subject basically relates to labour law reforms. It is a dynamic and continuous subject, evolving over time. The Report touches upon the historical background, nature and classification of various labour laws and steps already taken and being desired so that our labour laws are in conformity with changing socio-economic scenario. The basic purpose being to promote interests of all stake holders and arriving at a consensus in the matter, we have immensely benefited from the interactions we had with them in various fora , including the deliberations in this Meeting of the Working Group. The Report tries to put in place the diverse views and at the same time show the path ahead by way of making certain useful recommendations. It is hoped that these would provide valuable input to the formulation of the Eleventh Five Year Plan.

I immensely appreciate the sincere efforts put in by the Convener of the Working Group Dr. Ashok Sahu, Economic Adviser, Dr. Harcharan Singh, Director and Officers and Staff of Coordination Section of the Ministry of Labour & Employment, who were instrumental in organizing meetings and preparing the report. I would like to convey my sincere thanks to all the Members of the Working Group for their fullest cooperation in handling such a complex subject of labour law reforms having wide-ranging ramifications on work force, trade industry as well as the economy.

(K.M. Sahni)

Secretary

Ministry of Labour & Employment

REPORT OF THE WORKING GROUP ON LABOUR LAWS AND OTHER LABOUR REGULATIONS

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I. Introduction

1.1 The Planning Commission, vide its Order No. U-20017/01/2005-LEM/LP dated 8.3.2006 notified the constitution of one Steering Group for Labour and Employment under the Chairmanship of Prof. B.L. Mungekar and six following Working Groups :-

| <u>Working Group</u> | <u>Chairman</u> |
|---|----------------------------------|
| i) Labour Force and Employment Projection | Member (LEM) Planning Commission |
| ii) Skill Development and Vocational Training | Secretary, Labour & Employment |
| iii) Labour Laws and Other Labour Regulations | Secretary, Labour & Employment |
| iv) Social Security | Secretary, Labour & Employment |
| v) Child Labour | Secretary, Labour & Employment |
| vi) Occupational Health and Safety | Secretary, Labour & Employment |

1.2. The Working Group on “**Labour Laws and other Labour Regulations**” was constituted by Planning Commission, vide its Order No U-20017/01/2005-LEM/LP dated 3.3.2006. The composition and the terms of reference of the Working Group is enclosed as **Annexure-I.**

1.3. As per Para 4 of the Order constituting the Working Group on Labour Laws and other Labour Regulations, the Chairman of the Working Group may co-opt any other expert as Member of the Group. The representatives of Hind Mazdoor Sabha, National Commission for Enterprises in the Unorganized Sector and Labour Commissioner, Government of Uttar Pradesh were co-opted in the Group.

1.4. The meeting of the Working Group on “**Labour Laws and Labour Regulations**” was held under the Chairmanship of Secretary (L&E) on 8th August, 2006. The Group discussed in details the Terms of Reference and issues related to amendments of labour laws, simplifications and other labour regulations. The Principal Adviser, Planning Commission offered certain suggestion relating to the Minimum Wages Act, 1948, the Industrial Disputes Act, 1947, the Employees’ State Insurance Act, 1948 and the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 for being considered by the Working Group Meeting. His letter enclosed as **Annexure-II** was made part of the Agenda Note for the Meeting of the Working Group. This report is based on the discussions held by the Working Group. A copy of the Minutes of the meeting is enclosed as **Annexure-III**.

2. Historical Background of Labour Policy & Labour Laws

2.1 India's Labour Policy is mainly based on Labour Laws. The labour laws of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management. Our labour laws have also been significantly influenced by the deliberations of the various Sessions of the Indian Labour Conference and the International Labour Conference. Labour legislations have also been shaped and influenced by the recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma etc. and judicial pronouncements on labour related matters specifically pertaining to minimum wages, bonded labour, child labour, contract labour etc.

3. Constitutional Framework

3.1. Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result, a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc. This is how we have a large number of labour legislations, which can be categorized as follows:

| Sl. No. | Name of the Act |
|--|--|
| (a) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement | |
| 1. | The Employees' State Insurance Act, 1948 |
| 2. | The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 |
| 3. | The Dock Workers (Safety, Health and Welfare) Act, 1986 |
| 4. | The Mines Act, 1952 |
| 5. | The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976 |
| 6. | The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976 |
| 7. | The Mica Mines Labour Welfare Fund Act, 1946 |
| 8. | The Beedi Workers Welfare Cess Act, 1976 |
| 9. | The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 |
| 10. | The Cine Workers Welfare (Cess) Act, 1981 |
| 11. | The Beedi Workers Welfare Fund Act, 1976 |
| 12. | The Cine Workers Welfare Fund Act, 1981 |

| (b) Labour laws enacted by Central Government and enforced both by Central and State Governments | |
|---|---|
| 13. | The Child Labour (Prohibition and Regulation) Act, 1986. |
| 14. | The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996. |
| 15. | The Contract Labour (Regulation and Abolition) Act, 1970. |
| 16. | The Equal Remuneration Act, 1976. |
| 17. | The Industrial Disputes Act, 1947. |
| 18 | The Industrial Employment (Standing Orders) Act, 1946. |
| 19. | The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. |
| 20. | The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 |
| 21. | The Maternity Benefit Act, 1961 |
| 22. | The Minimum Wages Act, 1948 |
| 23. | The Payment of Bonus Act, 1965 |
| 24. | The Payment of Gratuity Act, 1972 |
| 25. | The Payment of Wages Act, 1936 |
| 26. | The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 |
| 27. | The Building and Other Construction Workers Cess Act, 1996 |
| 28. | The Apprentices Act, 1961 |
| (c) Labour laws enacted by Central Government and enforced by the State Governments | |
| 29. | The Employers' Liability Act, 1938 |
| 30. | The Factories Act, 1948 |
| 31. | The Motor Transport Workers Act, 1961 |
| 32. | The Personal Injuries (Compensation Insurance) Act, 1963 |
| 33. | The Personal Injuries (Emergency Provisions) Act, 1962 |

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| 34. | The Plantation Labour Act, 1951 |
| 35. | The Sales Promotion Employees (Conditions of Service) Act, 1976 |
| 36. | The Trade Unions Act, 1926 |
| 37. | The Weekly Holidays Act, 1942 |
| 38. | The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 |
| 39. | The Workmen's Compensation Act, 1923 |
| 40. | The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 |
| 41. | The Children (Pledging of Labour) Act 1938 |
| 42. | The Bonded Labour System (Abolition) Act, 1976 |
| 43. | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 |
| (d) There are also Labour laws enacted and enforced by the various State Governments which apply to respective States. | |

3.2. Besides, both Central and State Governments have formulated Rules to facilitate implementation of these laws.

3.3. The Ministry of Labour & Employment is mandated to create a work environment conducive to achieving a high rate of economic growth with due regard to protecting and safeguarding the interests of the working class in general and those of the vulnerable sections of the society in particular. The Ministry has been performing its assigned duties through the above stated legislations with the help and cooperation of State Governments.

3.4. It needs to be stated that in a dynamic context, laws need to be reviewed from time to time. Hence, review / updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy such as attaining higher levels of productivity & competitiveness, increasing employment opportunities, attaining more investment both domestic and foreign etc.

4. Important Developments during the Tenth Plan

(a) The Second National Commission on Labour

4.1. The First National Commission on Labour was constituted on 24.12.1966 which submitted its report in August, 1969 after detailed examination of all aspects of labour problems, both in the organised and unorganised sector. The need for setting up of the Second National Commission on Labour was felt due to vast changes occurring in the economy during the last three decades especially in the nineties due to globalization, liberalization and privatization.

4.2. The Second National Commission on Labour was given two point terms of reference:

- i) to suggest rationalization 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 sectors;

4.3. The Commission submitted its Report to the Government on 29.06.2002. The Commission has comprehensively covered various aspects of labour and given recommendations relating to review of laws, social security, women & child labour, wages, skill development, labour administration, unorganized sector etc.

4.4. The recommendations of Second National Commission on Labour inter-alia, included – (i) introduction of umbrella legislation for workers in the unorganized sector and agricultural labour, (ii) emphasis on up-gradation and development of skill of workforce by training/retraining of workers, (iii) encouragement of small scale industries, agri-business and rural sector for higher employment generation, (iv) bringing attitudinal change and change in the mindset and work culture where the employer and the worker work as partners with emphasis on participative management, (v) consolidation of social security legislations and establishment of social security system, (vi) abolition of child labour , etc.

4.5. The Ministry had held consultations and interactions with the workers representatives, employers' organizations, experts, professionals etc. The recommendations of the Commission were discussed in the 38th Session of Indian

Labour Conference held on 28-29 September 2002, a National Seminar on Unorganized Sector Workers held on 7-8 November 2002, Tripartite Committee meeting held on 18-19 February 2003, and Consultative Committee Meetings of Ministry of Labour held on 07.02.2003 and 30.4.2003. The recommendations had again been discussed in the 39th Session of Indian Labour Conference held on 16-18 October, 2003. While carrying out the amendments in labour laws, the recommendations of Second National Commission on Labour are also taken into consideration.

(b) Announcements by the Finance Minister

4.6. The then Finance Minister, in his Budget Speech, 2001, announced amendments to the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970 , as reproduced below:

- (i) “Amendment to the provision of Chapter V-B of the Industrial Disputes Act – prior approval of appropriate Government Authority for effecting lay-off, retrenchment and closure after following prescribed procedures to now apply to industrial establishments employing not less than 1000 workers (instead of 100 workers at present) and separation compensation to be increased from 15 days to 45 days for every completed year of service. Appropriate legislation to amend the Act to be introduced by the Minister for Labour within this Session.”
- (ii) “Section 10 of the Contract Labour Act to be amended to facilitate outsourcing of activities without any restrictions as well as to offer contract appointments. It would not differentiate between core and non-core activities and provide protection to labour engaged in outsourced activities in terms of their health, safety, welfare, social security, etc. It would provide for larger compensation based on last drawn wage as retrenchment compensation for every year of service. Appropriate legislation to amend the Act to be introduced by Ministry of Labour within this Session.”

4.7. Accordingly, in respect of the Industrial Disputes Act, 1947 comprehensive amendment proposals including inter-alia, setting up of Grievance Redressal Authority, relaxation of qualification of Presiding Officers of Central Government Industrial Tribunal-cum-Labour Courts (CGITs), direct reference of disputes connected with termination / dismissal / retrenchment / discharge to Industrial Tribunals etc. were prepared. In its meeting held on 22.02.2002, the Cabinet

approved the proposals while directing that process of building a consensus to facilitate the introduction and passage of the Bill in the Parliament would simultaneously be initiated. Pursuant to the direction, wide-ranging consultations with all concerned were held to build up a consensus, including discussions in the Indian Labour Conference, Tripartite Industrial Committee etc. But it has so far proved elusive.

4.8. Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 provides for prohibition of contract labour under certain circumstances, such as, perennial nature of the process, operation or work etc. From time to time, workers and their representatives have been demanding prohibition of employment of contract labour in various categories of jobs in various establishments whereas there has been increasing resistance from the employers in the matter. In its judgment of December, 1996 in the Air India case the Supreme Court, inter-alia, ruled that where employment of contract labour has been prohibited in a process, operation or other work in an establishment, contract labour engaged in such activities would automatically become the employees of the principal employer. Subsequently, a five-judge Constitution Bench of the Supreme Court in the matter of SAIL vs. National Union of Waterfront Workers has quashed the Air India Judgment in August, 2001 prospectively diluting its impact, but the situation has not undergone much change. The workers have continued to demand for abolition of contract labour in the hope that they may force the employer to absorb them on a regular basis as they are entitled to get preference if the employer intends to take regular workmen in the prohibited job.

4.9. In the wake of economic liberalization, however, the previous Government had constituted a Group of Ministers (GoM) to consider the proposals for amending the Act. The GOM had several meetings between the years 2000 and 2003. One of the proposed amendments under consideration was to exempt certain activities from the application of Section 10 of the existing Act. The GOM identified the following ten (10) activities, which are in the nature of supportive services of an establishment for exemption:-

- (1) sweeping, cleaning, dusting and gardening;**
- (2) collection and disposal of garbage and waste;**
- (3) security, watch and ward ;**
- (4) maintenance and repair of plant, machinery and equipments;**
- (5) house keeping, laundry, canteen and courier;**

- (6) loading and unloading**
- (7) information technology;**
- (8) support services in respect of an establishment relating to hospital, educational and training institution, guest house, club and transport;**
- (9) export oriented units established in Special Economic Zones and Units exporting more than seventy five percent or more of their production; and**
- (10) Construction and maintenance of buildings, roads and bridges.**

4.10. However, there was no headway due to change in Government and subsequently absence of a consensus. Only the State Government of Andhra Pradesh has made amendments by defining core and non-core activity, prohibiting contract labour in all core activities except those normally done through contractors, part-time work or in case of sudden increase of work in a core activities. A designated authority enquires disputes as to whether an activity is core or non-core.

5. National Common Minimum Programme (NCMP)

5.1. The UPA Government has adopted a National Common Minimum Programme (NCMP). Some of the important points / issues which have a bearing on labour laws are as follows:

- (i) Comprehensive protective legislation will be enacted for all agricultural workers.
- (ii) The UPA Government is firmly committed to ensure the welfare and well being of all workers, particularly those in the unorganized sector who constitute 93% of our work force. Social Security, health insurance and other schemes for such workers like weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour beedi workers etc. will be expanded.
- (iii) The UPA rejects the idea of automatic hire and fire. It recognizes that some changes in labour laws may be required but such changes must fully protect the interests of workers and families and must take place after full consultation with trade unions. The UPA will pursue a dialogue with industry and trade unions on this issue before coming up with specific proposals. However, labour laws other than the Industrial Disputes Act that creates an Inspector Raj will be re-examined and procedures harmonized and streamlined. The UPA government firmly believes that labour-management relations in our country must be marked by consultations, cooperation and consensus, not confrontation. Tripartite consultations with trade unions and industry on all proposals concerning them will be actively pursued. Rights and benefits earned by workers, including the right to strike according to law, will not be taken away or curtailed.

The position with regard to the above is as under:

(i) Comprehensive Legislation for Agricultural Workers:

5.2 The proposal of legislation of agricultural workers had been under consideration of the Government since 1975. The draft of the Bill was also prepared in 1997. However, due to lack of consensus amongst State Governments, the proposal could not be processed further. Presently, the Government is in the process of enactment of legislation for the workers in the unorganized sector including the workers in the agriculture sector. In view of this, the Ministry of Labour is of the view that the proposal could appropriately be left to the State Governments to act upon.

However, the interests of the agricultural workers will be addressed in the proposed Unorganized Sector Workers' Bill, 2005.

(ii) Unorganized Sector Workers' Bill:

5.3. To ensure the welfare of workers in the unorganised sector which, inter-alia, include weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour, beedi workers, the Government propose to enact a comprehensive legislation for these workers. The Ministry of Labour & Employment drafted the "Unorganised Sector Workers Bill, 2004" which, inter-alia, envisages provision for safety, social security, health and welfare matters. The draft Bill has been sent to all stakeholders including National Advisory Council (NAC) and National Commission for Enterprises in the Unorganised Sector. The Ministry has received a draft Bill namely, 'the Unorganised Sector Workers Social Security Bill, 2005 from NAC. The draft Bill is being examined in the Ministry in consultation with the State Governments, central trade unions, employers' organizations and NGOs and copies of the draft Bill have been sent to them. The NCEUS has now revised the Bills and have given two bills i.e. (i) Unorganized Sector Workers (Conditions of Work & Livelihood Promotion) Bill, 2005 and (ii) the Unorganized Sector Workers Social Security Bill, 2005 in place of earlier three Bills.

5.4. The draft Bills prepared by the Ministry of Labour and Employment, National Advisory Council (NAC) and National Commission for Enterprises in the Unorganized Sector (NCEUS) are still under examination. The proposal was discussed in the Meeting presided over by Hon'ble Prime Minister on 18th November 2005 and Members / Experts of NAC / National Commission for Enterprises in the Unorganized Sector on 22nd November 2005 .

5.5. As a follow up of the Minutes of the Meeting presided over by Hon'ble Prime Minister on 18th November 2005, a meeting was held with LIC under the Chairmanship of Member, LEM, Planning Commission on 20th January, 2006 in Mumbai in which it was suggested that LIC should work out the projections of funds required for the scheme providing for (i) life cover of Rs.5000/- (ii) accidental cover of Rs.40,000/- (iii) health insurance @Rs.6000/- (iv) maternity benefit of Rs.1000/-for two births and (v) minimum pension of Rs.200 or 300 or 400 or 500 per month guaranteed for life.

5.6. Some models for financing the scheme were also suggested. The LIC has given some projections for requirement of funds required to implement the scheme. This was also discussed in the Meeting taken by Hon'ble Minister of State for Labour & Employment with the Chairman and Senior Officers of LIC on 16th May, 2006. The Consultative Committee attached to Ministry of Labour and Employment also discussed the proposal on 17th May 2006 when LIC explained requirement of funds and informed that a "Strategic Business Group"(SBG) has been constituted to examine various options as to whether (i) a separate corporation would be required (ii) a subsidy of LIC ; or (iii) a joint venture of LIC and non-life insurance companies would be required to undertake such a gigantic task of implementation of all components of the scheme. The report of SBG is awaited. The matter is being vigorously followed up with LIC.

5.7 In the meanwhile, the National Commission for Enterprises in the Unorganised Sector (NCEUS) has submitted its report to the Government on the Social Security for the Unorganized Sector Workers in May, 2006. Amongst its various recommendations the Commission has recommended old age pension of Rs.200/- per month to all workers aged 60 years and above and belonging to BPL families. Similarly, the Commission has also recommended provision of Provident Fund to all other workers (Above Poverty Line) with a minimum guaranteed return of ten per cent to the workers, under the proposed provident fund scheme. The Social Security Scheme, as recommended by the Commission includes health insurance, maternity benefit, personal and accident insurance cover.

5.8. A meeting of CoS in this regard has been held on 25.07.2006. As directed by the CoS, the meeting of the Group constituted to examine various drafts and proposals was held under the Chairmanship of Secretary (L&E) on 24.08.2006.

(iii) Tripartism

5.9. The Ministry of Labour & Employment has always been striving to promote harmonious industrial relations in the country. The Government, being committed to the ethos and culture of tripartism, took measures to revitalize it. The Ministry continues to have consultations with its social partners to obtain a consensus for enacting new laws or for bringing about changes in the existing laws.

(iv) Inspector Raj

5.10. The National Common Minimum Programme (NCMP) states that labour laws other than the Industrial Disputes Act, 1947 that create an Inspector Raj will be re-examined and procedures harmonized and streamlined.

5.11. In pursuance of the deliberations in the meeting of Prime Minister's Council on Trade & Industry on 4th December 2004, a Committee was set up under the Chairmanship of Shri Anwarul Hoda, Member (Industry), Planning Commission to look into the requirements of multiple inspections and recommend on steps to be taken to streamline and simplify them. The Committee submitted its recommendations to the Prime Minister's Office on 22nd December 2005, the major ones being as follows:

- (i) A system of third party inspection should be established to give to enterprises an option to get their regulatory compliance certified by reliable agencies {e.g. ISO 140-01 certification by the Quality Council of India, Occupational Health and Safety Standard (OHSAS 18001) by the British Standard Institute UK, Social Accountability Standard (SA 8000) by Social Accountability International, USA and corresponding standard developed by Bureau of Indian Standards (BIS)}. Once such certification has been obtained the unit should be exempted from routine inspection. Special Inspection would be authorized only on receipt of credible complaints;
- (ii) Mechanisms of joint inspections and joint annual calendar of inspections to be developed;
- (iii) Introduction of a scheme of self certification.

5.12. The Report also favoured enactment of the Small Enterprises (Employment Relations) Act for the establishments having less than 19 workers with a view to reduce the pressure on them and supported proposed amendments in the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

5.13. The action taken is as follows:

- (i) Labour being a concurrent subject, the copy of the Report has been forwarded to all State Governments and Union Territories and circulated among all Divisional Heads and legislative sections inside Ministry of Labour and Employment for taking appropriate action;
- (ii) Some States like Gujarat, Punjab etc. have already introduced the system of self certification
- (iii) The Bill to amend the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, which intends to provide relief to a large number of enterprises, especially small and medium ones by allowing them to maintain only two registers, that too on computer and send only one return, also by e-mail, has been introduced in the Rajya Sabha on 22.08.2005.
- (iv) In the Central Sphere, the enforcing agencies, viz. Chief Labour Commissioner (Central), Employees' Provident Fund Organisation, Employees State Insurance Corporation have taken steps to reduce arbitrariness in the system of inspection and make it mostly complaint driven.
- (v) The Ministry has circulated a Discussion Paper on "Making Labour Markets Flexible: Suggestions for Consideration" among all stakeholders for their consideration, which, inter-alia, provides for streamlining the inspection regime and use of Information & Communication Technology.
- (vi) So far as enactment of Small Enterprises (Employment Relations), Act in pursuance of Second National Commission on Labour recommendations is concerned, a view was taken in the Ministry of Labour and Employment that it is not necessary in view of the proposed amendments as indicated at (iii) above and the Ministry of Small Scale Industries itself enacting a separate legislation for such industries. Moreover, as this legislation would be impinging upon the Industrial Disputes Act, 1947, it appears doubtful whether its enactment would at all be possible with National Common Minimum Programme disallowing any tampering with the Industrial Disputes Act, 1947

5.14. It may be noted that trade union leaders in various fora have criticized any attempt to dismantle inspector raj , as according to them , it would compromise the interests of vulnerable workers. So any consensus on this score is bound to remain elusive.

6. Labour Laws: Amendments under Consideration / Undertaken

6.1. The Present Status of amendments in certain Acts is as under:

- (i) The Factories (Amendment) Bill 2005 has been introduced in the Lok Sabha on 16th August 2005. The Bill proposes to amend the Section 66 of the Factories Act 1948, so as to provide flexibility in the matter of employment of women during night shift with adequate safeguards for their safety, dignity, honour and transportation from the factory premises to their nearest point of their residence.
- (ii) The Payment of Wages Act, 1936, ensures that wages payable to employed persons are timely disbursed and no unauthorized deductions are made from their wages. Presently, it covers only those employees whose wage ceiling is up to Rs.1600/- per month. The Payment of Wages (Amendment) Bill, 2005 has received the assent of the President on 5th September, 2005. The Payments of Wages (Amendment) Act, 2005 (41 of 2005) has been notified by the Ministry of Law and Justice on 6th September, 2005. Subsequently, the Ministry of Labour and Employment has issued notification No. SO 1577(E) dated the 8th November 2005 to enforce the amended provisions w.e.f 9th November 2005 . With the amendments, the wage ceiling for applicability of the Act, gets increased from Rs.1600/- to Rs.6500/- per month while empowering the Central Government to further increase the ceiling by way of Notification. It also enhances the penal provisions.
- (iii) The Cabinet had approved a proposal to amend the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 on 11.05.2005, which intends to introduce simplified forms of registers to be maintained by the employees under certain labour laws. The amendments proposed include applicability of the Act to the establishments employing up to 500 persons instead of 19 persons, as at present. Consequently, establishments, which employ not more than 500 persons, shall not be required to file multiple returns and maintain separate registers under various labour laws. This will result in reducing the number of registers from 53 to 2 and number of returns from 11 to 1 under various labour laws, allowing maintenance of registers on computers and transmitting the annual reports or other reports by e-mail, enhancing the applicability of these provisions from 16 Scheduled Acts instead of 9, at present and

prescribing uniform penalty for obstruction and non-maintenance of records under the Scheduled Acts. The Bill was introduced in Rajya Sabha on 22.08.2005. Subsequently it was referred to Parliamentary Standing Committee on Labour for its examination. As directed by the Committee , two tripartite meetings were held with the representatives of Employers' and Employees' Group on 23rd January, 2006 and 22nd June, 2006 respectively to arrive at consensus on the Bill. However, no consensus was reached in these Meetings and further direction of the committee is awaited.

- (iv) Amendment of the Apprentices Act, 1961 has been introduced in the Rajya on 19th May, 2006 to provide (i) reservation for Other Backward Classes, (ii) related instructions to be imparted at the cost of employer and (iii) flexibility in respect of ratio's prescribed for Apprenticeship Scheme. The Bill has been referred to Parliamentary Standing Committee on Labour for examination. The Parliamentary Standing Committee on Labour examined the Bill on 3rd July,2006 and decided that after receiving the recommendations of Shri M. Veerappa Moily Committee in case of reservation for OBC, the Bill be reviewed again.

6.2. Further amendments to certain other labour laws like the Payment of Bonus Act, 1965 by increasing the eligibility and calculation ceilings from Rs.3500/- to Rs.7500/- per month and from Rs.2500/- to Rs.3500/- per month respectively and the Minimum Wages Act, 1948 are at various stages of consideration.

7. Attaining Flexibility in Labour Laws

7.1. In line with the NCMP, and with a focus to spearhead consultation process amongst the stake holders for carrying out labour reforms, The Hon'ble Labour & Employment Minister held a meeting with the representatives of industry, economists and academicians on 29.3.2005, wherein following broad points emerged:-

- (i) In order to compete in this global market, the management would require operational flexibility which includes power to right-size the work force;
- (ii) The industry is prepared to consider paying higher compensation to the retrenched workers; and
- (iii) There is need for having adequately trained manpower. The training facilities need to be upgraded.

7.2. Similarly, on the same subject Hon'ble Minister for Labour & Employment held meeting with the representatives of Central Trade Unions on 31.3.2005 wherein following broad points emerged:-

- (i) While considering labour reforms, the spirit of the NCMP, the mandate of the Ministry of Labour and Employment and the interest of the workers should not be lost sight of / compromised.
- (ii) Any proposal for labour reforms should be conceptualized only after the trade unions are duly consulted.

7.3. Further, on "Making Labour Markets Flexible: Suggestions for Consideration", a Discussion Paper had been circulated among various stake holders for eliciting their views. The suggestions, inter-alia, included:

- (i) amendment in the Contract Labour (Regulation and Abolition) Act, 1970 by placing certain activities in a separate schedule so that provisions of Section 10 may not apply to them, and by replacing the term "emergency" with the term "public interest" in Section 31 of the Act; and

- (ii) amendment in the Industrial Disputes Act, 1947 by raising the number filter from 100 to 300 for applicability of chapter VB and raising the compensation ceiling payable to workers on retrenchment and on closure of the establishment, from 15 days' average pay to 45 days' average pay for every completed year of continuous service or any part thereof in excess of six months subject to the condition that such retrenchment compensation shall not be less than 90 days of average wages and by extending the powers of exemptions in the industrial Disputes Act, 1947 under Section 36 B to include any Government Undertaking.

7.4. The Ministry of Labour and Employment had made a presentation on the aforesaid Discussion Paper before the Hon'ble Prime Minister on 18.11.2005. The PMO had suggested that the National Commission on Enterprises in Unorganized Sector (NCEUS), under Prof. Arjun Sengupta should be requested to prepare the paper by undertaking the review of the Indian labour laws, consistent with labour rights, in order to improve productivity, ensure greater competitiveness and generate greater employment in various sectors, like textiles, IT and SEZs, which would subsequently be considered by the CoS and GoM. Accordingly the NCEUS was requested to take immediate action in this regard. The paper from the Commission is awaited.

8. Initiatives Proposed by State Governments to Rationalize Labour Laws

8.1. The State Governments of Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh and Maharashtra have proposed to seek relaxation in some provisions of the Central Laws through State Governments so as to facilitate setting up of Special Economic Zones and Special Enclaves in their respective States. These proposals broadly relate to regulating the working hours, empowering the Development Commissioner to fix for minimum wages, making provisions for allowing the women workers to work in night shift etc.

8.2. The views of the Central Government on these bills are generally based on the following principles:

- (a) the provisions framed for ensuring safety and health aspects of the workers need not be relaxed;
- (b) the provisions of the Central Acts, which are mostly implemented by the Central machinery, need not be relaxed by the State Governments;
- (c) the provisions in the State Bill should not be in contravention of the provisions in the Central Bill, presently under consideration, on the same subject, such as provisions for employment of women in night shift under the Factories Act, 1948;
- (d) the principles enshrined in the National Common Minimum Programme with regard to hire and fire and the amendment of labour laws through consensus should be scrupulously observed; and
- (e) the powers and functions of the State Government, where there is no provision to further delegate such powers and functions, should not be allowed to be delegated further.

9. Approach Paper to the Eleventh Five Year Plan:

9.1. The Approach Paper has suggested that amendments to the Chapter V B of the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970 be carried out by arriving at a consensus, the position relating to which has been indicated above

10. Written Comments

10.1. During the meeting of the Working Group, the participants were requested to furnish their observations in writing, if they so desire. Accordingly, comments have been received from Hind Mazdoor Sabha (HMS) , Employees State Insurance Corporation (ESIC), State Government of Uttar Pradesh, Government of NCT of Delhi and Teamlease Services.

10.2. Briefly stated, HMS feels that job creation is an important issue at present. But job creation shall be intended for full employment as well as decent employment. The principles given in the preamble, fundamental rights and the directive principles of our constitution and guidelines given in the ILO Conventions cannot be ignored. The entire intention of labour legislation is to protect labour from exploitation, as they are the weaker section. Trade unions are not bargaining for status quo but are requesting for protection of the existing rights and from further exploitation.

10.3 The ESIC has stated that annual phased programme has been drawn up by the Corporation in consultation with the state Governments for implementation of ESI Scheme in new areas/centres. The Corporation has since approved extension of ESI Schemes to educational and private medical institutions and some State Governments have issued the final notification. Ministry of Labour & Employment has issued a notification on 20.07.2006 inviting objections and suggestions on the proposal to enhance the existing wage ceiling from Rs.7,500/- per month to Rs.10,000/- per month.

10.4. In their comments, Labour Commissioner, Government of NCT of Delhi has mentioned that there is need for reforming the trade union movement by eliminating vested interest. The problem of inspector raj is perhaps over-exaggerated as the paucity of inspectorate staff has made inspection almost complaint driven. It can be best tackled by making the laws more rational, pragmatic and contemporary, providing exemption clauses in different laws which can be invoked judiciously to provide relief, and incorporating transparency by resorting to self-certification and placing employee-related information obtained through this method in the website. The system of giving Failure of Conciliation (FOC) Report under the Industrial Disputes Act, 1947 should be dispensed with as the Government has to take decisions in the national interest, even though no consensus is possible.

10.5. The Government of Uttar Pradesh has offered a number of suggestions. The Industrial Disputes Act may be amended to increase the number of workers from 100 to 300 for seeking permission for retrenchment, closure and lay-off. Simultaneously, the retrenchment compensation should be increased from 15 to 45 days wages for each year of service rendered along with certain additional benefits. These relate to three months notice or payment in lieu thereof, all terminal benefits as stipulated under various laws, making the retrenchment effective only after the terminal dues are paid, provided further that if there are sufficient reasons, the appropriate Government may declare the lay-off, closure or retrenchment illegal. Besides, the Industrial Disputes Act, 1947 may be amended to incorporate a time limit of three years for filing claims or taking disputes under conciliation or adjudication. For promoting healthy industrial relations and increasing productivity among workers, taking into account the recommendations of the Bipartite Committee on new Industrial Relations Committee (Ramanujam Committee) and the Second National Commission on Labour, Section 9 (c) of the Industrial Disputes Act, 1947 relating to Grievance Redressal Authority may be amended as follows:-

- (a) Every establishment employing 50 or more workmen must have one or more Grievance Redressal Committee.
- (b) The said Committee shall consist of equal number of representatives from the management and the workmen. The size of the Committee should not be less than 2 and more than 6.
- (c) Setting up of Grievance Redressal Committee will in no way affect the right of the workmen to raise disputes under the ID Act.
- (d) The Grievance Redressal Committee shall finalize its proceedings within 45 days.

10.6. The State Government also feels that in order to strike a balance between protecting the interest of labour and the need for providing operational flexibility to enterprises, it may be necessary to amend certain labour laws (like licence of a factory of non-hazardous nature may be renewed for five calendar years at a time, whereas the factories of hazardous nature may be renewed every calendar year under the Factories Act, 1948), exemption under the existing provisions of labour laws (like allowing women to work during night time), simplification of

procedure (like amendments proposed to the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988), and providing special measures for Special Economic Zones, Export houses etc. which foster creation of large employment opportunities (like self-certification, declaring them as public utility services, giving equivalent power of the Labour Commissioner to Development Commissioner of SEZ while providing latter with support services for effective administration and enforcement of labour laws). The State Government, however, does not support third party inspection for the compliance of health and safety provisions in SEZs. Besides, there is need for providing effective social security cover to workers engaged in smaller establishments and to contract workers.

10.7. The Teamlease Services has advocated that the provident fund needs to be paid on basic pay plus D.A, centralized compliance for Employees State Insurance Corporation and issuance of identity cards to members by employers may be allowed, there should be State and nation-wide registration of contractors, default compliance with Employees' Provident Fund Organisation should be simplified and minimum wages should taking to account on all types of compensation being paid to workers.

11. Recommendations

11.1 Taking into account the deliberations in the Working Group and the comments received, the recommendations of the Working Group are stated below:

- (i) As mandated in the National Common Minimum Programme, the amendments in the labour laws need to be based on a consensus, taking into account the interests of stakeholders. This applies to any suggested amendment in respect of the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970 as well.
- (ii) The Report of the National Commission for Enterprises in the Unorganized Sector, which is preparing a paper by undertaking the review of Indian Labour Laws, consistent with labour rights, in order to improve productivity, ensure greater competitiveness and generate employment in various sectors like textiles, IT and SEZs, as directed by the Prime Minister's Office, may be examined on receipt.
- (iii) In case any sector-specific relaxations in labour laws is sought, the administrative Ministries/ Departments should first formulate them, discuss with all stake holders including Central Trade Unions and refer them for the consideration of Ministry of Labour & Employment only after a consensus is reached.
- (iv) The unorganised sector workers need social security cover, preferably through legislation. Especially the interests of the agricultural workers need to be protected.
- (v) Since inspections are becoming complaint driven, the problems of inspector raj may not be as formidable as it is made out to be. The system of inspections cannot be eliminated, as it would compromise with the interests of workers, especially those who are vulnerable. Hence it would be more pragmatic to promote transparency by resorting to self-certification system and placing employee-related information obtained through this method in the website.
- (vi) The recommendation of the Second National Commission on Labour, ILO Conventions, tripartite fora like Indian Labour Conference & Industrial

Committees and bipartite bodies like Ramanujam Committee should be taken into account while formulating amendment proposals of various labour laws.

- (vii) Proposals pending consideration for a long time like the Workers Participation in Management Bill, 1990 amendment to the Payment of Bonus Act, 1965 and the Minimum Wages Act, 1948 etc. should be expedited.
- (viii) The possibility of expanding the scope of the Employees' State Insurance Act, 1948 and the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to cover even certain segments of unorganised sector workers may be considered.
- (ix) Judiciary is overburdened and valuable time of inspectors is wasted in visiting courts. The possibility of giving power of Executive Magistrate to Officers of the Labour Department to dispose of cases relating to minor offences may be explored.
- (x) More emphasis is to be placed on building up of an effective labour eco-system. While labour laws should be respected, what cannot be enforced should not be legislated. It makes effective implementation of labour laws feasible while making the environment conducive to job creation and friendly to small scale and unorganised sector enterprises.
