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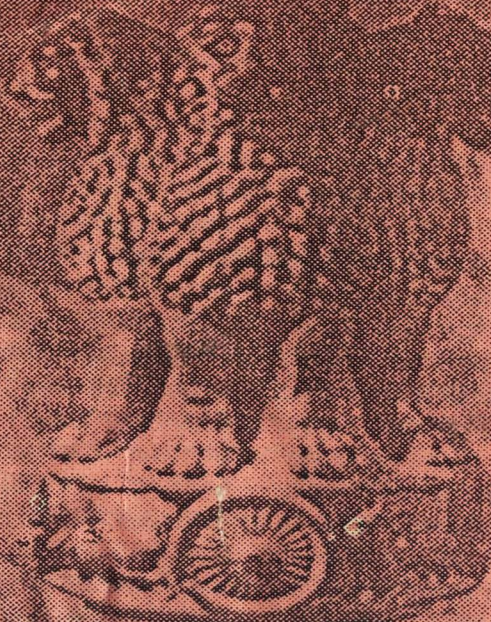
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THE WORKING CLASS

MONTHLY JOURNAL OF THE CITU



सत्यमेव जयते

Ministry of Labour
Government of India

**NATIONAL COMMISSION ON LABOUR
2002**

**LET US DEFEAT THIS
ANTI LABOUR REPORT!**

PROVIDING BASIC TELEPHONE SERVICES: PRIVATE Vs PUBLIC SECTOR

Despite our telecom policy to provide phones for all, India lags behind the world in teledensity figures. A major reason for this its private operators not having kept their word.

Fifty-five years after attaining freedom, India has one of the weakest telecommunication links in the world. Data released by the International Telecommunication Union (ITU) is an indicator. According to ITU, the world average teledensity, determined by the total number of telephone subscribers per 100 inhabitants, is 32.7 phones per 100 people (figures for the year 2001). While this is way above the teledensity figures for Africa (5.56) and Asia (20.17), it is far below that of North America, Europe and Oceania (at 61.55, 84.38 and 84.97 respective),

Of the 196 countries listed by the ITU report, India ranks 156th with a dismal teledensity of 4.01.

The data has clearly shown that government's tryst with privatisation of basic telephony has only compelled the government-owned BSNL and MTNL to do far more than what private basic service operators (BSOs) ought to have done. As a result, the entire burden of raising teledensity has fallen virtually on these two organisations. In fact, BSNL has grown from just 1.8 million phones in the early Nineties to approximately twice as many in about eight years. In contrast, the private BSOs registered a dismal performance not only vis-à-vis BSNL, but also against their own obligations and commitments made in the licence. A circle-wise comparison over the last four years

brings forth a clearer picture. In the circles of Andhra Pradesh, Gujarat, Punjab, Maharashtra (including Mumbai), Madhya Pradesh and Rajasthan, BSNL and MTNL added more than 8 million phones compared to just 700,000 phones by private operators. Between 1998 and early 2002, in these six circles, BSNL and MTNL gave 8,290,535 basic phone connections. By June 2002, the six circles had a waiting list of 636,684 subscribers. Evidence suggests that private operators have mostly focused on big towns and cities. They have't really added to teledensity as subscribers may have opted for second connections besides the one provided by BSNL or MTNL.

The licence of private BSOs clearly distinguishes between village public telephones (VPTs) and direct exchange lines (DELs). What we are discussing here relates only to DELs. The likes of Tatas, Hughes, HFCL and Shyams together were way short of their combined obligation of providing 20.17 lakh DELs even in the fifth year of their licence - which they were required to achieve in the third year operation.

With each DEL costing approximately Rs.20,000, the shortfall of nearly 1.3 million phones have been effectively deployed by BSNL causing it or the exchequer (since BSNL is 100 per cent government-owned) to spend Rs.2,600 crore. Though it is true that BSNL is not doing it gratis, the fact remains that most of them are subscribers with minimal monthly bills. Contrast this to private operators who have been skimming top end subscribers in cities. Instances have come to notice where private operators have refused connection to subscribers as the expected monthly revenue potential is very low. In some cities, private operators have begun to charge differential tariffs even between subscribers depending on where they are staying and the kind of building they are inhabiting. It is against this phenomenon that one should also compare the loss BSNL is sustaining on its 9 million rural connections and village public telephones.

(Excerpts from 'Hanging up on the nation', by R Krishnan.
Courtesy: Hindustan Times, 21 August, 2002)

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THE WORKING CLASS

CITU MONTHLY

SEPTEMBER 2002

ALL IN THE GAME



Courtesy: The Hindu

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EDITORIAL

DAMN THIS 'SCAM-A-DAY' GOVT.!

The Party with the difference is really showing up how and where it differs.

The 'Indian Express' a daily of which the present Disinvestment Minister Arun Shourie was once editor, has been flushing out stories, continuing as a daily column, calling the Bharatiya Janata Party (BJP) as the 'Petrol Pump Scam Party'. It has faithfully followed it up with the DDA plot allotment deals favouring the sangh parivar outfits, most of which have a dubious reputation.

What if the Parliament business is disrupted, Ram Naik will not resign. He has been asked to stay on, come what may. Then why did Advani resign and stayed away from the Lok Sabha contest, when his name figured in the 'hawala' racket? Why was Bangaru Laxman shown the door after the outbreak of 'Tehalka' expose? Though reinstated subsequently, why George Fernandes was asked to step down from the Defence Ministry in the same expose? The Party with the difference has proved that it will adopt different stances suiting its convenience.

Latest is the land grab by the BJP President Venkaiah Naidu in his home ground - that too appropriating the land meant to benefit the weakest sections of the society, the SC & ST.

An accusing finger is pointed at the Minister for Parliamentary Affairs, a close confidant of the Prime Minister, may be by an interested party, in relation to a murder case. Yet, no probe will be there. Moreover, he will also be allowed to back track on his own declaration to sue for defamation, without any qualms.

But, the Party with the difference will not admit that it has landed in troubled waters of its own making.

This much is on the scams.

But, Gujarat is still hitting headlines. A nine member team of the Election Commission, followed by the full Commission itself, visits Gujarat and call the bluff of 'return of normality' orchestrated by Modi and his saviours in Delhi. The President, who was the chosen one for the race to the Presidency with the sole motive of washing off the blood stains of Gujarat, also visits Gujarat. He also does not have any word of comfort to the Party with the difference. Yet Modi will embark on the 'gaurav rath yatra', blessed by the BJP establishment in Delhi, stooping to such a low to attack the Chief Election Commissioner citing his religion.

These are not issues that political parties use for their daily running battle. These are issues concerning the very essence of the social political fabric that this country is made of. Hence, the working class can, by no means, remain a spectator.

Enough is enough. Damn this sham Party with the difference! Show it the door wherever it is in power, at the centre or in the few States.

AGONY OF GUJARAT

M K PANDHE

The reckless butchering and burning of Muslims in Gujarat after the Godhra Massacre has no parallel in Indian history. It has brought shame to India all along the world and rich cultural heritage of our ancient country has been tarnished beyond proportions.

Whether the Godhra incident itself was manipulated by BJP requires to be investigated. Majority of passengers in C-6 coach of Sabarmathi Express, which was burnt, are alive and the list of passengers has been published after more than 6 months. The report of the forensic experts clearly pointed out that the inflammable material was not thrown from outside but was used from inside itself. Eyewitnesses have given different reasons of the Godhra incidents, which require impartial investigations to let the world know whether it was a planned attempt to initiate communal carnage all over the state.

STATE SPONSORED CARNAGE

Narendra Modi's own minister informed Human Rights Commission about a meeting called by Narendra Modi after shameless killings at Godhra in which he told police officers to give full freedom to the perpetrators of the so called back-lash. Press has correctly commented that Godhra violence in Gujarat was state sponsored killings and burning of Muslims.

The fountainhead of the Gujarat holocaust was no other than Narendra Modi himself. The Prime Minister gave sermon to Modi to follow Rajdharma. At the same time, L K Advani union Home minister shamelessly gave him good conduct certificate. In BJP conclave at Goa, Narendra Modi was given hero's reception as the real advocate of BJP's real agenda. Gujarat developments were considered by the BJP as the only answer to uplift the sagging morale of BJP activists after repeated defeats in the electoral battle.

Delegations from several political parties, human rights activists, trade unions and NGO's have pointed out time and again that Narendra Modi was behind the killings and demanded his resignation but the Central Govt. refused to budge on inch. The BJP high command was actually

considering repetition of Gujarat-game in other states to win the forthcoming general elections. VHP, Bajrang Dal and other RSS outfits have openly roused anti Muslim sentiments and even challenged patriotism of Muslims in India

MOCKERY OF RELIEF CAMPS

The relief camps were started much later and the conditions were simply shocking. Even the elementary needs of human existence were not supplied to the occupants of the camp. The compensation offered was not even sufficient to settle the victims and lakhs were forced to leave the state in search of safer places. Thousands who lost their jobs could not dare to go to the workplace and became destitutes. The property owners lost all their property and joined the ranks of destitutes.

The findings of the Human Rights Commission did not have any impact on Modi. He even went to the extent of callously dismantling the relief camps to create an impression that normalcy was restored in the state. Several relief camps had to be maintained with voluntary contributions by philanthropists and other secular minded people. Narendra Modi thought that it was a golden opportunity to reuse anti-Muslim sentiments and hold elections in the state with a view of ensure BJP victory in the polls. His game was to prevent Muslims from coming to the polling booths and manipulate Hindu votes. BJP high command endorsed the game since it was fitting BJP's national agenda.

ELECTION GIMMICK

The opposition parties rightly objected to holding of elections on the ground that free and fair election was not possible in the state. The electoral rolls deleted the names of several Muslims. Even Muslim population having their names in the voters list cannot come to vote for fear of reprisals.

The visit of President Kalam was State managed. Modi himself accompanied him to ensure that president could see as less as possible. Yet president could see that the relief measures in Gujarat were highly inadequate and normalcy was not restored.

The chief Election Commission J.M.Lyngdoh had to go to Gujarat along with other members of the commission to see the situation and find out whether free and fair election was possible in the state. After in-depth study the EC came to the unanimous conclusion that polls in Gujarat could not be held in such atmosphere when minorities were not in a position to cast their votes.

Instead of respecting the objective assessment of the Election Commission, the NDA Government took a politically motivated stand to challenge the very authority of the EC to give such a finding. The ground reality of the situation was totally ignored and the President of India was approached by the cabinet to get an opinion of the Supreme Court about the stand of the EC.

Narendra Modi openly came out against the Election Commissions findings.

Modi's logic, which can best be described as warped, is that Lyngdoh has supported the congress stand on the Gujarat polls because he is a Christian". It is an insult to the secular people of Gujarat, land which has given birth to a champion of Hindu Muslim unity during the freedom struggle.

POLITICS OF GAURAV YATRA

The so called Gaurav Yatra planned by BJP in Gujarat is only to hail the communal carnage in Gujarat and use the communal tension to BJP's electoral advantage. This yatra will only further unleash communal violence in Gujarat and its sole aim is to achieve communal polarisation during the elections. This "Gaurav Yatra" is direct affront to the Chief Election Commissioner and National Human Rights Commission.

The earlier Gaurav Yatra was postponed due to Vajpayee's intervention under public pressure. It is being revived again to fan communal hysteria in Gujarat and make this state as model for other BJP units in different states to follow. The RSS outfits all over India are following this dictum. They have openly come out to state that they would not follow the court verdict on Ram Janmabhoomi since it was a question of their faith.

OPPORTUNISM OF NON-BJP PARTIES

The servile attitude of the non-BJP parties in NDA has been responsible for continuing this situation. On every disputed issue, these parties bargain with BJP to gain some material advantages and

tolerate BJP's hidden communal agenda. The attitude of TDP leader Chandrababu Naidu is most disgusting on this question. George Fernandes, who got entry in the Government despite involvement in Tehelka Scam, has shamelessly justified the "Gaurav Yatra" as the right of BJP. Some of the NDA constituents just keep mum and connive at BJP's Hindutva agenda.

These parties cannot escape their responsibilities in these shocking events in Gujarat. Though they are getting isolated from the people, they want to make fortune while the NDA government lasts. This political opportunism of these parties has only added to the sufferings of minorities in Gujarat State.

Though there are several instances of workers coming forward to protect Muslim people from communal attack, we have to take account of the fact that a section of the working class became a victim of communal propaganda and joined the frenzy during the state sponsored communal riots. Unless the communal virus is eliminated from the working class, the united struggles of the Trade Unions will also be adversely affected.

The Bharatiya Majdoor Sangh is observing studied silence on the Gujarat communal carnage and is in practice endorsing whatever has happened in Gujarat during the last six months. We cannot ignore that it is in this background that BMS has decided not to join the nationwide movement against the economic policies of the Government. Without unity of the workers of all religions, the broad based united movement against the anti-labour, anti-people policies of the Government cannot be resisted effectively. Therefore the trade union movement while fighting against IMF, WB dictated policies of the NDA Government cannot ignore the equal importance of the struggle against communalism.

The CITU unions will have to redouble their efforts in opposing communal policies of RSS and their outfits, which are trying to tear away the secular fabric of the nation. It is therefore of paramount importance to eliminate the virus of communalism from the Trade Unions and democratic movement in our country. This is the lesson the agony of Gujarat has given to the whole country! We must take the lesson and move forward!

SECOND NATIONAL COMMISSION ON LABOUR COMMISSION ON LABOUR OR AGAINST LABOUR?

W.R.Varada Rajan

The NDA Government constituted the Second National Commission on Labour (SNCL), without either proper consultations with the central trade unions or considering their views. The composition of, as well as the terms of reference to, the Commission was mainly intended to kick start the labour law reforms, which the employer class had been clamouring for since long. The former Finance Minister, Yashwant Sinha - a reformer in a hurry - would not wait for the Commission to complete its job. He announced major amendments in the Industrial Disputes Act and the Contract Labour Act, in his budget speech 2001-2002. During the Indian Labour Conference on 18th May 2002, the Prime Minister turned down a fervent plea, even from the saffron brand trade union (BMS), to hold back the labour law changes pending the report of the Commission on Labour. Yet, things did not exactly go the way Vajpayee Government wanted, as other matters dominated Parliamentary business. And at last, the SNCL completed its job and presented its report to the Prime Minister on 29th June, 2002.

The Report, which runs into 1470 pages - as one pink paper daily noted - has not been made public, nor copies of it furnished to the central trade unions even by end August, 2002. Reason? The incumbent Labour Minister,

Sahib Singh Verma, assured a former Minister, Ramoowalia on the floor of the Parliament that the SNCL Report would first be tabled in the Parliament, before being made public. But, the scam a day, kept Parliament business away, washing out the Monsoon Session. There was neither monsoon nor session and the Commission Report was not tabled. The Ministry of Labour is knocking the doors of the Presiding Officers of the two Houses of Parliament for permission to reach copies of the Report to the MPs and make it public thereafter. This exercise is yet to take off.

Meanwhile, the media has come out with several stories on the SNCL Report. One newspaper declared in print that it had in its possession a copy of the Report.

Employers' organisations have planned workshops and seminars to debate the Report. As such it appears that the Report had selectively been made public. We also could gain access to the contents of the Report, at least in bits and parts. To present an overview of the Report, we can only state that it comprises the recommendations of the National Commission not 'on labour' but "against labour."

As scores of our functionaries and activists at various levels have been seeking information on the Report of the SNCL, we are trying to present in this issue, at least, certain highlights

thereof. A detailed analysis and comment has necessarily to wait till we get an opportunity to have free access to the Report and turn its pages.

COMMISSION DISTRESSED

The appendices to the Report make some interesting revelations. The chairman of the SNCL appeared as much aggrieved by the budget speech of Yashwant Sinha, as the trade union leadership, which came out with denunciation. Ravindra Varma, Chairman, SNCL, wrote to the Prime Minister on 7th March 2001, a week after the budget presentation conveying 'the very grave mood of introspection and sense of distress in the minds of most of the members of the Commission and its study teams after the budget speech'. The letter, inter alia, read as:

"The Finance Minister announced that the Government had decided to introduce legislation to amend the Industrial Disputes Act and the Contract Labour (Regulation and Abolition) Act in the current Budget session of Parliament. The very fact that the announcement came in an unusual and unprecedented manner, from the Finance Minister, and he not only indicated the possible direction of policy but also the specifics of the amendments and the schemes that were going to be introduced, has given edge to

the apprehensions that are being articulated both by some members of the Commission and by many concerned groups. "We thought that since the Government itself had appointed the Commission and asked it to review all existing legislation including the Industrial Disputes Act, the Contract Labour (Regulation & Abolition) Act, etc, it would have waited for the report of the Commission, or if it felt that urgency warranted immediate amendment, asked the Commission for an interim report on the amendments that were considered necessary. We deeply regret that both these alternatives were ignored, thereby giving an opportunity for sceptics and critics to say that the Government's mind was already made up, and the Commission, therefore, had no relevance. Unfortunately this situation has made it possible for many groups to cast doubts on the credibility and utility of the Commission and say that our report has already been pre-empted, even while we had to struggle hard and almost overcome the attacks on our credibility. Some distinguished members of our study teams have also expressed their deep concern, and asked whether, if the role of the Commission was really over and if the questions that were entrusted to us had already been settled in the Government's mind, there was any need for them to continue.

"The letter concluded by seeking the guidance from the Prime Minister that would enable him

(Ravindra Varma) to assure all concerned that the Government still wanted them to continue and complete the work entrusted to them. A guidance that never came!

A DERISIVE COMMENT

Despite carrying such a distress in their minds, the Commission chose to record derisive comments on those trade unions, including the CITU, which were forced not to cooperate with the Commission and its activities. The CITU and other unions had conveyed to the Chairman that their refusal to cooperate was in protest against the Vajpayee Government not abiding by the consultation process.

The Report commented: "The Terms of Reference given to our Commission have attracted some adverse criticism. They have been described by some, as too narrow and too limited, inadequate to cover all the crucial inter-related issues that have to be considered together. Some have gone so far as to suggest that what they consider the inadequacies of the Terms of Reference reveal a tilt in favour of demands and interests of one section. Some of them have openly expressed their apprehension that the Commission might not be impartial and unprejudiced, but might act as an instrument of partisan interests. They have, therefore, advocated and adopted a policy of non-cooperation. The Commission deeply regrets this unwarranted and unmerited prejudice. ..."

We wonder, whether such a derisive comment against the

trade unions, which as a matter of principle chose not to cooperate, was warranted in the light of the anguish by the Commission chairman to the Prime Minister and particularly when the Commission while making specific recommendation on change of labour laws followed more or less the lines dotted by the Finance Minister's announcement, thereby proving that such apprehensions by the trade unions were neither unwarranted nor prejudiced!

SUBJECTIVE BIAS

The first two chapters of the Commission Report are devoted to analyse the terms of reference and trace the historical background - from evolution of trade unions in India to the globalisation era. The subjective bias that pervades the historical dissertation of today - particularly the sangh parivar's attempt to rewrite history in saffron colour - manifest here as well.

To cite a few. There is a singular effort to present the BMS as the only trade union force from political control and to project its rise. Yet another piece dealing with the situation during the Second World War notes: "It is well known that during this period, the Communist movement worked against the policies and programmes of struggles of the Indian National Congress and the nationalist movement in the country." This is nothing but echoing the decades-old canard against the Communists, as though they are outside the periphery of national movement. It is highly

reprehensible that the pages of the Labour Commission Report have come to be used for recording partisan prejudices.

STUDY GROUPS

The Commission had appointed six study groups to make in-depth studies on the following subjects:

1. Review of Laws
2. Umbrella Legislation for the workers in the Unorganised Sector.
3. Social security
4. Globalisation and its impact
5. Women and Child Labour
6. Social Development, Training and Workers' Federation.

The Commission Secretariat, before it was wound up, had sent copies of these study Group Reports to all the Central trade unions. The Report claimed that the Commission addressed the task outlined to it on the basis of these reports and had made copious use of them. May be, the volume of the Report testifies to the copious use made of these study reports. But, the contents of the recommendations do not lend credence to the claim that they are based on the findings of these study groups.

The Commission Report had dwelt on the impact of Globalisation at considerable length, spanning over a hundred pages. This chapter incorporates the Commission observations and findings on the situation in China when the Commission visited China for the specific purpose. (See a detailed report on pages...) One

significant feature of this part of the Report is that it has drawn up a full-blown picture of the negative impacts of the world Bank-IMF driven globalisation. This chapter is almost an endorsement of the trade union critique of the policies of globalisation. But, the other two chapters on the Commission's Approach to Review of Laws" and the "Review of Laws" are totally on anti-thesis of the ground realities vividly captured in the preceding chapter.

In these two chapters as well as the succeeding chapters on unorganised sector, social sector, women and child labour, etc, the Commission has spelt out a lot of pious declarations of intent. But, when it comes to prescribing precise action-plans, the Commission Report is just a non-starter.

ANTI LABOUR THRUST

But, the Commission was keen on delivering what it was mandated to, in the arena of labour law changes, to gladden the hearts of the employer class and also to match the Finance Minister's arrogant announcement on labour law reform in his budget speech. The anti-labour thrust of the Commission Recommendations are revealing from the following:

- Freedom to hire and fire to all establishments employing up to 300 workers.
- Varying rates of compensation to workers, rewarding the employers who manage to have their units declared sick
- Provisions of section 9A of the Industrial Disputes Act relating to change in conditions

of service diluted and rendered practically ineffective in favour of employers.

- Green signal for unfettered freedom to contract out non-core jobs completely and core jobs also subject to some spurious limitations.

- No to industry level wage boards

- No secret ballot for selection of bargaining agent

- Secret Ballot MUST for strikes. Open ended right to Government for politicising strikes.

- Punitive prescriptions for illegal strike

- 'Go Slow', 'Work to Rule' termed misconduct

- A façade of equating lock out to strike

- Curtailment of holidays

- '8 hour work day' concept tampered with

- Separate law for small industries

- Supervisors irrespective of salary and employees in higher bracket of salaries to be outside the purview of labour laws. Allow wide spread registration of Membership Based Organisations' of women workers under the TU Act, which in effect will divide the trade union movement on gender lines.

The sub-text of the Commission Recommendations on Social Security is pre-set in the opening remarks of the Report, which reads:

"We are aware that the degree of protection that a society or State is able to assure to the worker; or those who are preparing to enter the workforce, or who have been

incapacitated, will depend on the resources available to the State society and the contributions that citizens/beneficiaries themselves can make" (Para 1.13) (emphasis added).

This makes it clear that the Commission has meekly submitted to the lack of political will on the part of those in the governance to mobilise/allocate adequate resources to provide even the basic components of social security to the needy and disadvantaged.

The Commission has attempted to present an indicative draft of a comprehensive law on Labour Management Relations, which it has proposed in replacement of all the existing laws. Such sterile exercises have been repeated in respect of unorganised sector, child labour, etc, as well. But, these are more of an archival value. It is futile to hope for even a cosmetic relief for the concerned workers.

The Ravindra Varma Commission Report is yet

another challenge before the working people of our country. The BJP led Government at the Centre, will pick up for immediate action only those parts of the Report, which serve the interests of the employer class. The other parts, which are only meant to hide the ugly face of the 'labour reforms prescriptions', will remain mere decorations. The working class has to unitedly rally to address itself to the impending task of decisively defeating the attack.

IMPROVED INDUSTRIAL RELATIONS IN POST-REFORM ERA?

The Government of India (GOI), through a Press Information Bureau release on 22nd August, 2002, claimed that industrial relations have improved in post-reform era. The claim is based on the data relating to the number of strikes and lock outs, which have reportedly shown a declining trend, the number 'dipping' from 1825 in 1990 to 555 in 2001. The release also noted: "the decline in the number of strikes is more conspicuous than the lock outs reflecting a sense of discipline and responsibility among workers".

The statistical data for 2001, on which the Govt. claim is based, can at best reflect a quick estimate, as the official figures quoted even in respect of 1999 are only 'provisional'. The false and dubious nature of the Govt. claim is evident from the figures furnished by the Labour Bureau, Shimla, as under:

The number of workers involved in strikes/lockouts in 1991 was 13.42 lakhs as against 14.18 lakhs in 2000. The number of man days lost had also increase from 26.43 million in 1991 to 28.76 million in 2000. The GOI release is conspicuously hiding this aspect of the data.

Even the Economic Survey (2001-2002) admitted that the man days lost due to lockouts increased by 0.6 million between 1999 and 2000, whereas those due to strikes declined by 1.4 million between 1999 and 2000. Why does the Govt. fight shy of terming this as the lack of discipline and responsibility on the part of the business class?

The dismal state of the real economy is revealed by the proliferating industrial sickness, with 2,52,947 units having turned sick/weak as on 31.3.2001 (Economic Survey). Between 1980-81 and 1995-96 the share of the organised sector in the value added had increase from 30 per cent to 40.3 per cent (as noted by in the report of the Second National Commission on Labour), whereas the proportion of the workforce in the organised sector had dipped from over 11 per cent to below 8 per cent during the same period. This reflects the steep fall in the quality of life of the workers in the country.

The Govt. of India, would do well to address the real issues haunting the economy and labour in the country, instead of seeking false alibis to justify their moves to change the labour laws to the detriment of workers' interests.

SECOND NATIONAL COMMISSION ON LABOUR ON REVIEW OF LABOUR LAWS

TAPAN SEN

We reproduce hereunder some excerpts from the Summary of the Conclusions and Recommendations of the Second National Commission on Labour, on the issue of "Review of Labour Laws". The anti labour content and direction of the Commission Report will be evident.

PIOUS INTRODUCTORY POSTURE

It is an overstatement to say that the labour or labour laws are the only cause of our unsatisfactory economic development. There are other factors that affect the efficiency of the industry like managerial skills, integrity and honesty, efficient and reliable infrastructure, etc. If there are many causes, and one deals with only one, and ignores all others, one cannot overcome the disease or hope for cure. (5.5)

HOLIDAY & WORKING HOURS

We recommend that: the Central Govt. and the State Govt.s should have uniform policy on holidays, only three national holidays be gazetted - viz. Independence Day, Republic Day and Gandhi Jayanti Day (October 2) - (note: even May Day is excluded!) two more days may be added to be determined by each State according to its own tradition and apart from these, each person must be allowed to avail of 10 restricted holidays in the year. Government holidays should be delinked from holidays under the Negotiable Instruments Act, In case of the option of a five day week, if a holiday occurs during the week, Saturday should be a working day... (5.29)

The attitude to hours of work should not be rigid. The total number of hours per day should not be more than NINE, and hours of work per week should not be more than 48. But within this limit, there may be flexibility, and compensation for overtime. (5.32)

The limitation on employing workers on overtime needs to be relaxed, and we recommend that the present ceilings be increased to double to enable greater flexibility in meeting the challenges of the market. (6.121 (b))

COVERAGE

It would appear that perhaps the safest approach, in the context of coverage under labour laws, would be to define organized sector as consisting of establishment which have a minimum

employment limit (6.11).

The Commission has given considerable thought to the number of employees that should be fixed as the threshold point for the organised sector. It does not want workers who are already enjoying the protection of laws forfeit their protection of benefits of provisions for safety and security. Nor does it want to add to the problems of small entrepreneurs financial burdens that affect the viability of their enterprises or compel them to work under irksome conditions. Balancing both these factors, the Commission feels that a limit of 19 workers should be accepted as the socially defensible mean. (6.17)

Relatively better off section of employees categorised as workmen like Airlines Pilots, etc do not merely carry out instructions from superior authority but are also required and empowered to take various kinds of on the spot decisions in various situations and particularly in exigencies. Their functions, therefore, cannot merely be categorised as those of ordinary workmen. We, therefore, recommend that Government may lay down a list of such highly paid jobs who are presently deemed as workmen category as being outside the purview of the laws relating to workmen and included in the proposed law for the protection of non workmen. Another alternative is that the government fix a cut off limit of remuneration which is substantially high enough, in the present context, such as Rs 25,000/- pm beyond which employees will not be treated as ordinary "workmen". (6.19)

It would be logical to keep all the supervisory personnel, irrespective of their wage/salary, outside the rank of worker and keep them out of the purview of the labour laws meant for workers. All such supervisory category of employees should be clubbed along with the category of persons who discharge managerial and administrative functions. The Commission would

also recommend that such a modified definition of worker could be adopted in all the labour laws. We expect managements to take care of the interests of supervisory staff as they will now be part of the managerial fraternity. (6.20)

INDUSTRIAL RELATIONS

Existing set of labour laws should be broadly grouped into four or five groups of laws pertaining to (i) industrial relations (ii) wages, (iii) social security, (iv) safety and (v) welfare and working conditions and so on. The Commission is of the view that the coverage as well as the definition of the term 'worker' should be the same in all groups of laws, subject to the stipulation that social security benefits must be available to all employees including administrative, managerial, supervisory and others excluded from the category of workmen and others not treated as workmen or excluded from the category of workmen. (6.21)

Central laws relating to the subject of Labour Relations are currently the Industrial Disputes Act, 1947, the Trade Unions Act 1926 and the Industrial Employment (Standing Orders) Act, 1946. Mention must also be made of the Sales Promotion Employees (Conditions of Service) Act 1976. and other specific Acts governing industrial relations in particular trades or employments. There are state level legislations too on the subject. We recommend that the provisions of all these laws be judiciously consolidated into a single law called the Labour Management Relations Law or the Law on Labour Management Relations. However, we would care out a section of those workers who are employed in establishments with an employment size of 19 and below, for a different kind of dispensation. In view of our approach, we recommend the repeal of the Sales Promotion Employees (conditions of Service) Act, 1976 and other specific Acts governing industrial relations in particular trades or employments and also specific laws governing wage fixation in particular trades or employments, in the light of what we recommend later in respect of the law on wages. The general law on industrial relations and wages will apply to them. (6.26)

We would recommend the enactment of a special law for small-scale units. We have come to the conclusion that the reasonable threshold limit will

be 19 workers. Any establishment with workers above that number cannot be regarded as small. The composite law suggested by us for small enterprises has provisions for registration of establishments, (provisions pertaining to) securing safety, health and welfare of the workers, hours of work, leave, payment of wages, payment of bonus, compensation in case of lay off, retrenchment and closure, resolution of individual and collective disputes of workers, etc. The law suggested by us also has provisions pertaining to social security. We are of the view that a composite law will not only protect the interests of the workers in these enterprises but will make it easier for the small enterprises to comply with the same. (6.28)

A system of self-certification has been introduced (in the draft law proposed) to offset the criticisms of 'Inspector Raj'. (6.106)

Term 'retrenchment' should be defined precisely to cover only termination of employment arising out of reduction of surplus workers in an establishment, such surplus arising out of one or more of several reasons. (6.43)

Federations of trade unions as also Central organisations of trade unions and federations should be covered within the definition of trade union and be subject to the same discipline as a primary trade union. The same dispensation will apply to employers' organisations and employees' organisations. (6.54)

Negotiating agent should be selected for recognition on the basis of the check off system, with 66% entitling the union to be accepted as the single negotiating agent, and if no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation on the college. (6.66)

Secret ballot even on a restricted basis is logistically and financially a difficult process in industries like railways, banks, post offices, coalmines and other undertakings operating in a number of states. (6.70)

Check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions. (6.73)

We would also recommend that recognition once granted, should be valid for a period of four years, to be co-terminus with the period of settlement.

No claim by any other trade union/federation/centre for recognition should be entertained till at least 4 years have elapsed from the date of earlier recognition. The individual workers' authorisation for check off should also be co-terminus with the tenure of recognition of the negotiating agent or college. (6.76)

REGIME OF HIRE & FIRE, RETRENCHMENT AND CLOSURE

... the Commission is of the view that notice of change (in service condition) issued by an employer as per provision of section 9A, should not operate as a stay under section 33 though such a decision of the management will be justiciable under section 33A. (6.82)

Prior permission is not necessary in respect of lay off and retrenchment in an establishment of any employment size. Workers will, however, be entitled to two month's notice or notice pay in lieu of notice, in case of retrenchment. . We recommend that the provisions of Chapter VB pertaining to permission for closure should be made applicable to all establishments to protect the interests of workers in establishments which are not covered at present by this provision if they are employing 300 or more workers. Necessary changes in chapter VA in regard to retrenchment and closure will have to be made accordingly. the Commission would like to recommend the compensation per completed year of service at the rate of 30 days on account of closure in case of sick industry which has continuously run into losses for the last 3 years or has filed an application for bankruptcy or winding up, and other non-profit making bodies like charitable institutions, etc and at the rate of 45 days for retrenchment by such sick industry or body where retrenchment compensation at the rate of 60 days of wages and similarly a higher rate of compensation for closure at the rate of 45 days wages for every completed year of service for profit making organisations. For establishments employing less than 100 workers half of the compensation mentioned above in terms of number of days wages may be prescribed. (6.88) We are recommending restoration of original threshold limit for prior permission, increased rate of compensation; consultation with the representatives of the workers without giving

workers a right to veto; judicial review by the LRC(Labour Relations Commission) in case of disputes; and legal provisions or review by appropriate Govts that make it obligatory for the employers to purchase insurance cover for the employees. (6.90)

Arising out of above, we recommend that while the lay-off compensation could be 50% of the wages at present, in the case of retrenchment, chapter VA of the law may be amended to provide for sixty days' notice for both retrenchment and closure or pay in lieu thereof. The provision for permission to close down an establishment employing 300 or more workers should be made a part of chapter VA, and chapter VB should be repealed. In case of closure of such establishment which is employing 300 or more workers, the employer will make an application for permission to the appropriate Govt 90 days before the intended closure and also serve a copy of the same on the recognized negotiating agent. If permission is not granted by the appropriate Govt within 60 days of receipt of application, the permission will be deemed to have been granted. (6.91)

VIRTUAL BANING OF STRIKE

"Go Slow" and "Work to Rule" are forms of action which must be regarded as misconduct. (6.41)

We, therefore, recommend that in the case of socially essential services like water supply, medical services, sanitation, electricity and transport, when there is a dispute between employers and employees in an enterprise, and when the dispute is not settled through mutual negotiations, there may be a strike ballot as in other enterprises, and if the strike ballot shows that 51% of workers are in favour of a strike it should be taken that the strike has taken place, and the dispute must forthwith be referred to compulsory arbitration (by arbitrators from the panel of the Labour Relations Commission (LRC), or arbitrators agreed to by both sides). (6.48)

Strike could be called only by the recognised negotiating agent and that too only after it had conducted a strike ballot amongst all the workers, of whom at least 51% support the strike. Correspondingly, an employer will not be allowed to declare a lock out except with the approval at the highest level of management except in cases

of actual or grave apprehension of physical threat to the management or to the establishment. The appropriate government will have the authority to prohibit a strike or lock out by a general or special order and refer for adjudication the issue leading to the strike/lock out. The general provisions like giving of notice of not less than 14 days, not declaring a strike or lock out over a dispute which is in conciliation or adjudication and so on will be incorporated in the law. In this context we also recommend that an illegal strike or illegal lock-out should attract similar penalties. A worker who goes on an illegal strike should lose three days wages for every day of illegal strike, and the management must pay the worker wages equivalent to three days wages per day of the duration of an illegal lock out. The union which leads an illegal strike must be derecognised and debarred from applying for registration or recognition for a period of two or three years. (6.101).

CONTRACT WORK

Organisations must have the flexibility to adjust the number of this workforce based on economic efficiency. It is essential to focus on core competencies if an enterprise wants to remain

competitive. We would, therefore, recommend that contract labour shall not be engaged for core production/services activities. However, for sporadic seasonal demand, the employer may engage temporary labour for core production/service activity. We are aware that off-loading perennial non-core services like canteen, watch & ward, cleaning, etc to other employing agencies has to take care of three aspects (1) there have to be provisions that ensure that perennial core services are not transferred to other agencies or establishments; (2) where such services are being performed by employees on the payrolls of the enterprises, no transfer to other agencies should be done without consulting, bargaining (negotiating) agents; and (3) where the transfer of such services do not involve any employee who is currently in service of the enterprise, the management will be free to entrust the service to outside agencies. (6.109).

There is no need for any wage board, statutory or otherwise, for fixing wage rates for workers in any industry. (6.118)

(Note: The numbers in brackets refer to the relevant SNCL Report paragraphs)

COMMENTS

The Commission's recommendations in respect of change in labour laws are a declaration of war against the working class. The recommendations have been specific and pointed for legitimising employers' right to 'hire and fire' in respect of retrenchment and closure and allowing contract work in almost all type of jobs in an establishment, on the plea of those being non-core jobs.

The recommendations have also been categorical to rule out secret ballot system for recognition of trade unions and also to virtually ban the strike. The Commission has dealt strikes and lockouts by the putting them at par in determining the parameters of illegality along with the penalties. This only reveals a perverted mindset. In fine, the recommendations of the SNCL on review of Laws are a blue print for imposing slavery on the working class.

The Commission Report also contains some good words. But they are nothing more than expression of pious intentions, to preach but not to practice. They are mostly on extremely generalised terms giving room for the Government to interpret as per their convenience. They are not made as specific and categorical as to enable the Government to ignore or neglect them altogether..

SECOND NATIONAL COMMISSION ON LABOUR: ON WOMEN AND CHILD LABOUR

K.Hemalata

The report of the Study Group on 'Women and Child Labour' is the most voluminous of all the reports of the various study groups set up by the Second National Commission on Labour on different subjects. The Study Group probably intended that the increasing number of women in the unorganised sector should be reflected in the attention paid by the Labour Department to their concerns. It has recommended that more than 80% of the time and personnel of the Labour Department should concentrate on enforcement of labour laws, of which 50% should be for women workers. But apparently even the Labour Commission did not take this suggestion seriously. Leaving aside the rhetoric, the Commission did not address many of the important concerns of workingwomen.

Unequal wages are one of the major concerns of the working women, particularly in the unorganised sector. The Equal Remuneration Act (ERA) is observed only on breach. The Study Group made the following recommendations on the ERA:

- The Act should be amended to apply across units on occupation, industry, and regional basis, not only within an establishment.

- Phrase 'same work or work of a similar nature' should be replaced by the phrase 'work of equal value'.

- Guidelines should be provided to inspectors in order to help them to identify discriminatory practices pertaining to the ERA.

- The Advisory Committee under the ERA needs to be converted into an empowered committee and be given a role to oversee the functioning of the Labour Commissioner's Office in relation with the ERA. The Act should also be suitably amended to include the role of the social organisations in the implementation of the Act and monitoring of labour authorities.

- The Advisory Committee of ERA has to function as a watchdog panel. It has to play greater innovative role, and vested with some authority and armed with powers to question the discrimination and disparity in the case of women

workers.

- For the purposes of filing claims and registering cases of discrimination and disparity of matters of emoluments in the case of women, the regional branches of the trade unions, some of the willing members of the committee, capable of contacting the management of enterprise, plant of industrial unit, on receipt of a complaint, could be suggested.

- A separate inspecting agency to detect and identify the discrimination and unequal emoluments for the same/ equal value of work based on skills, efforts, and responsibility is recommended.

In the Report, the Commission expressed great concern for the workers, particularly the women workers in the unorganised sector. But none of the above recommendations of the Study Group on Equal Remuneration Act found any place in the recommendations of the Commission. In fact, the Commission had nothing to say on how to ensure equal remuneration for working women in the unorganised sector.

The Study Group also recommended that all sexual behaviour as defined in the Supreme Court's Order be included in both the parts of Schedule V(c) of the Industrial Disputes Act, 1947. This also did not find favour with the Commission. On the question of allowing night work for women, the Study Group recommended that 'night work should be allowed on a case to case to basis, only if adequate transport and security is provided. The case of each industry for allowing night work would have to be examined by a committee to be nominated by the ministry of labour'

But this is the recommendation of the Commission on night shift for women: - "On the question of night work for women there need not be any restriction on this if the number of women workers in a shift in an establishment is not less than five and if the management is able to provide satisfactory arrangement for their transport, safety, and rest after and before shift hours"

SECOND NATIONAL COMMISSION ON LABOUR ON SOCIAL SECURITY

In the liberalisation era, the issue of social security has become the most crucial need that is felt today by not only all sections of the workers but also the 'non-workman' employees, including the 'knowledge workers'. The Government of India, had earlier constituted a Task Force on Social Security to examine the issue of integrated comprehensive scheme on social security, which had presented its report way back in May, 2000. The Government did not take any action on the report. But, the entire report of the Task Force was referred to the Second National Commission on Labour for an in-depth study. The reason stated was "the acceptance of recommendations of the Task Force involved heavy financial implication". The Government also stated: "further action can be taken only after the recommendations of the National Commission on Labour become available to the Government".

The Second National Commission on Labour, on its part, set up a Study Group on the self same subject. The Study Group had also come out with a voluminous report. But, neither the Study Group Report nor the final Report of the Commission suggest in concrete terms how the issue of the 'heavy financial implications involved' should be addressed. As such, the Recommendations are destined to end without any substantive action. However, the Study Group report pointed out one most glaring aspect. It noted that the developed countries are spending up to 40 per cent of their GDP on safety nets. But, in India, the public expenditure on social security is a mere 1.8 per cent as against 4.7 per cent in Sri Lanka and 3.6 per cent in China. This should have naturally led the Commission to suggest stepping up of public expenditure on social security. But, that was not to be. As the terms of reference to the Commission itself asked for only a "minimum level of labour protection", the Study Group 'made its recommendations deliberately modest' as in its opinion 'the country can ill afford a very ambitious programme of social security'. The Commission Report stuck to this script.

CONCEPTUAL ISSUES

This is what the Commission Report recommends on the 'conceptual issues' of social security.

"Our Commission accepts the need to consider social security as a fundamental human right". (Para 8.30)

"Considering all the conceptual issues as well as the demographic profile of the country we feel that no single approach to provide social security, will be adequate. The problem has to be addressed by a multi-pronged approach that would be relevant in the Indian context". (8.51)

"A scheme may be contribution-defined or benefit-defined". (8.429)

"The Commission feels that the Schemes should be benefit-defined". (8.430)

SELF-CONTRIBUTORY

The Commission Report poses different levels, tiers and kinds of schemes. But, the emphasis is on social insurance schemes, which are self-contributory. It states: "Social insurance schemes are contributory, and their viability depends upon the rate/s of contributions received and the quanta of benefits paid out. Different packages of benefits with different rates of contributions should be designed to suit the capacity of the contributors to pay". (8.427)

"We recommend a system in which the State bears the responsibility for providing and ensuring an elementary or basic level of security, and leaves room for partly or wholly contributory schemes. This will mean that the responsibility to provide a floor will be primarily that of the State, and it will be left to individual citizens to acquire higher levels of security through assumption of responsibility and contributory participation. Such a system will temper and minimise the responsibility of the State, and maximise the role and share of individual and group responsibility. Thus, there will be three levels in the system (8.32)

"The Study Group of this Commission felt that in evolving an integrated and comprehensive system of social security in India, one should have a broad vision and one should develop a structure which will encompass the whole population with its

diverse needs. It cannot be a single scheme but has to be a combination of schemes catering to the needs of different target groups with different needs and different paying capacities. The Study Group has expressed the view that, in India, there already exists a three-tier system which can be expanded and consolidated". (8.406)

"The system envisaged by the Commission comprises of four tiers, (a) Social assistance programmes, financed from the exchequer and wholly based on tax revenue, (b) Schemes which are partly contributory and partly subsidised by the State, (c) Wholly contributory social insurance schemes; and (d) Voluntary Schemes". (8.407)

"There will be three kinds of social security schemes: social insurance type of contributory schemes, subsidised insurance/welfare fund type of partly contributory and partly socially assisted schemes and social assistance schemes which will be wholly non-contributory. (8.434)

INSTITUTIONAL ARRANGEMENTS

This is what the report prescribes on what should be the institutional arrangements for social security:

"It is high time that a national policy on social security is formulated and a national plan to achieve the objectives set out in this policy evolved". ... "It is necessary to create a small but strong agency in the Central Government which will be concerned with the horizontal and vertical coordination of social security planning, monitoring and review". (8.414)

"We strongly recommend the constitution of a high-powered National Social Security Authority, preferably under the chairmanship of the Prime Minister of India. The functions of the Authority will be mainly to formulate the National Policy on Social Security and to co-ordinate the Central and State level programmes". (8.415)

"A Social Security Fund of India and a Social Security Fund of each State may be set up". (8.433)

"We would suggest a Department of Social Security within the Minister of Labour. This Department would provide policy inputs and secretarial services to the National Authority, coordinate, monitor and review specific programmes among various Ministers and the States. Similar arrangements can be made in the

States". (8.416)

"We feel that the unification of administrative responsibility, in respect of the existing social security legislation, is both necessary and desirable". (8.417)

"The Commission recommends the establishment of a comprehensive social security system covering various existing programmes of different Ministries/Departments. However, to begin with, functional integration of all social security programmes in the organised sector could be attempted, pending a review of the need for administrative integration". (8.418)

But, the Commission is not for immediate ratification of the ILO Conventions on social security, which should be the starting point. It says: "The Study Group of Social Security constituted by our Commission felt that **it might not be possible to ratify all the Conventions of the ILO immediately** (emphasis added), but it is desirable to plan for their eventual ratification by upgrading laws and practices, beginning with the Minimum Standard Convention. The Commission endorses the view of the Study Group". (8.78)

SMALL MERCIES

Certain small mercies have, however, been doled out on threshold, definition of workman, wage guarantee, education allowance etc.

"The Task Force on Social Security recommended that wage ceiling and employment threshold can and should be uniform with a provision for raising the wage ceiling and its eventual removal and lowering employment threshold and its ultimate removal. The Commission also agrees with it". (8.93)

"The term 'workman' may be replaced by the term 'employee' so as to make the Workers' Compensation Act applicable to all categories of employees; the term 'employee' may be defined to mean any person employed in any employment specified in Schedule II; the entries in Schedule II may be revised so as to make it applicable to all classes of employees progressively; and restrictive clauses, wherever they occur in the Schedule, may be omitted". (8.96)

"The National Renewal Fund (NRF) was established in February 1992 to provide a form of a wage guarantee which had to be used for re-training, re-deployment, counselling etc. But in

practice, NRF has mostly been utilised for implementing the VRS. There is need to restructure this Fund to serve as a wage guarantee fund". (8.179)

"A provision be made for payment of education allowance to all employees by amending the existing laws regulating employment and conditions of service of employees". (8.182)

Significantly, the Commission has conferred a bonanza on the employers by suggesting that they be freed from the liability towards workmen's compensation! "The Workmen's Compensation Act should be converted from an employers' liability scheme to a social insurance scheme (read self-contributory), its coverage should be progressively extended to more employments and classes of employees, and the restrictive clauses in Schedule II of the Act should be removed. (8.97)

AREA BASED SCHEMES

For the rhetoric, the Commission Report has copious platitudes covering the disabled, physically handicapped, lepers, mentally ill, scavengers and those who are economically and socially distressed.

The Commission Report, after a lengthy discussion on welfare funds, social assistance programmes, food security, care of the elderly, *et al*, commends area based schemes at the State level.

"A reasonable alternative to the various occupations-based schemes would be to design a scheme on area basis". (8.247)

"The area-based scheme appears to be suitable for application to the workers in the unorganised sector". (8.254)

"The basic benefits may include (a) insurance against death or disability, (b) health insurance and (c) old age benefits". (8.248)

"The coverage under death and disability may be comprehensive. In case of disability the compensatory payment may be made periodically". (8.249)

"Under old age benefits, a pension based on a savings-linked scheme may be evolved". (8.251)

"The funding of the scheme is envisaged to be from contributions **from members and from other sources**". (8.252)

"The project is conceived as a state level project".

(8.253)

Note here again the stress on 'contributions from members' and the vague mention of 'other sources', which takes abundant care not to require the Central Government to commit any allocations for the area-based schemes!

EMPLOYMENT AND LAND

However, the Commission had Report dwelt on two important issues - access to employment/relief and land assets -, which deserve to be noted.

"The need to provide some form of public assistance to meet the distressing consequences of unemployment has become more urgent after globalisation. The only way to mitigate such stress or insure against such exposures, will be to provide at least a modicum of support that will enable the victim to face the rigours of unemployment during the period of transition". (8.273)

"Effort to implement a National Employment Assurance Scheme is of considerable importance. Such a Scheme would not be unfeasible and should be given a fair trial". (8.292)

"We feel that it is the responsibility of the State to provide a basic level of subsistence by an appropriate social security measure to those who have no employment and no source of income. The Central Government should consider introducing a National Scheme of Unemployment Relief to the unemployed persons subject to a means test. (Para 8.294)

But here is a caveat: "The unemployment scheme should be financed by a tripartite contribution to be determined actuarially". (8.177)

The concept of 'tripartite contribution' in this regard has not been explained.

"Land is critical for rural people. Institutions and policy reforms are needed to give better access and secure rights to all the critical assets that are unevenly distributed". (8.296)

The Study Group recalled that while announcing the new economic policy in 1991, the then Finance Minister had given an assurance that a social safety net would be created to protect those who would be affected by the new policy. No such social safety net has been created yet. Even after all the phrase mongering in the SNCL report, social security will remain a mere pipe dream.

(Note: The numbers in brackets refer to the relevant SNCL Report paragraphs)

SECOND NATIONAL COMMISSION ON LABOUR

SOME MORE HIGHLIGHTS

ON EMPLOYMENT AND DOWNSIZING

"As on June 2000, there were 958 Employment Exchanges in the country and the job seekers registered with these exchanges were 406.98 lakhs. Between January - June 2000, 26.64 lakh were registered for new jobs, while Employment Exchanges were able to provide jobs to only 80, 0000 persons' (12.69)

"During the last few years there has been considerable talk of downsizing either through voluntary retirement schemes or through retrenchment. In public sector Banks 99,452 have opted for VRS. This accounts for 11 % of its staff. Staff accounts for 65-70 % of total costs in public sector banks. National Textile Mills has introduced VRS in six units in Tamilnadu. During the last one-year, 15,000 jobs have been cut between March 2000 and June 2001" (12.72)

"About 1200 employees of the Taj Group of Hotels have opted for VRS. Oberoi and Welcome Group of Hotels have downsized by about 1800. ITDC may off load another 1500 after privatisation. Automobile companies are downsizing in order to remain competitive. Telco got downsized by 9,375 workers, Bajaj Auto by 4,785 workers and Hindustan Motors by 1500 jobs. Escorts, Daewoo India, LML Ltd and Maruti Udyog have all cut the jobs. The software sector too is feeling the impact of the slow down. Indian Railways are the world's second largest transport system. Not only will there be no recruitment in the Railways but it is considering proposals to cut 30,000 jobs every year. **This is only a glimpse of the grave situation (and not a complete list)**". (emphasis added - 12.73)

"Casual workers are increasing in both the urban and rural sectors". (12.89)

ON WAGES AND WAGE POLICY

"Our Commission feels that the Government of India should appoint an expert committee to study the pros and cons of the national minimum wage and make suitable recommendations for construction of such a current national minimum

wage" (12.179)

"In determining such a national minimum wage, the recommendations of different committees, the 15th Session of the ILC, and the judgements of the Supreme Court should be used as guidelines" (12.180)

"It is difficult to lay down a clear-cut criterion for fixing an appropriate ratio between salaries of the top management and wages paid for the worker at the lowest rung of the ladder". (12.183)

"Our Study Group on Unorganised Labour has recommended that the minimum wage prescribed by the Fifth Pay Commission for the lowest category of Government employees (Rs/. 2400 + Rs. 2100 DA + Rs. 4500) should be the minimum wage for a worker in the unorganised sector". (12.247)

"We fully appreciate the considerations that have prompted the Study Group to make this recommendation. But **we regret that we do not find it possible to accept and endorse this suggestion**". (emphasis added - 12.248)

"We feel that we should legislate only what is capable of being put into practise". (12.250)

"Workers cannot be given minimum protection unless minimum wages prescribed and enforced in the unorganised sector". (12.262)

The above clearly demonstrate the lack of will on the part of the Commission, find solutions to the problems of the workers in the unorganised sectors, while the legislative provisions were to be dismantled to facilitate 'flexible labour market'. It reflects the dual standards adopted by the Commission. While it has recommended immediate steps for changing the labour laws, it has resorted to dilatory tactics on issues of urgent concern to the unorganised workers. It has justified a patronising attitude towards the highly paid executives when it has turned down the decades-long debated concept of relativity (and reducing the wage differentials) between the highly paid and the lowest paid.

In this issue we have carried extensive reports on the Second National Commission on Labour. This four page supplement (I to IV) is inserted in the middle of this issue. For continuation of the report appearing on page 14, please see page 15.

(6.121 (b)). Even today, many factories and establishments compel women to work in night shifts without providing transport, even if they are able to do so.

The Commission has been more considerate on the question of maternity benefit. It says:

"So far as the organised sector is concerned, the existing provisions for maternity benefits should be extended so as to be applicable to all women workers" (8.100).

"There are many classes and establishments where women are being employed increasingly to which the Maternity Benefit Act is not applicable. We recommend that those classes may be brought within the scope of the Act on priority basis by following the National Industrial Classification" (8.101).

"So far as women in the unorganised sector are concerned, there is undoubtedly a need for a separate legislation for providing maternity benefits. Its implementation is possible through Welfare Funds or area based Schemes" (8.102). The Commission also accepted the suggestion of the Study Group and recommended to take "immediate steps to extend the scope of the ESI Act for purposes of employment injury benefit and maternity benefit throughout the country, without waiting for the corresponding provision for medical benefits" (8.106).

The Commission recommended increase in the quantum of maternity benefit to a minimum of Rs. 2,000 (8.280). But at the same time, the Commission recommends "a policy that discourages having more children" (9.133). In practice this will mean that women will be punished for the decision on the number of children, a decision that is generally taken, not them but by their husbands and in laws.

The Commission made a welcome recommendation on the incorporation in labour legislation of a provision for crèches, irrespective of the gender of the worker, but this is to be confined only to establishments with 20 or more workers. The Study Group recommended the number to be 10.

There is also a recommendation favouring widow pension scheme and payment of children's allowance.

Our Study Group has suggested the introduction

of a National Widow Pension Scheme coupled with a training programme to help the younger ones to be self-sufficient. (8.332)

A National Scheme may be designed for the payment of children's allowance on a universal basis, subject to a means test, to persons below the poverty line. (8.340)

The united countrywide struggles of the anganwadi employees on their demands found some reflection in the Report, which recommended: "ICDS (Integrated Child Development Services) Schemes need to be redesigned to include the childcare under three. Current weakness in implementation and allocation need to be corrected. Wages, conditions of work, training and accreditation of child care workers need consideration at the policy level" (9.121). On the wages and social security of the anganwadi workers, the Commission says: "the anganwadi workers and the Balwadi workers are getting only nominal wages called honoraria. These and other similar workers are considered as part of the unorganised sector. They are entitled to minimum wages, and related social security measures, which we propose in the legislation for the unorganised workers" (7.307). But the Commission feels: "Its (the Scheme's) total dependence on the Government for funds further leads to lack of sustainability" (9.108). At present the ICDS is one of the best Schemes for poor and malnourished children and women in the rural and tribal areas and urban slums. Of late the Government is trying to withdraw from the Scheme and made several attempts to hand over the management to NGOs, Panchayats etc. The anganwadi employees throughout the country have stiffly opposed this, all these years. As a result the Government had to backtrack to some extent. This observation of the Commission will rather encourage the Government to pursue with its efforts to wriggle out of the Scheme, rendering all its other recommendations for the benefit of the anganwadi employees meaningless. The World Bank, whose dictates the Government obeys faithfully, also recommends collection of contributions from the beneficiaries, who belong to the BPL families, for improving the conditions of the anganwadi employees.

In the name of encouraging organisation of women workers, the Commission recommended: "the Government should allow widespread registration of MBOs (Membership Based Organisations) of women workers under the Trade Union Act... recognise MBOs in Export Processing Zones to protect women workers in this zone" (9.195). This is a harmful proposal, which will only lead to disruption of the trade union movement on the basis of gender. What is required today is integration of working women in to the mainstream trade union movement to effectively face the challenges posed by the policies of globalisation. Employers in many establishments today use women to bring down the wages and to scuttle

trade union movement. Once the wages are brought down or the women get organised and demand benefits like maternity benefit, crèches etc, they are often thrown out. Separate organisations for women cannot solve the problems of women workers. Men in the unorganised sector equally, if not more, need the strength of organisation to get their due rights and benefits. Misplace consideration for women workers in the form of separate MBOs, will neither help the women workers nor the workers in the unorganised sector, whose interests the Commission proclaims to safeguard.

(Note: The numbers in brackets refer to the relevant SNCL Report paragraphs)

SECOND NATIONAL COMMISSION ON LABOUR ON UNORGANISED SECTOR

The following are excerpts from the summary of conclusions and recommendations of the Second National Commission on Labour, after it elaborately studied the subject of unorganised sector, by commissioning a study group to look into it in depth.

The unorganised sector is in no way independent or exclusive sector but it dependent on the organised sector and the rest of the economy through variety of linkages such as raw material, capital, generation of employment, market facilities and so on. (7.22) Despite existence of labour laws, the workers in this sector do not get social security and other benefits for various reasons and there is hardly any trade union or institutional mechanism to fight for them. (7.23)

In the organised sector too permanent workers are getting casualised and contractualised as a consequence of new economic and industrial policies. Such workers (casual or contract) in the organised sector as well as unionised workers in the unorganised sector can be considered to be included in the unorganised sector. (7.24)

All workers who are not covered under the social security laws can be considered as part of the unorganised sector. (7.25)

The term-unorganised sector eludes definition. Its main features can be identified and the sectors and process where unorganised labour is used can be listed though not exhaustively. Apprentices, casual and contract workers, home-based

artisans, a section of self-employed persons involved in jobs such as vending, rag picking and rickshaw pulling, agricultural workers, migrant labour and those who perform manual and helper jobs come under this sector, as well as those who depend on natural resources that are open or common property. (7.26)

The official definition of the informal sector enterprises consists of directory establishments that employ between 6 and 9 persons and non-directory establishments which employ 5 persons or less and own account enterprise. (7.28)

The study group appointed by the Commission has brought out certain general characteristics of enterprises or employment in this sector such as low wages and low earnings, high percentage of employment of women, employment of family labour, child labour and migrant labour, piece-rate payments, home-based work or contractual work, seasonal or intermittent employment, lack of organisation into trade unions, casual and multiple jobs, existence of debt bondage, existence of cooperatives of self-employed workers, dependence on others for supply of raw material, less access to capital, existence of health hazards etc. (7.30)

The Annual Report of the Ministry of Labour for 1999-2000 which is based on 1991 census gives the following information about unorganised workers. Out of the total workforce of 340 million, 286 million are main workers and 28 million are marginal workers. Out of the 286 million main workers, 259 millions are in the unorganised sector. In relative terms, unorganised labour accounts for 90.6%. Out of 191 million workers engaged in agriculture, forestry, fisheries and plantations, 190 million (99.2%) are in unorganised sector. Out of 28.92 million workers in the manufacturing sector, 21.62(75%) are in the unorganised sector. In building and construction, 78% are in the unorganised sector. In trade and commerce, 98% are in the unorganised sector and in the transport, storage and communication, 61.5% are in the unorganised sector. (7.309)

Land reforms have not been implemented, in spite of reminders from many Commissions, and the manifestos of political parties. Employment opportunities are not adequate. Those in employment often do not get the minimum wages that have been guaranteed in law. Working conditions are deplorable, sometimes, inhuman. It is, therefore, necessary to construct a new legal framework and system of social security that will provide, protection and welfare to the workers in the unorganised sector.(7.383)

It is, therefore, logical and wise to enact an umbrella type of law for the unorganised sector which would guarantee a minimum of protection and welfare to all workers in the unorganised sector, and would leave it open to the Government to bring in special laws for different employments or sub-sectors if experience indicates the need for it. It will also be open to governments to repeal existing sub-sector laws or merge existing (welfare) Boards with the Boards or Rounds that we are suggesting in the Umbrella Legislation (7.384)

We have to address the question, what is the minimum that the Umbrella legislation for workers in the Unorganised Sector should ensure. There should be a policy framework that ensures the generation and protection of jobs, and access to jobs; protection against the exploitation of their poverty and lack of organisation: protection

against arbitrary or whimsical dismissals; denial of minimum wages and delay in payment of wages, etc. The system of Welfare should include access to compensation for injuries sustained while engaged in work; provident fund; medical care; pensionary benefit maternity benefits and childcare. (7.433)

The law should be capable of being implemented and monitored easily. It should, therefore, include machinery for the disposal of claims and complaints at a place that is not too distant from his place of work, with expedition. (7.434)

The system for Social Security must be such that the worker can make a commensurate contribution to the cost, consistent with as many of his needs as possible, and deliver the services as near his place. The machinery should not be cumbersome, costly, centralised, and burdened with many administrative layers and overheads. (7.435)

The labour policy set out in the five-year plans since Independence was based on the belief that the basic needs of workers for food, clothing and shelter must be satisfied. (7.438)

An important aspect of labour policy outlined in the Seventh Plan relates to the formulation of an appropriate wage policy, and provisions for the welfare and working and living conditions of unorganised labour not only in the rural sector but also in urban areas. The Eighth Plan (Chapter VII) said that improvement in the quality of labour, productivity, skills and working conditions and provision of welfare and social security measures, especially of those working in the unorganised sector was crucial for enhancement of the status of labour. The Plan laid emphasis on the enforcement of labour laws especially laws relating to unorganised labour and women and child labour. (7.441)

In looking at the need for social security in the unorganised sector and the demands on a system of social security in the unorganised sector, we have to keep certain characteristics of the sector in mind. (7.444)

A major obstacle to introducing contributory social insurance schemes for the unorganised sector is the difficulty in identifying the employer. Unlike the organised sector where steady and regular employment is more or less a given fact, unorganised sector workers need employment

security, income security and social security simultaneously. The needs of these workers often vary from those of workers in the organised sector. (7.445)

We have to see how these constraining factors can be eliminated or mitigated to extend the benefits of social security to workers in the unorganised sector. We should not lose sight of the fact that in this sector social security should have promotional and preventive aspects addressing employment and income security and converting healthcare, childcare and old age. (7.447)

The Social Security measures for the Unorganised Workers should include healthcare, maternity and early child care, provident fund benefit's family benefits, amenities benefits including housing, drinking water, sanitation, etc. compensation or employment injury, retirement and post-retirement benefits, cover in cases of loss of earning or the capacity to earn, schemes, either independent or in association with the Government, Welfare Bodies, NGOs and Social Organisations, for the up gradation of skills and the education of workers, and elimination of child labour, forced labour, and unfair labour relations and practices. (7.448)

Before going into modalities of setting up of an Unorganised Sector Workers Board it is necessary to classify the occupation in the unorganised sector. (7.457)

Minimum wages legalisations have listed certain employments/occupations. (7.458)

Industrial classification of economic activities has not been found helpful in arriving at the kind of distinct groups/classes of occupations and processes existing in the unorganised sector. (7.459)

The factors considered for classification are recruitment, payment, unionisation, casual nature, relation to child labour, family labour, migrant labour, wage and earning levels, skill levels, home-based activities, source of raw material, access to capital, nature of output, occupational hazards. (7.460)

We have classified workers in this sector on the above basis. (7.461)

National industrial classification of economic activities is on the basis of nature of economic

activity carried out in an establishment. The National Classification of Occupation 1968 bases its report on the nature of occupation. In the unorganised sector both these principles can be used but combined with other elements. (7.463)

If the classification is based on the distinction between the workers and a producer it will be more or less equivalent to distinction between the employed and the self-employed. In our analysis, no substantial group emerged as merely self-employed or employed. In almost all occupations we can find both self-employed and employed workers. (7.464)

In some cases the same person is employed in different occupations. For example a marginal farmer is working as producer, own account worker and also self-employed. Further the same person gets employed as agricultural workers/and also as construction worker. (7.466)

We believe that classification should be an on-going process. For instance if a child labour prone group exists under the board, after some time the group can be removed when sufficient improvement is reported in the incidence of child labour in that group. There should also be flexibility to accommodate newer classes and eliminate existing classes. (7.468)

We are suggesting a tentative but a comprehensive list of groups that can be useful in wage fixation and in undertaking studies to assess the undergoing changes in respective groups of industry and occupation. For the purpose of social security measures and cess collection, separate group-based consideration would be necessary. (7.469)

It is clear to us that crucial guarantees of justice lie in minimum wages, job security, safety and social security. (7.472)

To meet these crucial requirement we propose the constitution of unionised sector workers board with constituent bodies that will extend to the level of Panchayats. (7.473)

The employers employing more than 5 workers shall ensure that the workers engaged by them are registered with the board and issued identities cards by the boards and the employing less than 5 workers shall help the workers in securing in registration and identity cards. (7.474)

SECOND NATIONAL COMMISSION ON LABOUR THE NOTE OF DISSENT

The NDA Government chose to give representation only to the representatives of the BMS and INTUC on the Second National Commission on Labour, and ignored the other central trade unions. Sanjeeva Reddy (INTUC) and Hasubhai Dave (BMS) were made part-time members of the Commission, when it was set up. Sanjeeva Reddy continued to associate with the Commission till the last and fully concurred with the recommendations of the Commission, in its entirety. But, the BMS changed its nominee on the Commission mid-stream. In January 2002, Hasubhai Dave was replaced by C.K. Saji Narayanan. He, unlike the INTUC nominee, chose to dissent on certain issues, owing to "disagreement with the thought process and basic philosophy of the reforms". But, he has also signed the Commission Report, accepting its recommendations on all other matters, except those of chapter VI on Review of Labour Laws. We append a few excerpts from the Note of Dissent by C.K. Saji Narayanan.

Ravindra Varma, Commission-Chairman, who was 'deeply distressed' over the note of dissent, recorded his response thereto. He commented. "We were always aware that our recommendations had also to be contextual, and capable of being practically implemented, without detriment to the prospects of further upgradation or the interests of all sections of our people - all of whom had equal rights and duties as citizens. We felt - and we have stated it in our report that if we put contextually impractical laws in the statute book they tend to become a dead letter, honoured by being overlooked or circumvented - or become instruments that turn socially self-destructive. We have tried to keep these considerations in mind while formulating our recommendations, even while safeguarding the scope for upgrading standards of life, liberty and endeavour". He however concluded his response on a pleasant note:

"We are however very happy he (Saji Narayanan) has made it clear in his note of dissent, that he agreed with and welcomes the recommendations

we have made in the other eleven chapters in the report".

This is a significant note indeed!

EXCERPTS FROM THE NOTE OF DISSENT

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 workers' rights are at stake. Hence because of globalisation and anti-labour reforms, trade union unity is getting strengthened. In labour sector the accepted methods 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.

Nowadays 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 organised 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.

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.

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 factor 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.

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 lose 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 look 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 judgment is baseless. Because the SAIL judgment has failed to consider the realities of situation. If we adopt a different approach than one recognised by SAIL judgment, it would not be wrong as in the past, Supreme Court judgment 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. 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".

Working Hours

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.

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.

Composite bargaining agency

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.

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)

Sc. 16 Of Trade Union Act should be amended to prohibit political funds.

Check off and secret ballot (Para.26)

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.

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 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 pressurise the employer, which will not be achieved by token or symbolic strike.

Exemptions (Para. 62)

Government should not be given the arbitrary power to grant exemptions. The model legislations appended to various chapters of the report of the commission should not contain such arbitrary powers given to the Government.

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

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.

Bonus

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.
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

The purpose of brining 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. 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.

Miscellaneous

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.

System of self-certification (Para.52) is not the right method to offset the criticism of "inspector raj". 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.

A PASSING COMMENT FOR INTROSPECTION BY THE LEADERSHIP OF BMS

The note of dissent is surely a welcome relief from the otherwise disastrous recommendations of the Commission. But the dissent alone does not suffice to counter the atrocities, sought to be perpetrated on the working class through the recommendations of SNCL. More so, when it has become the dubious distinction and culture of the present Government in power to ignore all dissent, particularly from those representing the toiling classes. United action is the need of the hour. The dissent note rightly refers to the trade union unity getting strengthened. But, is it not inexplicable that the BMS leadership had talked in terms of 'raising the antenna of disagreement' to stay away from the united resistance against the anti labour policies!

CHINA AND INDIA : ECONOMY AND LABOUR

W.R.VARADA RAJAN

The employer class in India has, of late, started singing hymns and songs praising China. The Confederation of Indian Industry even sponsored a delegation of political leaders, industrialists and leaders of some non-left trade unions in the country, to visit China for an on the spot study of the situation there, during last year. Several studies had also come out with facts about the Chinese economy and the labour, which are often quoted in the media with an aroma of romanticism.

FICTICIOUS PROPAGANDA

While admitting the impressive economic growth achieved by China, the Indian business class spins a fiction as well. This is with reference to the labour laws in China. A study by Accenture, a consultant firm in Mumbai noted thus: "Labour laws are business friendly and there are no barriers to exit the business. Flexible labour laws and easy entry and exit reduce risks and aid productivity".

The recent report of the Second National Commission on Labour (SNCL), has dealt with this 'China' factor at some length. Quite a few of the representatives of the employers' organisation, who appeared before the Commission, had asserted that 'China had liberal labour laws and not rigid labour laws as in India'. The force with which such assertions were made spurred the Commission to undertake a visit to China to acquaint themselves 'more fully and authentically' with the situation in China. The SNCL report had recorded very detailed observations on what the Commission "could understand from authoritative and authentic sources about labour laws and laws that relate to industrial relations".

A cursory reading the summary of the Commission's conclusions and recommendations compelled us to extract a few of the observations here. We quote:

"We were told by all the authorities whom we met that the Central Labour Laws were applicable to the whole territory of the People's Republic of China, that there were no areas or zones or industries or enterprises that were exempted from these laws - or where any relaxation was permitted in these laws". (4.129)

"We should scotch the idea, if anyone is naïve enough to entertain it, that any entrepreneur can go to China and establish or close an enterprise without the knowledge or approval of the Government". (4.132)

CHINESE LAWS

"There are detailed "Regulations" laid down to regulate employment plans, recruitment, the signing of labour contracts with individual employees, the signing of collective contracts with Trade Unions in the enterprise, conditions for "firing," for retrenchment, responsibility to provide basic living allowance, etc., to the laid off and retrenched etc". (4.133)

The report proceeded to refer elaborately to the Shanghai Municipal Regulations on Labour and Personnel Management in Foreign Invested Enterprises to conclude: "It is clear that the law does not contemplate or permit "hire and fire". (4.163)

While the Commission noted that "Globalisation, and the consequent downsizing of its enterprises have also affected Chinese economy" (4.168), it has also listed the various Social Security Schemes in vogue in China, viz., Old Age Pension Scheme, Medical Insurance, Workers Injury Scheme, Maternity Benefits and Unemployment Insurance. (4.169)

The Commission concluded its observations in this part with this:

"Perhaps those who advised us to recommend labour laws similar to what China has, may have second thoughts after seeing the provisions in the Chinese laws that we have quoted because the kind of freedom that they thought the entrepreneur had in China is not found in the laws as they exist". (4.171)

"There is a second reason that makes it difficult for us to recommend that we adopt the laws that have been promulgated in the People's Republic of China. The basis of our State is different. The perception of freedom and fundamental rights that we have in India, in our Constitution and our Society, is different from what prevails in China". (4.172)

HOW CHINA DID IT?

But then, what enabled China super perform on the economic front, as acclaimed by everyone - from the bigwigs of the CII to the World Bank? The SNCL report throws some light on this as well. "It will be erroneous to think that 'flexible' labour laws are the main reason for China's progress. We would also like to place on record the arguments and observations that have been put forward to explain why China has made spectacular progress in globalisation and the post-globalisation scenario, as compared to the tardy progress that India has made. We state them without going into pros and cons. (4.210)

a) China followed a policy of market economy since 1978. India introduced the new economic policy only in July 1991.

b) China did not follow the standard policy prescriptions laid down by the World Bank and IMF for developing economies blindly.

c) China followed a policy of competition rather than ownership for higher productivity.

d) China did not give too much importance to balanced regional development.

e) China gave lot of importance to provide excellent infrastructure of international standard in Shanghai, Shenzhen and Guangdong provinces and attracted foreign enterprises over there.

f) Overseas Chinese have played a very important role in attracting foreign investments.

g) China followed proper sequence of reforms. China, instead of initiating reforms with foreign trade and exchange rate liberalisation, started with agriculture. Then, China introduced export orientation for Township and Village enterprises. Then, special economic zones were opened which offered foreign investors excellent infrastructure, special fiscal and financial incentives and flexible labour relations by their innovative contract system.

h) A new policy was first tried in a small region, and after gaining experience of such a policy and the difficulties encountered, this policy with modifications was introduced in a wider area.

i) The administration in China is completely decentralised. Local municipal corporations can also take a decision regarding foreign investment up to a limit. The laws are simple.

j) China allowed its companies to grow. Chinese companies are much bigger in size than Indian companies. In India, because of our different ideas of monopolies, industrial licensing, etc., Indian companies were never allowed to grow in the licence permit regime and even the largest companies in India are pigmies as compared to global players. As a result, they cannot effectively compete.

It is not merely the flexible labour laws, but because of all these factors that foreign investment is attracted to China and China has been able to achieve phenomenal progress".

Let us make one thing clear here. Except the BMS and the INTUC, all other central trade unions were denied representation on the Commission and a few of them, including the CITU, refused to cooperate with the Commission at any stage. Hence, we have quoted the SNCL report only for information.

It is also good to have a look at what the BMS representative had to say in his note of dissent. He noted: "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 other sector from labour laws, which was found to be true after our visit to Shenzhen, a Special economic zone".

COAL MINERS' STRUGGLE ACHIEVE SUCCESS

The six-lakh Coal miners all over India were preparing unitedly for a countrywide strike action from 5th to 11th August for a weeklong strike opposing denationalisation of Coal industry and other policy measures initiated by NDA Government. Ravi Shankar Prasad, Minister of State for Coal, convened a meeting of trade unions on 30th July. The conciliation proceedings were held on 30-31 July. The Minister of State for Coal had to give an assurance for detailed talks at the level of Group of Ministers pending which the denationalisation Bill would be kept in abeyance and not brought in Parliament for consideration. In view of the commitment given by the Minister of State for Coal the trade unions decided to call off the strike.

SECOND NATIONAL COMMISSION ON LABOUR ON HEALTH POLICY AND THE ESIC

The Commission Report has, in the Chapter on social security, dealt with health related issues as well. This part is in tune with the earlier changes contemplated by the Government on the basis of the Sathyam Committee report, which the trade unions had opposed. The following excerpts will testify to it:

"The National Health Policy assigns a minor role to health insurance to supplement the public services. The running of the medical services by the ESIC, parallel to the National Health Service might have been a historical necessity at the time when the ESI Scheme was introduced. The object and scope of the Scheme needs to be reviewed in the current context-when public as well as private medical services have increased". (8.103)

"It does not seem possible to extend the existing composite scheme of the ESIC to all sections of the workforce and all parts of the country in the near future. The Corporation has, to take a decision to de-link the employment injury and maternity benefits from the medical benefits, and to extend the application of the ESI Scheme for the purposes of these benefits throughout the country. Alternatively, separate social insurance schemes (read self-contributory) confining to these benefits will have to be evolved". (8.104)

"The Study Group on Social Security has strongly urged that the benefit structure of the ESI Scheme be unpacked, and provision be made for extension of the scheme for one or more benefits separately or in groups.

The Study Group further suggested that immediate steps be taken to extend the scope of the Act for purposes of employment injury benefit and maternity benefit throughout the country without waiting for the corresponding provision for medical benefits. This Commission agrees with the views of the Study Group". (8.106)

"When the constraints on extension of the ESI Scheme are removed, there would be no justification for retaining the other restrictions on the application of the Act. If necessary there may be a ceiling on wages for purposes of contributions and benefits". (8.108)

"Casual and contract workers may be covered for limited benefits at reduced rates of contribution as recommended by various committees and the ILO". (8.109)

"Exemptions may be granted from the ESI, in cases where establishments provide similar or superior benefits". "Since the ESI Scheme is a contributory scheme, the rates of contribution should be fixed on an actuarial basis, and be free from collective bargaining". (8.111)

"The Study Group has suggested a review of the

decision to impose a ceiling for purposes of reimbursement, and the level of the ceiling, and to consider the desirability of its withdrawal. The Commission agrees with this suggestion". (8.112)

"The management of the ESI scheme should be professionalised. While a tripartite body may continue to remain the general body, day-to-day administration may be entrusted to a body of experts who should constitute the governing body". (8.113)

"The ESI Scheme has provision for payment for funeral expenses. It is suggested that it should be substituted by the term emergency expenses so as to include care of the sick and the elderly members". (8.114)

"While basic health security has to be provided by the primary health care infrastructure, it may be supplemented by one or more of the various options. The ESI has an important role to play in supplementing the public medical service. It is, therefore, necessary to take all possible measures to improve its working and its expansion". (8.316)

(Note: The numbers in brackets refer to the relevant SNCL Report paragraphs)

CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS ON BASE 1982=100

State	Sr. Centre No.		Month		State	Sr. Centre No.		Month	
			May2002	June2002				May2002	June2002
Andhra Pradesh	1	Gudur	440	453	Maharastra	38	Mumbai	555	558
	2	Guntur	463	468		39	Nagpur	495	499
	3	Hyderabad	466	469		40	Nasik	508	511
	4	Visakhapatnam	466	468		41	Pune	530	531
	5	Warangal	496	496		42	Solapur	485	484
Assam	6	D.D.Tinsukia	396	395	Orissa	43	Barbil	426	430
	7	Guwahati	477	478		44	Rourkela	415	416
	8	Labac-Silchar	373	374	Punjab	45	Amritsar	413	418
	9	Mariani-Jorhat	402	402		46	Ludhiana	422	431
	10	Rangapara-Tezpur	408	409	Rajasthan	47	Ajmer	465	471
Bihar	11	Monghyr	421	420		48	Jaipur	433	435
Chhattisgarh	12	Bhillai	404	408	Tamil Nadu	49	Chennai	508	512
Gujarat	13	Ahmedabad	472	479		50	Coimbatore	471	480
	14	Bhavnagar	494	498		51	Coonoor	469	474
	15	Rajkot	442	446		52	Madurai	454	458
	16	Surat	481	487		53	Salem	461	470
	17	Vadodra	463	474	54	Tiruchirapally	507	522	
Haryana	18	Faridabad	475	480	Uttar Pradesh	55	Agra	428	434
	19	Yamunanagar	434	441		56	Ghaziabad	473	478
J & K	20	Srinagar	546	542		57	Kanpur	450	461
Jharkhand	21	Jamshedpur	421	425		58	Saharanpur	433	434
	22	Jharia	365	373		59	Varanasi	481	482
	23	Kodarma	382	386	West Bengal	60	Asansol	451	452
	24	Noamundi	400	401		61	Darjeeling	388	390
	25	Ranchi-Hatia	423	428		62	Durgapur	549	552
Karnataka	26	Bangalore	445	450		63	Haldia	577	579
	27	Belgaum	509	511		64	Howrah	541	542
	28	Hubli-Dharwar	462	469		65	Jalpaiguri	409	416
	29	Mercara	456	461		66	Kolkata	528	528
Kerala	30	Alwaye	471	479		67	Raniganj	416	410
	31	Mundakayam	457	464	Chandigarh	68	Chandigarh	505	509
	32	Quilon	459	496		69	Delhi	545	555
	33	Thiruvananthapuram	530	546	Pondicherry	70	Pondicherry	502	505
Madhya Pradesh	34	Balaghat	413	417					
	35	Bhopal	504	512					
	36	Indore	486	492					
	37	Jabalpur	460	462					
						ALL-INDIA	472	476	

ADDITIONAL SERIES OF LABOUR BUREAU

State	Centre	May 2002	June 2002
Andhra Pradesh	1 Kethgudem	464	471
Himachal Pradesh	2 Himachal Pradesh	451	454
Rajasthan	3 Bhilwara	467	467
Madhya Pradesh	4 Chhindwara	429	433
Tripura	5 Tripura	436	437
Goa	6 Goa	573	572

SECOND NATIONAL COMMISSION ON LABOUR ON PROVIDENT FUND AND PENSION SCHEMES

The SNCL Report has made recommendations on the Provident Fund, Pension Scheme and related issues in the chapter on social security. This part of the Report is again a mix of platitudes and a preconceived broad sheet of reforms, which will end up in undermining the existing measures rather than extending their scope. The following are extracts from the Report Summary:

*A law to place all the provident funds under a common regime seems to be called for. (8.115)

*The P.F. Act be made applicable to all classes of establishments, subject to such exceptions as may be considered necessary for specified reasons. (8.117)

*Regarding applicability of the P.F. Act, the Task Force on Social Security has recommended that the employment threshold should be brought down to 10 immediately, to 5 during the next 3-5 years, and to one within a short time-frame thereafter. The Commission agrees with these suggestions. (8.118)

*Our Study Group has suggested that the special dispensation granted to co-operatives is not warranted, and should be removed. We endorse this view. (8.120)

These are aimed at extending the scope of EPF coverage, hopefully!

*The Study Group constituted by us, commissioned a quick study to see whether the coverage of casual and contract labour has served the purpose for which it was intended. The study revealed that the provisions to cover persons employed on casual or on contract basis were operating largely to the disadvantage of the workers. (8.122) An alibi to deny coverage to the contract workers?

*We suggest that appropriate provisions be made in the Act to enable the Organisation to frame different schemes with different contributory and benefit packages for application to different classes of establishments, employees and persons. This is particularly necessary to make the Act applicable to self-employed people. (8.124) Here again a proposal for unpacking!

*The Commission suggests that the EPFO organise an inquiry into the working of all exempted funds by an independent agency and review the entire scheme of granting exemptions from the

provisions of the Act. (8.126)

*Considering the likely expansion of the coverage of the Schemes under the EPF act, there seems to be a greater need for decentralising the administration of the Schemes. One way to decentralise the administration is to authorise more and more employers to administer their own provident Funds, the EPFO acting as a regulatory authority. (8.128)

*It is suggested that the Act be amended so as to do away with the distinction between different classes of establishments for purposes of the rate of contribution. (8.129)

It is not clear whether the Commission favours liberal exemptions or to withdraw exemptions!

*The EPFO should streamline the procedure for tackling the defaulting employers speedily and to recover the arrears promptly. (8.130)

Note the stark indifference in the face of huge arrears, of which over 80 per cent are classified as 'not realisable'.

*We suggest that the EPFO should have its own mechanism for investment of its balances; investment patterns should be liberalised and government may consider issuing of indexed bonds for investment of PF balances. (8.132)

No recommendation on the unjustified interest rate reductions, unilaterally effected by the Government over the years.

*The Commission is of the opinion that the provision for premature withdrawal of funds should be restricted. (8.136)

*There can be no justification for permitting premature final withdrawals in case of resignation. (8.137)

Curtailment of existing provisions for exigencies suggested.

"Proposals to integrate the Payment of Gratuity Act with the Employee Deposit Linked Insurance Scheme and also to introduce an Unemployment

Insurance Scheme as part of the Scheme should be implemented soon. (8.138)

*It is desirable that an independent valuer and not the actuary who designed the Employees Pension Scheme, does three yearly or five yearly valuations. (8.147).

*All the ambiguities in the interpretation of the Employee Pension Scheme be referred to the Actuary and the Scheme be amended suitably as per his advice. (8.148)

Annual valuation was assured to take care of the demand for linkage with price-index. This is sought to be shuttled. Actuary is made the arbiter of all matters relating to the Pension Scheme.

*The Payment of Gratuity Act may be integrated with the EPF Act and converted into a social insurance scheme. (8.149)

*Integration of the Payment of Gratuity act and the EPF Act will ensure automatic extension of the Payment of Gratuity Act to all establishments to which the EPF Act applies. (8.150)

*The scope of the Payment of Gratuity act should be co-extensive with that of the EPF Act. (8.152)

*An integrated insurance scheme providing for gratuity, unemployment benefits, lay off and retrenchment compensation may be evolved, and entrusted to the EPFO for its implementation. (8.160)

*An unemployment insurance scheme could play a substantial role in coping with unacceptable levels of unemployment resulting from the implementation of the structural adjustment programmes and other economic reforms. (8.175)

*The scheme should preferably be implemented through the EPFO organisation and be applicable to all establishments and employees to which the EPF Act is currently applicable. (8.176)

The EPF Organisation is to be given a larger role. But, how such integration and co-extensive arrangement will be brought about, what will be the financial commitment that would devolve on the employers and the Government has been left delightfully vague.

*The Insurance Companies be required to develop two or more plans providing coverage for the major risks faced by people leaving it to individuals to choose from among them according to their capacity. (8.242)

*The IRDA has decreed that every insurance organisation must provide social insurance cover to a prescribed number of persons belonging to the weaker sections in the unorganised sector every year. Our Study Group has suggested that a separate organisation be set up to administer these schemes, and the insurance companies licensed by the IRDA be asked to make appropriate contributions to this organisation. (8.244)

*The cost of subsidy should be augmented by earmarking a part of service tax being levied on insurance business. (8.246)

Though the IRDA claim to be the Pension Regulator is not accepted, the basic prescription of pension reforms of the IRDA, which is based on a) individual retirement accounts and b) diverting pension funds to stock market are very much in place!

AIRCRAFT ACQUISITION: SURRENDER TO U.S. PRESSURE

The BJP led Govt of India to facilitate their evil design to sell out the Indian Airlines and Air India are holing up the long pending acquisitions of new aircrafts by Indian Airlines and Air India for revamping and strengthening the two public sector companies. There are political reasons too. The Indian Govt is being pressurised by the US Govt and the Boeing company lobby not to purchase Airbus (as decided by the Board of both Air India and Indian Airlines) and the Vajpayee Govt is succumbing to the pressure. Sections of the press have reported that no less than the Cabinet Committee on Security has stepped in with a directive that all Government orders should take into account India's geo-political and security interests, clearly suggesting that placing orders with Airbus would upset the USA and implying that this would go against India's (?) security interests.

The CITU secretariat, while condemning such slavish approach of the Vajpayee Govt, demanded an immediate reversal of this political directive of the CCS and called for the IA/AI aircraft acquisition to proceed on merits and in a manner to advance Indian rather than American interests.