



REPORT OF THE NATIONAL COMMISSION ON LABOUR

**UNITE!
REPULSE ATTACKS!
DEFEND RIGHTS!**

A CITU PUBLICATION

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FOREWORD

The Report of the Second National Commission on Labour generated a great deal of debate all over the country. The employers and the Government are extremely keen to get the recommendations implemented without any delay. The trade unions are coming together to oppose these anti-working class recommendations, which hit at the very root of the trade union movement.

Despite some paragraphs here and there showing up sympathy towards the conditions of the workings class, the major thrust of the report is an affront to the working class. Whatever rights the trade union movement has achieved, through years of bitter struggle, are sought to be snatched away to suit the interests of the capitalist class, both Indian and foreign.

Even if all the members of the Commission had been from the World Bank, IMF and the WTO, they would not have prepared a better report to suit the interests of the monopoly capital and the MNCs. The Report has thus fulfilled all the requirements of these globalisation agencies. The terms of reference of the Commission had underlined the outcome of the Report.

The CITU decided to boycott the Commission, since it was clear about the eventual outcome of the Report. The CITU and others who boycotted the Commission have been proved correct in their assessment.

We cannot but deeply regret the stand of the INTUC, which has signed this anti-working class Report. The representative of the INTUC, Sanjeeva Reddy, should have thought twice before subscribing his signature to the Report.

The BMS representative has, no doubt, recorded a note of dissent to the recommendations regarding the labour laws. It would have been much better if both the BMS and INTUC had submitted a joint note of dissent.

The Ministry of Labour tried to complete the discussion on the Report in a hurry and make a show of consultation in the 38th session of the Indian Labour Conference held on September 28-29, 2002. However, due to the firm stand taken by the central trade unions, the Government was forced to defer any decision

and to agree to have separate in-depth discussion on the Report at a later date.

Union Labour Minister Sahib Singh Verma has already announced that he would submit an action taken report on the Commission recommendations in the next session of Parliament slated to commence from 18th November 2002. It only indicates the hurry with which the NDA Government is trying to go ahead with the globalisation policy to attack the trade union and democratic rights of the working class.

This publication analyses the recommendations of the Second National Labour Commission and exposes its real face to the working class of India. If all the recommendations are allowed to be implemented, it will put the trade union movement in straight jacket and onerous working and living conditions will be imposed on the working class. Their social security benefits would be drastically curtailed and right of hire and fire will be given on a platter to the employers in India.

This publication has, therefore, clearly emphasised the need for countrywide struggles against these recommendations. It will be a weapon to educate the working class about the detrimental character of the Commission recommendations and create awareness among the workers. If all the trade unions organise a powerful nationwide campaign and struggle, it is possible to stall the implementation of these retrograde recommendations and preserve the gains of the trade union movement.

A team of the CITU Secretaries at the centre comprising W.R. Varada Rajan, Tapan Sen and K. Hemalata had authored this publication. They have made tireless efforts to study the recommendations in depth and expose its vicious character before the working class.

The CITU is confident that the working class of India will welcome this effort, which will help to unleash a powerful countrywide campaign and struggle.

M.K. Pandhe
General Secretary
Centre of Indian Trade Unions

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1. THE BACKDROP

On 11th January 1999, the then Union Labour Minister, Satya Narayan Jatia, in an abrupt move, announced the decision of the Government of India to set up the Second National Commission on Labour.

While making the announcement, the Labour Minister stated: "the main focus of the National Commission on Labour would be to suggest rationalisation of the existing laws so as to make them more **relevant and appropriate in the changing context of globalisation and opening up of the Indian economy**". (*Emphasis added*) The Commission was also to suggest an Umbrella legislation to ensure a minimum level of protection to the workers in the unorganised sector.

NO CONSULTATIONS

The decision to constitute the Second National Commission on Labour was announced by the Government without any consultation or discussion with the Central Trade Unions. The CITU, at that time itself, pointed out that the move was aimed at ushering in a deregulated labour market and urged that the Government should hold *de novo* consultations with the central trade unions on the composition and terms of reference of the Commission. The Standing Labour Committee, which met on 6th February 1999, also suggested that the composition and terms of reference of the Commission should be finalised in consultation with the employers' and workers' organisations.

But, the Ministry of Labour preferred to call for the views of the trade unions and employers' organisations by way of correspondence, instead of holding a consultative meeting.

The CITU, AITUC, HMS and INTUC had communicated their views in this regard in a joint letter dated 15th March 1999. The letter suggested the names of a few eminent Judges, who had dealt with the issues of labour with a positive outlook, for consideration for the appointment as Chairman of the Commission. It also listed the pressing problems confronted by Indian labour for broad basing the terms of reference of the Commission. The Government was also urged to call a meeting to complete the process of consultations, before a final decision was taken in the matter. The Government neither convened a meeting nor responded to the suggestions made by the central trade unions. With the dissolution of the Lok Sabha and the general elections in 1999, the matter did not proceed further at that stage.

COMMISSION APPOINTED

Immediately after the return of the Vajpayee Government to power, the NDA Government announced the appointment of the Second National Commission on Labour on the 15th October 1999. Ravindra Varma, a former Minister of Labour in the Janata Party Government of 1977 led by Morarji Desai, was appointed as the Chairman and the only full-time member-secretary of the Commission was a person who formerly served the Maratha Chamber of Commerce, an organisation of the employers. Only the BMS and INTUC were given representation in the Commission and all the left trade unions were deliberately kept out of the Commission. The Chairman of the Commission was also the author of the infamous Industrial Relations Bill of 1978, which was unanimously opposed by all the central trade unions of the country and had to be abandoned in the face of united resistance thereto.

The terms of reference of the Second National Commission on Labour were the same as it was announced during January 1999 viz.

“(a) To suggest rationalisation of existing laws relating to labour in the organised sector; and

(b) To suggest an “umbrella legislation for ensuring a minimum level of protection to the workers in the unorganised sector.”

More importantly, it was suggested that the Commission, while developing the framework for its recommendations may take into account the “Follow up implications of the recommendations made by the Commission set up in May 1998 for review of various administrative laws governing industry and the emerging economic environment involving, *inter alia*, globalisation of economy and liberalisation of trade and industry and the need for bringing the existing laws in tune with the future labour market needs and demands.”(Emphasis added)

APPREHENSIONS VOICED

Resenting the unilateral decision of the Government of India in appointing the Second National Commission on Labour, the CITU, AICCTU, AITUC, TUCC, UTUC and UTUC-LS decided not to cooperate with the Commission. In a joint letter addressed to the Labour Minister, the unions pointed out that the composition of the Commission did not create any confidence among the workers that their mounting problems could be considered to their benefit. They took exception to the terms of reference, which were in conformity with the employers' demands for deregulation of labour legislations commensurate with the retrograde globalised economy, giving the employers a free hand to deal with labour.

The worst apprehensions voiced by the CITU and other central trade unions have in fact been confirmed by the Report of the Second National Commission on Labour.

2. THE DOTTED LINES...

The framework for the recommendations to be made by the Second National Commission on Labour were already developed by several committees, task forces *et al.*

At the time of introduction of the economic reforms policies during 1991, the then Narasimha Rao Government had promised the employer class that they would introduce “exit policy” legislation. This was to cater to their orchestrated plea for freedom to exit business without any restrictions and for liberty to throw out workers at their sweet will. But, as the working class rallied together to vehemently oppose the very reforms measures, through countrywide strike actions, this clamour for “exit policy” had to take a back seat.

But, the employer class presented their demand under a new nomenclature viz. “labour market reforms” and the entire reforms lobby inside and outside the country mounted pressures on the Government of India to deregulate the labour market.

The NDA Government, heeding to the demand of the employer class, went about setting up one panel after another, to draw up a blue print for the “labour market reforms”. We recount in brief, what these panels had proposed.

□ COMMISSION ON ADMINISTRATIVE LAWS

The Commission on administrative laws governing the industry, set up in May 1998, submitted its report on 30th September 1998. Its recommendations, which were to be taken into account by the Second National Commission on Labour, had laid down as follows:

“... Some of the important issues to be decided urgently in the context of amendments to this Act (The Industrial Disputes Act) would be the concept of lock-outs and strikes, the definition of industry and workman, the establishment of grievance redressal machinery, and prior approval by government for lay off, retrenchment and closure... There is considerable demand from both public and private establishments and Central Government Departments for amending the existing provisions of the Contract Labour (Regulation & Abolition) Act, 1970... **The Commission would urge the Labour Ministry to bring forward these amendments as soon as possible in order to reduce or relax the present legal regime for engagement of contract labour in all the non-core peripheral activities of various departments and establishments... there is even greater need of permitting the engagement of contract labour....”**

☐ **TASK FORCE ON TRADE & INDUSTRY**

The Task Force on Trade and Industry, appointed by the Prime Minister comprising representatives of big business houses had constituted a Subject Group on Administrative and Legal Simplifications with Ratan Tata, Nusli Wadia, P.K. Mittal as Members and Kumar Mangalam Birla as Convener, on 18th September, 2000. Their recommendations were as under:

“Labour Issues: Labour is an area of concern and growing importance to the Indian industry. Key issues pertaining to contract labour, right-sizing manpower and closure of business are addressed... **The Government must seriously consider amending the Contract Labour Act, emphasising more on regulation than abolishing contract labour, particularly in areas, which are unrelated to the core activities of an establishment. There should be provisions to allow industry to shed the extra manpower, upon payment of certain determinable compensation. The provisions of Chapter V of the Industrial Disputes Act should be made applicable only to industrial units employing more than 1000 people”.**

□ PRIME MINISTER'S ECONOMIC ADVISORY COUNCIL

Vajpayee had also set up the Prime Minister's Economic Advisory Council comprising I.G. Patel, M. Narasimham, Bimal Jalan, Montek Singh Ahluwalia, Amaresh Bagchi, Kirit Parikh, Ashok Gulati, Rakesh Mohan, Jagdish Shettigar as members and N.K. Singh as Member Secretary, to advise him on the economic governance of the country. On the labour front the following, inter alia, were some of the 'recommendations' of the Prime Minister's Economic Advisory Council:

"The requirement of prior Government permission (for retrenchment and closure) should be abolished...continuing with the present situation will hurt our ability to grow rapidly ... If this is not possible then the floor at which the present provisions apply should be raised to cover only larger establishments employing 1000 or more workmen. ... In any case, all units in EPZs as well as 100% EOUs, should be completely exempted from these requirements and allowed to retrench or close down a unit subject to enhanced payment of compensation. A second area where reforms are urgently needed relates to contract labour.... It is recommended that the Contract Labour Act should be replaced by an Act, which recognises that outsourcing of services is a normal activity".

□ BUDGET 2001-2002

Next in the line was the budget for the year 2001-2002, presented by the then Finance Minister during February 2001. In the name of addressing the problems of so called rigidities in our labour laws, Yashwanth Sinha, in his budget speech, proposed to make the provisions of Chapter V B of the Industrial Disputes Act 1947, not applicable to establishments employing up to 1000 workers, as demanded by the employers. He further proposed to hike the separation compensation from 15 days wages to 45 days wages for every completed year of service and termed this as a 'deterrent'. He also proposed to amend the Contract Labour legislation facilitating outsourcing of activities without any restriction as well as offering of contract

appointment. He further announced that the amended law "would not differentiate between core and non-core activities".

□ TASK FORCE ON EMPLOYMENT

The Planning Commission on its part had set up in 1999, a Task Force on Employment Opportunities, under the chairmanship of Montek Singh Ahluwalia, a member of the Planning Commission and a former Finance Secretary. This Task Force presented its report in June 2001. On reform of labour laws, this report also recommended the following changes:

"Abolish the requirement of prior permission of government for retrenchment, lay- offs or closure by deleting Chapter VB of the Industrial Disputes Act. The provisions regarding dismissal after due process need to be streamlined. Section 11 A of the Industrial Disputes Act which allows labour courts, Industrial Tribunals to impose the state in matters that are best left to established internal processes (to be abolished). A system of short-term employment contracts should be introduced under which workers can be hired on contract basis and can be terminated at the end of the contract period without scope for dispute.

"Section 9 A of the Industrial Disputes Act provides that the job content and the area and nature of work of an employee cannot be changed without giving notice to the employees of at least 21 days. In practice this provision actually requires the consent of each employee. It is necessary to amend the Act to introduce much greater flexibility in this area.

"Introduce the system of "strike ballot" whereby a strike can be called only if it is supported by a qualifying majority of the workers.

"The Contract Labour (Regulation and Abolition) act needs to be suitably amended to allow all peripheral activities to be freely outsourced".

It may be observed that all the above series of documents had concentrated on introducing far reaching changes in labour laws, liquidating whatever protective provisions existing at present in favour of workers, to facilitate 'hire and fire' by employers. There may be marginal variations in specific recommendations but the main thrust remained the same.

These were the dotted lines on which the Ravindra Varma Commission on labour was called upon to make its recommendations.

A somewhat elaborate reference to these previous recommendations on the subject by several other bodies had been made here only to establish the blatant truth that **the Second National Commission on Labour was set up only to accomplish a pre-set, pre-meditated and pre-decided task.**

3. THE COMMISSIONS BEFORE AND NOW

It is not for the first time that in our country the exercise of appointing a Commission on labour matters had been made.

During the pre independence days itself, the British Government appointed the first Royal Commission on Labour in 1928. That Commission was headed by Whitley. Incidentally, the All India Trade Union Congress boycotted that Commission in the then prevailing anti-imperialist mood in the country.

In independent India, the Government of India appointed the First National Commission on Labour under the chairmanship of Justice Gajendra Gadkar. The Commission was appointed on the 24th December 1966. It presented its report in 1969.

HOLLOW CLAIM OF SIMILARITY

The Report of Ravindra Varma Commission has claimed: "A look at the Terms of Reference that have been set before our Commission, and the terms with which the two earlier Commissions, the Royal Commission on Labour in 1928, and the National Commission on Labour headed by Justice Gajendra Gadkar, were appointed, shows a high degree of similarity, as far as the core area of enquiry is concerned". This, in itself, is a hallow claim.

The Royal Commission, known as the Whitley Commission, was asked to report and make recommendations on **"the existing conditions of labour in industrial undertakings and plantations in British India, on the health, efficiency and standard of living of the workers, and on the relations between employers and employed."**

The First National Commission on Labour, referred to as the

Gajendra Gadkar Commission, had more comprehensive and elaborate terms of reference. The Commission was specifically required "to review the changes in conditions of labour; to review the existing legislative and other provisions intended to protect the interest of labour, to assess their working and to **advise how far these provisions serve to implement the Directive Principles of State Policy in the Constitution on labour matters and the national objectives of establishing a socialist society and achieving planned economic development.**"

But, the Ravindra Varma Commission was mandated to study the conditions not of the workers but of the economic environment in post-globalisation and post liberalisation situation. It was asked to recommend changes in labour laws not to protect labour but to bring them in tune with the future labour market needs and demands; naturally those of employers. Is there any similarity in the core area of investigation by this Commission and the earlier Commissions, as claimed by the Ravindra Varma Commission Report?

It is another matter how far the earlier Commissions did justice to either their terms of reference or to the cause of Indian labour. This is not the occasion to take a view on that.

'WHAT HAPPENED TO THE FIRST COMMISSION?'

The CITU and other unions in their suggestions on the possible terms of reference to the present Commission, conveyed before it was appointed, had included as the first item: "To comprehensively review the implementation of the recommendations of the First National Commission on Labour". The NDA Government did, obviously, not accept this.

Interestingly, the Ravindra Varma Commission Report reads:

"We have to record that almost in all the cities where we met representatives of trade unions and industrialists, labour lawyers and academicians, **we were asked about the status of the recommendations of the Gajendra Gadkar Commission -**

how many of them had been accepted by the Government, how many of the recommendations accepted had been implemented, and why the other recommendations were rejected or not acted upon. **We ourselves made efforts with the Ministry of Labour to gather information on these questions** that were raised before us and that arose in our minds as well. **But we did not receive any information** that could help us, either to understand the position or to answer questions that were put to us by witnesses". Indeed, a pathetic admission!

A REVELATION AND WARNING

The Report goes ahead and records: "There were some witnesses who wanted to know why we thought a new enquiry would help when the Report of the earlier enquiry was yet to receive full attention".

How did the present Commission answer this question? The Commission noted in the introductory stage itself of its voluminous Report that "Our answer was that the circumstances that have come into being after **globalisation and its visible impact on Indian industry, the working class and the economy**, and the need that the Government itself was experiencing for immediate steps to deal with these new problems, **would compel due and expeditious consideration of the recommendations that we may make in our Report**".

This is revealing. The recommendations of earlier Commissions could be ignored by the Governments of the day, as they related to improving the conditions of labour. **But, the recommendations of the present Commission would meet a different dispensation, as they fulfil the requirements of the employers, both domestic and foreign, and the government post-globalisation. That is why the Ravindra Varma Commission has been so certain about the positive consideration by the Government of its recommendations.** This, no doubt, is a real warning to the working class!

4. AN OVERVIEW OF THE REPORT

The Commission headed by Ravindra Varma completed its job and presented its report to the Prime Minister on 29th June, 2002. The Report, which is a voluminous one running over 1750 pages has been made public after a full seventy days of its presentation. The central trade unions received copy of the report only by first week of September 2002. In presenting an overview of the Report, it can be stated that it comprises the recommendations of the National Commission not 'ON LABOUR' but "AGAINST LABOUR."

A DERISIVE COMMENT

The Commission, in its opening paragraphs, 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 expressed by the Commission chairman to the Prime Minister over the Finance Minister's announcement in specifics on Labour Law amendments in his Budget speech. **In fact, the Commission while making specific recommendation on change of labour laws followed more or less the lines dotted by the Finance Minister's announcement; rather it went far ahead on many issues, 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 free 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 and falsehoods.

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' Education.

The Report of the Commission has 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 any 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's observations and findings on the situation in China when the Commission visited China for the specific purpose. 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 an 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 security, 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 remains just a non-starter.

The Commission has chosen to accept the inevitability of the adverse effects on the living conditions of the workers and the people, as also of the economy, without question. It has fallen a victim of the **TINA** (There Is No Alternative) syndrome and gone ahead to fit the working class of the country in the window

of "labour market reforms" in favour of the employers. It is an irony that the capital market reforms as well as labour market reforms will only benefit the business class, corporates and multi national corporations and ruin the lives of the workers and the common people. The trade union movement cannot go along with such a dispensation and will reject the anti-labour recommendations of the Commission Report.

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 irrespective of size of employment**
- **Freedom to close down 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 and illegalising strikes.**

- Punitive prescriptions for illegal strike
- 'Go Slow', 'Work to Rule' termed misconduct
- A façade of equating lock out to strike
- Stripping majority of the trade unions in the country, which could not get recognition by the employers, off almost all their rights
- Curtailment of holidays
- '8 hour work day' concept tampered with
- Separate law for small industries employing below 20
- 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.

It is significant that of the two representatives of the trade unions, who were members of the Commission, one had recoded his dissent on almost all the recommendations in the chapter on "review of Labour Laws" in the Commission Report.

5. CHANGES PROPOSED IN LABOUR LAWS

The report of the Commission in its opening chapter on "Approach to Review of Labour Laws" commences with an honest admission. It says: "Firstly, it is an overstatement to say that labour, or labour laws are the only cause of our unsatisfactory economic development, or our inability to attract foreign investment ". **There the honesty ends and treachery begins.**

TREACHEROUS RECOMMENDATIONS

The Commission's recommendations in respect of changes 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 types of jobs.

The recommendations have also been categorical to rule out secret ballot system for recognition of trade unions and also to virtually ban strikes. The Commission has dealt strikes and lockouts by putting them at par in determining the parameters of illegality along with the penalties. This only reveals a perverted mindset. In short, the recommendations of the Commission on review of Labour 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 and to ignore or neglect them altogether.

HIRE AND FIRE MADE EASY

Existing provisions of the Industrial Disputes Act on lay-off and retrenchment apply to an industrial establishment in which not less than 100 workmen are employed. Section 25-M stipulates that 'no workman shall be laid off except with the previous permission of such authority as may be specified by the appropriate Government'. Section 25N of the Act stipulates a three months, notice to be given and prior permission to be obtained by the employer before affecting any retrenchment. Section 25N(2) provides for the appropriate Government or authority to grant or refuse, for reasons to be recorded in writing, the permission for retrenchment, "after making such enquiry as such Government or authority thinks fit". Similar provisions in respect of closure are contained in Section 25-O of the Act.

First, the Commission seeks to confer the right to lay off and retrenchment to the employers with no fetters, whatsoever. It has recommended: **"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 months notice or notice pay in lieu of notice, in case of retrenchment"**. (6.88)

In respect of closure, the recommendation of the Commission seeks to relieve the employers from their obligation of obtaining prior permission from the Government for closing down establishments employing up to 300 workers (existing limit is 100 workers). (6.88)

The Finance Minister in his 2001 Budget speech had indicated the cut off limit in chapter V B at 1000 workers. It may appear that the Commission, at least in respect of its recommendation regarding closure, has expressed its disagreement with the then Finance Minister's prescriptions. But that is simply an eyewash. In the subsequent clause it has been clearly mentioned that the concerned employer (in establishments employing 300 or more workers) is required to make application for permission for closure 90 days before the intended date of closure and **"If permission is not granted by the appropriate Govt within**

60 days of the receipt of the application, the permission will be deemed to have been granted.”(6.91)

The language of the above recommendation has made submission of application for permission just a formality, with no mention of provision for refusal to grant permission for closure. **Is the Commission proposing a short cut for automatic approval of closure just through submission of an application?**

PITTANCE OF COMPENSATION

The Commission has also made a high sounding recommendation that every employer will have to ensure, before a worker is retrenched or the establishment is closed, irrespective of the employment size of the establishment, that all dues to the workers, be it arrears of wages earned, compensation amount to be paid for retrenchment or closure or any other amount due to the worker, are first settled as a precondition to retrenchment or closure. (6.88) The employers have already termed this as impractical provision. This is just a cosmetic relief and nothing else.

The Commission proposed a varying rate-structure of retrenchment compensation for the affected workers. The Commission report provides: “the Commission would like to recommend the compensation per completed year of service at the rate of 30 days on account of closure in case of sick industry which has continuously run into losses for the last 3 financial years or has filed an application for bankruptcy or winding up, and other non-profit making bodies like charitable institutions etc. and at the rate of 45 days for retrenchment by such sick industry or body where retrenchment is done with a view to becoming viable. It would also recommend higher retrenchment compensation at the rate of 60 days of wages and similarly a higher rate of compensation for closure at the rate of 45 days wages for every completed year of service for profit making organisations. For establishments employing less than 100 workers half of the compensation mentioned above in terms of number of days wages may be prescribed”. (6.88)

This is touted as “adequate compensation package” for the workers in lieu of the bonanza of absolute liberty for the employers in respect of lay-off, retrenchment and closure without hurdles. This was also described, in a shameless manner, as “the best, more honest and equitable course”. In the midst of terminal recessionary situation in the economy and a “sharply declining interest rate regime” can this compensate the loss of permanent jobs and a regular flow of income?

Moreover, various employers’ organisations have already started a hue and cry against this part of the recommendation on compensation, which, according to them is too high (?). It is doubtful whether at all the Government will accept this part of the recommendation, or even if accepts, will ensure enforcement of the same.

Implementation of any labour law, particularly beneficial part of it, depends mostly as to how the workers could assert through organised action. The Commission has made atrocious recommendations regarding curtailment of labour rights, and also on rapid casualisation of workforce, all intended to marginalise the trade union movement in a big way. Therefore, all such recommendations on compensation are destined to remain as mere showpieces in the statute book.

SEPARATE LAW FOR SMALL UNITS

The Commission recommended that all establishments employing less than 20 workers would be taken out of the purview of the general labour laws.

An “indicative draft” of a separate legislation titled “The Small Enterprises (Employment Relations) Act 2002” has also been annexed to the Report.

The draft Act provides that nothing in the following laws will apply to these establishments: i) The Factories Act, 1948 (except those covered by Sec.8); ii) The Industrial Disputes Act, 1947; iii) The Industrial Employment (SO) Act, 1946; iv) The Minimum Wages Act, 1948; v) The Payment of Wages Act, 1936; vi) The

Payment of Bonus Act, 1965; vii) The EPF& Misc. Provisions Act 1952; viii) The Employees State Insurance Act; ix) The Maternity Benefit Act; x) The Workmen's Compensation Act; xi) The Equal Remuneration Act, 1976; xii) The Contract Labour (R&A) Act, 1972; xiii) The Interstate Migrant Workmen (RE&CS) Act 1979; xiv) The Shops & Establishments Act; xv) The Mines Act 1951 (except the mines where work is being carried on below ground).

The proposed legislation will also confer the employers of these establishments absolute right to lay-off and retrench workers or close down establishments at their will, by paying a compensation of 20 days' wage per year of service. Those serving for less than five years will be entitled for 15 days' wage per year of service as compensation. They have also been given freedom to lay-off workers any time, and "if the lay-off continues for more than 45 days, it shall be lawful for the employers to retrench the workers."

Besides, the Law on Wages prescribed by the Commission has kept these "small enterprises employing below 20" out of its coverage. The proposed law for the small establishments has provided that "The State Government may fix the minimum rates of wages in respect of the enterprises covered under this Act". This clearly means that the minimum wages in the Small Enterprises will be different from and well below the "National Floor Level Minimum wages" as conceived by the Law on Wages, and which, as per the wisdom and also the "strong belief" of the Commission "should be a reasonable wage keeping in view the needs of the workers and his/her family". Can hypocrisy go farther?

Further, the Commission presumes that the small enterprises employing less than 19 workers will all be 'unorganised sector'. Such a presumption is incorrect. Many highly mechanised/computerised firms operating with less than 20 workers, particularly in Information Technology Sector are having both investment and turnover in terms of several crores of rupees. Those firms definitely do not deserve the "special dispensation" the Commission has conceived for the small enterprises.

"Self certification" by the employer regarding compliance of the Act has been made the lifeline of the enforcement mechanism of the Act. The fate of any complaint regarding violation of the Act by the workers or their trade unions will wholly depend on the intention or will, good or bad, of the Chief Inspector, who has been given all the powers of a civil court. The provisions are so framed that "No court shall take cognisance of any offence under this Act unless it is filed by the Dy Chief Inspector or the Inspector appointed under this Act". Complaint by trade unions will have no cognisance at all! The Commission has thus made foolproof arrangement to take away the rights of the trade unions and workers. Employers are guaranteed the freedom of violation of labour rights, if only they can manage to keep the number of workers below 20! Faithful indeed!

WHOLESALE CONTRACTORISATION

The Commission gives the very concept of 'permanent or perennial work' as envisaged in the existing Contract Labour (Regulation & Abolition) Act a complete go bye.

The Report reads: "The Commission is conscious of the fact that in the fast changing economic scenario and changes in technology and management, which are entailed in meeting current challenges, **there cannot be a fixed number of posts in any organisation for all time to come. Organisations must have the flexibility to adjust the number of their workforce based on economic efficiency.** ... We would, therefore, recommend that contract labour should not be engaged for core production/services activities. However, for sporadic seasonal demand, the employer may engage temporary labour for core production/ service activity. ... The contract labour will, however, be remunerated at the rate of a regular worker engaged in the same organisation doing work of a comparable nature or if such worker does not exist in the organisation, at the lowest salary of a worker in a comparable grade, i.e. unskilled, semiskilled or skilled". (6.109)

The Commission has deliberately ignored the fact that most of those permanent perennial jobs, termed as peripherals, are

inseparably linked with the 'core production/services activities'. And the Commission has recommended deployment of contract labour in those permanent/perennial jobs in total departure from the provisions of the existing statute.

But even the 'core' jobs as defined by the Commission are not spared from the contract system. By providing a loophole in the name of 'sporadic and seasonal demand' - and obviously, the right to decide on such sporadic situation or seasonality would vest only with the employers - a long rope is given to them to deploy contract workers even in so called core jobs, whenever they like. By this recommendation, employers have a free hand to employ, on the same jobs and under the same roof, two sets of workers with different service conditions, wages, job security etc. This would, besides creating a situation of unhealthy discrimination in the workplace, help the employers to exert tremendous pressure on worker's earned rights and benefits putting them in a disadvantageous position.

GROUND LEVEL SITUATION

It is to be remembered that even when the Contract Workers (Regulation and Abolition) Act is in place, it is blatantly flouted. Contract workers are being deployed in permanent/perennial jobs, both in public and private sector, in gross violation of the existing statute, with impunity. The Governments, both at the Centre and the States, are the biggest employers of contract workers in permanent jobs. In almost all the cases, the contract workers' wages are below the statutory minimum wages.

To cite a few examples - in Essar Steel in Gujarat almost the entire workforce engaged in steel production with sophisticated technology are reportedly deployed on contract basis. In a recently established cement plant of Larsen & Toubro, with a capacity of producing 4000 tonnes every day, the number of permanent workers is only 43, along with a few of thousands contract workers engaged closely in the production process.

All such things are completely illegal now, at least as per the existing statute. The Commission seeks to legalise that illegitimate process.

The ultimate motive is to confer right to flexible labour arrangements for the employers by allowing contract system in all jobs.

REMUNERATION OR DECEPTION?

In the matter of remuneration for the contract labour also, the Commission has resorted to a deceptive cover-up exercise. It has recommended: "The contract labour will, however, be remunerated at the rate of a regular worker engaged in the same organisation doing work of a comparable nature or if such worker does not exist in the organisation, at the lowest salary of a worker in a comparable grade, i.e., unskilled, semi-skilled or skilled."

This is nothing new or novel. The existing Contract Labour (R&A) Central Rules, framed under the Act, clearly stipulate under section 25, sub-section 2(v) that, "in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of job." This has just remained on paper.

Moreover, the Commission did build up its argument for allowing wholesale contractorisation on the pretext of making the enterprise competitive and economically efficient, or to facilitate minimising of the labour costs. The Commission's prescription for payment of wages to the contract workers, in line with the permanent workers of the concerned establishment, is contradicting its own arguments advanced to justify contractorisation of permanent jobs. In the existing legislative framework, the principal employer has to shoulder major obligation for ensuring proper and regular payments to contract workers. This, according to the Government, the employers and perhaps the Commission as well, is too rigid and over-protective

for the labour. In reality, most of the contract labourers, are deprived of even the statutory minimum wages. In such a background, this recommendation is only a cover up.

Legitimising 'hire and fire' and closure at will and completely liberalising deployment of contract labour or outsourcing of permanent jobs are complementary to each other. It is aimed at placing the employment relations at workplace at the mercy of the employers to facilitate unbridled exploitation.

NO TO UNIVERSALITY: TRUNCATED COVERAGE

The Commission has worked overtime to prepare the blue print of throwing a large section of workers so long covered by various labour laws and social security legislations, at least formally, out of their purview. Today, there are different provisions as to the applicability of various labour laws - some have specified number of workers, some have no such threshold limit. The Commission while admitting that **"the need for universality of labour laws appears to have a lot to commend itself"**, did just opposite while making concrete recommendations. It dismisses the concept as **"too ambitious or too impractical an approach"** and proceeds to fix a limit of 20 workers below which no labour laws in general shall apply.

The Commission also prescribes exclusion of certain category of workers like Airline Pilots etc. from the definition of "workmen". It has recommended that the Government may lay down a list of such highly paid jobs, which are presently deemed as workmen category or fix a cut off limit of remuneration, such as Rs. 25000/- p.m, beyond which employees will not be treated as ordinary "workmen". (6.19) But, when it comes to the supervisory employees, who are presently excluded from application of the I.D. Act, only if they draw wages beyond Rs. 1600/- p.m., the Commission would like all supervisory personnel irrespective of their wage/salary to be kept outside the rank of worker.(6.20), and thus out of the purview of labour laws. What a double standard!

CHANGE IN SERVICE CONDITIONS AT WILL

The Commission has conferred absolute rights on the employers to change the service conditions of the workers at their will.

Section 9-A of the I.D. Act at present provides that no employer can effect any change in the conditions of service applicable to workers without giving a notice. The matters covered under this provision are: 1) wages, including the period and mode of payment; 2) contributions to provident fund or pension fund; 3) compensatory and other allowance; 4) hours of work and rest intervals; 5) leave with wages and holidays; 6) starting, alteration or discontinuance of shift working; 7) classification by grades; 8) withdrawal of any customary concession or privilege or change in usage; 9) introduction of new rules of discipline or alteration of existing rules; 10) rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen; 11) any increase or reduction in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control). The law presently enables the workers or the trade unions to raise a dispute over any such change for which notice is required. Under Section 33 of the I.D. Act, conditions of service are to remain unchanged during pendency of conciliation proceedings related to such dispute.

The Commission has severely tampered with this basic provision. It ruled that section 9A of the Act requiring the employer to give prior notice for change in service conditions will not be applicable in respect of changes mentioned in item 11 above. The recommendation reads: "There need be no statutory obligation for the employer to give prior notice, in regard to item 11 of the 4th schedule for the purpose of increase in the workforce, as is the position now under section 9A." (CI 6.82, page 348)

It does not end here. It has practically rendered the provision of section 9A of the ID Act totally ineffective and superfluous even

in respect of rest 10 items of the 4th schedule. The Commission has explicitly stated: **“Further the commission is of the view that notice of change issued by an employer as per provisions of section 9A, should not operate as a stay order (to the proposed changes) under section 33...”** (6.82)

Thus the employers will be allowed to effect any change in the service conditions of the workers, in wages, allowances, working hours etc, as they like, just by giving the notice. The workers will have no other alternative but to go in for time-consuming litigation process for the remedy of the same.

DRASTIC CURTAILMENT OF TU RIGHTS

The Commission records a high sounding assertion: **“To begin with, a strike is the assertion of the fundamental right of the worker to withdraw co-operation from what he perceives as injustice being done to him. This is achieved by stoppage of work”**. (6.45)

The experience of the trade union movement is that not to speak of getting an injustice vacated, even to secure proper implementation of labour laws, the organised assertion by the trade union movement is needed. Even the implementation of statutory minimum wages requires a lot deal of pressure by way of organised trade union action.

The Commission has, sought to drastically curtail the rights of the workers and the trade unions in all respects - from formation of trade unions to the right to collectively represent, agitate and strike.

MOCKERY OF COLLECTIVE BARGAINING

The Commission's exercise in curtailing the trade union rights starts with an utterly perverse methodology prescribed for deciding on recognition of trade unions and the bargaining agent in an enterprise. This is of crucial import since in the Commission's scheme of things, all the unrecognised unions would be deprived of almost all their rights to represent and agitate on collective issues including strike action.

The Commission has turned down the logical and sound concept of deciding the representative capacity of trade unions by secret ballot, in situations where existence of multiple trade unions is a reality. It has recommended: "the negotiating agent should be selected for recognition on the basis of the check off system, with 66% entitling the union to be accepted as the single negotiating agent, and if no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation on the college". (6.66) It has even recommended compulsory check off system: **"The check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions"**. (6.73)

The Commission goes further to lay down 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)

The Commission has also sought to marginalise the role of trade unions, which do not pass the test of recognition through check off, for various reasons. It has recommended: "... a union which does not have at least 10% membership amongst the employees in an establishment should have no *locus standi* in that establishment. A union which has at least 10% members amongst the employees in a unit should only have the right to represent individual workers in various fora such as conciliation, arbitration or adjudication and a provision in this regard may be made in Section 36 of the Industrial Disputes Act". (6.96)

Thus the Commission seeks to strip-off the other registered unions of all their rights to represent and agitate on collective policy matters both to management and to grievance-redressal machineries. This is nothing but curbing the trade union rights of the overwhelming majority of the workers.

WORK-TO RULE, A MISCONDUCT!

The Commission has ruled: "Go slow" and "work to rule" are forms of action, which must be regarded as misconduct" liable for punitive action at the hands of employer. (6.41)

VIRTUAL BAN ON STRIKE

The Commission has been conscious and cautious to keep under limit the recognised unions also. The scheme of curtailing trade union rights as drawn by the Commission has been complete and multifaceted.

Even the recognised union also cannot call a strike unless the strike decision is endorsed by 51% workers' support through a mandatory strike ballot. The Commission conveniently ignored its own suggestions made in the context of recognition of union that "the campaign for a secret ballot disturbs the atmosphere, generates intense feeling of acrimony and rivalry and sometimes violent interludes...." (6.67). It has no qualms of conscience to prescribe a mandatory ballot in the case of strikes. There the task before the Commission was to rule out the 'secret ballot' for recognition. But here, the task before the Commission is to 'rule out' or at least make difficult 'strike action'. Both are aimed to serve the interests of the employers' class.

But even the endorsement by 51% workers in favour of a strike action may not allow the strike action to take place. In the language of the Commission itself, **"In the case of socially essential services like water supply, medical services, sanitation, electricity and transport," there cannot be any strike despite 51% strike ballot in its favour. In those sectors, in the event of a 51% ballot in favour of strike, "it should be taken that the strike has taken place and the dispute must forthwith be referred to compulsory arbitration"** (6.48). Innovative indeed!

In reality, strike has virtually been banned. In the so called socially essential services, even run with profit motive, embracing a wide range of activities and occupations, workers

would be deprived of the right to strike directly. Even in the other sectors, by debarring the unrecognised unions from calling the strike even through strike ballot, a major obstacle is sought to be placed to the workers, right to strike.

Even in the sectors which could escape the classification of socially essential services, the issuance of a notice for the strike-ballot will be followed by conciliation proceeding, adjudication and arbitration etc as prescribed by the Commission in the draft Act (Appendix V) There can be no strike while the proceeding of conciliation, adjudication and arbitration etc are pending. The whole exercise made by the Commission in this regard has prescribed such a time consuming procedures so as to make strike or for that matter any industrial action almost impossible or ineffective. Such a situation is sought to be created that almost all strikes can be declared illegal on one pretext or the other.

The Commission began by saying that "workers have a fundamental right to strike" but has ended up placing an insurmountable roadblock for the workers to exercise such a fundamental right!

STRIKE VS LOCK-OUT

Side by side, the Commission has resorted to a dubious attempt to take an impartial posture by keeping provision for declaring lockout also illegal. But the real content of such provision exposes a naive design to befool the people. According to the Commission, "An Employer may declare lock out. ...provided the decision to that effect is taken at the highest level of the management, except in case of grave threat to the establishment or management." (Appendix V). On the premises defined by the Commission, can any lockout ever be declared illegal?

The manner in which the Commission has dealt with the issues of strike and lockout clearly exposes its absolute subservience to the employers' lobby. On the one hand the right of the workers to go on strike have been practically taken away by various direct and indirect measures. on the other, even the existing

provisions and the power with the Governments, both at the Centre and States, to prohibit lock-out or to declare any lock-out illegal are to be drastically pruned, allowing the employers to resort to lock-outs freely at their will.

The same pro-employer attitude of the Commission is also reflected in the penalties prescribed for illegal strikes and lockouts. **For illegal strikes, striking workers will be penalised by three days' pay-cut for each day of strike. Besides, the concerned union sponsoring the illegal strike will be de-recognised and deregistered and office bearers of the union would be debarred from office bearership for a period of three years. The union thus de-registered will be "debarred from applying for registration or recognition for a period of two or three years".** (6.101) Whereas for an illegal lockout, (which will never be termed illegal under the dispensation proposed by the Commission), the employer has to pay three days wages to the workers affected, per day of lock-out. (Appendix V).

THRUST ON COMPULSORY ARBITRATION

In the matter of handling industrial disputes, too much emphasis has been given by the Commission on "compulsory arbitration" thereby undermining negotiation and other modes of dispute-settlement machineries viz. industrial actions and/or adjudication by tribunals and labour courts. The Commission also sought to limit the jurisdiction and power of labour court by recommending that "...if labour court comes to the conclusion that grave charges have been proved, then the court will not have the power to order reinstatement of the delinquent worker"(6.96). The other observations made by the Commission are: "...the system of arbitration to become the accepted mode of determining disputes..."(6.92); "clothing the National labour Relations Commission with the power of the Supreme Court of India" (6.94); "the jurisdiction of the Civil Courts be banned in respect of all matters for which provision is contained in relevant labour laws". (6.99) These, read with measures proposed in relation to strikes and other industrial actions, will make it amply clear that the Commission is wholly obsessed with its hidden agenda

of making the workers and their unions completely helpless at the hands of the employers. That is the way the Commission seeks to make the labour laws employer-friendly and liberalisation-friendly.

AXE ON HOLIDAYS

In an attack on the existing right of the workers to have common holidays, the Report recommends:

- The Central Government and all State Governments should have a uniform policy on holidays.
- Only 3 national holidays to be gazetted - viz. Independence Day, Republic Day and Gandhi Jayanti Day (October 2).
- Two more days may be added to be determined by each state according to its own tradition. Apart from these each person must be allowed to avail of 10 restricted holidays in the year, which he or she may be free to choose on the basis of custom, religious observances and so forth.
- 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.

Even the May Day will not be a national holiday for the workers of this country! It is not surprising as on the working hours also the Commission negates the eight-hour working day concept. It recommends: "The total number of hours per day should not be more than nine, and hours of work per week should not be more than 48. But within these limits there may be flexibility, and compensation for overtime".

NO TO INDUSTRY SPECIFIC SETTLEMENTS

While prescribing the drafts on Employment Relations Law and Law on Wages, the Commission has recommended repeal of

all industry specific legislations like that for sales Representatives, Newspaper Employees etc. The Commission has proposed that even the issues relating to job-enrichment, multi-skilling, production etc. be included in the Standing Orders defining the general terms of employment. It seeks to brush aside the fact that all those issues are situation-specific matters for bipartite or tripartite negotiation and collective bargaining.

The Commission has also undermined the industry level wage negotiations developed in various multi-unit industries like steel, coal, cement, oil, power etc., over last few decades. The Commission has recommended enterprise-based negotiation on wages and service conditions, with an ulterior motive of dismantling the apex level joint negotiating forum at the industry level. This is also aimed at disintegrating the industry-based workers' organisations and movement, to the advantage of the employers and management. It has also recommended doing away with the industry level wage-boards, echoing the prescription of the Geethakrishnan Committee to wind up the Pay-Commission.

In fine, the Commission's concrete recommendations on change of existing labour laws, particularly relating to industrial relations and service conditions are designed to facilitate absolute rights for the employers to hire and fire at will and casualise the entire workforce in phases. On the other hand, while talking tall on "fundamental rights" of the workers relating to freedom of association, strike and collective bargaining, it has actually prescribed in real terms just the opposite. An excellent handiwork of deception and hypocrisy!

6. ON SOCIAL SECURITY

In the post 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 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 a 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 while even in Sri Lanka it is 4.7 per cent. 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". (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 ONLY!

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 rates 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 on 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 tamper and minimise the responsibility of the State, and maximise the role and share of individual and group responsibility". (8.32)

INSTITUTIONAL ARRANGEMENTS

The Commission prescribed setting up an elaborate institutional structure for social security and emphasised the need for formulation of a national policy on social security and a national plan to achieve the same.

It recommended 'constitution of a high powered National Social Security Authority preferably under the Chairmanship of the Prime Minister', 'a Social Security Fund of India and a Social Security Fund for each State', 'a department on social security within the Ministry of Labour' and 'establishment of a comprehensive social security system covering various existing programmes of different ministries/departments and functional integration of all social security programmes in the organised sector to begin with' etc.

But the very task of formulating a concrete policy on social security at national level has been left to the Social Security Authority and the Commission preferred to remain non-committal on the responsibility of the Govt and employers towards generation of the funds proposed to be constituted at the central and state level.

The Commission is also 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 Standards Convention. The Commission endorses the view of the Study Group". (8.78)

Thus the Commission, while expressing the urgent need of an

all-embracing social security system for all, ended up in recommending some restructuring in the existing institutions; it remained virtually non-committal on the most important aspect - funding of the social security net and responsibility of the Government.

TAMPERING WITH EXISTING BENEFITS

The SNCL Report has made several recommendations on the Employees Provident Fund (EPF) Scheme, Pension Scheme, Employees State Insurance (ESI) 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.

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)

In a similar vein, the Commission upheld the recommendation of the Task Force on Social Security viz. to integrate the Payment of Gratuity Act with the Employees Provident Fund Act and convert the same into a social insurance scheme (8.149). This recommendation also smacks of an attempt to relieve the employers, at least partially, from their total responsibility to pay gratuity to the separating employees, as any social insurance scheme will require the employees to pay for the same.

There are a few recommendations aimed at extending the scope of EPF coverage, like the one to make the EPF Act applicable to all classes of establishments, subject to such exceptions as may be considered necessary for specified reasons (8.117) and

that 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 has suggested a proposal for unpacking the benefit packages for application to different classes of establishments, employees and persons justifying that it is "particularly necessary to make the Act applicable to self-employed people". (8.124)

In the face of huge arrears of PF contributions pocketed by the employers, of which over 80 per cent are classified as 'not realisable', the Commission has only made an omnibus suggestions that "the EPFO should streamline the procedure for tackling the defaulting employers speedily and to recover the arrears promptly". (8.130) There is also no recommendation on the unjustified interest rate reductions, unilaterally effected by the Government over the years.

The Commission has come harsh on the provision for premature withdrawal of funds from the PF accumulations by the employees to meet urgent unforeseen expenditure at the time of distress. It has held: "There can be no justification for permitting premature final withdrawals in case of resignation". (8.137)

The Commission report envisages that 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 Commission report does not accept the claim of the Insurance Regulatory and Development Authority (IRDA) to be the Pension Regulator. But 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 fully endorsed by the Commission!

The Commission has also attempted similar tampering with the

existing provisions of the ESI Scheme. **The Commission strongly pleaded, in line with the National Health Policy 2002, for the review of the existing provision of running of the medical services by the ESIC, parallel to the National Health Service (8.103) and recommended unpacking of the benefit structure of the ESI scheme to make provision for extending the scheme for one or more benefits separately or in groups as urged upon by the Study Group (8.106).** Such recommendations may open the avenue for the concerned authority to curtail the existing benefit structure provided by the ESIC to the detriment of the interest of the employees. Further the arguments built up by the Commission while dealing on ESI scheme (8.106) **are indicative of its bias for privatisation/ hiring off of the Corporation's own infrastructure for medical service, fully or partially.**

AREA BASED SCHEMES

For the rhetoric, the Commission Report has copious platitudes covering the disabled, physically handicapped, lepers, mentally ill, scavengers, widows 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!** Even in the draft of the law relating to small enterprises, the Commission has proposed some social security benefits to the workers. But, the draft provides: "The social security benefits mentioned at sub section (1) above will be provided out of the fund consisting of contributions from the employer @ 16% of wages paid by him to the workers, contributions by workers @ 12 % of the wages and contributions equal to 2% of the wages by the State Government". Here again, the Commission has not dared to suggest even a matching contribution by the Central Government. It is just an endorsement of the Prime Minister's stand that **"social security cannot mean, exclusively state-funded and state-administered security schemes"** and that social security net to be expanded **"without putting too heavy a burden on our budgetary resources - which we do not have"**. *The Commission has readily endorsed the Prime Minister's statement with its recommendations on social security.*

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.

7. ON UNORGANISED SECTOR

The Second National Commission on Labour had also been assigned the task of recommending an umbrella legislation for the workers of unorganised sector to ensure minimum level of protection to them. At the initial stage following the formation of the Commission, in fact, this part of the terms of reference had been given wide publicity as being the important noble task for giving rights and relief to this most downtrodden section of the workers and sought to be counterposed to the criticisms on the Commission's surreptitious move to dismantle the labour laws meant for the so called well-placed workers of the organized sector.

The Commission dealt in detail on the definition, problems of classification and ground level conditions of the unorganised sector workers in its voluminous report. It admitted the grim reality of these sections of workers representing around 90 per cent of the country's workforce, remaining deprived of any sort of legislative protection and social security benefits and stressed upon the need for an Umbrella legislation to ensure minimum level of protection and a humane livelihood for them. But while making concrete recommendation following the heart-rending description of their distressed condition, **the Commission did nothing more than propose an elaborate structure of Boards for the unorganised sector workers from the central to the panchayat level.** It also provided for registration of the workers of the unorganised sector and also the self employed workers through Workers' Facilitation Centres (WFC) at the area level to be overseen by district level and panchayat level boards, and registered workers will be provided identity cards individually. The draft bill elaborated in finest details the functions of such boards at various level but maintained deliberate vagueness on substantive issues of protection and social

security.

NO CONCRETE ACTION

The recommendations on concrete action to ensure protection from job-losses, provision of minimum wages to ensure a humane living and coverage of social security, etc, remained extremely vague, aimed at bailing out the Govt from its basic responsibilities.

The minimum thing that ought to be ensured by an umbrella legislation, according to Commission, is **"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)

While recommending specific steps for extending above-defined all embracing and multi-beneficial social security coverage including health care and old-age benefits, to the poorest of the poor workers, **the Commission focused more on their own contribution** to enable them to earn social security benefit for themselves and commented, **" 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)

ON WAGES AND WAGE POLICY

The Commission report opens with a pro-people posture that **"It is clear to us that crucial guarantees of justice lie in minimum wages, job security, safety and social security."**

(7.472). Elsewhere, the Commission again referred to the recommendation of the 15th Indian Labour Conference on the norms of fixing need based minimum wages to be used as guidelines. (12.180) But, *it did not hesitate to recommend just the opposite by turning down the recommendation of the Study Group that the minimum wage for the unorganised sector worker should be what has been "prescribed by the Fifth Pay Commission for the lowest category of Government employees (Rs. 2400 + Rs. 2100 DA = Rs. 4500) ..."*. (12.247, 12.248)

A glitter of hope is sought to be evoked in the minds of the unorganised workers when the report notes: **"Workers cannot be given minimum protection unless minimum wages are prescribed and enforced in the unorganised sector"**. (12.262) But the cat finally comes out of the bag when the Commission records its ruling that, **"We feel that we should legislate only what is capable of being put into practice"** (12.250).

Then why those tall talks of guaranteeing social justice, all embracing social security etc? Is it to befool the people? Or just shedding crocodile tears for the poor unorganised sector workers?

NOTHING MANDATORY

On fixation of Minimum wages for the unorganised sector workers, the matter has been left to the State Governments and the respective State level Boards, which can make recommendation regarding the minimum wage on various occupations and avocations not covered by other laws. *But the draft Bill appended with the Report has not specified any basic parameters for fixing the minimum wage. Rather in the context of "capability factor" pleaded by the Commission in the main text of its recommendation (12.250), such recommendation on minimum wage, instead of being linked with the bare minimum needs of the concerned workers, would be guided by the so called capability or willingness of the employers. It will, in all probability, remain much below the concept of national floor level minimum wage conceived by the draft Law on Wages.*

The draft Bill also mentioned about the eligibility of the workers for all-embracing social security benefits but so far as the operative part is concerned, the task of framing the social security scheme has been totally left to the State or Central Government, saying that **"Workers will be covered by social protection measures as may be prescribed by the Central or State Government"**.

So far as the funding of the schemes are concerned, the draft Bill made an extremely generalised stipulation which says that "The Central and State Board shall raise funds by way of contribution, cess, assistance, grant from Government through budget allocation or donations from employment providers, private sector, workers and other legally permitted sources."

The draft Bill has practically made no mandatory provision on protection of workers against retrenchment, arbitrary dismissals etc except making a pious statement that **"...no employer shall dispense with the services of an employee...except for a reasonable cause"** At the same time the draft Bill made no mistake in providing for *"absence of any written employment contract"* as the number one item of the General Provisions of the proposed Bill.

The above clearly demonstrate the lack of will on the part of the Commission to make concrete provision for substantive protection either of jobs and livelihood or in the form of social security for the workers in the unorganised sectors. The dual standard adopted by the Commission reveals itself. While it has recommended immediate steps for changing the labour laws, it has resorted to dilatory tactics, or more appropriately, mere lip-service exercise on issues of urgent concern to the unorganised sector 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) in income, thereby promoting widening income disparity in the country.

The Commission itself has been quite aware of the extreme

superficiality of its exercise on the unorganised sector. That is why in the introductory chapter of the draft Bill it has been noted as an escape route: **"It needs to be recognised that the umbrella legislation cannot be effective without integrating it into other existing laws, policies and schemes that basically control the economies of these sectors."** The Commission has already recommended virtual dismantling of existing labour laws, particularly the protective measures for the workers. The entire burden of the crisis is being thrust on the workers. What remains to be integrated with? The entire exercise for providing umbrella legislation for the unorganised sector workers is destined to remain a non-starter.

8. ON WORKING WOMEN

The Commission report relating to the working women showers abundant sympathy for women workers. It has noted: **"While it has been proved that women can do any job that men can do, there are some special responsibilities that men cannot discharge"** and that **"Yet, these special conditions are made excuses for denying women full and equal status as workers"**. The Commission also elaborately quotes Human Development Reports to show that women are discriminated against. All the concern for women workers ends there. And the deceptive ploy of **talking aloud and doing nothing**, which is the hallmark of the entire report, is repeated in the case of working women also.

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 Commission did not take this suggestion seriously. Leaving aside the rhetoric, the Commission did not address many of the important concerns of working women.

UNEQUAL WAGES TO PERSIST

A major concern for working women, particularly in the

unorganised sector is unequal wages. Working women today continue to be discriminated. Women doing work of the same or similar nature and the same quantity of work are not paid the same wages as men. For example, in the beedi industry, women are paid lower wages than men, for rolling 1,000 beedis. Women agricultural workers, shop employees, and construction workers etc get lower wages than men for doing the same work.

The Study Group has rightly suggested a number of concrete well-defined steps to be urgently taken, which were all focused mainly on strengthening the institutional machinery and framework for proper implementation of the Equal Remuneration Act (ERA). Some of such suggestions were 1) empowering the Advisory Committee to oversee implementation of ERA and to function as a watchdog panel for the same, 2) Constitution of a separate inspecting agency to detect and identify the cases of discrimination and unequal emoluments etc 3) making the Act applicable to all units on occupation, industry and regional basis and not on merely within an establishment etc. **But, such concrete steps for action do not find any place in the voluminous report of the Commission!**

While there is no specific recommendation to repeal the Equal Remuneration Act, as with the Beedi and Cigar Act, the Commission is completely silent on effective implementation of this law. The Draft Law on Wages, proposed by the Commission, deals with Prohibition of Discrimination Against Female Workers. But even in this, the Commission does not recommend equal wages for men and women 'across units or occupation, industry, and regional basis, not only within an establishment' as recommended by the Study Group on Women and Child Labour. It has confined itself to recommend: "There shall be no discrimination between male and female workers in the matter of wages, and the principle of equal pay for equal work shall be applicable to all workers under the same employer, in respect of work of same or similar nature". On the implementation of equal wages it is only blandly stated that if there is any dispute, the matter shall be decided by the appropriate Government, which may designate a person to

decide the question.

GREEN SIGNAL FOR NIGHT SHIFT

The Commission has also ignored the issue of sexual harassment, another major concern of working women, both in the organised and unorganised sector. Several studies have shown that sexual harassment at workplace has alarmingly increased in the last decade of liberalisation and globalisation. Though it is more than five years since the Supreme Court has passed the landmark judgment on Sexual harassment and directed the Government to enact a law on sexual harassment, no law has been enacted till now. But as is its wont, the Commission acknowledges the problem but fights shy of making any concrete recommendations for their redressal. A casual inclusion of "Causing sexual harassment to female workers" is only made in the long list of what constitute misconduct, in the 'Model Standing Orders' proposed for establishments employing 20 or more but less than 50 workers.

With liberalisation, employers have been voicing demands to increase hours of work without payment of overtime wages and allow night shift work for women. The Government of India has decided to go back on its ratification of the ILO Convention on Night work for women and amend the Factories Act accordingly. The Commission readily acceded to the demands of the employers and has recommended that **'there need not be any restriction on this if the number of women 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'**.

It is our experience that many factories and establishments compel women to work in night shifts without providing transport, even if they are able to do so. Women are not safe even during daytime and many reports indicate that violence against and sexual harassment of women have increased during the last few years. Besides, it is not possible for women to take rest during the day, after working in the night, as they have to attend their domestic responsibilities. It may be necessary to allow

night work for women in select industries, examining the issue on a case-to-case basis. But **allowing blanket permission for night work for women will only help the employers to intensify exploitation of women.**

SOCIAL INSURANCE MATERNITY BENEFIT

In the case of Maternity Benefit also, much space has been devoted to describe the coverage of the Act and the necessity of extending it to 'all classes of establishments where women are employed in large numbers.' But this is soon followed by expressing concern for the 'capacity of the employers to pay the benefit' and 'the financial feasibility for the extension of the Act'. Finally when it comes to make concrete recommendations, the Commission has given the ruling: **"It is, therefore, very essential that the Scheme of the Act should be converted into social insurance. This object can be achieved if the Maternity Benefit Act is integrated with the ESI Act. If that is not feasible, a separate social insurance scheme exclusively for maternity benefit or in combination with the employment injury benefit may be considered."**(8.102) So, women in the unorganised sector, who have no job security, who do not even get minimum wages, must pay for their maternity benefit through insurance! This much is the concern of Commission towards women workers!

ON ANGANWADI WORKERS

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 years. 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).

After reiterating the entitlement of the Anganwadi workers to statutory minimum wage, the Commission in the same breath negates such possibility. It recommends: 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 few better-designed 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 has made several attempts to hand over the scheme to NGOs, panchayats etc.** The anganwadi employees throughout the country have stoutly opposed this, all these years. As a result, the Government had to backtrack to some extent. In this context, ***this observation of the Commission will rather encourage the Government to pursue its efforts to wriggle out of the Scheme, rendering all the other recommendations of the Commission (for the benefit of the anganwadi employees) meaningless.***

PROMOTING GENDER DIVIDE IN TUs

One of the seemingly innocuous recommendations, which in fact will be dangerous for the unity of the trade union movement, is the recommendation for preferential treatment for the so-called '**Membership Based Organisations**' (MBO) of women. In the name of encouraging organisation of women workers, the Commission recommended: "the Government should allow widespread registration of MBOs 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. It is a fact that women workers need to be more organised to fight against the increasing attacks by the employers on their living and working conditions, as a result of the policies of liberalisation and globalisation. They should be organised as part of the mainstream trade unions and play

an active role along with their brothers in the working class. Employers in many establishments even today use women workers to bring down the wages and to scuttle the trade union movement. Membership Based Organisations of Women, by dividing the trade union movement on gender lines will only further help the employers to increase their exploitation of both male and female workers. The trade union movement must oppose this artificial division of the trade union movement.

In fine, the Second National Labour Commission has nothing concrete to offer to improve the conditions of working women, except rhetoric!

9. INFINITE HYPOCRISY

The Commission, while dealing exhaustively on various aspects of the policies of liberalisation, globalisation and privatisation has made conclusive comments on their consequences, some of which are, inter alia, given hereunder:

- ◆ Except the IT, telecommunication, entertainment industry, a large number of industries are downsizing and some have closed. ... A very large number of workers have lost their jobs through VRS, retrenchment and closure of units.
- ◆ Employment is not growing and unemployment is growing in the country. Jobs are being created only in very narrow fields. ... Globalisation led growth cannot be described as a job-led growth.
- ◆ Internal demands have been affected and exports too have been affected. Imports are growing.
- ◆ There is general slow down in industrial activities.
- ◆ Small-scale industries are worst affected. A large number of them are closed.
- ◆ Foreign investment inflows are too low, despite opening of many sectors of the economy to them. Much of these funds come for portfolio investment and M & A activities and very small in Greenfield or brown field investment.
- ◆ The New Economic policies have neglected the Farm and small-scale sectors with adverse consequences on the employment situation.
- ◆ The burden of structural adjustment has mostly fallen on the poor.

In fine, according to the diagnosis of the Commission, consequent upon the liberalisation policies, retrenchment and job-losses and not the employment-creation, are the resultant phenomenon. Much more jobs have been lost than the meagre job creation, that too in a very narrow spectrum.

After such a diagnosis, the Commission has prescribed measures, which would permanently engrave the above brazenly negative consequences and further aggravate the economic slowdown.

Measures prescribed by the Commission for ushering in a "flexible labour market" (*read hire and fire regime*) are destined to create an environment of anarchy in the industrial relations scenario. It is not without reason, the "Special Panel" appointed by the Planning Commission headed by S P Gupta had observed in clear terms: "It is sometimes argued that if the legal conditions for hiring and firing of labour force is relaxed (referring to present Industrial Disputes Act, 1956), the organised sector could be made more employment friendly and the employment generation in this sector can be improved. But...the immediate effect will be more firing than hiring..."

The Commission Report is, thus, nothing but an exercise in infinite hypocrisy!

10. COMMISSION REPORT ON CHINA

The report of the Second National Commission on Labour (SNCL), has dealt with the labour law situation in China 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". Some of the observations contained in the Commission's Report are reproduced here:

"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)

"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)

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? While dealing on the issue the SNCL report conclusively observed: **"It will be erroneous to think that 'flexible' labour laws are the main reason for China's progress..."** (4.210) The Commission report also significantly mentioned: *"China did not follow the standard policy prescriptions laid down by the World Bank and IMF for developing economies blindly".*

The **BMS representative** also noted in his note of dissent: **"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 exemptions to MNCs or any other sector from labour laws, which was found to be true after our visit to Shenzhen, a Special economic zone".

11. 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. G Sanjeeva Reddy (INTUC) and Hasubhai Dave (BMS) were made part-time members of the Commission, when it was set up. G 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 Law.

In his note of dissent the BMS representative, *inter-alia*, stated:

"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."

"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'."

"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."

"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..."

Ravindra Varma, Commission-Chairman, expressed 'deep distress' over the note of dissent and recorded his response thereto also in the Report. 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!

12. RALLY TO RESIST ATTACKS, DEFEND RIGHTS!

The Ravindra Varma Commission Report is yet another challenge before the working people of our country. It is likely that 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 frequent assertions of the Prime Minister and others in the Government that they are fully committed to carry out the labour market reforms are indications of the impending offensives. The working class has to unitedly rally to address itself to the impending task of decisively defeating the attack.

The workers expected nothing from the Commission. That is why the major chunk of the trade union movement did not cooperate with the Commission. The Commission in its shrewd attempt to confuse the people wrote volumes in its report on the negative fall out of the policies of globalisation on the economy and the workers, but at the end did everything to fully concede every demand of the employer class.

But for the working class, the Commission's recommendation is the forewarning of a much bigger onslaught in the days to come. It is a design for imposing conditions of slavery on the working class, the blue print of which has been meticulously drawn by the experts of World Bank and IMF. The Commission cannot boast for any originality in drafting its prescription for labour law reform. It can definitely claim credit for observing unflinching loyalty to the predetermined text authored by their

masters. It has aimed at closing all the doors before the working class for seeking justice against exploitation and onslaughts. The working class have been left with no other alternative but to take on the perpetrators of the nefarious designs of slavery on the streets, through countrywide united struggles.

Design of slavery shall not pass!

Let us unitedly rally together to repulse the attacks and defend our rights!

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