Issues in Labour Reforms in the Context of India

Dissertation submitted to Jawaharlal Nehru University in partial fulfilment of the requirements for the award of the Degree of

MASTER OF PHILOSOPHY

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Declaration

The dissertation entitled "Issues in Labour Reforms in the Context of India", in partial fulfilment of the requirements for the award of the degree of Master of Philosophy, is an original work and it has not been submitted in part or full for any degree, to this or any other university. The dissertation may be placed before the examiners for their consideration for the award of M.Phil degree.

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Introduction

In India with the inception of liberalization there has been a consistent effort on reforming the labour laws. This dissertation analyses the debate on labour reforms with reference to various issues concerning the labourers. One of the most important criticisms put forward by the developed countries is that the developing countries take advantage of abundant cheap labourers and exploit them through various means as a result of which the condition of the labourers is miserable in these countries. The developing countries take advantage of the cheap labourers in the form of enjoying a comparative cost advantage in the international market. The developed countries argue that the developing countries take the advantage of labour exploitation while the developed countries are penalised for following the Core Labour Standards. While the enforcement of rules can always be debated it is important to understand whether the constitution of a country really allows for labour exploitation or not. In this context in chapter one the ILO Core Labour Standards are studied in a comparative framework with the constitutional provisions in India relating to labour. In this connection it is analysed whether in a liberalised regime the implementation of Core Labour Standards can prevent the deterioration of the workers or not. The example of the East Asian countries is often cited in order to prove that the improvements in labour standards can be obtained without any external conditionalities but only through the process of economic development in which export-led growth plays a vital role. This issue has also been analysed in chapter one. While at the international level there has been an increasing pressure on India to implement the Core Labour Standards, at the domestic level there is an increasing demand for making labour laws flexible in order to make the Indian manufacturers more competitive in the international market. In chapter two the issue of labour market flexibility has been dealt with in great details. Labour market flexibility alone can not really bring

about an improvement in the conditions of employment and wages of the workers. It has to be supported by significant demand management policies undertaken by the government. Labour market flexibility coupled with aggregate demand management and Core Labour Standards reinforces the importance of trade unions. Flexibility can be seen as a phenomenon in which the government provides the broad framework within which the employer and the employee enter in to their own respective agreements for which employee needs the help of the trade union. Core Labour Standards necessitates the formation of both employers' and employees' associations and collective bargaining. The trade unions and their changing character in the era of liberalisation is being analysed in chapter three. One of the most important weapons in the hands of the trade unions is the right to strike. Though it might not be totally compatible with the context of discussion so far, nevertheless judicial interpretations regarding the right to strike is one of the major issues of debate in the context of reforms in the labour laws. This has been discussed in chapter three itself. The Second National Commission on Labour set up by the government has made certain important recommendations regarding reforms in the labour laws. This has been critically analysed in chapter four. Finally any discussion on labour related issues must also take in to account the issue of employment. In this connection the report of the Special Group on Targeting Ten Million Employment Opportunities Per Year has been critically analysed in chapter five.

Chapter-1

Core Labour Standards

India is a founder member of the International Labour Organisation (ILO) which came in to existence in 1919. At present the ILO has 175 members. The three organs of the ILO are:-

(a) Intertnational Labour Conference which is the General Assembly of the ILO and it meets every year in the month of June. It adopts programmes and budget and in this regard it is helped by the Governing Body. In addition to it International Labour Conference also adopts International Labour Standards which are generally expressed as conventions or recommendations. According to the report of the Director General in 1984, where the objective can be clearly defined with relative precision, it should be referred to as a convention. In 1994, the Director General's report addressed this issue again and proposed that: "Whenever a convention can not be made ratifiable without first watering down the standards it sets, it would seem preferable to adopt instead a fully autonomous, clear, precise and detailed recommendation, which might guide member states along their path to fuller development. Eventually, it might pave the way for a convention." According to Article 19 (1) of the ILO Constitution, an instrument shall be considered to be a recommendation if the subject is not considered suitable for the adoption of a convention. Thus recommendations primarily deal with those subjects which are considered to be too advanced to be applied generally or which deals with complex subjects regarding which different countries face different kinds of problems. Very broadly speaking conventions are the basic instruments of setting standards while recommendations provide guidance for national action. A member country may or may not ratify a particular convention. But once a

member country ratifies a convention it binds itself to its observance. India has so far ratified 40 ILO conventions.

(b) Governing Body which is the Executive Council of the ILO and it meets thrice in a year in the months of March, June, November. Governing Body of the ILO is the executive wing of the organisation and it functions through its various committees. India is a member of all six committees of the Governing Body viz.:

(i) Programme, Planning and Administrative

(ii) Freedom of Association

(iii) Legal Issues and International Labour Standards

(iv) Employment and Social Policy

(v) Technical Cooperation

(vi) Sectoral and Technical Meetings and the Related Issues.

(c) International Labour office which is a permanent secretariat.

Sengenberger has classified the labour standards in the following three ways:

(i) **Standards of Protection:** These include ILO conventions and recommendations relating to regulation of duration and scheduling of working time, standards ensuring occupational health and safety, protection against loss of job, employment and income, protection of income through minimum wage regulation, protection of equality of opportunity and treatment, protection of particular

groups of workers, protection from forced labour and bonded labour etc.

(ii) **Standards of Participation:** participatory labour standards imply collective organisations of employers, workers and the governments. Collective organisations to be effective need to be legally guaranteed. ILO Convention No. 87 provides for (a) freedom of association and protection of the right to organise, (b) protection of organised workers from employer interference, (c) protection of workers' and employers' organisations against acts of interference by each other, (d) the promotion of voluntary collective bargaining etc.

Here it may be noted that genuine participation emerges when workers' and employers' organisations are independent of the state and are financially and organisationally strong enough to play an autonomous role.

(iii) **Standards of Promotion:** standards of promotion are defined as those which further the productivity of labour, promote creation of employment, combat unemployment and under employment and finance functioning of the labour market. Some of the standards of promotion are: (a) improvement of qualification of labour through education, vocational training and on-the-job training (ILO Convention No. 142), (b) the active promotion of full, productive and freely chosen employment (ILO Convention No. 122), (c) active policies of vocational rehabilitation (ILO Convention No. 159) etc.

At the World Summit for Social Development in 1995 the following Conventions were categorised as the Fundamental Human Rights Convention or the Core Conventions of the ILO :

(i) Forced Labour Convention (No. 29)

(ii) Abolition of Forced Labour Convention (No. 105)

(iii) Equal Remuneration Convention (No. 100)

(iv) Discrimination (Employment and Occupation) Convention (No. 111)

(v) Freedom of Association and Protection of Right to Organise Convention (No. 87)

(vi) Right to Organise Convention (No 98)

(vii) Minimum Age Convention (138)

(viii) Worst forms of Child Labour Convention (No. 182)

India has ratified the first four of these Core Conventions while the last four are not yet ratified by India. On June 18, 1998, at its 86th session, the International Labour Conference adopted a Declaration on Fundamental Principles. According to this declaration all the countries are required to comply to the Core Conventions even if they might not have ratified it. In a sense this declaration and the rights at work constitute a benchmark which is to be followed by all the member states.

It might so happen that the Fundamental Principles and Rights at Work (FPRs) come into conflict with the fundamental rights guaranteed to the citizens by the Constitution of India. For example a businessman who has the fundamental right to carry on with his occupation might find it difficult to do so if he is forced to follow the FPRs. In such a situation the view of the Supreme Court has been quite unambiguous. This is evident from the judgement delivered by the Supreme Court of India in Crown Aluminium Works vs. Their

Workmen (1958). In that judgement, the Supreme Court of India held, "There is, however, one principle that admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages can not be encouraged or favoured in a modern democratic welfare state. If an employer can not maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wages, he would have no right to conduct his enterprise on such terms".

I now provide a brief comparative analysis of the Core ILO conventions and the corresponding Articles dealing with the labour standards in the Indian Constitution.

Forced Labour

The Indian Constitution prohibits forced labour while the Bonded Labour System (Abolition) Act 1976 abolishes bonded labour. Article 23 of the Indian Constitution prohibits traffick in human beings and begar and other similar forms of forced labour. Begar means compulsory work without any payment (eg withholding the pay of a government employee as a punishment is considered to be beggar). Traffick in human being implies buying and selling of human beings as if they are some kind of saleable products. Such an act is punishable in accordance with law. However, the state can impose compulsory service for public purposes but in imposing such service the state shall not make any discrimination on grounds of religion, race, caste, class. The court has held that any one who works for less than the statutory minimum wage, if forced to do so out of poverty, would constitute a case of forced labour, leading to an infringement of his/her fundamental rights. Convention 29 of the ILO states that forced or compulsory labour means all services exacted from a person

under the menace of any penalty and for which the said person has not offered voluntarily. However compulsory military services and normal civic obligations are not part of the forced labour. Convention 105 of the ILO states that any form of forced or compulsory labour can not be used as a means of punishment for holding political views which are ideologically opposed to the established political, social or economic system. Neither can forced labour be used as a means of labour discipline, as a punishment for participating in strikes, as a method of mobilising and using labour for purpose of economic development. Moreover forced labour can not be used as a means of racial, social, national or religious discrimination. Clearly the instance of forced labour that is mentioned in Article 23 of the Indian Constitution is much broader than what is conceived of in convention Nos. 29 and 105. Conventions 29 and 105 deals with forced labour only as a means of punishment. But according to the Indian Constitution even if it is not a punishment and the person is forced to work at wages which are less than the minimum wages due to some other reasons (like poverty) then also it constitutes a case of forced labour. So, clearly the concept of forced labour according to the Indian Constitution goes far beyond than that of forced labour as a means of punishment. The courts in India have rejected the idea that forced or compulsory labour would only cover labour that is extracted without remuneration. Instead, even if paid, the work would fall under forced labour if it is done under compulsion. Further the Supreme Court has stated "where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23". [People's Union for Democratic Rights vs. Union of India, 1982 SC]. No individual will be willing to supply his labour for less than the minimum wages unless and until he is forced to do so under some kind of compulsion. Once minimum wage is incorporated

with the notion of forced labour, this has important implication for workers in the informal sector. According to the Minimum Wages Act, minimum wages are notified only for those occupations where at least 1000 workers are employed and which are included in the Schedule to the Act. There are a large number of occupations in the informal sector where the number of workers does not exceed 1000 and hence no minimum wages are notified for such occupations. Even where the number of workers exceed 1000 and so minimum wages are notified, they are fixed on a time rate basis while many workers work on a piece rate basis. So we find that a large number of workers who are not counted as forced labourers actually should be considered as forced labourers. The problem of estimation of forced labour is further complicated by the fact that there exist two kinds of wages viz time rate and piece rate. If minimum wages are fixed on a time rate basis then it becomes very difficult to estimate forced labour in occupations where wages are fixed on piece rate basis. A significant feature of Article 23 is that it protects the individual not only against the State but also against other private persons. The Supreme Court has tried to bring an end to forced labour even if it has its origin in the contract itself. Even if remuneration is paid, it will be considered as a forced labour if the labour is supplied not willingly but as a result of force or compulsion. In the case Sanjit Roy vs State of Rajasthan (Supreme Court, 1983), the Court ruled that even famine relief workers should be paid the legal minimum wages. Broadly speaking, any factor which deprives a person of a choice of alternatives and compels him to undertake a particular course of action may be regarded as force and if labour or services is the outcome of such a force then it is called forced labour. A very interesting case came up to the Supreme Court regarding whether prisoners should be made to do hard work against their will (State of Gujarat vs Hon'ble High Court of Gujarat, Supreme Court, 1998). In this case the Supreme Court ruled that prisoners sentenced to rigorous imprisonment can be made to do hard work but they should be paid equitable wages for their work.

Discrimination

According to ILO Convention No. 111 discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, which can effectively nullify the opportunity of equality of treatment in employment or occupation. However, if any particular job requires any specific qualification then it shall not be treated as discrimination. According to Article 15 of the Indian Constitution, the state shall not discriminate on grounds of religion, race, caste, sex or place of birth. Hence according to this article no person of a particular religion, caste, race, sex, place of birth shall be treated unfavourably by the state when compared with a person of any other religion, caste etc merely on grounds that he belongs to the particular religion, caste etc. However discrimination in favour of a particular sex will be permissible if the classification is the result of other considerations (e.g. physical or intellectual fitness for some work) besides the fact that the person belongs to that sex. Moreover, Article 15 would not preclude the state from making special provisions for women and children and also making special provisions for the advancement of any socially and educationally backwards classes of citizens. These exceptional classes of people require special protection and hence any legislation which is necessary for the making of special provisions for the persons of these classes would not be held to be unconstitutional.

In addition to Article 15, the Equal Remuneration Act, 1976 also prohibits discrimination on grounds of sex. According to the Equal Remuneration Act, 1976 the employers are required to pay all workers remuneration (whether in cash or kind) which is not less than that paid to workers of the opposite sex employed to perform the same or similar work. Employers must also not discriminate on the basis of sex in the recruitment of workers for the same or similar work in any terms or conditions of employment such as promotion, training or transfer. However, priority reservation in recruitment is allowed in

relation to any class or category of persons. ILO Convention No. 100 states that the rate of remuneration should be established without discrimination based on sex. The term remuneration includes basic or minimum wages and any additional emoluments payable directly or indirectly by the employer to the workers and arising out of the worker's employment. However, T.C.A. Anant and Kamala Sankaran have found out that the earnings of male casual labourers in rural areas are significantly higher than that of the female labourers. Kingdon (1997) conducted a study in order to find how much of the difference in wage between male and female workers is attributable to human capital characteristics (like years of education) and how much of it is attributable to discrimination. Kingdon found that the gap is explained only to a small extent by women's inferior years of education. The major cause of difference Kingdon found was that the society rewards men's education more than female education. Similarly Singh and Bhattacharjee (1998) conducted a firm level study which shows that that women executives are clustered at lower end jobs. In spite of the constitutional provisions, the ILO Committee of Experts has identified that equal pay for work of same or similar nature laid down in the Equal Remuneration Act, 1976 is not sufficient compliance with Convention No. 100. The report points out that the need is to carry out detailed studies in order to assess the comparable worth of different jobs. Moreover, gender segregation of jobs resulting in women's jobs being valued at lower levels need to be tackled. So, it can be seen that even though there may be implementation problem, by and large the ILO Conventions regarding discrimination are in agreement with the provisions in the Indian Constitution. Ratification of these two Conventions therefore became easier.

Child Labour

According to Convention 138 of the ILO each member ratifying this convention shall progressively raise the minimum age of employment

or work to a level that is consistent with the fullest physical and mental development of young persons. Also, each member ratifying this convention shall specify a minimum age for admission to employment or work within its territory. The minimum age shall not be less than the age of completion of compulsory schooling and in any case shall not be less than 15 years. A member whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years. The minimum age for any type of hazardous employment which is likely to jeopardise the health, safety or morals of young persons shall not be less than 18. According to Convention 182, the term child should apply to all persons under the age 18 years. Also Convention 182 specifies the worst form of child labour and calls upon member countries ratifying this convention to prevent any such form of child labour. According to this convention, the worst form of child labour comprises of all forms of slavery, sale and trafficking of children, debt bondage, forced or compulsory labour, recruitment of children for use in armed conflict. Article 23 of the Indian Constitution Prohibits traffick in human beings and forced labour. According to Article 24 of the Indian Constitution no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Supreme Court in M.C. Mehta vs. State of Tamil Nadu (1991) case directed that children should not be employed in hazardous jobs in factories and positive steps should be taken for the welfare of such children as well as improving the quality of their life and the employers of children below 14 years must comply with the provisions of Child Labour (prohibition and Regulation) Act providing for compensation, employment of their parents and their education. The minimum age of employment in hazardous work is 18 years according to the Indian Constitution. So we find that the legislation in India does not completely prohibit child labour in all forms. The Constitution calls for banning of child work in factories, mines and work that are hazardous in nature. Under the Child Labour Act, 1986, child labour

has been prohibited in certain occupations and processes considered hazardous for children under 14 years of age. Yet several activities which could be considered hazardous such as domestic work have not been listed. On a case-by-case basis the courts have prohibited certain activities considered hazardous by the judiciary and thereby expanded the list of activities where children under 14 can not be employed. The Amendment to the Constitution introduced in 2002 makes the right to education a fundamental right. The amendment also casts a duty on every parent or guardian of a child under 14 years of age to ensure that the child attends primary school and thus it implicitly tries to prohibit child labour. For ratifying Conventions 138 and 182 a suitable Central Legislation has to be enacted which will have provisions for fixing a minimum age of 14 years for admission to employment or work in all occupations, employment and work. However, in case of small land holdings where agricultural activities are carried on with family labour (ie without any hired labourer) and where production is for self consumption, this legislation should not be binding. Moreover a minimum age of 18 years has to be fixed for admission to any type of employment which by its nature is likely to jeopardise the health, safety or morals of young persons. Even before enacting any such legislation, a suitable enforcement machinery needs to be established in order to make such legislation effective. However, setting up of such machinery particularly for the unorganised sector in agriculture, cottage and small scale industries becomes a difficult task in a country like India where the unorganised sector accounts for 92 per cent of employment. It has to be noted that the problem of child labour is not an isolated problem. Whatever legislations are made and howsoever strict the enforcement mechanism may be, the problem of child labour can not be tackled without addressing the problem of adult employment simultaneously. Children are mostly sent to work not out of choice but out of compulsion. If the income of the adults in the family is insufficient even for subsistence living then children have to be sent to

work for mere survival. Hence any such programme aimed at eliminating child labour should be supplemented by adult employment programme.

Association and Collective Bargaining

According to Convention No. 87 of the ILO, workers and employers without distinction whatsoever, shall have the right to establish and join organisations (subject to the rules of the organisation concerned) of their own choice without previous authorisation. Moreover, it also states that the workers' and employers' organisation shall not be liable to be dissolved or suspended by the administrative authority. However, the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by the national laws and regulations.Convention No. 98 of the ILO states that the workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment and such protection shall apply more particularly in respect of acts calculated to:

(a) Make employment of a worker subject to the condition that he/she shall not join a union or shall relinquish trade union membership,

(b) Cause dismissal of the worker by reason of union membership or because of participation in union activities outside working hours or with the consent of the employer within working hours.

Moreover, the Convention states that workers' and employers' organisation shall enjoy adequate protection against any act of interference by each other. However, the extent to which the guarantees provided for in this convention shall apply to the armed forces and the police shall be determined by national laws or regulations. Freedom of Association is guaranteed as a fundamental

right in Indian Constitution. According to Article 19(b) all citizens shall have the right to assemble peacefully and without arms. However the right of meeting or assembly shall not be liable to be abused so as to create public disorder or a breach of the peace, or to prejudice the sovereignty or integrity of India. According to Article 19(c) all citizens shall have the right to form associations or unions. However this right also is subject to reasonable restrictions imposed by the state in the interest of public order or morality or the sovereignty or integrity of India. Thus this freedom will not entitle any group of individuals to make illegal strikes or to commit a public disorder or to undermine the sovereignty or integrity of India. India has not ratified Conventions 87 and 98. One of the key objections of India to ratification of these two Conventions has been the special status and protection afforded to government employees that precludes them from forming trade unions alongside other workers and also prohibits their right to strike. While the government employees are not in the position to join trade unions, they nevertheless enjoy constitutional rights of association but the associations are not registered as trade unions under the Trade Unions Act, 1926. The terms and conditions of employment of government employees is unilaterally determined by the government and collective bargaining is not available to any section of the government employees. According to Article 309 the state has the power to regulate their conditions of service. The inability of the government to promote unionisation of the government servants in a highly politicised trade union system of the country also points out why the government has not ratified Conventions 87 and 98. It is precisely the contradictions between the ILO Conventions and Constitutional Provisions about the government employees regarding the extent to which they can be organised, the recognition of their organisations, their strength in collective bargaining and the extent to which they can agitate which prevent the government from ratification of Conventions 87 and 98. This however was not a major hurdle

because while ratifying the concerned Conventions, the government can always exempt certain services. According to the former Chief Labour Commissioner of Government of India, Nath (1997) "These conventions have not been ratified by India because the policy of the government has been to restrict freedom of association to only manual workers and exclude supervisory and managerial workers .... The other interest of the government is not to allow the right of collective bargaining even to industrial workers in government's departmental undertakings like the Railways, Posts and Telecommunications, Central Public Works Department etc. Their pay, etc., is decided by the government, on the basis of pay commissions recommendations and not through collective bargaining".

It is often argued that the developing countries are likely to be adversely affected due to the ratification and consequent implementation of Conventions 87 and 98. The reasons are as follows:

Structure of the economy: Most developing countries like India have dualistic economic structure, labour market segmentation and surplus labour. In India the formal sector employs only 8 per cent of the labour force. For this segment of the labour force it is feasible to consider the Core ILO Labour Standards. For the vast majority of the labourers in the informal sector it is almost impossible to implement the Core Labour Standards. In a populous country like India, there exists a large reserve army of unskilled low productivity labourers that has to survive at any means and hence is in search of work at any price. So, the possibilities of unionization and collective bargaining becomes difficult. In such a situation imposition of labour standards is likely to widen the already existing wage gap between the formal and the informal sector. Improvements in labour standard can be brought about by significant changes in the economic structure, the most important being the increase in proportion of labour force in the organized industry and formal service sector.

Institutions: The freedom of association and of collective bargaining in advanced countries have developed through an evolutionary process spanning well over a century. In Europe, early efforts to improve labour standards focused on gaining legislation to eliminate the worst form of child labour and female labour and initiatives were taken to improve health and safety at work. It took many decades before workers' efforts to associate and bargain with their employers gained legal recognition. In the meanwhile labour unions and employers developed responsible institutional mechanisms for conflict resolution. The employers came to appreciate the advantage of trade unions and collective representation of the workers. On the other hand, unions curbed wasteful and damaging inter-union rivalry and in many industrialized countries centralized wage bargaining and other similar pay co-ordinating structures were put in place. In the developing countries this historical process of mutual understanding between the employers and the workers did not take place. In fact in the developing countries many employers do not see any need for trade unions. So, they often use various kinds of methods to stop the formation of unions. On the other hand, unions in order to increase their membership resort to popular demands and end up into direct confrontation with the employers. The consequent economic and social disruption discourage investment. Even if the formal sector unions succeed in getting high wages, it is likely to reduce labour demand in that sector thereby forcing the unemployed to seek employment in the informal sector. So, the paradoxical result of efforts to improve compulsory labour standards is that it would harm economic development and increase the number of workers in the informal sector where labour standards hardly apply. Thus, it is argued that if the compulsory introduction of free collective bargaining is successfully implemented, it is likely to widen the already considerable wage and income gap between the workers in different parts of the economy. In such a situation of conflicting interest between the employers and the workers, government intervention may

be desirable but here again government can intervene through institutional and administrative set ups which many developing countries do not have. So, developing countries like India would prefer not to ratify Conventions 87 and 98 so as not to discourage investment. In fact it is often argued that improvement in the condition of the labourers can be achieved internally through increased investment rather than by any external mechanism like compulsory ratification of Core Labour Standards. In this regard the example of east Asian countries which Ajit Singh and Ann Zammit have cited can be mentioned. Notwithstanding the Asian crisis, these countries experienced very fast long term growth. The result has been fast absorption of surplus labour resulting in labour shortage, very high rates of growth of real wages and speedy structural change resulting in the displacement of informal sector activities by the formal sector. In South Korea during 1960s and 1970s trade unions were severely repressed. However, with the fast expansion of the formal economy and particularly the shrinking of the informal sector not only did wages and employment greatly improved, there was a considerable expansion of unionization. These improvements in core as well as other labour standards took place in the countries through the process of economic development itself without any international pressure.

It may be noted here that the process of development of labour market institutions and industrial relations took place in the advanced industrilised countries at a time when protectionism was largely in practice. Each country protected its domestic market from the exporters of other countries and in the process the industrial institutions that were set up did not come under the influence of the outside world. The developing countries are experiencing the process of industrialization in a globalised world where free trade rules large. Due to the process of globalisation, a part of the domestic income is spent on imported goods. So, the domestic producers are adversely

affected. The process of globalisation has forced the countries to shift ever more of their output on to global market and thereby adopt an export-led model of growth. The global market is highly volatile and the developing countries with precarious balance of payment condition need to export more in order to earn more foreign exchange. This in turn leads to the problem of falling prices and hence a vicious cycle is generated. This vicious cycle is not generated if the demand is increasing or at least steady. But once demand in the global market falls, there exists excess capacity and this inevitably generates pressures to cut wages and benefits in developing country labour markets as a means of saving jobs. These features of export-led growth suggest that it is ultimately unsustainable and there are chances that the global economy becomes deflationary. In fact the high growth rate of the East Asian countries was primarily due to the export-led strategy of growth. This led to an increase in investment which in turn forced the speedy absorption of the informal sector by the formal sector. But this strategy is rather unsustainable as has become evident from the East Asian crisis. While there can be various reasons for unsustainability one of the reasons why this unsustainability problem can arise is by definition, one country's exports is another's imports. Thus whereas one country can successfully pursue export-led strategy all cannot because all cannot run trade surpluses simultaneously. Developing countries will continue to be net borrowers on global capital market as they seek to industrialise. In such a situation if the demand for its export falls, it will either go for currency devaluation or it can change its development path into domestic demand-led growth. For a developing country depreciation will have adverse affects as it will adversely affect the imports. The best option is through domestic demand-led growth. This requires rising wages to support domestic consumption. But this will adversely affect the foreign investors who would like to take cost advantage in production through lower wages. So, domestic demand-led growth becomes a difficult option for the developing countries.

They insist on lower wages and highly flexible labour markets to lure foreign investors so that the unorganized sector where the labour laws are hardly applicable expands at the cost of the organized sector. This often leads to a 'race to the bottom' among the developing countries. The remedy lies in international labour standards which by allowing for the formation of independent trade unions that bargain collectively can ensure a more equitable income distribution. International labour standards as far as possible should be implemented by all the countries so that lowering of wages or taking away labour rights can not be used to attract the foreign investors. However if one county defaults it will be very difficult to prevent the 'race to the bottom' amongst those countries whose level of economic development is similar to the country which defaults in labour standards. So automatic improvement in the standards of the labourers becomes a rather remote outcome of increased investment in today's world simply because of the fact that there is a race to attract foreign investors at the international level and also to lure domestic investors at the national level. Making labour laws more entrepreneur friendly at the cost of the welfare of the workers is a very important weapon in this regard. So there is an urgent need to implement the Core Labour Standards in all the countries particularly in the developing countries. Moreover, the political institutions promoted by Core Labour Standards may also promote economic stability and give countries the ability to deal with economic crisis. This can be verified by comparing South Korea and Indonesia in the wake of the East Asian Financial Crisis. Before the crisis South Korea had begun to put in place democratic institutions including independent trade unions. When the crisis hit, these institutions provided a framework for crafting a national recovery policy, and they also prevented the emergence of a political vacuum that would have caused further economic collapse. This contrasts with Indonesia which lacked such institutions and the resulting political vacuum caused by the crisis created total economic breakdown. Thus, Rodrik (1999) finds that democracies tend to

exhibit less volatility in economic performance, have greater resilience in the face of economic shocks and have a more equal distribution of income. The concern for establishing links between international trade and labour standards has existed since the time ILO was founded in 1919. The objectives of peace and social justice were laid down in the preamble to its constitution but even at that time economic considerations had come to the fore since the preamble also declares that failure of any nation to adopt humane conditions of labour is an obstacle to the efforts of other nations in improving the economic conditions in their own countries.

The concerns which were raised in the ILO at the time of its foundation seems to have become true particularly since the 1980s and the 1990s. Among the developing countries we find an increasing competition to attract foreign direct investment (FDI) and India also entered into this race with the liberalisation of the economy since 1991. Since the member countries can ratify the ILO Conventions at their free will, the developing countries are in particular busy in making their labour laws more flexible in order to attract FDI which in turn is presumed to take their respective economies to a higher growth trajectory and thereby lead to overall development of the economy. So, for the development of the economy it is argued that flexible labour laws are essential. As a result of this we find that the concern for the welfare of the working class through international conventions has totally relegated to the background and instead flexibility of labour laws is perceived to be the savior of the working population around the world. India is no exception to this general perception. How far this general perception about the positive effects of labour flexibility is true has been analysed in the following chapter.

Chapter-2

Labour Flexibility

Labour market regulations are considered by some as rigidities which inhibit economic growth and efficiencies and reduce the competitiveness of firms especially in a globalized world. While trade union activities have been the primary target of such criticisms, other aspects of the labour market like minimum wage regulations, social security for the workers have also not been spared. Trade unions on the other hand oppose the introduction of flexibility practices on several grounds, the most important being the dilution of union power and creation of unemployment. Technological developments along with the rise in demand for specialised commodities, the need to maintain competitiveness(primarily through lower labour cost),the reorganisation of production and the uncertainty about market growth are the factors that push the firms to adopt flexible labour practices. On the other hand it is seen by the trade unions as a strategy of the ruling classes to weaken the collective bargaining and unionisation of the workers. According to them the basic feature of flexibility strategies is to take jobs outside the realm of legal and institutional regulations. In this chapter I try to analyse the arguments put forward by both the groups concentrating primarily on the economic aspects of the arguments.

Labour market is often conceptualized in the same way as the commodity market. According to this view, variation in the wage rate ensures equilibrium between demand for and supply of labour and unemployment is impossible unless the government legislations and social institutions restrict the variation of wage rate or mobility of labour. This conceptualisation of labour market is too simplistic and unrealistic. First fact to consider is that labour demand is derived demand. Labour demand is derived from the demand for goods and

services in an economy. This means that characteristics of the product market have an important influence on labour demand. So, the outcome in the labour market is not only the result of the conditions prevailing in the labour market alone but rather it is influenced by the conditions in the product market as well. A second consideration is that wage is both price and income and this makes the relationship between wage rate and labour demand rather complex. A fall in wage rate increases labour demand through price effect. Price effect can be decomposed in to substitution effect and scale effect. Substitution effect encourages the firm to use a more labour intensive method of production, thereby increasing the employment. Scale effect encourages the firm to expand, further increasing the firm's employment opportunities. But a fall in the wage rate depresses the labour demand through the income effect. This is because a fall in the wage rate means that the income of the workers decline which necessitates a fall in the demand for the commodities. This leads to a fall in the price of the commodities and hence there is a fall in the employment level. So the net effect depends upon the magnitude of price effect and income effect. Thirdly, there is a limit to downward wage flexibility because if there is labour union then it will definitely oppose the downward wage adjustment. Moreover, it may not be in the interest of the employers to push the wage rate below a certain minimum, known in the economic literature as the efficiency wage, because this has adverse effect on labour productivity.

The relationship between wage rate and labour supply is even more complex. At the individual level, an increase in the wage rate generates both income and substitution effects. Because of the substitution effect, as the wage rate rises the worker devotes less time to relatively expensive leisure activities and therefore wage increase reduces the demand for leisure and increase hours of work. The income effect on the other hand reduces the hours of work. An increase in the wage rate therefore increases the hours of work if the

substitution effect dominates the income effect and it decreases the hours of work if the income effect dominates the substitution effect. So at the individual level, the net effect is ambiguous and it depends upon the relative magnitude of the two effects. At the macro level, while a wage increase is normally expected to increase the labour supply from a given population, it can conceivably have the opposite effect. A wage increase, for example, may induce women and children to withdraw from the labour force and thus reduce the labour supply. Moreover, there are limits to geographical mobility of labour even in most advanced economies because in such a situation the problems associated with relocation of families, housing are involved. Limited geographical mobility of labour also introduces ambiguities in the relationship between wage rate and labour supply at the level of aggregate economy.

Walras showed how pure competition produced a general equilibrium in which all markets clear. With the help of two fundamental theorems of welfare economics Walras showed how resources are optimally allocated in equilibrium. The first of them states that under certain conditions the Walrasian general equilibrium is Pareto optimal in the sense that the allocation of resources prevailing at equilibrium can not be so improved as to make at least one person better off without making someone else worse off. The second theorem states that under some stricter conditions including non-increasing returns to scale, Pareto optimum allocation can be attained through the price system if the initial distribution is fixed appropriately. According to this argument what is implied is that the government's role is restricted to only getting the initial distribution of income right. Once that is achieved the market can be relied upon to produce the optimum allocation of resources.

Over time there have been many criticisms of the general equilibrium analysis. But here we mention the criticisms put forward by

Stiglitz(1991). Stiglitz has classified two kinds of problems which are as follows:-

1. problems arising from imperfect information and

2. problems arising from the view that human behaviour is based on strategic consideration rather than being based exclusively on self interest.

Problems arising from imperfect information.

The competitive equilibrium theory assumes that each consumer selects a basket of goods that maximizes his satisfaction today taking into account not only all the goods that exist today and all the prices that prevail today but also all the goods that would be available in the infinite future and the prices that would prevail in the future. Similarly a producer maximizes his profits with full knowledge of not only what to produce, where to produce and how much to produce today but also of what to produce, how much to produce, where to produce and with what technology in the infinite future. The theory requires that he knows the technological progress that will take place in the future as well as the demand for all goods and their prices in the future. Each economic agent has to make a choice today so that the satisfaction of the future generations is not compromised. We see around us that many goods people produce and technologies they use to produce them harm the environment and thereby the welfare of the future generations. The information required by an economic agent to make rational choices today is so vast that it is impossible for any individual to posses it. The fundamental theorems of welfare economics require markets to exist in all commodities contingent on all possible outcomes in the world. This is impossible. Human beings may make mistakes in processing

such vast information. The competitive theory assumes away transaction cost and yet in practice every transaction involves cost. Like information cost they too are asymmetric and distort the price from the equilibrium price. Further the theory assumes that the cost of enforcing contracts is zero which is unrealistic. Moreover due to uncertainty the problem of information arises. They give rise to demand for insurance. Insurance markets create a moral hazard. Moreover insurance reduces the incentive of the insured person to avoid the undesirable outcome.

Problems arising from human behaviour

The competitive theory assumes that human behaviour is motivated by self-interest and everyone pursues self-interest independently of others. Critics challenge this assumption by pointing out that many situations in life resemble prisoners' dilemma where the action of one individual influence the outcome of others. The society would be better off if its members cooperated with one another than when each member pursued his interest independently of others.

In the general equilibrium analysis labour services are not treated any differently from commodities and all assumptions pertaining to the goods market are applied to the labour market. Assuming rationality of human behaviour, homogeneity, perfect knowledge, a large number of buyers and sellers, free mobility and substitutability of resources it can be proved that the labour market would be cleared at a wage that would be consistent with the equilibrium price set. Most of the criticisms of the general model apply to the labour market as well. According to Stiglitz the existence of unemployment shows that at least one of the markets is imperfect and the economy is out of equilibrium most of the time in most countries.

The principal-agent problem can also be included in the set of problems caused by incomplete knowledge. When an employer hires

a worker he does not know how productive the worker would be in his job. In many cases the principal finds it difficult to monitor an employee's performance and under these circumstances wages would not equal marginal product and thereby violate the condition of competitive equilibrium.

All these suggest that we can not arrive at a one-to-one relationship between wage rate and labour demand and wage rate and labour supply. Moreover as we have seen there are problems with the general equilibrium analysis of the labour market as well. Once this is recognised, it becomes obvious that labour market flexibility can not be meaningfully defined with reference to some ideal situation where operation of unrestricted forces of demand and supply eliminates all possibilities of involuntary unemployment. In Solow's words "wage rates and jobs are not exactly like other prices and quantities. They are much more deeply involved in the way people see themselves, think about their social status and evaluate whether they are getting fair share out of society. Social institutions define acceptable or unacceptable modes of behaviour in the weighty context like the labour market" (Solow 1990).

However labour market flexibility can be understood in a slightly different way. Labour market flexibility can be considered as a short hand expression for three types of flexibilities viz wage flexibility, employment flexibility and job flexibility.

Wage flexibility means short run variability of wage rate. In an economy with no inflation, the relevant wage rate would be the money wage rate. In most economies, however, inflation persists and thus it is the flexibility of product wage rate that matters. Employment flexibility refers to the ease with which labour can be hired and fired. Job flexibility refers to the ease with which labourers can be transferred from one occupation to another within a firm or an enterprise.

The three kinds of flexibilities in the labour market have become relevant in three different contexts. Wage flexibility facilitates adjustment to short run price fluctuations in the product market. Firms are better able to adjust to price fluctuations in product market if their unit labour cost is variable. In the short run, unit labour cost is variable only if wage rate is variable since labour productivity and rules governing the conditions of work and social security can not be changed quickly. The demand for wage flexibility from the employers has increased tremendously with the onset of trade liberalization which has tremendously increased the competition among the firms and this competition is mostly in the nature of price competition. The best way for the firm to survive in such a competitive market is through downward adjustment of the wage rate which undoubtedly has a deflationary impact on the economy as a whole. But while deciding on wages at the firm level, the employer is not really concerned about the economy as a whole but on his own survival in the market. It is the government which can take into consideration the economy as a whole and hence implement policies to overcome such deflationary tendencies. The demand for trade liberalization and wage flexibility had to come simultaneously which it did but it has to be understood that such demands are rather short sighted. Leaving the determination of the wage rate entirely to the market can be self defeating.

Employment flexibility is relevant in the context of industrial restructuring when old industries are declining and new industries are emerging. It is argued that due to employment protection legislation the employers are discouraged to employ workers because they may find it difficult to retrench workers when the business circumstances are not very profitable. They rely on contract labourers to meet the increased demand or use capital intensive technology. A firm's internal labour market has been defined in dualistic terms such as 'primary' and 'secondary', 'core'

and 'periphery', 'formal' and 'informal'. Though the employers can reap short run benefits from employment flexibility, in the long run their harmful consequences are realized. Competition requires top quality employees; low cost is not the only source of competitive advantage. In the long run the employers and the workers both bear the cost of flexibilisation. In a highly flexible labour market employees are constantly screened for their productivity performance. The ongoing selection process might ultimately lead to loss of confidence in workers and exclusion from the labour market. In the world of asymmetric information and incomplete information, long term contracts provide scope for learning process for both employers and the workers about each other and even about their own strengths and weaknesses. The information is gradually shared between the two parties after a period of consolidation and relationship. Short labour contract resulting from flexibility limit the information sharing process. Improvements in productivity depend not only on cooperation of workers but also on their active involvement. Insecurity dampens involvement and active participation of workers. Also, the long term contracts allow the firms to impart extensive training to their workers which positively contribute to increased efficiency. Low wages and short term contracts constrain training process and hurt productivity and quality which further depress wages.

Job flexibility is important when technological changes require reclassification and restructuring of jobs. Job flexibility requires that the employees must be specialized in more than one area which is possible only if the employee stays in a particular firm for a substantial period of time.

The issue of labour market flexibility has gathered momentum in the increasingly free global flow of capital, technology and commodities which have had three major consequences. First, the industrial firms in many developing countries are being transformed from price

makers in to price takers. Under an import substitution regime when the industrial firms in India enjoyed significant degree of protection, industrial pricing tends to be on a cost-plus-mark-up basis as a result of which price adjustment need not necessarily required cost adjustment. As globalisation proceeds, domestic prices are increasingly influenced by international prices and the importance of cost adjustment increases. Second, globalization drastically reduces a government's ability to influence aggregate demand in the domestic economy. To begin with, as trade grows in importance, management of real exchange rate tends to acquire priority. This means that inflation control replaces Keynesian demand management as the principal focus of macroeconomic policy. Third, globalization stimulates technology transfer and this together with the fact that the pace of technological change today is much faster than before, has created pressure for regular and speedy adoption of new technologies by industrial firms. Competition from imports also creates pressures on domestic firms for adoption of advanced technologies. It is often argued that the rapid rate of technological progress is unambiguously good for the society since technological progress leads to higher growth rate. Now higher growth rate implies more output which in turn implies higher employment. So it is argued that growth eventually leads to a decline in unemployment. However this is not really the case. Along with technological progress and growth there is usually some rise in labour productivity as a result of which the rate of growth of labour demand is given by the excess of the rate of growth of output over the rate of growth of labour productivity. If the rate of growth of labour productivity is higher than the rate of growth of output then increase in the growth rate of the economy is accompanied by a reduction in the rate of growth of labour demand in which case an acceleration in the output growth would be accompanied by a worsening of the employment situation. In economies like ours, the trajectory of innovation is not an independent one, but is heavily influenced by the trajectory

followed in the advanced capitalist economies. The new processes and products introduced in the advanced capitalist countries enter in to the developing countries after a certain time lag. The majority of technological progress in the advanced economies is such that while it does not much affect the overall capital-output ratio it does tend to lower over time the labour-output ratio and this is precisely what gets replicated in the developing countries. The speed with which the labour-output ratio declines in the developing countries depends upon two considerations namely the pace of innovation in the advanced capitalist countries and the pace with which they get diffused in the developing countries. The pace of diffusion in turn depends upon the nature of our economic regime, ie. how liberal economic regime is and the demand for imported goods in the economy. These factors clearly show that there does not exist a one-to-one correspondence between the rate of growth of output and the rate of growth of employment in economies like ours. It is argued that in economies like ours a high rate of growth of labour productivity occuring along with the weakening of trade unions would lower real wages and this in turn would raise the share of surplus in output and hence the share of investment will rise. This would increase the rate of growth of the economy still further and this process of accelerating growth would necessarily go on until involuntary unemployment substantially disappears. The basic presumption of this argument is that the higher is the share of surplus, the higher is the share of investment in output. But this is not really the case. Even if we assume that the share of surplus does rise with the rise in labour productivity (ie. real wages do not rise with the rise in labour productivity) surplus is far from being synonymous with investment. Investment to a very large extent depends upon the expected growth in the size of the market and the increase in the share of the surplus does not give rise to such expectations.

For eliminating involuntary unemployment growth to be sure has to be there. But in addition to it some other measures are also essential. First, the developing countries like India must be very selective in adopting the technologies. Second, there is a need to initiate an independent trajectory of innovations, emphasizing in particular on employment-augmenting as opposed to labour-displacing innovations. There is also another kind of measure in which the same labour demand can be met by a larger number of workers. But if this work sharing is accompanied by a sharing of the same wage bill then we are not really overcoming involuntary unemployment. For reducing unemployment it is essential that work-sharing be accompanied by an increase in the wage-bill subject to the fact that this increase must not be so large so as to outweigh the growth itself. The entire thrust on technological innovation seems to have increased tremendously since the inception of the liberalization process without taking in to account the macroeconomic realities of the country. All these three major consequences restrict the capacity of the economy to generate employment which is concomitant to increase in the working population. As a result of this there is a vast pool of unemployed workers which acts as a stimulus to the employers to argue in favour of wage and employment flexibility.

As has been pointed out earlier that with the inception of trade liberalization, the Keynesian demand management has been largely neglected. The thrust has been on supply side management. According to the supply side argument, firms will be induced to produce more if the production cost is lowered. So, the lower product wages will induce firms to produce more. Since at equilibrium wage rate is equal to the marginal product of labour and marginal product of labour curve is the labour demand curve which is downward sloping, higher employment and hence output will be attained at a lower wage rate. Moreover, it is argued that a more

flexible wage rate (real or product) as well as freer hire and fire would encourage economic efficiency by a sort of 'carrot' and 'stick' policy vis-à-vis labour. More efficient workers could be paid higher wages while labour discipline would improve through the fear of loss of jobs. A free exit policy would allow the inefficient firms to exit and would also discipline the labourers. Such supply side emphasis at the cost of the demand side neglects how aggregate demand is formed in an economy. This point has been discussed by Bhaduri (1996) by looking at the individual components of aggregate demand in national income accounts from the expenditure side. Lowering of real wages due to wage flexibility would redistribute income against the working population which has a higher consumption propensity. So demand arising out of the working population is adversely affected.

Due to IMF style reform programmes, government consumption expenditure and government investment expenditure declines. While India has been able to increase its exports quite substantially during liberalisation, its imports have increased even more rapidly due to the policy of trade liberalisation during this period. The only remaining item which can solve the aggregate demand problem is private investment. Unfortunately the scenario in this regard has not been very encouraging. Moreover, whatever foreign direct investment has occurred, it has been mostly in the nature of portfolio investment. They usually take the form of NRI deposits and at times acquisition of ownership titles in the secondary market. Moreover, to the extent that a part of the foreign exchange earned through portfolio investment is used to support the import bill in excess of export earnings in a liberalised trade regime, it would have a strong contractionary effect on the level of domestic economic activity through the multiplier effect. This has been rather explicitly explained by Bhaduri (1996).

Thus there is a contractionary effect on aggregate demand. This contractionary effect does not end in the first round itself but rather it continues in the subsequent rounds as well. Subsequently some domestic workers lose their jobs and domestic profits of industry also decline. This reduces the purchasing power in the economy leading to further contraction in output and employment in the successive rounds of the multiplier effect. These successive rounds of the multiplier have nothing to do with the debate on efficient foreign versus inefficient domestic production. It is a consequence of the decline in aggregate demand. It falls on all domestic producers, both efficient and inefficient. What we see from the above analytical exercise is that no degree of labour market flexibility and other similar supply side measures are likely to be effective in improving the productive efficiency and thereby improve the condition of the workers, unless the government assumes the responsibility of managing demand through its fiscal and monetary policies.

Once the aggregate demand in the economy is taken care of, we can look in to the issue of wage flexibility and employment flexibility. In India wage is primarily composed of three main elements: the basic wage, compensation for increase in the cost of living known as the dearness allowance and bonus payment. There are established rules for payment of dearness allowance and bonus. The structure of basic wage has been determined by wage boards and pay commissions. Public enterprises dominate the organised sector and wage revisions in the public enterprises strongly influence the wage revisions in the private enterprises. In the organised sector we find that wage growth occurs basically through wage revisions and unless macroeconomic policies succeed in keeping the rate of inflation at a low level, pressures build up for frequent and generous wage revisions. Second, while real and product wages are flexible, the flexibility arises solely from the system of indexation. There is no mechanism for adjusting wages in response to changes in

productivity and profitability and wage growth tends to be exogenously given to the enterprises. In this sense there is effective wage rigidity. This means that enterprises must adjust productivity to exogenously given wages. The result is growth of capital intensity and the corresponding depression of employment growth. However it may be noted here that this kind of wage system exists only in case of the organised sector which accounts for hardly 7% of the total employment. For the rest of the 93% of the workers in the unorganised sector this system of wage determination is not at all followed and basically it is the employers who decide the wages unilaterally.

The view that poorly organised workers should be protected by the government against exploitation by the strong employers was widely shared in the early post independence period. Furthermore, since a social security system seemed non-feasible, guaranteeing employment security appeared to be the only way of guaranteeing income security. Finally, it was visualised that large modern establishments would eventually become the dominant employer in the economy and it seemed sensible to create ideal employment conditions in them. Since enterprises were being protected against external competition, no great difficulties for them were foreseen. The rules which primarily govern employment security in India's organised sector are Industrial Disputes Act,1947 and Industrial Employment Act,1946. According to section 25N of Industrial Disputes Act,1947, in an industrial establishment in which not less than 100 workmen are employed on an average per working day for the preceding 12 months, no worker who has been in continuous service for not less than one year shall be retrenched until:-

1.the worker has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has been expired, or the worker has been paid in lieu of such notice, wages for the period of the notice and 2.prior permission of the

appropriate government agency has been obtained on an application made in this behalf. The government after conducting its own enquiry based on the reasons provided by the employer for retrenchment may or may not grant permission for retrenchment. The rules of retrenchment pertaining to industrial establishments employing less than 100 workers are much simple and the employer can proceed with retrenchment quite easily. The basic understanding in these differences in rules may be that it is not possible for the small employers to provide employment benefits to its employees equivalent to those employed in large industrial enterprises. Moreover it was visualised that large-scale modern establishments would eventually become the dominant employer in the economy and it seemed sensible to create ideal employment conditions in them.

It has to be recognised that though these regulations have the merit of protecting employment and preventing frictional unemployment, they not only obstruct labour adjustments but also discourage employment growth in the organised sector. In effect they push the cost of hiring labour much above the wage cost and hence encourage substitution of capital for labour. And to the extent that the increased cost of labour hiring is passed on to product price, demand growth is constrained. It also needs to be recognised that the regulations protect only a tiny and declining proportion of the workforce in the economy. The industrial workers who originally were the intended beneficiaries, actually constitute a small proportion of all employees.

The Indian Constitution divides legislative powers in to three lists: the Union list, the State list and the Concurrent list. Central and State governments respectively make laws relating to matters in the Union and State lists whereas both central and state governments can make laws relating to matters in the Concurrent list. Matters relating to trade unions, industrial and labour disputes fall under

concurrent list. The Industrial Disputes Act,1947 has been extensively amended by the state governments. Timothy Besley and Robin Burgess studied the Indian labour market regulations and particularly these amendments in order to explain the performance of the Indian manufacturing sector between 1958 and 1992.They coded each of these amendments as neutral, pro-worker and anti-worker. With the help of econometric analysis they found that regulating in a pro-worker direction was associated with lower level of investment, employment ,productivity and output in registered manufacturing sector. For example West Bengal which was the largest producer of manufactured output per-capita at the beginning of the period had fallen to the seventh position in 1992 with output per-capita falling at an average rate of 1.5 percent per annum. West Bengal is also the state that had the greatest body of pro-worker labour regulations passed in the state legislature during this period. Its performance contrasts with Andhra Pradesh which grew at 6 percent per annum over the same period but which experienced anti-worker labour legislations. The study also finds little evidence that pro-worker labour market regulations have actually promoted the interest of the labour and more worryingly that they have been a constrain on growth and poverty alleviation. Their analysis reinforces the sentiment that government regulations in developing countries have not always promoted social welfare. Djankov etal (2002)found that countries with higher regulations of entry have less impressive performance across an array of social, political and economic indicators. They found that greater regulations expands the size of the unofficial economy. Stern(2001) points to improvement of the investment climate as being key to increasing productivity and reducing poverty and identifies reforms of India's cumbersome labour regulations as a priority. Fallon(1987) and Fallon and Lucas (1993) argued that strengthening job security regulations through central government amendment of the Industrial Dispute Act,1947 in 1976 and 1982 was associated with

a reduction in labour demand in firms covered by the regulations but not in small firms uncovered by job security regulations. The stringency of employment protection regulations has thus been used to explain the phenomenon of jobless growth in industry in the 1980s whereby industrial output growth was accompanied by stagnation in employment. Fallon and Lucas (1991) estimated that the amendment in 1976 of the exit clause of the Industrial Disputes Act,1947 which prohibited the employers of 300 or more workers instead of 500 or more workers earlier to retrench or close down without permission three months in advance of the closure reduced the demand for labour by 17.5 percent. Papola (1994) reports a high correlation between productivity and real wages at two digit industry level during 1970/71to1987/88.This implies a decline in unit labour cost. But the capital intensity with respect to labour did increase. It would be wrong to argue that an employer would increase capital per worker only if unit wage cost is increased. The fear that he would not be able to retrench the workers in the future could drive him to substitute capital for labour and justify deregulation.

So from the above analysis we find that there is a need to revise the labour market policies in India. The most common fallacy about the labour market is that it is a zero sum game(ie one person's gain is another person's loss).Hence, it is believed that for India to progress, the organised labour must be prepared to make sacrifices. So, the reform is presented as something that will hurt the organised labour but is justified in the interest of the nation as a whole. In 1982,there were 898000 workers employed in the firms that employed 100 or more workers. By 1990 the number had fallen to 569000 workers(Kaushik Basu).It was in 1982 that the Industrial Disputes Act,1947 was amended making it mandatory for firms employing more than 100 workers to seek prior permission before retrenching workers. So, the amended Industrial Disputes Act,1947 far from

increasing jobs had the opposite effect. The reason is that new firms coming in to existence after 1982 tried to make sure that they did not cross the 100 workers mark so as not to come under the ambit of the new law. They managed the shortfall of labour requirements simply by hiring contract workers or by slowly moving to more capital intensive technologies. What is really needed to be done is not to make hiring and firing easier or harder but to make room for flexible contracts between workers and the employers.

The National Commission on Labour has suggested raising the severance package to 60 days salary for every year in the job. What is not taken in to account is that different firms and different workers have varying needs. There are some sectors that pay high wages but retain the right to dismissal of the workers more easily with little severance benefit, while other sectors will guarantee employment or huge severance but offer lower wages. The government must lay down the broad framework within which the contract is to be signed between the worker and the employer. However it is quite likely that the worker may not be knowing about the details of these broad frameworks. It is here that unions play an important role not only in informing the workers about the broad frameworks of contracts but also to strengthen the bargaining power of the workers. In the following chapter we analyse the labour unions in greater details.

Chapter-3

Trade Unions

Throughout the nineteenth century unionism was largely confined to skilled workers. As a result of this, unionism covered only a small proportion of the total labour force. The first trade unions to emerge were craft unions of skilled workers in the U.K. Due to the industrial revolution and the consequent emergence of the industrial society a significant proportion of skilled craftsmen (who were previously self employed or even small employer) were effectively forced to remain as employees throughout their working lives, with a consequent lessening in their ability to represent their own interest. This factor provided an important impetus to the formation of craft unions by skilled workers. Phelps-Brown (1968) have shown that historically the wages of skilled craftsmen had exceeded those of the unskilled. Hence it can be argued that the formation of craft unions represented a largely successful attempt by skilled workers to maintain their favourable relative wage position. During the process of industrialization there was a rapid growth in demand for the skilled craftsmen. Faced with this situation, craft unions had to restrict the influx of new entrants in the labour market in order to prevent the labour supply from increasing and thereby prevent fall in their relative wage position. The principal instrument by which the craft unions restricted entry was the apprenticeship system. Although this system was designed to ensure proper standard of training and qualification, but in reality it was often used as a barrier to entry for the new entrants to the craft.

Until the last decade of the nineteenth century unionism in U.K. was largely confined to skilled workers. During 1880s there was a new phase of growth of trade unionism in U.K. This phase which lasted until the outbreak of the First World War was characterised by the formation of general unions, which opened their doors to all kinds of

workers irrespective of their industry of employment. During this period there was a massive influx of non-unionised unksilled labourers from agriculture as a consequent of which the general unions had little opportunity to increase their members wages by restricting the supply of union labour.

The inter war period can be characterised by two main effects on trade unionism. First, falling membership (since there was massive unemployment which had a negative effect on union subscription) forced many smaller unions to merge with the large ones as a result of which there was a marked decline in the number of unions in existence which can be verified from the following table.

Year	U.K.		U.S.A.
	No. of trade unions	Membership (millions)	Membership (millions)
1892	1233	1.576	0.477
1900	1323	2.022	0.869
1910	1269	2.565	2.102
1920	1384	8.348	4.775
1930	1121	4.842	3.162
1940	1004	6.613	7.055
1950	732	9.289	14.09
1960	664	9.835	15.539
1970	543	11.187	18136
1980	454	12.947	20.246
Source: Sapsford (1981)			

Second, faced with falling membership, unions tried to outweigh this by making inroads in to new areas. During the second world war period, there was a marked change in the occupational structure of the U.K. labour force with a shift in employment away from manufacturing towards the service sector.

Apart from this brief description of the trends in union membership in the U.K. and the U.S.A., a more detailed analysis of the union membership relating to a large number of countries shows that the growth of aggregate union membership is typically characterised by cyclical fluctuation of the economy. Bain and Elsheikh have studied the rate of growth of union membership in Australia, Sweden, UK, USA and found that it depends on the rate of price inflation, the rate of wage inflation, unemployment and union density. They argue that workers are more likely to join trade unions when there is rapid price inflation as they attempt to achieve an improvement in money wages which is sufficient to protect their real standard of living. This they term as 'threat effect'. They also argue that when there is price rise (which can be seen as an index of prosperity of industry) the chances of union growth are higher because the employer would not object to union formation as they perceive that such an action might lead to disruption of profitable production. This they term as 'prosperity effect'. Both threat effect and prosperity effect work in the same direction and suggest a positive relationship between union growth and the rate of price inflation. They also suggest that workers are more likely to join and remain in unions during periods when money wages are rising rapidly, as during such periods workers tend to credit increased money wages to unions and hope that by joining or remaining with them they will do at least as well in the future. This they refer to as the 'credit effect'. According to them there is a negative relationship between the rate of union growth and union density (which is defined as the ratio between actual union membership and the potential union membership) because the higher the density, the greater will be the difficulty of increasing membership further since there will be fewer workers left to recruit. Lastly they suggest that the rate of growth of union membership is likely to fall when unemployment is high. There are several reasons for this hypothesis. First, when unemployment is high there is low level of aggregate demand as a result of which employers are more able to resist the

spread of unionism since the opportunity cost of foregone output resulting from disruption of production (when employees oppose anti union activities of the employers) is much less. Second, some employed workers may also become reluctant to join unions during periods of high unemployment because this might antagonise their employers as a result of which they might lose their jobs in a period of excess labour supply. Third, employed members may also tend to withdraw from membership during periods of high and rising unemployment as they estimate that under prevailing economic conditions the scope for union-won collective bargaining advances is limited and the expected benefits from membership are no longer sufficient to outweigh membership costs.

Over the years there has been a considerable debate over the question whether it is valid to analyse trade unions as economic institutions. Trade unions have been analysed by drawing analogies with the rational firms and household of microeconomic theory which are assumed to maximise some clearly defined objective function. According to Dunlop 'the economic theory of a trade union requires that the organisation be assumed to maximise (or minimise) something.' Various suggestions have been put forward as to precisely which variable the trade union could be assumed to maximise. One view suggest that trade union maximise wage income per member. Give the existence of a downward-sloping demand curve for union labour, this objective clearly implies that the union will seek to raise wages to such a level that the bulk of its members will be forced out of employment. If the workers are unemployed then it is quite unlikely that they will remain in the union. Therefore, the pursuit of wage maximisation per member is likely to lead to reduction in the union membership. If this objective is reformulated and it is assumed that the unions maximise average wage income of the original members, the prediction is ultimately the same, except that employment and membership are contracted more slowly. So, the maximisation of the

wage policy implies that the union has no interest in either the employment of its members or the size of its membership and hence by implication no interest in its own survival which is highly implausible. There is another view according to which the unions aim to maximise the employment of their members. Given the existence of a downward sloping demand curve for union labour, this objective will be achieved when the union has succeeded in pushing its members' wages as low as possible. The employment maximising formulation therefore gives equally implausible prediction that the union seeks the lowest wage possible by aiming to increase its members employment up to the point where they are no better off than they would be without a union. To the extent that existing members are able to exert greater pressure than potential members on the union leadership, it is not easy to see how the leadership can continue to pursue such a maximisation policy which sacrifices the wages of the existing members in order to increase the number of members employed. In a nutshell, this model fails to provide any answer to the question as to why existing members should support a policy designed to sacrifice their own wages in order to increase the employment prospect of the others.

Because of the inadequacies of both wage maximisation and employment maximisation models, the model which takes in to account the product of the members' wage rate and employment (i.e. wage bill) has been put forward. The wage bill is maximised at the point where the elasticity of the labour demand curve is equal to unity. If the unionised wage rate is above the wage rate that would prevail at a point where the elasticity of labour demand is equal to one then in order to maximise the wage bill, the union will seek to achieve wage cuts. As under the employment maximisation mode, the union in this model also sacrifices the wages of its already employed members. As in the employment maximisation model, here also it is not easy to see how such a policy if pursued could survive since the

existing members would be unlikely to be willing to continue to subscribe to a union policy that persistently sacrifice their own interest.

In the search for a union objective function it has been suggested that the union can be viewed as a monopoly seller of the labour service of its members and that it can therefore be assumed to behave in a manner analogous to a product market monopolist. It has therefore been argued that in the same way as a product market monopolist equates marginal cost to marginal revenue, it is reasonable to assume that the trade union as a monopoly seller of labour seeks to equate the marginal revenue from the sale of its members labour to their supply price. The problem with the monopoly analogy arises on the supply side. In the case of monopoly, the firms is order to maximize their profits equate marginal cost to marginal revenue from the sale of their output. The union, however, does not produce the labour services of its members but acts instead as their agent. Therefore, unlike a firm, the union does not incur production costs. The labour supply function is not a marginal cost function analogous to that of a monopolistic producer but illustrates members work-leisure preferences at various wage rates. Therefore, the union is seen as attempting to maximise an economic rent; namely, the surplus of its members' total wage income over and above the total of their individual marginal supply price.

Dunlop (1944) argued that the number of workers who are allied to the union will be a function of the wage rate. Accordingly Dunlop constructed a membership function showing union membership as an increasing function of the union wage rate and suggested that this should be substituted in place of conventional labour supply curve. In cases where union membership is required in order to work, the labour supply function and the membership function will be identical. However, in situation where union membership is not essential to work, the two functions need not coincide with each other and it is

quite likely that the membership function will lie to the left of the conventional labour supply schedule, with its displacement to the left indicating the number of workers who will not be union members at the wage rate in question.

In view of the difficulties encountered in the specification of a single union maximand, it has been argued that trade unions are encountered at least with increasing both the wages and employment of their members. As a development of this sort of approach to trade union analysis, economists have specified utility functions accordingly to which a trade union's utility is assumed to be an increasing function of two variables: its member's wage rate and their level of employment. Given this utility function, it is possible to employ the standard techniques of indifference curve analysis to study the union's wage-employment objectives. The demand curve of the employer for union labour imposes a constraint upon the union, since it shows the amount of union labour that the employer will seek to hire at each particular wage rate. With a given labour demand curve the union's utility is maxmised at the wage-employment combination where the indifference curve is tangential to the labour demand curve. So, the union maximises utility subject to the labour demand curve constraint by equating its marginal rate of substitution between wages and employment to the slope of the labour demand curve.

Over the years the utility maximising approach has attracted considerable attention about the likely form taken by the union's utility function. Oswald (1982), Mayhew and Turnbell (1989) have proposed different forms of utility function that the union faces. The utility maximisation approach can be extended to allow analysis of the union's reaction to the shifts which may occur over time in the position of its short-run demand for labour curve. It has been recoginised over many years (e.g. Lewis, 1963) that trade unions do not typically react in symmetrical manner to increases and decreases in the condition of demand for their members' labour. Confronted with

an increase in the conditions of labour demand, unions are frequently observed to attach a higher order of preference for improvements in wages than for increase in employment. But when confronted with a decrease in labour demand condition they are often observed to resist any reduction in money wages despite the resulting contraction in employment.

Ross (1948) challenged the economic approach to the analysis of trade union behaviour on the grounds that unions are organisations composed of a heterogeneous set of members with heterogeneous interests and goals. Ross argued that union policies are not formulated on the basis of any simple maximising process but on the basis of a political decision making mechanism, whereby the union leaders, given their own objectives, reconcile the pressure up on them both internally and externally. In response to this challenge, Dunlop argued that while unions do have political dimensions, these are by no means as significant as Ross would lead us to believe and that, on the basis of the US evidence, the dominance of the political factors is in fact a characteristic of the behaviour of only a small number of new unions. Dunlop went on to argue that, despite the existence of political forces, union leaders are aware of economic factor particularly long-run realities, as is evidenced by the fact that the behaviour of wages can be well-explained by market variables.

Freeman and Medoff (1984) contrasted the "two faces of unionism": the "monopoly" versus the "collective voice" view. The monopoly view analyses unions as large monopolies in the labour market where basic objective is to increase their members' wage above the market level by restricting labour supply. This leads to a misallocation of human and capital resources and is therefore not only economically sub optimal but may also be socially undesirable since it leads to greater inequality within the work force. In sharp contrast, according to the collective voice view the union is the collective voice which is determined by a "median voter", provides management with

information on workplace and shop floor issues, act as a communication channel. This leads to the development and retention of specific skills and enables the union to put pressure on management to act fairly and efficiently in its daily operations.

There can be three kinds of bargaining structures viz decentralised bargaining structure (where enterprise based unions negotiate at plant and firm level), centralised bargaining structure (where national agreements with centralised trade union federations take place) and industry-wide bargaining structure (where industry specific trade unions bargain).

The "collective voice" effect seem to be maximised in centrtalised bargaining structure, whereas "monopoly" effects seem to be greatest in decentralised bargaining structure.

Nelson (1991) found that economies with decentralised bargaining structures as well as economies with very centralised bargaining structure managed to generate cooperative behaviour that contained union wage demand and generated employment growth compared to those economies in which bargaining generally occurred at the industry level with industry wide unions. According to Nelson market competition keeps wage demands in check in decentralised regimes, whereas in the centralised regimes, greater power is balanced against greater risk that wage gains may trigger price inflation which in turn will erode those nominal gains. It is at the industry level of bargaining (particularly those industries which are insulated from any kind of competition) that there exist high degrees of union wage militancy. Given mark-up pricing higher union-won wage gains are passed on to the final consumers.

The Indian economy represents a mix of all three bargaining levels and a variety of union structures. In the private corporate sector, enterprise-based unions exist that may or may not be affiliated to parliamentary political parties. In public-sector enterprises, centralised trade union federation affiliated to political parties bargain

with the state at the national level or at the industry level. Central and state government employees in the service sector (transport, postal services, banking insurance etc.) are usually represented by politically affiliated unions bargaining at national or regional level. However since the mid 1980s, the Indian economy has been opened up to greater domestic and international competition as a result of which these structures have come under increasing pressure to decentralise. In several private enterprises independent unions have come into existence and engaged in militant bargaining often with multinational employers securing substantial wage and non-wage gain in the process. As these unions traded off increased wages against employment growth, and as employers shifted to non-unionised sites, the traditional party-based unions are finding it difficult to increase their membership in these enterprises. In terms of the "monopoly" versus the "collective voice" framework, in the early years after independence the state acted as the collective voice of the workers for the purpose of rapid industrialisation with minimum industrial strife. In so doing, the state minimised the potential monopoly effect. In the public-sector, wages and working conditions were administered by the state rather than decided through collective bargaining. Over time as both inter-industry and intra-industry differentiation developed, different unions emerged that challenged the state hold on organised labour movement. In the private sector, efficient productivity bargaining with the informed unions kept monopoly effect within the firm in check while collective voice effect increased. In public sector enterprises and services, the union voice led to rigid and inflexible contract provisions. With pay increases unrelated to improvements in productivity, union monopoly effects intensified. The large majority of the workers continue to face increasing employment insecurity, if not lower wage growth, both in declining industries in the formal sector and in growing informal sectors.

Some authors have characterised the contemporary labour unions in India as being either "selfish" or 'altruistic'. Given a choice

between wage increase and an increase in employment, the 'altruistic' unions choose employment to be maximised. Consequently, their bargaining strength is positively related to their size. We can think of large, established trade union federation, which are affiliated to the political parties under this category. On the other hand, 'selfish' unions are interested in maximising the wage bill of only those already employed in the particular enterprise. The decentralised employees' unions fall under this category. In the private corporate sector, especially among the new and profitable units, the 'selfish' unions have over time gained dominance over the 'altruistic' unions. In this sector, wage increases are closely related to productivity increases largely due to the effective implementation and monitoring of various incentive systems. In older industries like textile and jute (containing both private and public enterprises) where typically industry-wide bargaining prevail 'altruistic' unions were imposed on them due to political reasons. Maximisation of employment generation being the primary objective, the bargaining structure did not reflect the voice of the average union member.

From the above discussion it becomes clear that from the very inception there has been a lot of controversy over the objectives of the trade unions. With the process of liberalization in the Indian economy, decentralised unions have become more dominant and the objective of such unions are quite clear cut. Such unions are least bothered about the level of employment. Rather they are more interested in raising the wage level of their members. This has adversely affected the employment situation in the post liberalisation era. It has also led to intensified segmentation of the working population. This has weakened the strength of the trade unions vis-à-vis the employers. What these decentralised unions do not really realize is the fact that the vast pool of unemployed workers is always a strength to the employer as the employer can always threaten to

dismiss the workers if the workers misbehave (misbehaviour being interpreted by the employer).

From the above discussion we find that it is very difficult to generalize about the nature of Indian trade unions and thereby formulate a universal policy towards the trade unions. It is in this regard that the analysis of government policies vis-a vis the trade unions become essential and this is done in the following chapter.

Chapter-4

Government Policies

The government of India had set up the National Commission on Labour in October 1999 in order to suggest rationalisation of existing laws relating to labour in the organised sector and to suggest an "umbrella" legislation for ensuring a minimum level of protection to the workers in the unorganised sector. The Commission submitted its report to the government on June 1, 2002.

The report of the Commission reveals that the government has for the first time given due importance to the unorganised sector. In the report of the first Labour Commission one can find hardly 12-14 lines on the unorganised sector.According to the Commission, a special provision may be made in the Trade Union Act to enable workers in the unorganised sector to form trade unions and get them registered even when an employer-employee relationship does not exist or is difficult to establish. In its present form the Trade Union Act, 1926 specifies that 10% of the workers are needed to get recognised as trade unions in the unorganised sector as well. The Commission recommends that the provision stipulating 10% of membership shall not be applicable in the case of the unorganised sector. This recommendation if implemented can pave the way for the 92% of the workers in the unorganised sector to enter into the labour movement along with the workers in the organised sector. This shall change the restrictive character of the labour movement and help in the organisation of unorganised labour. Keeping in view the fragmented nature of the trade union movement and given the fact that the constituents are not willing to give up their respective indentities, the Commission has suggested that one of the ways in which genuine representation can be obtained is by upgrading the eligibility criteria for representation. The negotiating agent should be selected on the

basis of a check-off system, in which the union having 66% of support of the workers will be accepted as the single negotiating agent. If no union has 66% of support then unions that have more than 25% should be given proportionate representation in the college. If a union has 66% of the membership then it is recognised as the sole negotiating agent in which case 34% of the workers are left out. So the negotiating agent is not really representing the interests of all the workers. Proportional representation of the workers would have solved this problem of representation. However in this case the provision of minimum stipulated percentage of workers can be simultaneously used.

The commission has recommended a three tier system of Lok Adalats, Labour Courts and Labour Relations Commission. While Lok Adalats and Labour Courts deal with individual grievances and complaints, the Labour Relations Commission has been empowered to deal with both individual problem and the problems of collective bargaining when bilateral negotiations are unable to reach a settlement. The Commission has recommended that Labour Courts should have final authority in issues pertaining to labour and that the jurisdiction of civil court in this area be banned. All this is done with an objective of resolving grievances pertaining to labour within a reasonable period of time. By imposing on the unions the condition of 10% membership to represent labour in various fora, the Commission has eliminated the role of very small unions who often claim that they are the genuine representatives of labour.

The Commission has very categorically viewed that no exemption from labour laws should be allowed to export promotion zones or to special economic zones. Almost all the governments apart from providing various kinds of tax and non-tax concessions to the entrepreneurs in these special zones, the labourers in these areas are outside the purview of the labour laws which are applicable to the organised sector labourers. When all the avenues of attracting investments in

these areas are saturated, the government often resort to various kinds of regressive labour policies (like not making various kinds of concession and benefit payments to the workers necessary) which eventually instigate a race to the bottom. This recommendation if implemented will force the governments to concentrate on other factors (like development of infrastructure) in order to attract investment in these special economic areas instead of repressing the labourers.

While examining the question of salary limit for coverage of the workers, the Commission found that the relatively better-off sections of employees categorisaed as workers like airline pilots, do not merely carry out instruction from a superior authority but are also required and empowered to take various kinds of on-the-spot decisions in various situations. The Commission therefore recommended that the government may lay down a list of such highly paid jobs wherein the employees are considered as non-workers and thus included in the law meant for the protection of non-workers. Another alternative is that the government fix a cut-off limit of remuneration which is substantially high (Rs 25000 p.m), beyond which the employees will not be treated as ordinary workers. All supervisory personnel, irrespective of their salary are to be kept outside the rank of workers and therefore keep them out of the purview of labour laws meant for the workers. There is clearly problem with the system of cut-off limit. There may be some workers in some establishments getting higher salaries than the managers or supervisors in some other establishments and at the same time getting the benefits accruing to the workers owing to the fact that their salaries are lower than the cut-off limit.

The Commission has explicitly stated in its report: "A settlement entered into with a negotiating agent must be binding on all workers". The basic aim of this recommendation is that once the negotiating agent, who enjoys 66% representation or a composite negotiating

agent constituted from major trade unions, enters in to an agreement, such an agreement must be binding on all workers. But the Commission does not make such an agreement binding on the management. It may be the case that the management itself violates the agreement. The Commission is totally silent on what should be done to the management if it fails to obey the agreement. Such an action on the part of the Commission may be due to the fact that the Commission presumed that it is only the workers who might not obey the agreement while the management will always abide by the rules of the agreement. Such a presumption is highly falacious.

According to chapter VB of Industrial Dispute Act, 1947, an industrial establishment employing not less than 100 workers can not lay-off a worker whose name is in the muster roll of the industrial establishment without the prior permission of the appropriate government authority. Only the workers in mines can be laid off for reasons of fire, flood or excess of inflammable gas or explosion and the employer of such establishment must apply to the appropriate government authority for permission to continue the lay-off within a period of 30 days from the date of commencement of such lay-off. The Commission has suggested that any establishment of any employment size need not obtain prior permission to carry out lay-off and retrenchment. In the case of establishments employing 300 or more workers, where a lay off exceeds a period of one month, the Commission recommended that the establishment be required to obtain post facto approval of the appropriate government authority. It is really strange that the Commission recommends post facto approval to be obtained from the appropriate government authority because it clearly appears that the commission presumes that obtaining the approval of the state government is a routine matter. This is rather unfortunate as the Commission does not state what is to be done if the appropriate government authority denies the approval.

The Commission recommends that in case of closure of an establishment which is employing 300 or more workers, the employer will have to make an application for permission to the appropriate government authority 90 days before the intended closure and also serve a copy of the same to the recognised negotiating agent. The Labour Commission has permitted establishments employing less than 300 workers in the manufacturing sector to function outside the purview of this requirement. The real issue is as to whether closure is used as a device for retrenchment. It is alleged that in many situations, closure may be resorted to, during periods of very low demand in order to retrench workers. In case the employer restarts the firm after some time on the plea of change of circumstances with a reduced number of workers than those employed earlier or by recruiting new workers, can it be concluded that such an action on the part of the employer confirms that he earlier decided to close down the establishment to reduce the liability of the worker? The most important question is what is genuine closure? The Gujrat High Court in the case of Associated Cement Companies and others vs union of India and others (1989), stated: 'If the closure is bonafide or on account of unavoidable circumstances viz financial or commercial compulsion or serious management problem, then it shall be regarded as genuine. Prevention of unemployment can not be regarded as the sole basis or paramount consideration in granting such approval.

Regarding providing protection to workers employed in small units with an employment size of less than 20 workers, it mention: "No employer shall dispute with the service of an employee employed for a period of not less than six months, except for a reasonable cause." But this clause has been removed in case of retrenchment of industrial employees working in establishments employing up to 300 workers. The question of proving a reasonable cause does not arise in this case. In this regard the observation made by the Special Group on Targeting Ten Million Employment Opportunities Per Year (2002) can be noted.

It states that: "One should remember that the contribution of total employment by the organised private sector is hardly 3.5% and therefore the potential of generating sizable employment in this sector, even by changing the law will be insignificant over the Tenth Plan period... Given the fact that the organised sector (especially the public sector) is already carrying excess labour, the immediate effect will be more firing than hiring. Therefore, purely on the ground of employment generation, the favourable effect of any change in this generation, the favourable effect of change in this legislation is marginal, at least in the short term."

The Commission has treated strikes and lock-outs at par. It recommends: "an illegal strike or illegal lock-out should attract similar penalties. A worker who goes on an illegal strike should lose three days wages for every day of the illegal strike, and the management must pay the worker three days wages per day for the duration of the illegal lock-out. The union which leads an illegal strike must be de-recognised and debarred from applying for registration for a period of two or three years." The Commission is however silent on what happens to the management in case of an illegal lock-out. According to the report of the Commission the number of man-days lost due to lock-outs and strikes during the period 1981-90 was 402.1 million. As against this, the number of man-days lost during 1991-2000, was 210 million. But the interesting thing is as against 92 million man-days lost in strikes during 1991-2000, lock-outs accounted for 138.5 million man-days lost during the same period. While the average number of man-days lost per worker in strikes during the period 1991-2000 was 11.7, the corresponding figure was 39.4 man-days for lock-outs. Thus we see that the individual intensity of lock-outs was nearly 3.4 times as compared to strikes. The situation was alarming in 1999 when lock-outs accounted for 76.2 man-days lost per worker as against 9.7 man-days per worker lost in strikes. So, the Commission should have outlined a more effective policy to curb the phenomenon

of lock-outs which it did not. The following table gives a more detailed picture of strikes and lock-outs.

Workers Involved and Man-days Lost in Strikes and Lock-out in India during 1991-2000.

Year	Workers involved in (000's)		Man-days lost (in millions)		Man-days lost per worker	
	Strikes	Lock-outs	Strikes	Lock-outs	Strikes	Lock-outs
1991	872	470	12.43	14.00	14.3	29.8
1992	767	485	15.13	16.13	19.7	33.3
1993	672	282	5.61	14.69	8.3	52.1
1994	626	220	6.65	14.33	10.6	65.1
1995	683	307	5.72	10.75	8.4	34.4
1996	609	331	7.82	12.47	12.8	37.8
1997	637	344	6.31	10.68	9.9	31.0
1998	801	488	9.35	12.71	11.7	26.0
1999	1099	212	10.62	16.16	9.7	76.2
2000	1044	374	11.96	16.80	11.5	44.9
1991-2000	7801	3513	91.60	138.54	11.7	39.4
2001(p) [Jan-Sep]	138	148	2.49	10.76	18.0	72.7

Source: Annual Report (2001-02), Ministry of Labour, Government of India.

On the question of the right to strike, if we go through various Supreme Court judgements then we find that position taken by court has changed time and again.

The case T.K. Rangarajan vs Government of Tamil Nadu (Supreme Court, 2003) is interesting on several grounds. The Supreme Court in its judgment did not deal with the constitutional validity of Tamil Nadu Essential Services Maintenance Act, 2002 and Tamil Nadu Ordinance No. 3, 2003, though the employees had approached the Court precisely for this reason. According to this judgement there is no fundamental right to go on strike. The Court relied on earlier judgments in order to reach such a conclusion. To mention a few the Supreme Court, in Kameshwar Prasad and others vs State of Bihar and another [Supreme Court, 1962] held that 'the rule in so far as it

prohibited strikes was valid since there is no fundamental right to resort to strikes.' Similarly, in Radhe Shyam Sharma vs The Post Master General [Supreme Court, 1964] the Court held that there was no fundamental right to strike and hence Essential Service Maintenance Act was not violative of the fundamental rights as enshrined in the Constitution of India. The Supreme Court citing clauses 22 and 22A of the Tamil Nadu Government Servants Rule, 1973 ruled that 'there is no statutory provision empowering the employees to go on strikes'. According to clause 22 no government servant shall engage himself in strike or incitements or in similar activities. According to clause 22A no government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any government office or inside any office premises. The Supreme Court explicitly said that there is no moral or equitable justification to go on strike. In view of the Court, strikes by the government employees hold the society at ransom. The Court specifically observed: 'strikes affect the society as a whole and particularly when two lakh employees go on strike enmass, the entire administration comes to a grinding halt.' In the opinion of the Court, resorting to strike by the government employees is also not equitable because 'out of total income (Tamil Nadu state Government's income) from direct taxes, approximately 90% of the amount is spent on the salary of the employees. Therefore... in a society where there is large scale unemployment and a number of qualified persons are eagerly waiting for employment in government department or in public sector undertakings strikes can not be justified on equitable grounds.' Thus the Court has perhaps adopted the principle that since there is abundance of available people, the wages and other facilities should be decided by the employer and the employee either have to agree or quit. Moreover it is argued that government services are monopolies wherein the workers, the bureaucracy, and the management are insulated from the tides of competition. There workers in such firms should therefore not have the right to strike.

With the opening up of the economy in some sector (like insurance, telecom), the government is facing competition from the private players. Should the workers in these sectors granted the right to strike? Can the same employer (like the government) have different rules for different sets of employees? It is also argued that workers in the organised sector are highly protected with guaranteed social security benefits and in case of government employees, it is the tax payers' money which provide them such security and hence tax payers should not suffer because of strikes. First of all it has to be understood that the workers do not resort to strike out of choice but out of compulsion when all other forms of negotiations fail. Secondly, if there is strike, it is not only the general public at large who suffer but workers suffer as well. Thirdly it is the workers in the organised section with minimum job security who can resort to strike as an ultimate weapon. For the workers in the unorganised sector the question of whether to go on strike or not does not arise at all. It is believed that the organised sector has too little employment because of a lot of restrictions in term of labour protection. The unorganised sector has labour flexibility and accounts for 92% of employment. So, in order to increase employment in the organised sector, labour flexibility should be introduced and ban on right to strike is but only one such measure in this direction. The question of labour market flexibility has been dealt with in another chapter. Wage labour is distinguished from slave labour by the fact that the wage workers sell a fixed number of hours of labour power per day in exchange for a pre-assigned compensation in the form of wages plus benefits (if any). The right to withdraw one's labour is an important human right which only slavery denied to the enslaved. Freedom to strike in capitalist society is what distinguishes modern form of employment from slavery.

This recent judgement of the Supreme Court is in confirmity with a previous judgement which the Supreme Court held in the case Bank

of India vs T.S. Kalawala and others (Supreme Court, 1990). The Supreme Court held that 'whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike and the liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it.' The judges have further observed that during the period of strike, the contract of employment continues, but the workers withhold their labour and consequently they can not expect to be paid. This has serious implication as it increases the opportunity cost of observing strike and puts tremendous pressure on the workers to reach an early settlement instead of losing the wages for the period of even legal strike. The management can easily take advantage of this situation and put their own terms and conditions up on the workers. Therefore it would be suicidal for the workers to resort to a strike, even a legal strike, since they themselves would be losing their wages and employers would not be required to pay any wages for the strike period whether legal or illegal.

This is contrary to the earlier view which the Supreme Court had held. In the case of India Marine Services Pvt Ltd vs Workmen (Supreme Court, 1963) the court held that: 'We would like to make it clear that in case where the strike is unjustified and the lock-out is justified, the workmen would not be entitled to any wages at all. Similarly, where a strike is justified and the lock-out is unjustified, the workmen would be entitled to the entire wage for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified, a case for apportionment of blame arises.' In another case Churakulam Tea Estate Pvt Ltd. Vs Its workmen (Supreme Court, 1969), the Court held that if the strike is neither illegal nor unjustified the workers are entitled to the wages for the period of the strike. The finding of the Tribunal in this regard is accepted. In the case of Crompton Greaves Ltd vs its workmen (supreme court, 1974) the court held that: ' It is well settled that in order to entitle the workmen to wages for the period of the strike, the

strike should be legal as well as justified. A strike is legal if it does not violate any provisions of the statute. Again, a strike can not be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is question of fact which has to be judged in the light of facts and circumstances of each case.' As can be clearly seen that in the Bank of India vs T.S. Kelowala and others (1990) case, the Supreme Court has clearly bypassed the issue of legality and justifiability of strike.

In a later and much celebrated decision of the Supreme Court in the case of Gujrat Steel Tubes Ltd (Supreme Court, 1980), the court held that even in a mass misconduct, individualised disciplinary proceedings are essential. It is therefore well established that even in mass action by the workmen, an individualised equiry is a must before an employee is punished. Deduction of wages is a punishment for an alleged act of misconduct and therefore there is no exception available to the employer not to hold enquiries on the ground that the mass of the workmen were involved. If a dismissal for a misconduct is a punishment then deduction of wages for the same misconduct would also constitute a punishment and therefore would necessitate an individualised enquiry.

So, what comes our from various previous Supreme Court judgements is that in order to deduct wage for participating in strikes, the court must first decide if the strike is legal or illegal. If it is found to be illegal then enquiry has to be conducted at the individual employee level and must prove that the employee is guilty of misconduct. In the case of Bank of India vs T.S. Kelawala the Supreme Court bypassed this entire process and went on to deduct wages for the period of the strike. In the Tamil Nadu judgement also the Supreme Court has acted in a similar manner. The National Commission on Labour in spite of addressing certain key labour issues has remained wanting in issues particularly related to labour rights. The Supreme Court on its turn has been rather inconsistent is its judgements regarding the

right to strike. While interpretations may vary between judges and between different cases, the adjudication procedure followed should be uniform. To be more specific, there can be a debate over the issue whether a particular strike is legal or illegal or whether a particular employee has been indulged in a misconduct or not. But totally bypassing this procedure and abruptly deducting wages of the striking employee is something which must be rectified. One of the ways in which this can be achieved is to make strikes one of the fundamental rights. Like other fundamental rights, the right to strike will not be absolute. It will be subject to certain conditionalities. Based on these conditionalities, legality of a strike can be judged and further proceedings can take place.

As has been already mentioned in the beginning of this chapter that the main purpose of setting up of the National Commission on Labour was to rationalise the existing labour laws in the organised sector and to suggest an umbrella legislation for the workers in the unorganised sector. In this regard, the approach of the Commission has been to fix a benchmark mostly in terms of number and percentages in order to comply the concerned parties to follow such regulations. But without work, all talk about providing protection, improving conditions, assuring minimum wages, social welfare etc is futile. Employment generation therefore becomes a very important task for the government. But in order to formulate any policy regarding employment generation, one needs to look in to the employment scenario of the past. In this regard the following chapter deals with the employment situation in the country so far and analyses the report of the Special Group which has been set up by the government.

Chapter -5

Employment Situation

Anywhere in the world particularly in the developing countries like India with such a high density of population, the question of employment is the most vital question which needs to be addressed. Realising the enormity of the problem and sensitivity of the issue, the government has set up various committees in order to address the issue of employment generation. The most recent committee which the planning commission of India appointed on September 5, 2001 is that of the Special Group on Targeting Ten Million Employment Opportunities Per Year headed by S.P. Gupta. The objectives of the special Groups are first, to suggest strategies and programmes in the Tenth Plan for creating gainful employment for 10 million persons per year and second, to look in to the sectoral issues and policies having a bearing on employment generation, besides recommending sectoral programmes for the creation of employment opportunities.

On the basis of the NSS data, the special group has estimated the number of unemployed to be 26.58 million in 1999-2000. The growth rate of unemployment is 4.74% per annum for the period 1993-2000. The unemployment rate which declined to 5.99% in 1993-94 from 8.33% in 1983 increased to 7.32% in 1999-2000 (Datt, 2002). According to the special group: "The present rising unemployment is primarily an outcome of a declining job creating capacity of growth, observed since 1993-94. The employment growth fell to 1.07% per annum (between 1993-94 and 1999-2000) from 2.7% per annum in the past (between 1983 and 1993-94) in spite of acceleration in GDP growth from 5.2% between 1983 and 1993-94 to 6.7% between 1993-94 and 1999-2000." According to the Special Group the employment

elasticity has come down to 0.16 in the late 90s from 0.52 during the 1980s. The organised sectors employment generating capacity came down to near zero and has been negative in most cases in the public sector.

Employment in the organised sector

Employment (in lakh)	Year
279.41	1996
282.45	1997
283.90	1999
280.90	2000

Source: Indian Labour Journal: various issues.

The organized sector is defined as all public sector establishments and all private non-agricultural establishment employing ten or more workers. One view of opinion regarding the lack of growth of jobs in the organised sector is that the rise in real wages as well as rigidities in the labour market have resulted in policies that prevent market dictated hiring and firing which in turn has led employers to freeze hiring and to move towards capital intensive technologies (Ahluwalia 1992). According to this school of thought liberalisation would not be significantly responsible for the shrinking of jobs in the organised sector. However Nagraj (1994) has shown that in the 1980s, in major industries the compound growth of wage rage was either lower than the corresponding per capita income growth, or was not disproportionately large compared to it. According to him the power of the trade unions also declined during this period. This period also witnessed change in the structure of employment. The share of employment in the organised manufacturing fell from 14.903 millions in 1978-79 to 2.881 millions in 1996-97.

Decline in employment in Organized Manufacturing Industry

Year	Employment (in Millions)
1978-79	14.90
1983-84	10.198
1989-90	7.252
1991-92	4.234
1996-97	2.881

Source: R.G Nambiar, B.L. Mungher and G. A. Tades, 'Is Import Liberalisation Hurting Domestic Industry and employment?' EPW, Feb 1999.

In a period of declining bargaining power of organised workers and reduction in the number of organised sector employment, unionised labour is unlikely to have secured a disproportionate rise in the wage rate.

Thus a rising wage rate could not be a factor slowing down hiring. Nagraj cited that among other factors underlying the decline in jobs in the organized sector is the competition in the product market due to domestic liberalisation leading firms to cut labour costs.

According to the proponents of liberalisation, reduction in the size of the public sector and lifting all kinds of government controls would lead to a more competitive environment leading to improved efficiency and hence growth. Sudip Chaudhuri observed that the pattern of rate of growth of gross value added by the manufacturing sector before 1991 and after 1991 has not undergone any significant change. The pattern observed before 1991 was that periods of high growth were invariably followed by periods of low growth. This tendency has not undergone any significant in some year excepting the fact that only change after 1991 excepting the fact that only in some years the annual growth rate was in the range of 11-15%. So, the argument that liberalization of the economy would lead to enhanced economic growth does not seem to be valid here. Moreover, the proponents of economic reforms have argued for radical economic changes because according to them the past growth record has been dismal. However, if we look in to the National Accounts Statistics data, we find that this is not really the case. The following table brings this out.

Compound Annual Rate of Growth of Manufacturing

Year	CARG of Gross Value Added of Registered Manufacturing Sector at Constant Prices (%)
1950-51 to 1965-66	7.03
1955-56 to 1965-66	7.47
1980-81 to 1990-91	7.66
1990-91 to 1998-99	5.91

Source: Sudip Chaudhuri, 2002.

From the above table we can clearly see that growth achieved from 1990-91 to 1998-99 could not surpass that achieved during the first 15 years of Indian planning.

In this context it may be relevant to analyse the growth rates of different sectors of the economy in the pre and post 1991 period. A close analyses reveals that the growth in the gross value added in the manufacturing sector in the initial planning period was led by the basic and capital goods industries while growth in the recent years has been mostly led by the consumer goods industries. This is turn implies that the capital and other necessary intermediate goods are not necessarily produced here but are imported from other countries. This can lead to balance of payment crisis. Broadly speaking there are two ways to tackle the balance of payment problem arising out of such a situation. The country can either increase its exports in order to finance its imports or it can reduce its demand for foreign exchange by gradually replacing imports by domestic production. Economic reforms primarily rely on the increase in exports to finance imports. If the exports of a country does not increase, then the entire strategy fails. It may be noted that there was a sharp increase in the rate of growth of real exports during 1993-94 to 1995-96. But since then there has been a sharp decline in the growth of exports (Sinha Roy 2001). Chaudhuri (2002) has analysed the Annual Survey of Industries data on employment in the registered manufacturing sector and has found that the annual rate of growth of employment in this sector has been negative in five out of nine years since 1990-91. The following table shows this result.

Employment in Registered Manufacturing Sector

Year	No. of Workers	Annual rate of growth of no. of workers
1989-90	5517800	
1990-91	5500907	-0.31
1991-92	5513561	0.23
1992-93	5816352	5.49
1993-94	5797102	-0.33
1994-95	6033669	4.08
1995-96	6603790	9.45
1996-97	6526360	-1.17
1997-98	6521534	-0.07
1998-99	6242983	-4.27

Source: Chaudhuri (2002)

So, what we find from the above analysis is that with the fall in the growth rate of the organised manufacturing sector, there has been a decline in the growth of employment in this sector. Economic liberalization has clearly not helped the organized manufacturing sector and as a result of which employment in this sector has been adversely affected.

The decline of the growth rate in the organised manufacturing sector has been accompanied by the expansion of the unorganized sector. The share of the unorganized manufacturing sector in the work force has increased from 72.8% in 1972-73 to 82.1% in 1993-94 (Anant and Sundaram, (1998), 'Wage Policy in India' Indian Journal of Labour Economics, vol 41, No. 4). The workers in the unorganized sector earn much lower wages with no social security at all. So, informalization of the work force has its own negative effects which becomes very difficult to estimate correctly owing to the lack of data on the unorganised sector. One of the classic examples of the expansion of the unorganised sector is the state of Gujrat. Gujrat is considered to

be one of India's fastest growing states, industrial growth there being far above the national average. Gujarat also has a high record in attracting capital both domestic as well as international. This development has taken place along with the massive erosion of Gujarat's largest and oldest industry, textiles. Because of the decay of the textile industry one lakh persons have become unemployed. They have now become a part of the unorganized sector. One of the clearest indicators of the impoverishment of these people is the fact that there has been a rapid increase in the number of people living in the slums of Ahmedabad. Breman (2001) estimated that between 1981 and 1996-97, the percentage of people living in slums in Ahmedabad has almost doubled from 23% to 41%. The development of the state's economy which is widely presented as having reversed the negative impact of the decline of the textile industry is mainly due to the growth of the tertiary sector (Breman 2001). This will invariably lead to a widening of the gap in the labour market with a handful of skilled workers getting highly paid jobs while the vast majority of the workers living in distress condition. It is very difficult for the displaced textile workers to find jobs in the tertiary sector because of the fact that the tertiary sector demands specialised skills which the displaced textile workers mostly do not possess. As a result most of them remain unemployed. In fact NSS 55th round (1999-2000) reveals that the unemployment rat is much higher in lower consumption classes than in the upper consumption classes.

For increasing employment generation, the special Group has given stress on the small and medium manufacturing enterprises as these enterprises have much higher employment elasticity as compared to the organised sector. The other employment generating areas identified in the unorganised sector are trade, restaurants and tourism and information technology. They are all witnessing a high growth of above 9% per annum and have very high employment elasticities. According to the special group: "As the absorption

capacity for high skill jobs has its own limit in the organizes sector the future plan for education and training should keep in mind the type of skills needed for many newly emerging activity sectors like IT, tourism, financial services and the vast unorganised small scale industries, and services sector including new areas in agriculture and the non-form rural activities."

The decline in the percentage of labour force in the organised sector as a result of reforms is not only confined to India but it can be found in a large number of other countries as well most of which are developing countries. In may African countries despite exchange rate adjustment, convertibility of currency and reduced budge deficit, there has been no creation of new jobs. Foreign and domestic investment which is necessary to sustain the structural changes has not been forthcoming. The following table shows how employment in the formal sector has reduced over the years.

Evolution of Employment in the Formal Sector in Sub-Saharan Africa during the Adjustment Phase

Country	1990	1995
Kenya	18	16.9
Uganda	17.2	0.3
Tanzania	9.2	8.1
Republic of Zambia	20.7	18.0
Zimbabwe	28.9	25.3

Source: Hoeven (2001)

A study conducted by the ILO in 1998 in case of the Latin American Countries found that the informal employment (non-agricultural) as percentage of labour force in the selected Latin American Countries have increased over the period of 1990 to 1997.

Another phenomenon which is observed in many countries is an increase in wage and income inequality. World Development Report have provided information regarding income inequality in selected

countries for the period 1970s-1990s. The report found that the income inequality increased in four out of eight countries in the lower inequality band, in eight out of fourteen countries in the medium inequality band and in six out of nine countries in the higher income inequality band. M. Karshenos (1997) in one of the working papers at SOAS, London has found that the reform process in many countries has reduced the share of wages in the value added in manufacturing sector. For 20 out of 26 countries which he has considered between the early 1980s and the early 1990s. In those countries where the share stayed constant or increased, the increase was very little.

Most of the reform programmes have given considerable stress on changes in the labour market in order to make the reform programme more effective. These reform programmes though might have led to increased economic growth rate have totally ignored the equity aspect of development. In most of the cases, reforms have increased the disparity in the working forces. Reform programmes must concentrate on employment generation in the formal sector for which the policy makers must look beyond the labour market. Wage is not only a cost to the employer but it is also incomes to the workers. If the income characteristic of wage is ignored then it becomes very difficult for a country to further its economic activity due to the lack of effective demand.

It has to be understood that in a mixed economy like India, it is not only the government but also the private enterprises who have to share the responsibility of enhancing employment generation in the organised sector. The government has provided protection to the domestic enterprises primarily with a view that such a policy would help the industries become competitive and at the same time the private enterprises would turn out to be the largest provider of employment in the country. What we find is precisely the opposite. The private companies have mostly resorted to labour saving technique as the primary means of achieving competitiveness in the

world market. Therefore far from generating employment in the organised sector there has been a decline in employment. Shrouti and Nandkumar (1994) have found that a large number of big companies in India have in fact stopped recruitment from as early as 70s and early 80s. But the growth rates of these companies have not declined. These companies have grown mostly on the basis of contract workers. In fact this was true even for some of the public enterprises as well. Noronha (1996) has found out that the contract workers working at Air India were paid Rs 1800 per month and permanent worker doing the same job designated as plant technicians are paid Rs 8000 per mont. Noronha (1996) also found that 120 ancillary units in Bhillai Steel Plant have a work force of 65000 who are hired on contract basis. There is no proof of employment and the workers are paid less than the minimum wages. Apart from employing the contract workers, companies often resort to subcontracting and this tendency has increased tremendously in the 1990s. Shrouti and Nandkumar (1994) have provided us with the extent of subcontracting by some of the major companies in India which is represented in the following table.

Percentage of Production Transferred to Outside Main Unit

Name of company	1980	1993
Pfizer	8	38.61
Cadbury	8	30.00
Hindustan Lever (Soap)	0	15.00
Rallifon	10	50.00
Murphy	15	100.00
Bush	10	100.00

Source: Shrouti and Nandkumar (1994)

The loss of permanent jobs due to subcontracting has tremendously reduced the bargaining strength of the worker and this was a major reason for the failure of the Bombay textile strike in 1981-82.

Apart from undertaking responsible policies by both the government and private enterprises, there is a need for some kind of collusion between different interest group (the most important being that between the employer and the employee) which can be beneficial to all the parties and at the same time sustainable. In this regard, the German model of 'social partnership' can be an important idea to promote. Turner (1998) has pointed out that the German model of 'social partnership' is a comprehensive framework of partnership among the major interest groups including banks, government, employees, associations and unions. 'Social partnership' basically refers to the bargaining relationships between organised employers' associations and the employees, associations (like trade unions) regarding wages vocational training, federal state and local level economic policy decisions and various plant level decisions. The German codetermination law provides mechanisms for representation of workers in supervisory boards of large firms. Work councils are mandatory even in small firms and help in the dissemination of information about actions of the management. Most of the large and medium-sized companies belong to employers' associations organized along industry lines at regional and national levels. These associations participate in the industry wide agreements with their respective industrial unions. The major banks extend their support by maintaining long-term relationship with large firms. The government plays a supportive role in facilitating the partnership.

A careful analysis of the 'social partnership' model reveals that in order to make this model successful certain institutional factors are necessary like the presence of trade unions and employers' associations, appropriate labour laws, support of the government and the financial institutions and the collective bargaining agreements and their coverage. In contrast to this we find that in India, the trade unions represent only a small proportion of the workers and their activities are mostly restricted to the formal sector. Apart from this

most of the trade unions are affiliated to some political parties and hence they represent the interest of a particular political ideology. So, it becomes difficult for them to independently enter into agreement with other parties involved. There are also deficiencies in terms of presence of strong employer associations. There exist employers' associations like Confederation of Indian Industries (CII), Federation of Indian Chambers of Commerce and Industries (FICCI) but these are yet to cover all sectors of industries and mostly represent anti-union stand without realising that their conflict with labour can be mediated for the common interest of both. The rights to information, consultation and codetermination which are the key components of the German codetermination law do not exist in India. Absence of these rights makes the committees ineffective because of lack of trust between the parties. The German federal law makes it mandatory that the employees elect their representative to the supervisory boards of all large companies. In India, the law does not provide for such representation. In some public sector enterprises, the government appoints individuals as representative of the workers in the boards of the companies but they are in general loyal to the government than representing the workers' interest. In the German model centralised collective bargaining at industry or regional level plays a crucial role. In India while we do find instance of industry-wide agreements in some parts of the country (like in West Bengal the tea planters' associations has signed an agreement with the operating unions in 1997 for the elimination of child labour in tea industry), these kinds of agreements are uncommon in most of the regions. Financial institutions play a vital role in this model. In India some industries have long-term relationship with banks. But this is not an universal phenomenon. Besides many banks are overburdened with unrecoverable funds locked in sick industries. This in turn makes future stable relationship between financial institutions and industries difficult.

So, we find that the 'social partnership' model though successful, is very difficult to implement in India. Indian policy makers may have something of this kind in their minds while formulating policies which becomes evident in the way they stress up on industrial cooperation. The 'social partnership' model provides an elaborate and detailed analysis of how one should proceed. As mentioned earlier, the government in order to address the unemployment problem should look beyond the labour market and keep its focus on the over all macro economic scenario of the country. Institution can be viewed as a macro economic variable and as such institutions building and development can be viewed as a part of macroeconomic adjustment.

Conclusion

The concerns that were raised in the ILO at the time of its foundation regarding the non ratification of important conventions which were later clubbed under the Core Labour Standards by any country and the consequent similar actions by other countries have become true particularly in the era of globalisation. Non ratification of Core Labour Standards by one country encourages the same by other similarly developed countries as all of them are in a race to attract foreign direct investment in their respective countries. Compulsory ratification of Core Labour Standards by at least the similarly developed countries (if not by all the countries) can prevent this race and stop victimization of the workers in the name of attracting foreign direct investment. If so done countries will be forced to use other means like developing infrastructure, concentrating on development of human resource in order to attract foreign direct investment. This in turn will not only help the working class but will make it easier for the countries to attract foreign direct investment. Having said so it does not mean that the rigidities in the domestic labour laws need not be addressed at all. Flexibility in labour laws should be coupled with proper aggregate demand management and technological innovation that suits the country in order to boost investment and thereby increase employment in the country. Making labour laws more flexible and the ratification of the Core Labour Standards are not really incompatible with each other as may be commonly understood. They are not really two opposing forces. In fact both of them together brings out the importance of trade unions. In the analysis of trade unions what has really come out is that not only are the trade unions finding it increasingly difficult to penetrate into the unorganized sector but they are also finding it increasingly difficult to hold onto their traditional bases. The reason being increasing informalisation of the workers and increasing decentralization of unions which are more concerned about their own benefits at the expense of higher

employment level. No external authority can put any kind of pressure upon the trade unions and force them to take a particular stand regarding a particular issue. However the issue of trade union representation and the employment not only concerns a particular trade union alone but are issues which are very important for the society as a whole. In this context what comes out by analyzing the report of the National Commission on Labour and the Special Group is that while these two committees have made certain important recommendations, there are many issues which needs further study. In a nutshell, in order to improve the labour standards along with employment generation, the effective implementation of Core Labour Standards become essential. Once this is done, the go0vernment can undertake aggregate demand management policies along with formulating the broad framework within which the employer and the employee can enter into agreement which suits both the parties. But for this to be realized development of institutions become essential. So, Core Labour Standards, flexibility in employment and wage contracts, effective trade unions and employers' organisations along with appropriate government policies in demand management and appropriate government policies towards labour market institutions should all work in a coherent manner to attain the twin objective of employment generation along with improvement in labour standards. Explicit focus on one of them ignoring the others will not generate the desired result. Finally any particular issue relating to labour has to be studied in conjunction with other issues pertaining to labour. This research is an attempt in this direction.

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