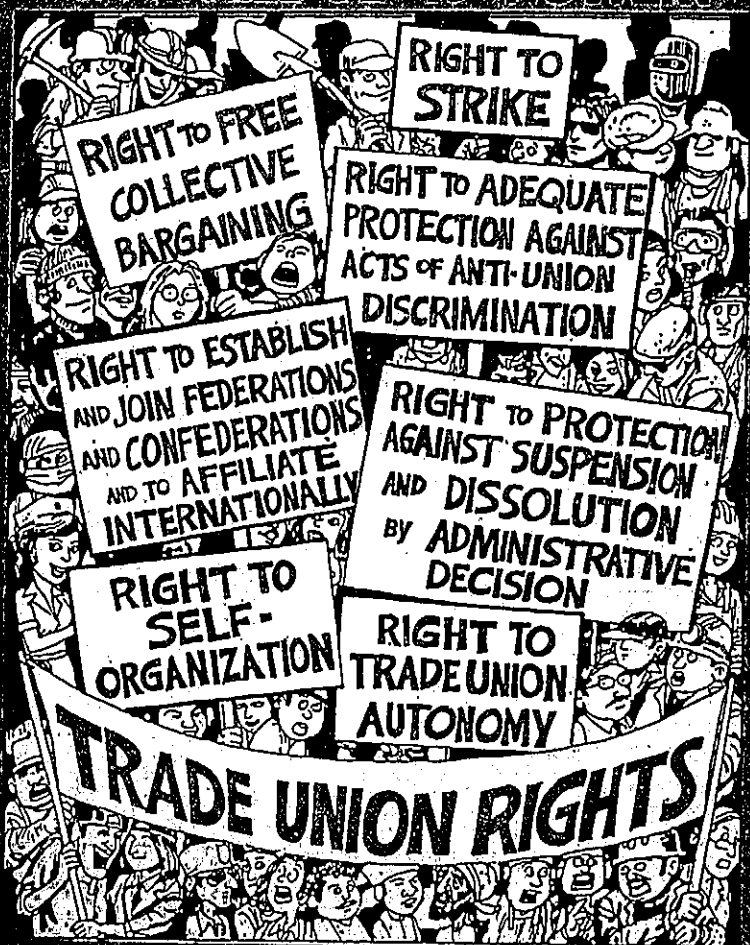


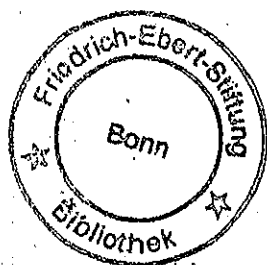
TRADE UNION, HUMAN AND DEMOCRATIC RIGHTS IN PAKISTAN

KNOWLEDGE IS POWER!



CONFERENCE ON THE
TRADE UNION, HUMAN AND
DEMOCRATIC RIGHTS SITUATION IN
PAKISTAN

AUGUST 21-23 - 1992
KARACHI - PAKISTAN



IFBWW ● IUF ● ITGLWF-TWARO ● FIET

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Organised by

**International Federation of Building and Wood
Workers (IFBWW)**

**International Union of Food and Allied Workers'
Associations (IUF)**

**Asian Regional Organisation of the International
Textile, Garment & Leather workers' Federation
(TWARO)**

**International Federation of Commercial,
Clerical, Professional and Technical Employees
(FIET)**

**with the cooperation of
Friedrich-Ebert-Foundation**

**technical arrangements by
Pakistan Institute of Labour Education and
Research (PILER)**

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INTRODUCTION

There is a dearth of published materials on the trade union rights situation in Pakistan. This publication hopes to fill the gap.

The various reports and discussion papers prepared for the Conference and published together here, are of high standard. These contributions from highly experienced trade unionists and from representatives of NGOs greatly helped to illuminate the problems addressed and enriched the discussions. It is hoped that the various representatives of NGOs who participated in this Conference learnt as much from the inter-action with trade unions as they had contributed. There is much to be gained for unions and NGOs by working together and this can only be done if mutual understanding and mutual respect is the basis of co-operation.

Although this publication is brought out more than a year after the Conference, the information contained therein is still current, and the analysis still relevant and fresh. A useful publication must be able to stand the test of time.

When the conference was held, the Pakistan government had just embarked upon the road of economic

liberalisation and privatisation and new laws affecting labour rights were being introduced. Since then an election had been held, and the government had changed, but the economic orientation towards liberalisation begun under the previous government remains. The newly elected government of Benazir Bhutto had not yet at the time of writing, introduced any new laws affecting labour rights.

Indeed, no changes in the law that are substantially favourable to workers will come about unless the Pakistan labour movement re-organises itself to acquire a capacity to exert real influence in society. At present, it is much too divided and is, therefore, not in a position to play this role. This is one of the key problems raised in the Conference and it is addressed in the text of the Conference Conclusion.

By publishing this document, we hope, to raise the interest for solidarity among Pakistani workers and for international solidarity with Pakistani workers.

IFBWW IUF ITGLWF/TWARO FIET

February 1994.

OPENING SESSION SUMMARY OF PROCEEDINGS

OPENING SESSION (Summary of Proceedings)

The opening session of the Conference was chaired by Mr. Nabi Ahmed, Secretary General, Muttahida Labour Federation.

Mr. Khursheed Ahmed, General Secretary, All Pakistan Federation of Trade Unions (APFTU), welcoming the delegates and observers attending the Conference, underlined its special importance and lauded the role of the ITSs. He focussed on the deplorable plight of the working people in the countries of the region in the face of the continuing domination of feudals and capitalists and emphasised that the struggle for trade union rights and the struggle for democratic rights were inter-linked. He cited some of the major problems faced by the working people of Pakistan, such as:

- * Literacy level is abysmally low ;
- * Most children are deprived of access to education ;
- * Large sections of workers are denied the right to organise and collective bargaining ;
- * Workers have no representation in the parliament, which is dominated by feudals and capitalists ;
- * Peasants do not have the right to form unions, which is a violation of the Constitution.

He deplored the fact that despite Pakistan having duly ratified ILO conventions 87, 98, 105 and 111, these are continuously violated, although ILO has repeatedly reprimanded Pakistan for these violations.

He specially referred to the rights of women and child

workers in this context. He further said that the workers should fight also for the rights of the peasants and stressed the need for changing the existing setup.

He also pointed out the need for struggle on both at national and international level and urged the trade union movement to also take up the problems of developing countries, such as the debt burden and so on.

Introducing the International Union of Food & Allied Workers Associations (IUF), Mr. Ma Wei Pin, Regional Secretary for Asia and Pacific, told the participants of the Conference that IUF represented 250 trade unions in 95 countries with 2.3 million members. He said that its Asia-Pacific chapter was 20 years old and represented 50 Unions in 20 countries. The primary goal of the organisation, he said, is to promote international solidarity while striving to support member organisations. He expressed IUF's satisfaction at having organised this Conference in cooperation with other ITSs and PILER.

He pointed out that the purpose of the Conference was to provide an opportunity to trade unions of Pakistan to have mutual discussions on the problem of their rights. He added that not only Pakistani unions but those of the entire region had an interest in this Conference because trade union and human rights in present-day world were not an isolated internal issue of any single country but essentially a common cause of the entire humanity. He concluded that the Conference should provide an opportunity to discuss all related aspects and find ways and means to achieve these rights.

Introducing International Federation of Building and Wood Workers (IFBWW), Mr. G. Balan Nair, its Regional Representative for Asia-Pacific region, informed the participants that 160 trade unions in 80 countries with 5.6 million members were affiliated to the IFBWW, and its Asia-Pacific Chapter has 36 unions in 15 countries of the region.

He said that unions were now increasingly recognising the importance of trade union solidarity because of increasing attacks on workers' rights not only in the developing countries but also in the developed world. He pointed out that a systematic campaign was being conducted by the international corporate sector to undermine workers' rights and cited the privatisation of public undertakings leading to severe curtailment and suppression of workers' rights as an example.

Mr. Iftikhar Sheikh, speaking on behalf of International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), emphasised that there cannot be trade union rights without human rights which, in turn, depended on the existence of democratic rights. He told the conference that never before was there such an urgent need for fighting collectively to achieve these rights.

Mr. Phee Jung Sun of International Federation of Chemical, Energy and General Workers' Union (ICEF), stressed the need to defend and promote trade union rights throughout the world.

Mr. Muhammad Sharif, speaking for the International Confederation of Free Trade Unions (ICFTU), said that in Pakistan, trade unions were weak because they were fragmented along regional, ethnic and ideological lines. However, he expressed satisfaction at the fact that the most important trade unions had managed to work together for a long time and had been able to stand up unitedly for their rights.

He described the various devices employed to curb trade union rights in the name of attracting foreign capital for industrialisation and creation of employment opportunities and cited privatisation, special industrial zones and exemption from labour laws under the Finance Bill, the proposal exempting any

industry exporting 75% of its products from the application of labour laws and so on. He also condemned the practice of contract labour.

Mr. Nabi Ahmed, Secretary General of Muttahida Labour Federation (MLF) and Chairman of the opening session of the Conference told the participants that in a situation where the country was under the domination of feudals and capitalists, the responsibility to change it lay with the trade unions.

He made the point that basically the struggle has to be waged internally in each country; friends from outside could only help in the struggle. He also underlined the need for promoting fraternal ties at national as well as at international level. He dealt at length with problems such as achieving the right of workers to organise, collective bargaining and strike which are inseparable ingredients of fundamental human rights.

Mr. Leong Fook Kee, Assistant Secretary, Asian and Pacific Regional Organisation, International Textile, Garment & Leather Workers Federation (TWARO), presented a paper introducing the Conference Theme.

Mr. Ma Wei Pin, Regional Secretary, IUF-Asia and Pacific, presented a discussion paper on the International Context of the Conference. A discussion paper on the Regional (South Asian) Context of the Conference written by Mr. E. A. Ramaswamy of India, who could not personally take part in the Conference as he was not issued visa by Pakistan Embassy in Delhi, was presented at the Conference.

Discussion papers (Pakistan Context) on following themes were also presented :

- (a) . Socio-economic conditions
by Mr. Omer Asghar Khan
- (b) . Human and Legal Rights
by Ms. Asma Jehangir

A workshop on the above presentations was also held on the opening day.



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INAUGURAL SPEECHES

G. Balan Nair, Regional Representative
International Federation of Building & Wood Workers

I, on behalf of the International Federation of Building and Wood Workers, (IFBWW) welcome all participants, observers and guests wholeheartedly to this Conference on Trade Union, Human and Democratic Rights for Pakistan. The International Federation of Building and Wood Workers is one of the Co-organisers of this conference.

The IFBWW is an international trade union organisation which has a history of about 100 years. Today we represent about 5.6 million members organised in 159 trade unions in 79 countries throughout the world. In the Asian and Pacific Region, we have 39 affiliates from 15 countries.

The All Pakistan Federation of Trade Unions (APFTU) is our biggest affiliate in Pakistan.

In the last three years, the IFBWW has grown from a membership of 3.5 million to the current strength of 5.6 million. We are also optimistic that our membership by the time of our next Congress in The Hague, Netherlands, in 1993, will be 7 million members.

This substantial growth in membership has not only been the result of hard work, but rather, around the world, unions are increasingly recognising the importance of international solidarity in their day-to-day work. The IFBWW's growth is also the result of the end of the Cold War and the emergence of a new period of history, where the free and democratic international trade union movement is truly becoming recognised by building and wood workers around the world as the only international organisation that can provide practical assistance to workers in dealing with the problems they face at work and society.

Unfortunately, while all the signs are positive for the strengthening of the IFBWW worldwide, the same positive indications cannot be said for the general atmosphere in which trade unions have to work, because the number of attacks on human and trade union rights over the last years have been constantly on the increase.

In attempting to find solutions for the problems faced by common working people, we face enormous challenges which have to be recognised. Indeed, many of these challenges are direct and brutal attacks on democracy itself, and now more than ever, not only in developing countries, and the Eastern European countries undergoing transition, but also in many well-developed countries.

The present trend under the so-called New World Order is to privatise most, if not all, public enterprises and undertakings. In the process, trade union rights are taking a beating. The Governments, in order to sell off public enterprises, are paying least regard to human and trade union rights. Governments in South Asia are now inviting foreign investors to their countries and offering concessions to attract the foreign investors.

I am sure this Conference will discuss these issues and many more during the next three days.

In conclusion, I wish to thank Bro. Khurshid Ahmed, General Secretary of APFTU, for taking time off from his busy schedules to be present with us here today. I also wish to thank Bro. Karamat Ali from PILER for his untiring efforts towards organising this conference and to ensure that this is carried out in the manner we are experiencing today.

I hope that this Conference will give full concentration to all aspects of Trade Union, Human and Democratic Rights and come out with such recommendations that will make it possible for all of us to work together to defend and advance these rights.

**Ma Wei Pin, Regional Secretary
IUF-Asia and Pacific**

It is my pleasure to bring to you the greetings of the IUF which is an international trade union federation in the food, beverage, tobacco, sugar, HRC and allied industries.

Founded in 1920, through the merger of 3 smaller international federations that were established about 100 years ago, the IUF today unites a total of 250 unions in the food and allied industries in 95 countries representing in all, a global membership of 2.3 million workers with a central secretariat in Geneva.

In the Asia-Pacific region, the IUF groups together about 50 unions in 20 countries within a regional organisation of the IUF, which is more than 20 years old.

International labour solidarity is the main reason for our existence.

This has been the case since the IUF and its predecessors were founded. It continues to be our guiding principle. What it means in practice is that through mutual support, each member union is strengthened.

The IUF is a "union of unions" which means that it follows the policies established for it by its affiliates.

The IUF takes pride in co-sponsoring this conference together with 3 other ITs - IFBWW, TWARO and FIET.

We are pleased that the ICEF is represented here at this conference (by Bro. Phee), and on behalf of the sponsoring ITs I would like to extend a welcome to ICEF.

This conference is a follow-up of the Sub-Regional conference held in March last year on the theme of " Rights of Workers in South Asia ".

This Conference comes out of a request by the Pakistani delegates to the Colombo Conference. It is not merely something that the ITSs consider a good idea, but it is a specific response to a specific request.

A lot of efforts have been put into organising this conference, in order to provide an opportunity for Pakistani unions to address the question of workers rights, a question which is a major concern not just to you in Pakistan, but also to workers in many countries in Asia and indeed in the world.

Moreover, trade unions around the world are no longer just interested in what is happening in their own countries. They are interested in violations of workers rights wherever they occur, and in knowing about the progress in respect of workers rights that unions have achieved.

The struggle for trade union, human and democratic rights is a common endeavour of unions everywhere. These matters are no longer considered as domestic affairs but the legitimate concern of people everywhere whenever there are violations.

Indeed, in the struggle for trade union, human and democratic rights, international support and concern is vital. This is not to imply that international action alone is going to win respect for rights for those people who merely sit back and wait. It is local and national effort to overcome oppression supplemented by international support that increase the chances for success.

The burden for the technical arrangement of this conference was carried mostly by PILER with the help of the conference organising committee which comprises Pakistani representatives of the ITSs involved. To them we owe a special word of thanks.

All of you who have come from throughout the country to participate in this conference, we hope, will contribute to the discussion and find this conference a useful milestone in your struggle. Thank you and we wish you every success.

Leong Fook Kee
(TWARO)

On behalf of the 2.3 million members from 17 Asian and Pacific countries as represented by TWARO which is the Asian and Pacific Regional Organisation of the International Textile, Garment and Leather Workers Federation, I have great pleasure in conveying our fraternal greetings and warm welcome to all of you who are assembled here this morning for the opening of this Pakistan National Conference of Trade Union, Human and Democratic Rights.

It is indeed a great pleasure for TWARO to be given another opportunity to jointly organise this national conference on a subject of vital importance, with the IFBWW, IUF and APRO-FIET. As a matter of fact, it may be recalled that this Pakistan National Conference came about as a result of the Declaration adopted by the IFBWW-IUF-TWARO Joint Conference of Trade Union, Human and Democratic Rights for South Asia which was organised in Colombo in March last year with the cooperation of FES. The Declaration, among other things, calls for the holding of national conferences by affiliates of the sponsoring ITSs in the South Asian countries as part of the follow-up activities.

For the privilege in sponsoring the Conference here, I should like to express the heartfelt thanks of TWARO to the Pakistan Institute of Labour Education & Research (PILER) which is coordinating the preparations in Pakistan for the Conference, and the FES for their financial contribution in making the Conference possible. Needless to say, we are also grateful to all the participants, both local and overseas, who have come a long way to contribute to the success of the Conference.

We believe, as you do, that the right to trade union freedom, such as the right to organise, bargain collectively and strike, is inalienable and must be respected everywhere regardless of the

Navraj Uprety

Hotel & Tourism Congress of the Nepalese Trade Union Congress

First of all, I would like to thank the organisers for the warm hospitality extended to us in this country. It is a great pleasure to get together here to exchange views.

I would like to introduce myself to you. I am participating from the Kingdom of Nepal and represent the Nepalese Trade Union Congress (Hotel Unit). My name is Navraj Uprety. I presently belong to the Democratic Unit in the Everest Hotel.

INTRODUCTION OF NEPAL :

Nepal is a land-locked country with :

Area : 147181 Sq. Km

Per Capita Income : US \$ 170.00

Religion : Hindu (89 %)

Budhist (5.3 %)

Others (5.7 %)

Languages : Nepali, Maithile, Newari and others

Capital : Kathmandu

Population : 19 Million (Approx)

Nepal is surrounded in East, West and South by India and North by China. Geographically, Nepal is classified into different ranges i.e. Himalayan Range, Middle Himalayan Range, Mahabharat Range, Inner Terai and Terai. Nepal is divided into 5 Development Sectors, 14 Zones and 75 Districts. Nepal is rich in natural resources and offers a wide variety of scenic beauty, and religious, aesthetic and cultural attraction for foreigners. Nepal is known to the world by different names such as : Land of Everest, Land of Gurkha, Birthplace of Buddha etc. Mother Language of Nepal is Nepali.

TRADE UNION

Nepalese Trade Union Congress (NTUC) is one of the oldest and biggest workers unions in Nepal. In 1947 it was established under the name: Nepal Labour Union, and had been continuously working for the upliftment of the workers of Nepal. Mr. G. P. Koirala is the Founder President of NTUC and he is presently the elected Prime Minister of Nepal. He belongs to the Nepali Congress which played a leading role in the movement for recent restoration of democracy.

HUMAN RIGHTS

Human rights situation in Nepal in terms of law and Practice has to be understood in two phases : first, 1947 to 1990; second, 1990 onwards.

First Phase: Due to illiteracy and lack of awareness among the people till 1958 and again, after 1960, due to the dictatorial Panchayat Monarchy till 8 April 1990, there was lack of serious thinking and national effort towards development. As political parties were banned and the right of association of workers was strictly curbed, there were no institutions to protect the rights.

Second -Phase: The rights conferred on the citizens of Nepal are basic human rights such as : Right to Equality, Right to Freedom of Speech and Assembly, Right to Religion etc. Enforcement of human rights is carried on account of their embodiment in national laws which have the sanction of the State behind them. The principles of democratic socialism, nationalism and fundamental human rights are adhered to. The state policy aims at bringing women in to the mainstream of the development process by making them socially and economically self-reliant.

DEMOCRATIC RIGHTS

After the Revolution in 1990, we are enjoying democratic rights in all sectors of life in Nepal. We can now express our views and demand fundamental rights from the government.

We have a pluralist democratic system with a strong Opposition in Parliament. People can comment against the Government policies and statements if they are not beneficial to them.



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INTRODUCTION OF CONFERENCE THEME

INTRODUCTION OF CONFERENCE THEME: TRADE UNION, HUMAN AND DEMOCRATIC RIGHTS

Leong Fook Kee (TWARO)

Let me begin by thanking you for the opportunity given to me to introduce the theme of this conference which is: Trade Union, Human and Democratic Rights.

Trade union rights, such as the right of self-organisation, the right to bargain collectively and the right to strike constitute a vital and integral part of human rights. These freedoms are the life-blood of trade unions and we have to do our utmost to assert and safeguard trade union rights at home as well as abroad. The very fact that this theme has been chosen clearly shows the great concern and interest attached by not only the organisations represented here but also by the free and democratic trade union movement as a whole in defending and promoting human and trade union rights.

An essential condition for the full realisation of trade union and human rights is the knowledge by each trade unionist of his inalienable rights and the means that exist to promote and protect them.

What are trade union and human rights and why must trade unions attach such great importance to them?

As you are aware, every citizen has fundamental rights called "human rights" which are inherent to every human being. Human rights are the various political, civic, economic, social and cultural rights embodied in the United Nations "International Bill of Human Rights" which comprises the "Universal Declaration of Human Rights", the "International Covenant on Economic, Social and Cultural rights".

Among these fundamental human rights are the freedom from arbitrary arrest, detention and exile; the freedom of movement and residence; the freedom of opinion and expression; the right to receive and disseminate information; and the right to assembly and association.

These fundamental rights are indispensable for trade unions to function normally. As I mentioned earlier, a vital and integral part of human rights are trade union rights. And trade union rights are important and essential because they enable the working class to face employers with a stronger bargaining power and to obtain a fairer share of the fruits of its labour.

The origins of the basic trade union rights date back to the 19th century when the first unions started to organise the workers. These rights were not granted as an act of benevolence. Trade unionists from the beginning had to fight long and hard for their right to have organisation, often against the ruthless attacks and resistance by the governments and employers.

Moreover, these rights have been recognised and codified at international level through the ILO conventions concerning trade union rights particularly Convention No.87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and to Bargain Collectively. It may also be noted that these two ILO Conventions have greatly helped and inspired workers and trade unions everywhere in the world in their daily struggle to obtain and defend their basic trade union rights.

There are seven basic trade union rights which are essential for the existence of free and democratic trade unions capable of defending and furthering the interests of the workers. They are as follows:-

FIRST: All workers without distinction, are entitled to form and join trade unions of their own choosing, irrespective of the status of their jobs or whether they are employed in the private, public or rural sector.

This means, no previous authorisation from government is needed when workers wish to establish a trade union.

SECOND: Trade unions have the right, without any interference from the public authorities, to draw up their constitution and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

The right to trade union autonomy also implies the right of trade unions to engage in political activities as means for advancing their economic and social objectives.

THIRD : Trade unions have the right to protection against suspension and dissolution by administrative decision.

What this right means is that a workers' organisation cannot be dissolved or suspended by the government. Only an independent and competent judicial authority could declare the suspension or dissolution of a trade union.

FOURTH : Trade unions have the right to establish and join federations and confederations and to affiliate internationally.

This means that trade unions should be able to form federation free from any restriction, whether occupational or geographical in nature, and trade unions should be allowed to constitute confederation at the national level in order to coordinate their activities, increase their efficiency and help each other by reciprocal solidarity.

FIFTH : Trade unions have the right to adequate

protection against acts of anti-union discrimination. This right requires the existence of guarantees which ensure that no worker can be dismissed for his involvement in trade union activities. It also prohibits any clause that would prevent a job applicant from joining the trade union.

It further means that trade unions must be protected against any act of interference by employers in their establishment, function or administration.

SIXTH : Trade unions have the right to bargain collectively on the regulation of the terms and conditions of employment and all other matters affecting the livelihood of the workers.

SEVENTH : Trade unions have the right to strike. The right to work stoppage is complementary to the right to collective bargaining. It is the ultimate resort for trade unions to match the power wielded by employers.

The right to strike is a weapon which must be employed with responsibility, but it is, undoubtedly, a legitimate right that no trade union can renounce. Therefore, the right to strike and to participate in other forms of industrial action is essential and must be conceded to all workers without any restrictions and exception.

Since the basic trade union rights I have just mentioned are internationally recognised standards set by the ILO, one would have thought that workers should not have any problems in enjoying and exercising them. But reality is very different from aspiration. The world today is witnessing a deplorable trend towards the curtailment of basic human and trade union rights and that violations of freedom of association have become a regular occurrence in all parts of the world, ranging from the total denial of freedom of association and trade union rights to partial limitations, obstacles or the gradual undermining of these rights.

In its 1992 annual report, the human rights organisation Amnesty International pointed out that the governments in more than 100 countries ignored or contributed to human rights abuses by allowing their forces to commit abduction, torture and murder without censure. It also reported that in about half the countries of the world, people were jailed for their religious or political beliefs and for speaking their minds.

And trade unionists, because of their consistent defence of human rights, are among the prime targets of repression. In the 1992 annual survey on violations of trade union rights, the ICFTU said that about 200 people were killed and many more arrested around the world for asserting and exercising trade union rights.

For example, in some countries, trade union rights are totally denied. Assassinations, abductions, torture, disappearances, imprisonment without trial, extremely heavy sentence for normal trade union activities and destruction of trade union properties are some of the methods which dictatorial governments employ against trade unions.

In other countries, legislation recognises trade union rights, but while governments present themselves as champions of democracy, trade union rights are virtually a dead letter since legal dispositions are not taken seriously by government administration or management.

Some governments offer restrictions on trade union rights, even adopting a "no union" guarantee to foreign companies as part of investment incentives especially in the export processing zones or free trade zones.

Other governments employ coercion and harassment in order to transform an independent trade union movement into a docile mouthpiece of government policies. Workers resisting such policies are usually branded as subversive and anti-national.

In many countries, workers in the public sector are restrained

from fully exercising trade union rights by denying them the right to collective bargaining and the right to strike. The same is true with rural workers who are frequently not allowed to form trade union organisations.

For supervisory and managerial staff, the right to organise into trade unions is often hampered, if not totally denied.

The right to strike is one of the most curtailed trade union rights. If the right to refuse to work is withheld from workers, other trade union rights can become less effective.

All over the world, we see many more and not less restrictions and violations of trade union rights by employers and government taking place. In short, the full and universal respect for trade union rights remains far from reality. For these reasons, trade union rights should not be taken for granted. They must be jealously guarded against ruthless attacks. There is therefore a continuing need to defend and promote respect for workers rights. The trade union movement cannot rest until these rights are fully respected everywhere and under all circumstances.



4

DISCUSSION PAPERS

INTERNATIONAL CONTEXT OF THE CONFERENCE ON TRADE UNION, HUMAN AND DEMOCRATIC RIGHTS

Ma Wei Pin, Regional Secretary, IUF - Asia and Pacific

We are privileged to be here with you to discuss the trade union, human and democratic rights situation in Pakistan.

We and the IUF are honoured to have been called upon to contribute to this conference our assessment of the international context of our common struggle for workers' rights.

The collapse of military dictatorships and communist dictatorships in many countries in Africa, Latin America and Eastern and Central Europe, and their looming demise in Asia where they still exist as everyone now knows does not necessarily lead to democracy as we want it, i.e. with social justice, with full employment and governments being accountable and subject to popular control.

What has happened is that central planning and the command economy as a model has collapsed. In their place, the "free market" is being established.

Free market does not necessarily lead to free societies. The new democracies that follow in the wake of collapsed dictatorships could remain only as formal democracies devoid of any substantive content that makes a democracy real to ordinary people.

Unless trade unions (i.e. strong and independent unions) are part of any democratic system and are capable of delivering and guaranteeing social justice, full employment and serves as a channel for popular participation in politics, a so-called democratic society will only be democratic in name.

The upsurge in popular demand for democracy and the growth

of pro-democracy forces around the world is one positive development that is clearly in our favour.

Unfortunately these new pro-democracy forces lack depth and experience, and are very fragile.

Ultimately, we must never forget that the best guarantee for trade union, human and democratic rights is a strong labour movement in every country.

In the new era that we are now entering, the post cold war era, basic workers rights, despite recent remarkable progress in democracy around the world, have not progressed, in fact if anything, they have regressed, if one considers the increasing attacks on trade unions around the world.

In the Asia/Pacific region for instance, labour laws have been modified to introduce yet more restrictions on workers and unions - in Thailand, Fiji and NSW (a state in Australia). In New Zealand, the new laws de-recognised unions completely. And if the Labour Party loses power in Australia, New Zealand type labour laws will be introduced. In South Korea, workers have absolutely no right whatsoever at all. Burma, of course, is the last bastion of old-style military dictatorship in Asia where democratic space is nil and all pro-democracy forces have been driven underground.

In many countries in North East Asia, South East Asia and South Asia, trade union repression is nothing new. The resistance against repression however is growing.

In Malaysia, the MTUC is leading the struggle for the rights of workers in the electronic industry to form their own national union. In Thailand, workers of state enterprises are regrouping and pushing for their union rights to be restored. In Indonesia, workers are forging an alternative labour movement to the one sponsored by the government. In South Korea workers are fighting to free themselves from interference in trade unions and

for trade union rights and have taken their case to the ILO. In China, workers have established underground free trade unions, like what the Polish Solidarnosc workers did many years back.

The struggle for workers rights in the new era will be waged under political and economic conditions that are different compared to the past.

In political terms, the struggle in Asia against the traditional oppressors continues (i.e. the various remaining military dictatorships and the Stalinist type communist dictatorships).

What is going to be new is the struggle against the " New Right ", their forces and their ideology.

What is the New Right and Who are they ?

The following is an extract from the Report on Activities presented by the IUF Regional Secretary to the Regional Committee at its meeting in July 1992.

" The two principal gurus of the New Right (NR) can be said to be F.A von Hayek and Milton Friedman, This means that their ideology was put forward in the late 40s. It was only in the late 70s with the election of Reagan in the USA and Thatcher in the U.K. that the ideology of the NR gained " respectability " in conservative politics. Probably, owing to an overuse of Keynesian medicine, inflation refused to be tamed and stagnation refused to budge in the early 70s. People began to look for alternatives and in this context Reagan and Thatcher presented themselves.

" Another important opportunity for the NR came at the end of the 80s. When the Stalinist totalitarian empire collapsed, the NR quickly jumped at the opportunity to proclaim victory and sought to identify itself as the force that defeated totalitarianism and ended the Cold War.

" In the aftermath of the collapse of the command economy

model, the New Right also hijacked the notion of democracy which they identified with their cause and proclaimed the superiority of the free market.

" Even more importantly, the target of their attack shifted from the command economy to the mixed economy. This is ironical. The NR claimed victory in the Cold War on the ground that it is laissez-faire capitalism that won whereas the East Europeans were really attracted to European social democracy rather than to the American free-wheeling capitalism. Moreover, it is evident that the West's robust economies owe much to two generations of Keynesian intervention and government involvement, measures that the NR opposed at every step.

" For the NR, the purpose of hijacking the notion of democracy is to equate democracy with the elimination of a public sector, trade unions, and to deny a role for the state in promoting economic growth, full employment and stability. For them, the removal of all regulations is supposed to free up the individual drive that will propel the economy to fulfil society's need for full employment and happiness.

" Their credo has become the orthodox in IMF-World Bank and in the Governments of many countries.

" One may be tempted to think that the force of the NR is petering out on the ground that the unacceptably high social costs that it entails have discredited it and that we can simply wait it out. It is not clear that it is at all waning. The fact that it has captured power in Sweden recently is a cause for concern. Moreover the fact that it may also capture power in Australia is another serious cause for concern.

Its Ideology

" Central to its ideology is its tenet of economic liberalism by which is meant that the free market is the key to higher employment and resumed economic growth. Hence their political

agenda is focussed on the reform of the microeconomic structure (especially the labour market). More bluntly, it means that trade unions stand in the way and must be eliminated or emasculated.

They point to the high speed of growth in the economies of Asia and say, because the free market is allowed to reign there that is why they are growing fast. This simply is not true. In only one of the 4 so-called Asian tiger economies of Korea, Taiwan, Singapore and Hong Kong was the Government absent and did not play a major role. In all other three economies, the governments played and continue to play a big role in economic management and planning.

" On the thesis that economic interventionism by the state will inexorably destroy individual liberty, the New Right's project is a minimal state, i.e. without a role in the economy. Unemployment should be left alone to be corrected by the free labour market through a downward adjustment in the price of labour. The poor and the unemployed should not be assisted with government social programmes.

" The theoretical underpinning is the argument that the free market is best for economic efficiency, progress, and high employment, no matter what the social costs are.

" It is in short an ideology that is anti-social, and anti-union." In economic terms, the conditions have changed drastically.

before the end of the Cold War, the outline of a globalised economy can be seen. Companies could produce/manufacture whenever costs are the lowest and sell in markets where profits are the greatest.

With the collapse in Eastern Europe and with the US no longer a world creditor but a borrower, the competition for credit and investment capital has grown more intense. The emergence of new industrial producers e.g. the NIEs means the competition for markets has also intensified.

The result is a more competitive economic environment in the world and all unions, irrespective of where they are, have to deal with governments and employers whose primary concern is international competitiveness and what it implies in terms of industrial relations reforms.

In this context, many governments are reviewing their industrial relations laws. We are undoubtedly at a juncture where there are dangers as well as opportunities.

The danger is that governments may unleash a new round of repression under a form of developmentalist dictatorship.

On the other hand, they may attempt to build a new Industrial Relations culture based on respect for workers rights as the underpinning for greater productivity and proceed on the basis of a genuine tripartite cooperation.

It is now generally known that repression of workers rights in order to lower production costs is no guarantee of economic success and development. You may have heard of the joke originating from Eastern Europe under Stalinism : the government pretends to pay us and we pretend to work.

Employers that rely on low wages to subsidise their inefficiencies have little reason to innovate. It is the consistent pressure to innovation that ensures their survival.

So far we have considered the situation at the macrolevel. At the micro-level, i.e. at the level of the enterprise, companies are responding to greater competition by developing flexibility and total quality management systems. Included in their measures is one aimed at reducing influences from external (i.e. national) trade union organisations by either eliminating unions or establishing management-dominated company unions.

On the other hand, the new economic conditions present in the globalised economy means extended possibilities for

international solidarity. International solidarity is also easier to develop with modern technology of communication.

Having outlined the forces at play in the new era, let us consider what weapons national trade unions can use.

Let me refer you to the following which are discussed fully and documented in the records of the Colombo Conference, copies of which are now available to you in Urdu :-

- 1) International Instruments -UN Universal Declaration of Human Rights
-International Covenant on Civil and Political Rights.
-Other UN Conventions.
- 2) ILO conventions 87, 98, etc.
- 3) US Trade Laws
- 4) International Workers Organisations of which the most important today are the International Trade Union Federations - i.e. the ITSs and the ICFTU. Important - because they are most accessible to Unions on the ground and unlike most other organisations, are not government-controlled but are workers-controlled organisations.

In conclusion, I would like to say that no matter which of these weapons you use in furthering trade union, human and democratic rights, international solidarity is an indispensable element in your campaign.

This is so today and in future, much more than in the past, because of globalisation of the world economy.



TRADE UNION, HUMAN AND DEMOCRATIC RIGHTS IN SOUTH ASIA : AN OVERVIEW

E.A.Ramaswamy

After decades of political independence, we now know that the protection of democratic and human rights in our societies cannot be left to well-meaning constitutions or to the benevolence of the state. Our laws are at their least automatic when it comes to the rights and liberties of ordinary citizens. Trade unions and voluntary agencies have in fact to strive hard to ensure that the laws of the land are implemented. They have an even more difficult job on hand where the laws themselves are unfavourable or the political system is repressive. Mounting international debt, the introduction of market-oriented economic reform and structural adjustment policies under pressure from external creditors have further complicated the picture in recent times.

It is true that our economies have performed poorly and that we cannot survive as a self-respecting people unless our economic management improves. But it is not at all clear why productivity requires the denial of basic trade union and human rights. Surely, these rights are not denied to their people by affluent societies with better managed economies and higher living standards. Our political leadership and interlligentsia seem to think, however, that better economic management requires lower wage levels, denial of trade union rights and an overall climate of oppression and exploitation. There is a deep and troubling contradiction between international experience and our own thinking when it comes to the relationship between the performance of the economy and the welfare of ordinary people.

This is the context in which we have to reflect on democratic, human and trade union rights in South Asia. It is a disturbing scenario. The difficult economic situation we face will make it hard for working people to advance their rights. Even the defence of existing rights will

not be an easy task. Quite clearly, a strong and determined labour movement is the need of the hour. So we need to look not only at the laws and regulations dealing with the rights of workers but equally at the state of the labour movement in our countries.

The legal Framework

The basic framework of our labour and industrial relations laws is inherited from the British. While the British wanted to confer on workers the right to organise trade unions, they put the government in the centre of the relationship between labour and management. The extraordinary powers they gave the government to compulsorily conciliate, arbitrate and adjudicate in industrial disputes, to ban collective action in essential services, to outlaw strikes and to force striking workers to return to work were tailored to the emergency created by the outbreak of the second world war. The objective was not to promote a relationship of cooperation and mutual respect between labour and management but to keep the wheels of production moving in order to meet urgent war-time requirements. Quite aptly, the law itself was termed Defence of India Rules. Industrial dispute legislation in most of our countries is basically a continuation of this war-time law. As a result, the most important feature of our legislative framework is the central role played by the governments. There are few free, democratic societies in the world where governments have such a dominating presence in the industrial relationship. Looking back, it would appear that this war-time approach suited our governments when we gained independence. They trusted the bureaucracy and the political leadership, but not either labour or management, to maintain industrial peace. There is the dominating presence of the government in the name of economic planning, social justice, national security or whatever is the common thread running through our societies, although there are important national differences when we get to the details.

Working Class Rights

Do workers have rights in our societies? And what kinds of rights do they have? Where are the gaps and what additional rights must they have? How do we compare with other democratic countries of the world? I believe that it will serve little purpose to draw up a list of statutorily guaranteed rights in all our countries. The reason for this is simply that the existence of a right does not mean a thing without a trade union which can fight to translate that right into reality. Where trade unions are weak, rights remain on paper. And where they are strong and well organised, it is possible to go beyond laws, regulations and constitutional provisions to create new rights. This can be shown quite easily with some examples.

There is no centrally enacted law in India that requires labour and management to engage in a bargain. In other words, workers do not have bargaining rights, but the fact is that we have numerous bargained settlements. In India, as in Pakistan, we have many restrictions on the right to strike which make it perfectly impossible to call a legal strike. But workers do of course call strikes even if they are illegal. We even have instances where they have persisted with a strike long after it has been banned by the government. Trade unions have created new rights in the above cases. In Pakistan, the law does not permit the formation of industrial unions. On the other hand, in India where industrial unions are perfectly legitimate, we have instances of workers withdrawing from federations under pressure from the employer. We even have collective agreements which provide that workers will not affiliate to any wider body. There are not many such agreements, but they do exist, especially in multinationals. Obviously workers have surrendered under pressure a right granted to them by law. Since a vibrant trade union is more important for the creation and protection of workers rights than benevolent governments and favourable law courts, we must look at the labour movements in our countries and what they have done to advance these rights.

The Trade Union Scene

If we look back at the years that have passed since independence, it is difficult to escape the conclusion that our trade unions have by and large settled for easy options. They have concentrated on permanent workers in large enterprises who are easy to organise and for whom benefits are more easily obtained. And here comes one of the many rights we are talking about - the right to employment. In India, the only way a permanent worker can be denied the right to his job is by way of dismissal for misconduct, which is hard to level and even harder to prove before a court of law. Employers have responded to this situation with a virtual freeze on permanent employment. There are simply no permanent jobs to be had in organised industry any longer and even profitable enterprises have registered a fall in employment. With the trade unions concentrating their attention on permanent workers, it has been easy for employers to divert employment to the many impermanent categories. There is a growing class of badlis, casual workers and contract labourers in every firm, but few trade unions show any interest in them. Employment is also growing in the numerous small enterprises which are now producing goods for the large scale sector. Trade unions are not interested in them either.

The overall result is that while trade unions claim that they are strong and have close to a hundred percent membership in many large firms, their membership is actually shrinking. They are speaking for a declining and increasingly inconsequential clientele. The basic job of organising unorganised workers has all but stopped. Major unions and big name trade union leaders are fighting for the loyalty of permanent workers who are already unionised, when there are millions of unorganised workers who would be grateful for their attention. To understand the consequence of the labour movement's partiality for permanent labour and self-imposed abstinence with regard to all others, one has only to see the most celebrated recent lockout in India. Hindustan

Lever locked out its main factory in Bombay for one year, but the company posted its highest turnover and best profits during that very period. Its products were not in short supply. It did not matter to the company if the main plant was locked out. Non-unionized small firms all over the country were supplying the products. We can see here what happens to labour's rights without a trade union movement to protect those rights. The right to employment given to workers by law and protected by the courts has become a burden instead of being an advantage. The right itself is still there, but there are fewer and fewer people who enjoy it because there are fewer and fewer permanent workers. Do you still believe that legislatures and courts can uphold and sustain workers' rights ?

It is not only a class of workers that unions have turned their attention to but also a class of industry. The public sector is in particular the focus of their effort. That is because the government is by and large a more tolerant and fair-minded employer than private capital. It is easier to obtain recognition for the union and bargain for better wages and benefits in the public sector. Concentration on the public sector where life is a lot easier for the leadership has resulted in a situation where trade unions have very little following outside government employment even in large-scale enterprises. Unlike in Pakistan where managers cannot form trade unions, we have a large managers movement in India, but it is confined almost entirely to public enterprises. Trade unions in most of our countries are opposing tooth and nail the privatisation of the public sector. I suspect that at least part of the reason for this opposition is that quite a lot of the labour movement will vanish along with the public sector. Trade unionists say that the private sector will abolish jobs, reduce benefits, close down enterprises and so on. That is perhaps the case, but then it is to fight all this that we need trade unions. Surely, trade unions will no longer be needed if the employer is capable of protecting the rights of labour.

All this apart, we must ask what the labour movement has done with the many rights conferred on workers by the government as an employer. Some rights granted quite readily in the public sector come immediately to mind - the right of trade unions to recognition, the right to bargain wages and benefits and the right of unions leaders to engage in the collectivisation of workers. Pakistan has laws extending the right of recognition and collective bargaining, but it must be remembered that there are no such laws in India. These rights nevertheless exist in much of the public sector even without the sanction of law.

The right to recognition has meant that union fees can now be collected through the payroll. With this, most unions have lost the only contact they had with the member - that of meeting him once a month to collect the fee. Money flows into the union still without anyone having to exert and ordinary workers are now as distanced from their own union as they are from the employer. Trade unions have exercised their bargaining rights quite forcefully, as they must, but they have taken a rather conservative view of the legitimate interests and concerns of their members. I hardly know of a case where they have demanded information rights. They have never demanded to know, for example, what plans the company has for the future. Now, when public enterprises are collapsing all around us, all that one hears from the trade unions is the argument that they must not close. They are willing to blame everyone else in the world for threatening the public sector, but are not prepared to examine what they themselves could have done to improve the performance of public enterprises. And, finally, the right of the leaders to collectivise workers has resulted in the most outrageous abuse of union power. I know many public sector enterprises and some private ones as well where literally hundreds of workers do not work at all in the name of trade union leadership. Employers don't mind this at all, because they think of it as a form of corruption which will buy

the cooperation of the leader. But, you should talk to the ordinary worker to understand the contempt he has for them.

Trade unions, as I said, have limited their attention to permanent workers, largely in the public sector. To complete the picture, I must add that they have also not moved out of the big cities. And here lies yet another threat to trade unions. Industries are quitting the big cities, and new businesses will certainly not open up in our overcrowded metropolises. Their motive is quite obviously to take advantage of low labour costs and the absence of trade unions in the hinterland. With the organising drive all but dead, the only response of the labour movement to this shift is a lot of breast beating.

The rights of workers in our countries, as I said in the beginning, have a long way to go. While the rest of the world is recognising the performance of the human resource as critical to the success of industry and giving workers equal rights with the employer in deciding such far-reaching issues as investment decisions and plans for expansion and diversification, we are still debating the rights of recognition and collective bargaining. And, what is worse, with mounting pressure from international creditors, we appear set to move backward rather than forward. But there is no way we can advance further without thorough-going changes in the state of trade unionism in our countries. New rights to labour will not come cheap as a gift from either the employers or the government. It will serve no purpose even if they do, because our trade unions are in no position to enforce their implementation. What we need to do, above all, is to lift our labour movements from the depths to which they have sunk and build them up all over again.



AN IMPERATIVE FOR CHANGE : THE NEED FOR A JUST AND EQUITABLE POLITICO-ECONOMIC SYSTEM

Omar Asghar Khan

Introduction

The emergence of genuinely democratic and people-oriented institutions in Pakistan - institutions which could become the basis for transformation and change - is made an almost impossible task by the political, social and economic structures prevailing in the country today.

In order to discuss the role of people's organizations in the struggle for the just, democratic and equitable socio-economic order it is important to examine briefly the structure of Pakistan's society and its economy. This review is necessary if we are to discuss possible alternatives to existing structures.

Our Inheritance of a Military-Bureaucratic Machine

Our inheritance from Britain included a large and non-productive military-bureaucratic machine. Successive rulers - both civil and military - instead of trimming it to size, have used this machine to prop up their otherwise weak positions. These governments have perpetuated a politico-economic system where representatives of oppressed or powerless classes could not influence policies and events.

The situation has further been compounded by the attitudes of successive governments in both India and Pakistan - attitudes which have made for continued strained relations between the two countries. Mutual hostility and lack of willingness to engage in dialogue have been used to justify large and unaffordable expenditures for Pakistan's defence establishment.

Even when the government was under civilian control, the military bureaucracy continued to influence political and economic decisions. Civilian governments have been arbitrarily dismissed as a result of collusion between the civilian and military bureaucracy. Periodically, we have witnessed the suspension of fundamental rights. We have seen the constitution abrogated, trade union activities curbed, and the political process subjected to severe constraints imposed by a civil-military ruling elite.

The Grim Legacy of Martial Law

In its 44 years as a free and independent state, Pakistan has been under Martial Law for no less than 26 years, or approximately 60% of its period of existence. Long periods of Military Rule have done irreparable damage to democratic institutions in Pakistan. The eleven years of rule by the military ruler, General Zia-ul-Haq, for example, have left a deep and painful mark on the country's political psyche.

The civil and military establishment has become so used to undiminished power that it has refused, for example, to address the issues of local and provincial rights and autonomy. Frequent interruptions and manipulation of the political process by military and civil rulers have further subverted democratic institutions, compounding a gross imbalance of authority in a country so long used to and abused by a highly centralized system of governance.

Electoral processes in Pakistan have been manipulated to suit the designs and interests of the establishment. Anti-establishment parties have been effectively prevented from dominating the political scene. In the introduction of the 8th amendment to the 1973 Constitution, parliamentary democracy was dealt a severe blow.

The Exploitation of Ethnicity and Religion for Political Ends

The exploitation of ethnicity for political ends also owes its origin to Zia-ul-haq who suppressed political parties and held elections in 1985 on a non-party basis with a view to promoting influential local personages who appealed to narrow ethnic interests, countering the influence of progressive nation-wide political organizations.

Today, mainstream political parties woo these influential individuals because of the personal loyalties they command from certain groups - often as a result of threat and intimidation. Many of these so-called "leaders" do not owe allegiance to a political party or programme and are only committed to themselves. Exploiting widespread ignorance and the fanaticism that this breeds, these individuals have used democratic processes, not to work towards socio-economic transformation but to gain personal privileges, favours and fortunes.

An important instrument used to suppress democracy successively by the ruling elite in the country has been religion. The legal system has been sabotaged by the creation of the Federal Shariat Court. By declaring the Shariah, as interpreted and determined by a few hand-picked Ulema, the supreme law of the land, the establishment is reducing parliament and the laws enacted by elected representatives to a secondary status.

Some Examples of the Misuse and Abuse of Religion

An example of the manner in which religion has been used to undo progressive reforms is the case of the Federal Shariat Court declaring Land Reform un-Islamic. This decision, however, has not deterred landless peasants from agitating against the Federal Shariat Court's decision. The Kissan Mahaz in Hazara has organized a number of protest meetings against the decision and has appealed to the Supreme Court against it.

The misuse of religion in Pakistani politics was vividly brought out recently when the Federal Minister for Religious Affairs declared the leader of the opposition and former Prime Minister Ms. Benazir Bhutto a " non-believer " and therefore, under Islamic Law, liable for sentencing to death. The reason stated by the Minister for his pronouncement was a statement Ms. Bhutto had allegedly made in a public meeting declaring that the People's Democratic Alliance would not accept the supremacy of the Federal Shariat Court. Ms. Bhutto had said that while she accepted the supremacy of the Quran and Sunnah, she refused to allow some hand-picked Maulvis to arrogate the right and authority to interpret Islam. This, she said, would make a mockery of democracy where Parliament and the Constitution are supreme.

In another incident, an eminent social worker, Akhtar Hameed Khan, who had dedicated a lifetime to empowering the poor, was accused of blasphemy on flimsy grounds and therefore liable for sentencing to death under Shariah Laws. The manner in which Akhtar Hameed Khan has been victimized has belied the government's claims of supporting and encouraging non-government organizations working with the poor.

As a result of " Islamization, " a significant proportion of the population has effectively been disenfranchised and relegated to the status of second class citizens. The system of separate electorates introduced by the dictator General Zia-ul-Haq denies minorities, including religious minorities, the right to vote for political parties at the national level. More recently, the introduction of the column on religion in identity cards and passports would make matters worse for minorities who are already discriminated against.

Both Islam and national security have been liberally used by various administrations to suppress legitimate attempts to reform the country's exploitative socio-economic structures.

On Our Feudal Past and Present

After forty five years of the country's existence, feudalism is still deeply entrenched in the political system. The feudal system took root during British times when British colonial rulers created a class of collaborators in the shape of landlords who maintained law and order in the countryside. Today this class performs the function of maintaining the status quo for the establishment. Representatives who are elected on the basis of ethnic, linguistic and sectarian considerations and who are supported by vested interests can not be expected to support the struggles of the people for socio-economic transformation.

An Unrepresentative Parliament

In Pakistan, Parliament is dominated by feudals and big business interests. Power is concentrated in the hands of very few families. Whenever possible, this monopoly has been preserved by convenient matrimonial alliances. On the surface it would seem that these elected representatives are true representatives of the people. At election time, one can see ordinary people participating in political rallies. This would seem like a concrete manifestation of democracy. In reality, however, their participation is a result of elaborate arrangements made by local politicians: transport to rallies and polling booths is provided, as are food and cash. In some cases, fear and intimidation drive them to go and vote as commanded. From this we see that the political process in Pakistan is not truly participatory.

A seat in parliament has in many cases become a pathway to huge personal empires; a licence to get bank loans written-off ; a ticket to get prime land at throw-away prices. Zia-ul-Haq and successive rulers after him have turned a deaf ear to charges of graft and nepotism by parliamentarians, a blind eye to obvious or not so obvious corruption, since confronting these charges would damage valuable political alliances.

Our Other " Representatives "

Traders and industrialists have emerged as powerful lobbies, but in terms of political power they do not wield the same degree of influence as the feudals. An important addition to the groups brokering political power in the country has been the drug Mafia. Not only have drug lords played an important role in financing election campaigns of political parties and individual parliamentarians; they themselves have succeeded in being elected to provincial and national assemblies.

Representation Without Participation

There is little accountability of representatives to the people who elect them. The people's needs are not truly represented in decision-making. So, while there is representation, there is no participation within the formal political process, whether at the local (Union Council, District Council), the regional (Provincial Assemblies), or the federal (National Assembly) level. This lack of a true voice for the people has led to a socio-economic crisis in the country. The country's natural and human resources have been systematically plundered by powerful interests who have gone unpunished. The management of the country's financial affairs has been similarly corrupted. If the nation's rulers are not held accountable, why should lower officials be held accountable? Why should the police be incorruptible? Corruption has permeated every level of national life. The rot has started from the top.

A Grim State of Affairs

There is grave disharmony between man, nature and economic development due to the unbridled pursuit of wealth and power by a few.

Different governments, both civil and military, have pursued policies and maintained a system that prevents individuals and political groups representing the marginalized, the disenfranchised

and the downtrodden from wielding a significant voice in parliament and in the political process. The election machinery, the bureaucracy, intelligence agencies, sections of the military and even the media have all been used to prevent political power from falling into the hands of representatives who would like to see a progressive and democratic Pakistan. Progressive representatives themselves have not always been blameless. Once in office some have failed to demonstrate vision and maturity in their political strategy and practice.

Three Reasons for Our State of Affairs

Policy-making and economic development have therefore been the exclusive domain of elites, effectively excluding true participation by local communities whose interests a democratic state is supposed to safeguard. One can identify three main features of the Pakistani state that have historically militated against the inclusion of local communities in the process of planning and development:

1. A centralized state structure which has failed to address specific problems and needs of particular communities and has also failed to develop effective administrative, financial and political institutions at the local level;
2. The feudal-tribal character of the state which has prevented political, social and economic development from taking place, thus assuring the lack of participation of the people and the failure of institutions to work in the people's interest;
3. The colonial character of the present-day bureaucracy. It is the symbiotic relationship between the bureaucracy, feudal elites and western capitalistic countries that has perpetuated the concentration of power and decision-making in the hands of a few and effectively excluded the participation of people at large.

These three features of the Pakistani state have reduced the ability of the state to mediate between the interests of different groups and social classes. Given this state of affairs, it is not surprising to see many sectors of society in a state of near-paralysis; whether it be education, health, communications, power generation, infrastructure, law and order, the judiciary or the electoral process. These institutions and sectors are all in an advanced stage of deterioration.

State of Human Deprivation

The latest UNDP Human Development Report shows the magnitude of human deprivation in Pakistan. To quote from the report:

"55 million people have no access to safe drinking water or primary health services; 100 million people are deprived of any sanitation services; 37 million people are below the absolute poverty line with no access to even the very basic needs for human survival; 44 million adults are illiterate and two-thirds of them are women; 12 million children under 5 are severely malnourished". Given this state of affairs, the country spends only 2.8% of GDP on health and education and 8% on defence. No wonder the country ranks fifth in the world in terms of GNP growth and 120th in terms of human development indicators".

It is clear that neither the 5-year or annual development plans, nor the annual budgets, nor the various grandiose projects presented with such fanfare each time have translated themselves into human well being.

Our own research has revealed equally shocking data. As I speak to you, 2000 children under the age of 5 are dying and will die today. Most deaths are from water and sanitation-related diseases. Except for certain parts of Lahore, no urban centre in the country receives water supply which can be described as safe for drinking. Karachi's urban services have virtually collapsed, as

can be seen from the pools of sewage water in almost all parts of the city. Even the so-called posh localities are no longer immune from mass outbreaks of jaundice, typhoid, etc. In Faisalabad, over one lakh people defecate on the streets and open plots every day and the filth simply lies there to fester as there is no municipal arrangement to remove the garbage. In Sukkur, tap water smells of sewage. In Jacobabad, Gwadar and other towns and cities the residents have always consumed brackish water and no effort has ever been made to provide potable water to these communities. These facts raise serious questions about Pakistan's expenditure priorities. After all, who would be left to defend if all our children are dead?

We are Losing Our Natural Heritage

One other problem which has not received much attention of either policy makers or the media is the fast eroding natural resource base of the country. It has been estimated that in order to prevent further erosion of soils, contamination of surface water and the aquifer, save cultivable lands from water logging and salinity, arrest deforestation, etc., the country needs to spend Rs. 150 billion in the next ten years. This works out to Rs. 15 billion annually. Where are these resources going to come from? At present, while the Federal government spends almost Rs. 200 billion on non-development heads, it allocates only Rs. 66 billion for development. This ratio needs to be reversed.

On Our State of Indebtedness

It is most unfortunate that our elected leaders have failed to realize the grave consequences of wistful government expenditure. Pakistan has assumed the unenviable position of borrowing to meet even the governments's non-development expenditure. This phenomenon started in the mid eighties during the regime of General Zia-ul-Haq, when revenue expenditure out paced revenue receipts,, forcing the government to resort to borrowing to meet part of its then current expenditure. Thus, out of a total domestic

debt of close to Rs.500 billion, approximately Rs.100 billion have been borrowed to finance the government's non-development expenditures. In FY 1991-92 an estimated Rs. 40 billion would have been borrowed to finance the government's non-development expenditure.

It is important to remember that borrowing is justified if the borrowed sums are invested in projects where the rate of return is higher than the rate of interest. Allocating borrowed sums on non-development expenditure heads means a zero return. More debts will therefore have to be incurred to service the earlier debt, or more and more money will have to be printed. This is an extremely dangerous situation and the country is fast approaching the point of financial bankruptcy.

It is most unfortunate that the present government has not learned any lessons and is continuing to borrow heavily to finance its profligacy. At the present rate of borrowing, the country's debt servicing tends to double every four years. By the year 1995-96 the country's annual debt servicing will be close to Rs.150 billion. This is an alarming state of affairs with serious implications for the country's sovereignty and independence and well-being of the people.

How the Government Spends

When we analyse budget allocations it becomes obvious that the government is continuously spending large amounts of resources on non-productive heads such as defence and civil administration. A large component of the government's non-development budget is debt servicing which takes up almost a third of the government's non-development expenditure, leaving few resources for social sectors such as health and education.

The country's growing debt burden has reduced the availability of resources for social development. The rising debt burden has been caused by excessive borrowing by successive regimes.

Due to this Pakistan has had to accept the dictates of donor agencies expressed in the form of conditions such as import liberalization, privatization, user charges to withdrawal of subsidies and more. This has resulted in the loss of national sovereignty in economic decision-making and hardship for the poor and under privileged.

As far as foreign borrowing is concerned, the country has accumulated an external debt of \$ 17 billion, with an external debt service liability of Rs. 30 billion per year. Adding the domestic debt to the external debt shows that close to half the country's economy stands mortgaged in debt.

Defence at Any Cost?

After debt servicing, the largest expenditure head is defence which is considered a sacred cow and therefore above public debate and scrutiny. Defence expenditure takes up more resources than the entire federal Annual Development Programme. Defence expenditure which stood at 5.4 per cent of GDP in 1979-80 is now estimated to be in the range of 7 per cent of GDP.

The importance of a strong defence capability cannot be denied. However, there is a need to bring national defence and security under public scrutiny, so that the teeth can be sharpened while the tail can be cut. As Winston Churchill said: "War is too serious a business to be left to the generals". In our own case, we have twice lost territory - East Pakistan and Siachin - and on both occasions we had generals at the helm of affairs.

Presently, as in other civilian establishments and society at large, there is considerable waste in the defence establishment, especially in the perks and privileges given to senior military officers, such as duty free import of limousines for service chiefs, expenditures on officers messes, etc. If the officer corps is made accustomed to high living then their ability to undergo hardships, which is essential in order to develop a truly effective fighting machine, is weakened.

Moreover, in order to strengthen defence the people must be involved. This can reduce expenditures in maintaining a large standing army while making the country's defence a truly national concern. This however can only be done by a government that enjoys full public support in all the regions of the country, a government prepared to subject itself and the military establishment to public scrutiny and accountability.

The benefits of reduced defence spending are simply enormous. It has been estimated that if Pakistan and India were to freeze military expenditure at the current level of the 1990s, they would be able to reap a peace dividend of \$ 15 billion. This amounts to just about enough to see that all children in Pakistan and India are provided primary education, primary health care and clean drinking water.

Conclusions

To sum up, an oppressive feudal-tribal socio-economic structure bolstered by a civil-military bureaucratic structure has caused our country irreparable damage.

Whether in the family, at the work place, or in society at large, oppression and exploitation have become a norm. Because they are so pervasive, oppression and exploitation do not encounter collective and organized resistance. Thus dictatorial regimes have succeeded in wresting power and holding on to power for long periods of time. It is also the entrenchment of exploitation in our political, economic and social life that have made ostensibly democratic governments resort to undemocratic practices.

Fear, terror and human rights violations are the logical outcome of an oppressive and exploitative social structure. Sections of the bureaucracy and military, the religious establishment and the feudal-cum-industrial elite are the main pillars of the present day exploitative and oppressive social order. It is not in the interest of these elites to promote a participatory politico-

economic process involving the people.

It is only by developing effective people's organizations that inroads could be made in the power and influence of the elites. Such people's movements have the potential to transform exploitative and oppressive social structures.

The centralized state system that we have today, can only perpetuate human deprivation, human rights violations, underdevelopment, and consequent social and political instability. The present State structure has proven incapable of resolving the deep contradictions in economic and political realities in Pakistan.

The alternate system that we propose is a decentralized one, with decision-making authority vested in the people at the regional and local levels. The closer government is to the people, the lesser the chances of misuse of power. Presently, this is not the case. The federal government's role is still dominant and interventionist. The provinces have limited areas of authority, but even in these areas the federal government defines the parameters. As far as the lowest tier of government is concerned, i.e. the local level, these institutions lack the constitutional sanction for their existence and are at the mercy of provincial governments. They also lack the resources and capacity to develop the base for a truly decentralized and participatory political-economic framework. Local government will, therefore, have to be accorded the status of the third tier of the federal structure. Substantial resources will have to be diverted to strengthen local government. To do this, the domain of the federal government and, concurrently, its expenditures, have to be curtailed.

It is essential for the federation of Pakistan to restructure its systems and laws to ensure that subnational groups can lay claim to their rights to justice, fair play and equal participation in the shaping of their destinies. A balance of power between provincial and federal levels of government is urgently needed, with a fair measure of financial, administrative and political authority being

devolved to the provinces. The district and the village should be able to act at another level of administrative, financial and legislative authority, for even more decentralized governance and to ensure wider political participation. What we are recommending is nothing less than a complete restructuring of the political system, to provide a new direction for Pakistan as it faces the challenges of the 21st century.

Along with steps to decentralize and diffuse political and administrative powers, measures will have to be taken to check the power and influence of feudal-industrial and bureaucratic elites. This can be done through socio-economic reforms such as land reform and the reduction of non-development expenditures. A conscious policy of encouragement and support for participatory people's organizations will have to be adopted.

At the political level, a number of measures will have to be taken to restore people's faith in democratic processes. The rights of women and minorities need to be protected. All undemocratic legislation needs to be repealed, and anti-democratic and anti-people institutions need to be abolished. A permanent system of accountability needs to be instituted so that those who have amassed wealth by using influence and power are not only checked but are made accountable.

Above all, the system of elections and representation will have to be drastically changed so that manipulation of the electoral system and the role of money and the mafias is eliminated.

In the present configuration of political power, such changes will not come about easily. Moreover, the presently entrenched elites will not give up their positions of power voluntarily for the genuine transformation of society.



HUMAN AND LEGAL RIGHTS

Ms. Asma Jehangir

When we talk about trade union rights, we cannot ignore the fact that women constitute a significant part of our labour force; yet they are not to be found here. Similarly, half of our country's children work but they too are not represented here. When we talk about constitutional rights for ourselves, we should not forget that others too have similar rights. You cannot demand rights for yourselves while denying the same to others.

When an industrialist says he has such and such rights and he is free to do such and such things, he will be listened to only if he speaks for other classes and their rights. Otherwise he has no credibility. No mill owner or industrialist or organisations like APTMA are seen to have made any contribution to the betterment and welfare of the society which would induce the workers to be considerate to them. Similarly, trade unions too ought to establish their own credibility. While running your trade unions you ought to ensure that the work done by women who work with you or work separately is given due recognition. This is your duty and not that of a professional woman lawyer, because a working woman is first a worker like you and only afterwards is she a woman. Likewise, it is your duty to fight for the rights of children working in the unorganised sector.

At a Seminar some time ago I had an argument with Brother Karamat. My contention was that an Article prohibiting child labour should be written into our Constitution. But Brother Karamat being more practical, he argued that children have to work out of necessity. But I still hold that there should be some stage, some age, up to which children should be restrained from working. The Constitution says that "no child below 14 years shall be engaged

in any factory or mine or any other hazardous employment." I propose that this Article be re-worded as: " A child should have the right not to work if he/she so desires." This at once concedes more than one right to children. When children are given the right not to work, it is for the government to set up schools throughout the country to provide compulsory education to them and initiate measures for social development. If schooling arrangements are not available to the children and they are not working also, a mere provision in the constitution is not going to stop them from working. Education in itself is nothing. Its importance lies in its capacity to help us not only to change the social structure but also to have better laws.

We are supposed to have fundamental rights in Pakistan, I fully agree with what Omar Asghar Khan said in his paper. But I have one point of dissent that Pakistan has never had a genuine democratic system till now, irrespective of which party was in power, whether it came to power in the name of the poor or the rich or on the basis of empty slogans. In our country the term democracy has been frequently exploited. Here there is no political party whose manifesto pledges that it will introduce literacy within one year. May be, some of them have such a provision but their actions do not suggest that they are really serious about it.

In Pakistan, the people are willing to undertake any task if only there is a leadership to guide them. All our constitutions conceded fundamental rights, but the period when we had constitutional rule was comparatively very short. And, with each such right there was always a restrictive provision. Of course, such restrictions are there in other countries too. It is motivated by the imperatives of managing a civilised society in an orderly manner, as for instance, you have the right of free expression but this right ends at the point where you tread on some one else's right. You are free to make speeches but if you abuse someone, you are violating that person's right. So, to that extent, there are restrictions in all constitutions and laws.

However, in Pakistan, these restrictive provisions have been exploited by the rulers to serve their own ends. For instance, Chapter I of Part II of the Constitution on Fundamental Rights includes an Article on detention of persons. Now, detention of a citizen is negation of his / her fundamental right. This Article should not be in the chapter on Fundamental Rights. It is stated that preventive detention shall apply to only such persons who are " acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or public order, or the maintenance of supplies or services ". But experience has shown us that practically every national leader - in government at one time or other as Prime Minister, Chief Minister or Governor, or out of the Government - has been detained under this law on the charge of working against the country. Now, how is it possible that a person working against the country is made Prime Minister, Chief Minister, Governor, Opposition Leader and so on ?

Thus, it is obvious that this constitutional provision is mis-used by the rulers to curb human rights. In Ayub Khan's time the Government could detain any person without assigning any reason. Gradually as trade union leaders also began to be detained, and when the Courts realised how recklessly the laws were being exploited resulting in people losing respect for and confidence in the courts, the courts ordered that if and when the government detains a person he/she should be informed of the grounds of detention. Then, in course of time, as a result of our sustained struggle, it was conceded that a detained person must be given the grounds of detention within 15 days and also that he/she can be detained only for three months.

We should remember that when we fight legal battles, the battle for human rights, the rulers move faster than us. They contrive various tricks to counter us. Nowadays people are not "detained". If the Government is against you, you will not be detained because as a result of the long legal battles you have

fought, you have taken the detention laws to a point where the Government cannot detain you arbitrarily for indefinite periods. You know what is happening these days, you who live in Sindh know it better than anyone else. There are FIRs registered in police stations about alleged dacoities having been committed by unknown persons. You are picked up and charged under one such FIR. You are now neither a detenu nor a political prisoner; you are a simple criminal, a dacoit.

We have thus seen that our rulers have used the laws to suppress our voice. The Constitution concedes freedom of the press. But see what is happening. Newspapers cannot survive without government advertisements. And government advertisements are monopolised by 3 or 4 newspaper owners in the country who willingly place their newspapers at the service of the government rather than air public opinion, so much so that only a handful of bold journalists can write according to the dictates of their conscience. Is this freedom of the press?

Article 25 (1) of the Constitution explicitly states that "there shall be no discrimination on the basis of sex." But you know that in spite of the laws, discrimination against women is widely prevalent. Let me ask you: when you are discussing a society, what do you think constitutes its basic unit? Family is the basic unit of society. And if the woman is denied equal rights at that basic unit level, how can she expect to get equal rights at any other level?

You may not agree with me but I must say that there are several laws framed in the name of Islam under which not only have women no rights but they are ruthlessly victimised, so much so that even our judges have publicly admitted in the press that the manner in which these laws are implemented violates human rights. Women have suffered enormously due to these discriminatory laws.

There is a long list of provisions to disqualify a person presenting himself as a candidate in an election. If these provisions are strictly followed, I don't think any one in the whole country except a handful would be qualified to be a member of the parliament.

When I speak of government of Pakistan, I am actually referring to the Pakistan of a particular class, the feudal class, to be precise. This is the class which has always been in the government. Look at our parliament. Those who are there today were there yesterday as well. They have been in every political party too.

When we talk of trade unions or the disadvantaged classes, we should realise that the government is of one particular class and that class has always exploited everyone else. Those very people who were shouting slogans for socialism yesterday are raising slogans for Islam today. And those who were raising slogans for Islam are now shouting for capitalism. In my view, whenever you begin to fight for anything, you must take stock of the given conditions. You must know that T.V, Radio etc are under the control of these classes. When a lie is repeated over and over again on these media, people begin to believe it as truth. Therefore, the deprived sections of people of Pakistan must realise that they are being subjected to systematic exploitation carried out under a calculated plan. This is not happening by accident. It is the result of a conspiracy by one class against all others.

We should keep in mind that as far as Pakistan is concerned, different views have been expressed here. My brother from Sri Lanka says that when we discuss Pakistan, we should confine ourselves to discussing only trade unions and trade union laws. I don't agree. I think whenever we talk about Pakistan we seem to be stuck in the quagmire of confusion. We have to get out of that. I have often heard people say: "there was no other alternative but this." If you ever think that when there is martial law, trade

unions can have their rights also, you are living in a fool's paradise. When there is martial law, when the press is muzzled, when women have no voice, trade unions can also have no rights.

We have to keep in mind a few basic points. First of all, to say that there are no two points of view here is wrong. There is one clear point of view i.e. Islamic system should be introduced in the country irrespective of the cost. There is a second equally clear point of view that if you want to introduce the Islamic system here, the people will not go along with it. Thus there is a definite polarisation. There are two clearly conflicting views. Let us admit it. Let us have the courage to admit it, no matter if one or the other view is right or wrong. There is nothing wrong in what my brother Omar Asghar Khan said without mincing his words. Those who say that there should be Islam in Pakistan say it because of their belief, and those who say that religion should be kept separate from state affairs say it because of what they have experienced.

We have seen that whenever religion was allowed to get mixed up with state affairs there always was sectarian tension and conflict. There may be quite a few here who can be termed as extremists. Among other things, they may be asking for trade union rights also but they must know that no right is complete as long as women are not given their rights. There are several sections and groups who oppose the rights of women. Therefore, please understand this carefully. You must know about the Federal Shariat Court. I tell you it is a political court; it has nothing to do with Islam. The Judges of the Federal Shariat Court are appointed by the President for a 3-year term and after 3 years if they are found not to be serving to the satisfaction of the President, they are removed and if they have earned the confidence of the President, they are allowed to continue, even life-long.

One thing more. Ziaul Huq used to boast that he would

Islamise Pakistan but at the same time he made it clear that he would not allow the Federal Shariat Court to meddle in political matters or interfere in constitutional laws. Why? Did he not trust the Judges of the Court? The fact is that he knew very well that it was all a political game and had nothing to do with Islam. Now see. This Court was not created by me. But the Judges of that Court decreed that the punishment of stoning to death was un-Islamic. It was not my Judgement, not Omar Asghar Khan's, not of that section of the public who rightly or wrongly think that religion must be kept separate from state matters. But look at what happened afterwards. The Chief Justice of the Federal Shariat Court was sacked. Previously, the Court had no power to review its own judgement, but now it was given that power, through an amendment in the constitution. The Judges were asked to behave. And they behaved. They changed their won previous judgement. Subsequently, they pronounced many judgements with which no person can agree and they also changed many of their own previous judgements.

There is sufficient room for varying interpretations of Islamic laws. But what is important is who is interpreting them. If the parliament is interpreting them, we can say that it is a democratic exercise. But here it is the Mullahs who are doing the interpreting. Result : sectarian tension, conflict and bloodshed. So, please try to understand this new phenomenon and admit that there are two points of view.

We have also seen that there are certain elements/groups who do not want to see democracy prosper here. If there is democracy and democratic election, they can never reach the parliament. First they tried the street power; then army as a shield. And now eventually they are trampling on human rights through the laws.

I can show you hundreds of laws framed in Pakistan which are clear-cut violations of human rights. But the sad fact is that when we talk about it, you begin to slip away. At least we should

be prepared to talk to each other on these issues. In my opinion, when trade unions speak of their rights they should be prepared to work within a larger human rights framework. As long as you are not part of the broader struggle, you will be isolated and even if you gain some petty concessions in isolation, that will be short-lived and your unions will not be able to consolidate themselves.

Today we should chalk out a strategy. I have worked only once with a trade union. I will tell you my experience with brick-kiln workers doing real hard labour. The trade union working with them was running ahead of them, with the workers trailing far behind. The result was that the workers were not yet ready, they had not yet the courage to challenge their almighty employers. I worked with them for one and a half years, and the only thing we did was to explain to them that the type of work they were doing was forced labour. It took us one and a half years because a person whose father and forefathers had been doing forced labour for so many generations was unable to see the difference between forced labour and voluntary labour. It was a difficult task to convince them that forced labour was a crime, that if they struggled unitedly, they would find a way out of it. We prepared posters which only focussed on the difference between forced and voluntary labour and tried to convince them that unity would bring them success.

Then we sought the help of courts and filed 520 cases in Lahore in a single year. In the beginning it was hard to take care of even 10 to 15 cases because the workers did not have the inherent strength to withstand the pressures of the owners. When they were summoned by the Court and there they came face to face with their tormentors, they were terrified. Though a day before, they had told us that they would come and depose against their employers, they now told the court that they had not asked us to file any cases and they were prepared to return to their jobs and so on. I was deeply disappointed. But I learnt a lesson during

this period. When you work with workers who do not receive immediate benefits, you cannot expect them to come and depose against their almighty employers. But gradually, as 4 cases succeeded, more and more workers came and deposed against the employers, so much so that High Court Judges and lawyers were highly impressed and the Supreme Court took notice too. And we also talked to the then Law Minister. We prepared a draft law for the government but it was not passed by the then PPP Government. They sat on it. It was the present government which passed it without any change.

We fought against discriminatory laws. The story is long. The brick-kiln owners filed several cases against the union but as workers had access to free legal advice, the owners were defeated. And today the struggle of the brick-kiln workers has reached an advanced stage. Today they themselves stand up in court, argue and fight their own cases.

In conclusion, I wish to say this. Until and unless you include the fight for women's and children's rights in your struggle for workers' rights, trade unions will also not be able to get any rights.



PROTECTION OF FUNDAMENTAL RIGHTS AND DETENTION WITHOUT TRIAL

Subihuddin Ahmed

Article 9 of the Constitution of Pakistan contains the following solemn declaration by way of fundamental rights:

" No person shall be deprived of life or liberty save in accordance with law."

Article 10 further augments this right by providing that a person arrested on a penal charge shall immediately be apprised of the grounds or charges against him and be produced before a Magistrate within 24 hours of such arrest. No detention in custody beyond 24 hours is valid without the orders of the Magistrate and a person so detained has a right to be defended by a lawyer of his own choice.

The legal system, however, also enables preventive detention i.e. keeping a person in custody not because he has committed a certain offence but merely for preventing him from doing something prejudicial to national security, public order, etc. The concept of preventive detention, though abominable in principle, has come to be recognised in most societies in situations of war or national emergencies. It is justified in the following words Lord MacMillan:

" However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely, national success in war or escape from national plunder or enslavement."

Our legal system unfortunately allows preventive detention even in times of peace. Nevertheless, the Constitution provides the following safeguards against such detention:

1. No law providing for preventive detention can be made

except for purposes of national security, public order, or maintenance of supplies or services.

2. No detention is possible beyond 3 months without the permission of the Review Board comprising judges of superior Courts.
3. A person detained must be informed of the grounds of his detention within 15 days from commencement of his detention and be allowed to make a representation against such detention.

As regards the preventive detention, the superior Courts have engrafted further protections for the detenus in the corpus juris of Pakistan. Though the power to order detention is purely executive, the Supreme Court of Pakistan, way back in 1967, rejected the view taken by the British House of Lords and other Superior Courts that the judgement exercised by the officer ordering detention is purely subjective. The Court, by majority, held that the detaining authority must be able to establish that objective reasons existed for depriving a citizen of liberty. Subsequently, the Court also held that irrespective of the powers that a law conferred on an executive functionary, it was a constitutional duty of such functionary to be able to satisfy the Court that detention was ordered on good and proper grounds. It has also been held that no material upon consideration of which a detention order was passed can be withheld from the Court and it is for the Court to decide whether a privilege against its disclosure to the detenu can be claimed on the ground of public interest. The onus of proving the validity of detention is also upon the detaining authority. Practically, the superior Courts have insisted on strict compliance of the requirement of law and several orders of detention have been quashed for technical defects.

In terms of pure theory, therefore, one can safely contend that adequate legal safeguards existed against preventive detention. In practice, however, the situation is unsatisfactory. Despite

the fact that most of the orders of preventive detention that have been questioned before superior Courts are struck down, executive functionaries continue to pass such orders recklessly. Most of the orders passed under the Maintenance of Public Order Ordinance stipulate detention for 30 days. Grounds of detention are rarely supplied within the time mandated by the Constitution. By the time the detenu is able to file a petition before a High Court and it is taken up for final hearing (after a couple of adjournments sought by the State counsel) the period of detention stands expired. The usual practice is that the petition is said to have become infructuous. On the other hand, in many cases, the detenu, instead of being released, is handed over a fresh detention order and is forced to enter into another round of litigation. Thus, all protections available under the law and Constitution become meaningless.

Perhaps the only way to check this blatant violation of fundamental rights is to find alternate methods for enforcement of fundamental rights. The fact that a citizen deprived of his cherished right of liberty in violation of the law and the Constitution only manages to obtain his release from detention almost at the expiry of the period of detention ordered by the executive through a Court is hardly any redress. No doubt he has a right to seek damages for unlawful detention or even institute criminal proceedings for false imprisonment, but such proceedings are hardly efficacious. In the first place, the cumbersome procedure in both civil and criminal action wears out any litigant.

Consequently, the measure of damages granted according to existing principle is never really commensurate with the torture and agony that a person suffers through deprivation of his liberty and confinement in inhuman conditions in our jails. There are really no well-settled principles to be applied by civil Courts to compensate the indignity and ignominy sustained by a prisoner through incarceration and the mental and physical torture that he encounters. Again in practical terms, a citizen litigating in Courts

against the powerful apparatus of the State is at a definite disadvantage. Incidentally, a criminal complaint is to be tried by a Magistrate who functions under the administrative control of a Deputy Commissioner who is usually the officer empowered to order preventive detention. The superior Courts, in addition to the power of issuing orders and directions similar to high prerogative writs like habeas corpus, have also been granted the power to enforce fundamental rights by the Constitution. Perhaps one form of enforcing such rights would be to award exemplary damages and heavy costs on a per diem basis in respect of detention in violation of fundamental rights. Such compensation has been awarded in certain countries like India, Sri Lanka, Trinidad etc., where the superior Courts possess the power to enforce fundamental rights. It is awarded under the special power of the Court for the enforcement of those rights and is irrespective of the injured parties' private claim under torts. According to the Judicial Committee of the Privy Council, it is purely a matter of public law and no claim of immunity to an officer acting in good faith is entertainable against it.

Keeping the constraints of the law of preventive detention in view the more frequent method employed by State agencies to victimise citizens is through resort to ordinary modes of punitive detention. The most " popular method " adopted recently in Sindh was to arrest people under several false charges one after another. Afaq Shahid was arrested on a penal charge and a remand order for police custody was obtained for 14 days. The charge was obviously false to the knowledge of those affecting the arrest and after 14 days, the maximum period allowed by law, a report was filed that " after investigation " no evidence was found against the accused. However, instead of being released, he was handed over to another police station for being involved in another false charge. This exercise was repeated on 13 consecutive occasions. Afaq Shahid's case is only one example and there were several of his like in the province.

Apart from the malicious acts of the police the performance of the Magistrates in passing mechanical remand orders is extremely unsatisfactory. To check such practice, the Sindh High Court has recently delivered a judgement clearly spelling out the duties of the Magistrates in passing remand orders.

The most oppressive form of detention without trial, however, relates to those who languish in jails for years together, without being noticed by anybody. Ferozuddin was arrested in 1987 for being tried for a penal charge apparently after completing the formalities of police investigation. He was remanded to judicial custody and sent to jail on 1.7.1987. The first time that he saw a Judge was 5 years thereafter as incidentally he came across the Chief Justice of the High Court while he was inspecting the jail. It is prisoners like Ferozuddin and many others about whom the law enforcing machinery and the conscience of the society is allowed to sleep. Theoretically they are presumed to be innocent until found guilty by a Court and practically they have suffered more than those found guilty. The Sindh High Court has recently taken up an exercise of examining the cases of undertrial prisoners in the jails of Hyderabad, Sukkur and Larkana who have remained in custody for more than 4 years without any substantial progress having been made in their cases. Some of them are accused of trivial offences and would have been released much earlier even after serving out the sentences, had trials concluded in a reasonable time.

While the action of the High Court is commendable, more drastic measures are required through legislation and judicial interpretation. A jailer can only detain a prisoner under a warrant from the Court. Under Section 344, Cr.P.C., a Court can remand a prisoner to custody for not more than 15 days in case the trial is adjourned for any purpose. The problem arises when the prisoner once remanded to jail is never produced in Court owing to the stale explanation of absence of police vehicles and escort. The

law must explicitly provide that the production of a prisoner in Court is mandatory for a remand to judicial custody as well. At the same time, applying the spirit of the law it is possible for the Courts to take the view that any detention in jail exceeding 15 days without further warrant from a Court is illegal. The Supreme Court has taken the view that failure to produce an accused in custody on the date of hearing would amount to contempt of Court. It is advisable that the contempt power ought to be exercised more effectively for protection of liberties.



WORKERS' RIGHT TO ORGANISE AND COLLECTIVE BARGAINING: BARRIERS, CURBS AND RESTRICTIONS

By Nahi Ahmed

Background

At the time of independence, employees of all categories throughout the country with the exception of personnel of the armed forces and police had the right to form and join trade unions. All government and semi-government employees, civilian employees of the armed forces and all the workers of factories and commercial and financial organisations had this right. Self-employed persons could also form trade unions.

The United Nations General Assembly adopted the International Bill of Human Rights on 10th December 1948. Article 23(4) of that document recognised the right of every individual to join trade union for the protection of his/her rights.

Under Article 17 of the Constitution of Pakistan every citizen had the right of association and to form unions. ILO Convention No. 11 had already been ratified in 1923, long before the establishment of Pakistan. Under that Convention, agricultural workers were given the right to form unions. ILO Convention No. 87 which the Government of Pakistan ratified in 1951 conceded this right to all workers without discrimination with the exception of employees of the armed forces, police and state administration. ILO Convention No. 98 which the Government of Pakistan ratified in 1952 guaranteed adequate protection of workers' right to organise, besides the right of collective bargaining.

Labour Policy, August 1955: Under this Policy the Government declared its intention to promote trade union activities. To stop the exploitation of workers and ensure welfare of workers

were declared to be the goal of the government. It was also announced that the Government would encourage collective bargaining as per ILO convention No. 98.

Labour Policy, February 1959: This Policy was a re-iteration of all the Conventions and Recommendations of ILO which the Government of Pakistan had ratified earlier and was intended for the welfare and betterment of all types of workers, whether they belonged to the agricultural sector or the industrial sector. In this Policy it was declared that the growth of trade unions is imperative for a stable social structure, and for industrial and social peace, increasing production and ensuring equitable distribution of wealth.

Labour Policy, 1969: In this Policy it was officially admitted by the government that justice was not done to the workers in the past and that their economic conditions had deteriorated. It was categorically stated that the discrimination between government and non-government employees would be abolished and everyone would have the right to organise and collective bargaining. While duly recognising the importance and usefulness of trade unions, both the government and the employers were severely criticised. Industrialists were accused of being the first generation industrialists with a feudal and commercial mentality, who were taking advantage of the inexperience of the workers in order to preserve a landlord-peasant relationship in industrial life.

Thus, the Government of Pakistan set up the worst example of saying one thing and doing the opposite. Today the largest employer in the country is the federal and provincial governments who employ the overwhelming majority of the country's labour force. Peons, attendants, gardeners, drivers, mechanics, fitters, painters, carpenters, clerks and thousands of workers employed in other fields of work in the government sector have been by law deprived of the right to form and become members of trade unions.

Employees of Pakistan Security Printing Corporation, Pakistan Security Papers Limited, Pakistan Broadcasting Corporation, Pakistan Television Corporation, Civil Aviation Authority, Pakistan Council of Scientific and Industrial Research, Wah Ordnance Factory, National Logistics Cell, Stores Department, Defence Club and Defence Housing Authority, besides hospitals and educational institutions, have also been deprived of the right of collective bargaining.

During the Second World War, the colonial rulers had passed the Essential Services Act to keep army supplies and communication lines running uninterrupted. It was a temporary legislation for a limited purpose. However, today the free citizens of independent Pakistan are victims of this unjust and oppressive law. The government arbitrarily declares any organisation as Essential Service reducing all its workers to virtual hostages who are not free to go anywhere at will nor to quit their jobs: On the other hand, if they are sacked for no reason or justification, there is no court in the whole country where they can even file a petition seeking reinstatement. It is the most oppressive form of slavery, to say the least.

Public Utility Services: The definition of Public Utility Services is so sweeping that a large majority of workers fall within its orbit and lose their right of collective bargaining. They include the thousands of workers in gas, electricity and oil generation, production or supply and a host of other similar jobs, such as:

- (i) persons working on supply, storage and distribution of water to general public;
- (ii) employees of post offices, telephone and telegraph offices;
- (iii) workers employed at the ports;
- (iv) workers employed in railways and airways;

- (v) workers in fire-extinguishing services;
- (vi) persons employed as watchmen in any establishment and the personnel of security services.

All the above categories of workers/employees have been denied the unconditional right to strike. Prior to or during strike, the Government can issue orders forbidding the strike or order the strike to be called off.

As long as there were strong and active trade unions in Pakistan Security Printing Corporation and Pakistan Security Papers Limited, there were no incidents of theft or pilferage. Today just as workers' jobs are not secure, government's currency notes and other valuables in these top security organisations are not safe.

Not only officers and administrative experts work in the Radio and Television but there are also peons, watchmen, drivers, clerks, photographers and laboratory technicians. There are also writers and translators, news producers, reporters and announcers, artistes and singers. These people are denied the right to organise.

In the hospitals, besides doctors, professors and specialists, there are also ward boys, nurses, laboratory technicians, x-ray technicians, peons, chowkidars and drivers whose number runs into thousands. According to government statistics, there are 733 hospitals, 3714 dispensaries, 4211 public health units and sub-health units, 1027 maternity and child care centres, 230 T.B. Centres and 455 rural health centres all over the country where countless persons are employed on the para-medical staff to provide medical advice and care to the sick. To give medicines to the patient, take temperature, prepare X-Ray and laboratory test reports, carry tea, breakfast etc to the patient, make the patient's bed, put patient in wheelchair when necessary and take him round; all these duties are carried out by workers. They have, after

all, their own sorrows and worries. They have their basic needs too. And all of them are deprived of the right to organise themselves in unions. A large number of clinics and hospitals in the country are run on purely commercial basis. They charge exorbitant sums from the patients. There also workers cannot exercise the right to organise.

There are 22 universities, 99 professional colleges, 612 arts and science colleges, 6215 high schools, 7389 middle schools, 127,575 primary schools and 930 secondary and vocational institutes in the country. And now a large number of big commercialised schools carrying the illustrious names of former masters and other dignitaries have mushroomed in various cities. These private institutions charge from each child every month more than what an employee gets as his monthly pay. Persons working in these institutions receive very meagre salaries and none of them can exercise the right of unionisation.

Approximately 1 lakh (100,000) persons are employed in the banks and financial institutions countrywide, of whom a large number consists of experts with a high level of education and conversant not only with different aspects of the country's economy but also matters of international finance. They have worked tirelessly to raise the banking industry to a high stage of sophistication. Banking is a very sensitive commercial activity. It is the height of irony that the employees of this institution are denied the right of collective bargaining.

The disastrous effect of not allowing collective thinking and decision is amply manifested in our political life. When individuals are left free in the political field without any organisational base, they perforce lean on village, tribe, clan and sect to secure votes. This is extremely dangerous and harmful to national interest.

People employed in the Private Sector today work in conditions reminiscent of the age of slavery. In most of the

enterprises the employer is all the time trying to replace permanent employees (who enjoy certain facilities under existing laws) by recruiting workers through contract labour system which rejects even the most fundamental right of job security, not to speak of other rights under labour laws. Workers can be kicked out at will and have nowhere to seek relief from. This cancer of forced labour which is virtual slavery is spreading so fast that it can be called the number one problem faced by the trade union movement today.

Let us consider the present state of affairs at overall national level and at the level of the trade union movement, from a historical perspective. Kings and emperors and foreign masters used to bestow favours in the shape of lands and estates on their touts in recognition of their loyalty, competence and services rendered in enslaving the people mentally and physically in order to protect their selfish interests. They created an administrative system which hailed every act of savagery on their part as assertion of a right. Anyone who dared to stand up was liquidated. Those demanding justice were given the harshest punishment. And the masses were made to accept their tormentors as their benefactors who alone could protect their life and honour.

The country became free but the same old structure has been kept intact.

The leader of our freedom movement and Founder of Pakistan Quaid-e-Azam Muhammed Ali Jinnah had time and again warned that "feudalism which is a highly repressive system has made its adherents so selfish that they would not be convinced by reasoning. It is in their blood to resort to merciless exploitation of the masses to achieve their objectives. They have forgotten the teachings of Islam. Similarly, naked greed has so blinded the capitalists that they willingly become tools in the hands of enemies for the sake of enrichment. Have you paused to think how cruelly crores of people have been exploited that they cannot

afford even one meal in a day? If the achievement of Pakistan cannot change this state of affairs, I think it better not to achieve it. If they (the feudals and capitalists) are sensible, they will adapt themselves to the new conditions; if not, God help them. We cannot help them."

Ever since the establishment of Pakistan and the death of the Quaid-e-Azam, the people of Pakistan have been exploited ceaselessly with the knowledge, if not direct connivance, of the government. Laws were enacted in total violation of the country's constitution, international covenants and ILO Conventions. The Government has empowered itself to wholly or partially exempt the employers from any provision of the law.

For a long time there had existed 2 separate laws relating to the organising of unions and industrial disputes. During any kind of emergency, workers were forbidden to resort to strike for resolving industrial disputes but the union remained in existence. However, since the two laws were integrated under the Industrial Relations Ordinance (IRO), the situation became worse. Subsequently, as implementation of IRO also began to be blocked by means of new laws, the situation further deteriorated. And today it has assumed the shape of all-round violation of the Constitution and the ILO Conventions.

The Federal Government is empowered by Export Processing Zones Authority Ordinance 1980 (Clause 25) to suspend, through a notification, the application of any or all laws or parts thereof in the whole of the Export Processing Zone. This obviously means that the Government has assumed the right to wholly or partially set aside the operation of not only the IRO but also Social Security Ordinance, Employees Old Age Benefits Ordinance and all the basic or welfare laws made for the workers.

The Finance Act 1992 empowers the Government to exempt all industrial units exporting 75% or more of their products from

the application of IRO or any other law. Similarly, the Civil Servants Act 1973 (Section 2 B) is interpreted in such a way that IRO is not applicable not only to power-wielding officials handling administrative matters but also to ordinary workers.

Due to the constraints imposed on union formation process, defective labour laws and the negative attitude of the government and the employers, only 3% of the employed labour force are members of trade unions. And only 1.32% of workers are members of such unions which function as Collective Bargaining Agents (CBAs). After excluding workers of the agricultural sector, members of registered trade unions constitute 6.14% and members of CBA unions 2.7%. Even if, along with agricultural workers, personnel of police, armed forces and other workers who have no trade union rights are excluded, these figures rise only slightly to 8.18% and 3.6% respectively. (See Appendix).

The above statistics are from Economic Survey and Labour Gazette.

The Industrial Relations Ordinance 1969 which, besides denying union rights to all types of government employees with the exception of railway, post, telegraph and telephone workers, creates a variety of constraints and complications rendering it difficult for workers to exercise the right to form unions. Worker is defined in such a manner that persons employed as supervisors or receiving more than Rs. 800/-per month are excluded from its scope and counted in the category of employers and as such, cannot form or be members of unions.

Among the various objections raised by employers to block registration of a union or recognition of a union as CBA, one relates to what they call the " presence of non-workers in it, which makes the formation of the union illegal and ineffective". Employers often resort to filing different cases in civil courts and use various tactics to cause frustration among workers (which

usually succeed) to impede the registration process. In the meantime, pocket unions are easily created and get registered. IRO also forbids workers from becoming members of more than one union at a time. Employers also approach the Registrar of Trade Unions or civil courts and try to create obstacles in the way of formation and registration of the new and effective union, by taking the plea that its sponsors are members of another union and they cannot be members of two unions concurrently.

One of the compulsory provisions which the constitution of a union applying for registration must contain is that the numerical strength of the Managing Committee shall not exceed the ceiling fixed by the government and 75% of the members shall be from the same establishment / industry for which the union is being formed. It is also obligatory to state in the application the details of the name / names of the establishment, group of establishments or industry concerned. Similarly it is also obligatory that the name of the establishment / industry in which a member is employed must be written in the membership form. The manner in which laws have been framed makes it impossible for self-employed workers to become members of a union. It excludes the possibility of forming industry-based or profession-based or combined trade unions at the level of industrial area, city, district, province or country.

It is not possible to form trade unions in small industrial units particularly when workers have not been issued written letters of appointment. No new unions are being registered in Punjab, because employers refuse to own up workers who are union members as their employees. In this way, both the trade union's application for registration as well as workers who sponsor the union get the sack.

Secret agreements are concluded between owners and contractors after every six or eight months under different names and addresses. This allows the contractor to exclude himself from

the official definition of owner. For instance, after the workers form a union in the name of Siraj & Co., it suddenly comes to light that since last month the owners had signed contract with Sattar & Co. after terminating the contract with Siraj & Co.

In connection with registration of trade unions, it is clearly stated in Section 7 (2) that:

- (2) Without prejudice to the provisions of Sub- Section (1) a trade union of workmen shall not be entitled to registration under this ordinance:
- (a) unless all its members are workmen actually engaged or employed in the industry with which the trade union is connected, and
 - (b) where there are two or more registered unions in the establishment, group of establishments or industry with which the trade union is connected unless it has as its members not less than one-fifth of the total number of workmen employed in such establishment, group of establishments or industry.

According to Section 10 (3), the Registrar of Trade Unions is empowered to cancel the registration of a union if, as a result of his enquiry, he finds that the union has ceased to exist.

10 (3) The registration of a trade union shall be cancelled by the Registrar if, after holding such enquiry as he deems fit, he finds that such trade union has dissolved itself or has ceased to exist.

During the period when the application for registration is pending with the Registrar, there is no guarantee of the security of job of ordinary members. However, in respect of office bearers it is stated in Section 8A that only in the event that the names of the office bearers have been intimated in writing to the owner they will not be transferred, suspended or dismissed without the

consent of the Registrar. But usually the employers acknowledge receipt of the envelope but say that it contained blank paper, or they say that the covering letter had no list of names enclosed with it and so on and in this way discharge or dismiss even the office bearers without Registrar's permission.



APPENDIX

Total Labour Force
3,28,10,000
Employed Labour Force
3,17,80,000

Number of Registered Unions	Number of Members	Number of CBA Unions	Number of Members
7080	952488	1957	419801

Total Employed Labour force : 3,17,80,000

Of these :

In Agriculture :	1,62,60,000
In Mining & Manufacturing :	40,80,000
In Construction :	20,30,000
In Electricity and Gas Distribution :	1,90,000
In Transport :	15,50,000
In Commerce :	37,90,000
Miscellaneous (Govt. employees, army, police etc):	38,80,000

3,17,80,000

Published by Pakistan
Labour Gazette, Economic
Survey, Finance Division,
Government of Pakistan -
1990-91

Number of members in 7080 regist- ered unions	Number of members in 1957 regist- ered CBA trade unions
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9,52,488	4,19,801
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Total			
Labour force :	3,28,10,000	2.90%	1.28%
Total Employed			
Labour force :	3,17,80,000	3.00%	1.32%
Total Employed			
Labour force excluding those employed in			
Agric. Sector :	1,55,20,000	6.14%	2.7%



LABOUR FORCE / PAKISTAN'S ECONOMIC STRUCTURE / INDUSTRY-WISE DISTRIBUTION AND TRADE UNIONS: IN THE LIGHT OF STATISTICS

by Karamat Ali

Labour Force

According to 1990-91 statistics (Labour Gazette), Pakistan's total labour force consisted of 3,28,10,000 persons. Of these, 3,17,80,000 persons were employed.

Distribution of the labour force among different sectors of the economy was as follows:

Agriculture	:	1,62,60,000
1. Mining, Manufacturing	:	40,80,000
2. Construction	:	20,03,000
3. Electricity and Gas	:	1,90,000
4. Transport	:	15,50,000
5. Commercial	:	37,90,000
6. Others	:	38,80,000

Total Non-Agricultural : 1,55,20,000

Distribution of labour force in purely industrial and commercial sector was as follows:

1. Mining, Manufacturing	:	40,80,000
2. Construction	:	20,03,000
3. Electricity and Gas	:	1,90,000
4. Transport	:	10,55,000

5. Commercial : 37,90,000

Total : 1,16,40,000

As we all know, there is acute shortage of accurate statistics in all areas of life in Pakistan. However, for the time being the statistics published in various official publications and by various government departments from time to time can be used, although these statistics very often contradict one another.

According to the above figures, 1,16,40,000 persons out of the total labour force have the right to form unions according to Pakistani laws. Agricultural labour force of 1,62,60,000 and "others" (basically government employees, army and police personnel etc) who number about 39,00,000 have no right to form unions.

Correct Position of Unionisation

According to official figures (1990-91), the number of registered trade unions and their members were as follows :

Registered trade unions : 7,080

Membership : 9,52,488

Thus, the number of those who are members of unions comes to barely 6% of labour force who have the right to form unions. But the real position of trade unions will become clear when an assessment is made of CBA unions and their membership.

Total number of CBA unions : 1,957

Membership : 4,19,801

In real terms, only a little over 4,00,000 workers are members of effective unions. In other words, only 2.5% workers have the right to form unions and collective bargaining.

Causes of Weak Unionisation

To understand why unionisation is so weak, it is necessary to keep in view the following factors :

1. Legal difficulties
2. Problems arising from the economic structure
3. Social problems
4. Problems arising from prevailing organisational structure.

First of all, let us analyse the legal difficulties and problems arising from the economic structure.

We have seen in the beginning that the prevailing law excludes workers of agricultural sector and employees of government from the right to form unions. However, those in the industrial and commercial sectors enjoy this right. But the fact is that even these persons who enjoy the right are unable to exercise it.

In this context it is necessary to consider some facts about the country's economic structure.

According to a survey carried out by ILO in 1985 the composition of economically active persons was as follows :

- | | |
|--------------------------------|-----------|
| 1. Employers and Self-Employed | : 40.90 % |
| 2. Employees | : 27.70 % |
| 3. Unpaid family workers | : 27.60 % |
| 4. Others | : 3.80 % |

It means that persons who are employees constitute barely 28%. Under prevailing conditions, unions can be formed only by persons who are working. As such, a large portion of over two-thirds of workers are excluded.

Similarly, if we look at further data on employment in the industrial sector, the break-up on the basis of small and large industries will be seen as follows:

Employment in large-scale industries : 17.16 %

Employment in small-scale industries : 82.84 %

As the law in Pakistan permits formation of unions only at plant level, about 83% of industrial workers who are employed in small-scale industries (employing 10-15 persons) are unable to overcome the practical barriers in forming unions owing to their limited numbers and resulting paucity of resources. Small-scale industries are not covered by even the most basic laws (e.g. Factories Act, Standing Order Ordinance etc.); therefore, workers in these units have no legal protection of any kind. This sense of insecurity is a major barrier in exercising their right to form union.

In our country, in terms of industrial employment, 7 industries occupy top positions, viz., Textile, Engineering, Electronics, Plastics & Chemicals, Agricultural Processing, Fruit Canning and Printing & Publishing. Of these, the Textile Sector tops the list, i.e. about 35-40%. However, the Textile sector these days has the least unionisation.

Apart from other reasons, small size of the units, lack of education among workers and resultant ignorance of laws, non-implementation of existing laws particularly the law relating to terms of employment (the prevalence of contract labour system) etc. are other major barriers impeding unionisation.

A probe into additional statistics on membership of unions reveals that more than 60% of the total number of unions and membership is in the Services sector. One basic factor in this is the relatively higher rate of education among workers in this sector.

Social Problems

In our country a large percentage of workers consist of migrants, women, children and foreign (mostly illegal)immigrants. All such workers, faced with sense of insecurity, legal and economic pressures and family and social constraints, shy away

from taking any step that could jeopardise their means of livelihood, the intolerable conditions under which they have to work notwithstanding.

Nevertheless, in recent years, workers in several factories, especially women workers, have tried to form unions but due to the anti-union attitude of the owners, the accursed system of contract labour, cumbersome registration procedure, and corruption among government officials and court functionaries, their efforts were defeated and they were subjected to reprisals.

Obviously these workers were aware of their rights and were ready to take steps to achieve them. But the constraint of union formation at plant level stood in their way. Had there been industry-wise trade unions or general trade unions, they could have overcome such barriers and become members of such unions.

Lately in many parts of the country there has been a spurt in fractionalisation of society on ethnic, linguistic and sectarian lines, and workers who were already divided on the basis of temporary/permanent category, full citizen / half citizen, small-scale industry/large-scale industry and so on have been further divided and subdivided on these lines. The resulting mutual conflict, hatred and distrust among the workers have not only weakened existing unions but made formation of new unions almost impossible. Owners deliberately exploit such divisions for their own ends.

Every year 12.5 lakh new persons are added to the labour force, whereas only 4 lakh jobs are created annually. Such massive unemployment further accentuates job insecurity.

According to existing laws, more than one union cannot be formed in an establishment. However, the statistics given earlier show that there are on an average about 4 unions in an establishment. There are also such establishments like Railways, Steel Mills etc, where the number of unions reaches up to 60-70. This multiplicity of unions has also divided the workers into small fractions and further weakened them.

The law also divides the workers into different classifications like worker, supervisor, and so on. Even those who should normally have become members of the union are deprived of that right by illegally making them part of the management and putting them in confrontation with workers. The majority of them consists of such employees who are experienced and educated and very often those who had been founders of the union in these establishments. This also impedes and weakens the unions.

Prevailing Organisational Structure

We have seen that union formation basically takes place at plant level. More than one union is usually formed in a plant. Besides, generally union is based on membership of workers of permanent category. In some situations, in an industry, as for example Banking, industry-wise federations have been formed but they do not fall within the definition of industrial unions.

Actual Position of Existing Unions

A close examination of existing unions will show that usually they reflect the social classification prevailing in our society; i.e. they are not based on the principle of equality of members and their democratic and collective performance. In every union a few persons (office bearers) exercise absolute authority. Ordinary members seldom participate in any union activity except paying the monthly subscription and casting their votes in union elections. The top office bearers of unions i.e. President and General Secretary take most of the major decisions without the concurrence of the Managing Committee. Leadership rather than representation is the prevailing practice.

The Managing Committee of a Union is usually called the Cabinet. Following in the footsteps of State functionaries and keeping in tune with the established traditions, the President and / or Secretary keep all powers in their hands. They become indifferent to their duties and begin to believe that enjoying the facilities approved by the Managing Committee such as use of vehicle, overtime etc is their right. Thus, after getting elected as repre-

sentatives of workers, they draw themselves away from those very workers.

The ordinary members remain ignorant of day-to-day affairs of the unions ; in fact they do not consider it necessary to be aware of the principle of collective organisation, conditions and terms of work, labour laws etc. Union leaders, of course, totally ignore the education and training of workers and are very often scared of and even hostile to such activities.

Besides, we see in every union mutual bargaining going on amongst different groups / factions based on caste, clan, region, language etc. Most unions concern themselves with the interests of permanent workers only. The fate of non-permanent workers and contract workers is left entirely at the mercy of the management. The common tendency is to think about only one's own establishment and avoid even thinking about the collective problems of the labour movement as a whole. Obviously, the problems of unorganised workers, agricultural workers and self-employed workers are simply cast aside.

Trade Union Federation

In the absence of industry-wise and general trade unions in Pakistan, federation is the basic organisation after the union. Federation is general in character as it consists of unions of different sectors/industries.

Generally federations are established by certain leading personalities and remain under their full and life-long control. Most of them come into being or functions under the patronage of the State or the capitalists. Just like ordinary unions, the character and functioning of the federations is also undemocratic as they revolve round personalities.

Like there are several unions in a single establishment, there are numerous federations in the country. 132 federations were represented in the 1972 tripartite conference and 70 in the 1980 conference. If the total membership of CBA unions (about 400,000)

is compared with the number of federations, the average membership of a federation comes to not more than 4-5 thousand. Thus, the majority of federations are, organisationally and in terms of their practical activities, extremely ineffective.

In recent years, apart from labour wings of political parties, a number of federations on linguistic and regional lines has come up. Most of the federations do not consider it important to provide education and training to members or to practise democratic ways. Their financial position also is very weak. As a result, they are in no position to do anything significant for the promotion of the social, economic and political interests of workers.

The following facts emerge from the above assessment of the labour movement and trade unions in Pakistan.

- ★ Trade unions are extremely weak owing to multiplicity of their numbers (being divided and sub-divided into so many of them) and are individually and collectively ineffective.
- ★ Unions exist in a selected number of factories (total number of industrial and commercial establishments is over 50,000) which is not more than 4% of the total and are based on the membership of permanent workers.
- ★ Unions are incapable of organising the workers of small units, non-permanent workers, contract workers, self-employed workers and workers barred from unionisation under wrong laws.
- ★ Generally speaking, unions are undemocratic and revolve round a handful of individuals.
- ★ The financial position of the unions is extremely weak.
- ★ The unions pay no attention to the weaker sections of their membership - women workers etc.
- ★ Unions are incapable of playing any significant role in the country's social, economic and political life.

In the above circumstances, how can an active, vigorous and purposeful labour movement involving the dominant majority of the country's workers be organised?

Prospects for A Comprehensive, Organised Labour Movement

In the prevailing conditions, a comprehensive and organised labour movement can only be one that :-

- ★★ unionises all the workers, entitled under existing laws to form unions.
- ★★ ensures that the existing unions function on democratic lines and, through education and training, motivates and ensures the active participation of ordinary members in union activities.
- ★★ ensures that all persons employed in every establishment are made members of the union.
- ★★ achieves, through effective lobbying, trade union rights for all those persons who are at present deprived of that right.
- ★★ eliminates the prevailing multiplicity of unions and federations and unites the maximum number of workers on a single platform.
- ★★ creates alternate forms of organisation for self-employed workers.
- ★★ develops itself into an effective force capable of fighting for the collective social, political and economic rights of workers in all the sectors.

At the same time, it is most important that existing unions become strong and that all such federations which have common perceptions, attitudes, thinking and ideologies, unite. It is also most essential to lay greater emphasis on discussions, debates, education and training on a wide scale.

Organisational Requirements

Side by side with the struggle to get required changes introduced in the existing laws, it is necessary to form industry-wise and general unions in specific sectors and strive for their legal recognition. Besides,-

- ☆☆ Concrete steps should be taken immediately to improve the financial condition of the unions.
- ☆☆ Every organisation should, according to its resources, draw up comprehensive educational programmes and motivate its membership to further extend and expand them.
- ☆☆ In pursuance of above objectives, first priority be given to initiating the process of mutual discussions with industrialists so as to convince them of the advantages of industry-wise and general unions.
- ☆☆ Through public debates and discussions on different issues and topics, the intellectuals of the country be motivated in favour of workers' rights.
- ☆☆ And most important of all, existing union leaderships should democratise their attitudes to the maximum and launch a campaign without delay to give institutions preference over individuals.



5

STRATEGIES FOR SECURING RIGHTS