

INDUSTRIAL RELATIONS AND  
INCREASING GLOBALIZATION IN  
SELECTED COUNTRIES



International Confederation of Free Trade Unions  
Asian and Pacific Regional Organisation

---

Reference Series  
No. 6

**C 01 - 02694**

## FOREWORD

The ICFTU-APRO in cooperation with the Japan Institute of Labor(JIL) held a regional conference on the issue of industrial relations and increasing globalisation from 29<sup>th</sup> August to 2<sup>nd</sup> September 2000 in Manila. 52 participants from 22 countries in the region participated. These included participants from the affiliates of the ICFTU-APRO and resource persons from the International Labour Organisation, Asian Development Bank, International Monetary Fund, Department of Labor and Employment of the Government of the Philippines, Employers' Confederation of the Philippines, Trade Union Congress of the Philippines(TUCP), researchers concerned, JIL and ICFTU-APRO itself.

The Regional Conference covered issues such as the overview of industrial relations and increasing globalisation; the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy; labour laws and corporate governance; role of international financial institutions and promotion of social dialogue as well as a structural framework for an Asia-Pacific Industrial Relations Research Institute. Apart from presentations of country reports, four country case studies were also conducted and presented to the said Conference.

The country case studies covered India, the Philippines, the Republic of Korea and New Zealand. In the case of India it was found that the challenges faced by all parties including the trade unions are daunting with the recent further opening up of the economy to foreign investment. Since its independence more than 50 years ago India has followed a very sheltered market and protective regime based on political patronage. Any changes to the industrial relations system to meet the onslaught of globalisation has to ensure that workers should not be in the losing end.

In the case of the Philippines the creation of export processing zones(EPZs) to attract foreign investors to these areas has brought about anti-union activities by the authorities and employers concerned. However in recent years trade unions have been able to break the "no union, no strike" iron rule and thus some unions have taken root in some of these EPZs. Collective bargaining is also starting to be practiced in these areas although such a practice is not alien to the industrial relations scene in the country.

The Asian financial and economic crisis has brought much strain and challenges to the industrial relations system in the Republic of Korea. The crisis developed into a human crisis with more than a million workers thrown out of jobs and not able to find employment immediately. With inadequate social safety nets provisions the sufferings of the people particularly the affected working men and women and their families were further deepened. Tripartite mechanisms set up were initially able to provide some form of purposeful social dialogue to mitigate the adverse impact of the crisis. However there need to be more trust and transparency as well as ability to deliver for the social dialogue to be meaningful and effective.

The free market experiment in New Zealand brought about greater disparity in society and worsened the economic fundamentals. The Employment Contracts Act(ECA) had shrunk the union density tremendously in a country where unionisation rate was once among the highest in the region. The ECA had also led to a substantial increase in casualised workers and the lowering of standards in contracts thus adversely affected working conditions. With a change to the Labor/Alliance Government in 1999 the scenario is changing. The ECA had since been repealed by the Employment Relations Act. However the new approach to industrial relations has still to take time to manifest its positive impact with increasing globalisation.

The above four country case studies were commissioned by the ICFTU-APRO to provide inputs into the Regional Conference. Although a guideline was drawn up by the ICFTU-APRO for the researchers the views expressed in the respective papers prepared are those of the researchers themselves and are not necessary those of ICFTU-APRO or those of the affiliates which had recommended the researchers concerned. The case studies and the country report of the TUCP prepared for the ICFTU-APRO/JIL Regional Conference and Industrial Relations and Increasing Globalisation are presented in the following pages.

I would like to take this opportunity to thank the Japan Institute of Labour for providing the necessary fund for the printing of this publication. I wish to also thank the researchers for carrying out the studies as commissioned to them as well as all those who have contributed to the studies and this publication.

Noriyuki Suzuki  
General Secretary  
ICFTU-APRO

Singapore  
February 2001

# Content

<b>Foreword</b>	i
<b>Case study of India</b>	
<i>by C. S. Venkata Ratnam</i>	
I Introduction	2
II Historical overview of industrial relations in the country	2
III Development of legal framework	4
IV Impact of liberalisation on industrial relations	4
V Employment and employment security	7
Social safety nets	10
VI Key issues: MNCs, privatisation and EPZs	11
Multinational companies (MNCs)	11
Privatization	15
Export processing zones (EPZs)	18
Skills training	18
VII New approaches to work organisation	20
VIII International labour standards	23
IX Recent developments in industrial relations	29
Collective bargaining	29
Workers participation in management	29
Aligning labour policy	30
Industrial relations	32
X Roles of social partners	33
Government	33
Employers	34
Trade unions	34
References	35
<b>Case study of the Philippines</b>	
<i>by J. M. Damaso</i>	
I Development of industrial relations system	38
Historical perspective	38
Elements of industrial relations	39
Wage determination	40
Unionism and collective bargaining	40
Labor standards and working conditions	40
Dispute and grievance management	41
Dualistic IR system	41
II Changing environment for industrial relations	42
Economic and political issues	42
Changes in economic sectors	43
Changes in the corporate world	44
Other relevant considerations	44
Implications on industrial relations	45
III Prospects for industrial relations	45
Labor code reforms	45
Economic performance	47
IV Highlights of tripartite joint statement on SAP issues	48

	Key policies	48
	Major strategies	48
	Short-term concerns	49
V	Ratified ILO conventions	50

### **Country report on the Philippines**

*by Gilbert P. Lorenzo*

I	Labor Organizations for 1995 April 2000	51
II	Unionization rates	51
III	Number of strikes/lockouts and mandays lost	51
IV	List of national laws on industrial relations	52
V	Disputes settlement procedure in law and in collective bargaining agreements	53
	Voluntary arbitration	54
	Compulsory arbitration	55
	Mediation and conciliation services before NCMB	59
VI	Procedure in collective bargaining determination of bargaining agent	60
VII	Tripartite structures and functions	64
VIII	Participation of trade unions in social dialogue	68
IX	ILO tripartite declaration of principles concerning multinational enterprises and social policy	69

### **Case study of the Republic of Korea**

*by Pong-Sul AHN*

1	Introduction	72
2	Historical development of industrial relations, 1948-1997	72
	Politico-economic factors framed industrial relations	72
3	Development of legal framework	78
4	Changes of industrial relations in an increasing globalising milieu	82
	Impacts of globalisation on industrial relations	82
	Employment and employment security	83
	Multinational companies and EPZs	93
	Corporate governance	96
5	Labour standards and social protection	96
	International labour standards	96
	Development of tripartism and social dialogue	98
6	Concluding remarks: recommendations	99
	References	101

### **Case study of New Zealand**

*by Peter Conway*

1	Introduction	104
2	Globalisation in the New Zealand context	105
	Globalisation	105
	The free market experiment	107
	Privatisation	108
	The New Zealand sharemarket	109
	Trade	109
	Labour market characteristics	110
	Current economic issues	112

3	Industrial relations in New Zealand	112
	A brief history	112
	The Employment Contract Act 1991	114
	Union density	115
	Sharp differences between employers and unions over success of ECA	116
	Employment and unemployment since the ECA	117
	Wages since the ECA	118
	Productivity since the ECA	119
	Strikes and lockouts	120
4	New Zealand and ILO conventions	120
5	The Employment Relations Bill	125
6	The NZCTU in a new period of social dialogue	126
	Fairness at work	127
	Economic development	128
	“Social Wage” issues	128
	State sector capacity	128
7	Summary and conclusion	129

**INDUSTRIAL RELATIONS**  
**AND**  
**INCREASING GLOBALIZATION**

Country Case Study — India

by

**C. S. Venkata Ratnam**

# **INDUSTRIAL RELATIONS AND INCREASING GLOBALIZATION**

## **CASE STUDY OF INDIA**

by C S VENKATA RATNAM\*

### **I. INTRODUCTION**

This paper traces, briefly some of the key issues and trends in industrial relations in the wake of globalization with particular reference to India. Specifically it deals briefly with (i) the historical development of industrial relations and the corresponding legal framework in the country. (ii) examines the Impact of liberalization on industrial relations in the context of increasing globalization, (iii) reflects of employment, employment security and social safety nets, (iv) key issues concerning multinationals, privatization, export processing zones, (v) new approaches to work organization, (vi) international labour standards, (vii) recent trends and developments in collective bargaining, workers' participation, labour laws, and industrial relations, and (viii) finally discusses the role of trade unions, employers organizations and government in developing systems of industrial relations.

### **II. HISTORICAL OVERVIEW OF INDUSTRIAL RELATIONS IN THE COUNTRY**

India was predominantly an agricultural economy till Independence in 1947. Even after Independence, the First Five-Year Plan (1951 – 56) laid emphasis on agriculture. With the Second Five-Year Plan (1956 – 61) there was a shift towards heavy industrialization. The share of agriculture in gross domestic product (GDP) declined from about 56 per cent in 1950 – 51 to less than 30 per cent in 1990 – 99 while the share of industry rose from 15.6 per cent to 24.7 per cent and of the services sector, from 29 per cent to 45 per cent during the corresponding period. It produces a wide variety of industrial and consumer goods. Over the years, the dependence of the performance of the industrial sector on that of the agriculture sector has reduced. India also did not feel the crunch of recession or the wrath of business cycles. Its middle class has grown to over 250 million, a vast enough market, even as over 220 million continue to live below the poverty line.

The industrialization strategies and industrial policies followed in India from Independence to the mid-1980s aimed at development and a faster growth rate, but emphasized regulation rather than development. To protect the domestic industry from foreign competition and promote self-reliance, import substitution was encouraged as a state policy. But import substitution and export promotion were not viewed as two sides of the same coin. Instead, the plethora of controls led to the erection of barriers of entry and exit, to pygmies being treated as giants and monopolies denying economies of scale to Indian enterprises, to tariff and other restrictions on imports and exports, distortions in pricing of inputs and outputs, and to a sheltered market and protective regime based on political patronage. The end result was the creation of pre-emptive capacities to minimize or avert competition, gross underutilization of capacities, profiteering by trading in licenses and quotas (for state-controlled raw material etc.)

---

\*C S Venkata Ratnam is the Dean of the International Management Institute, New Delhi



and to collusion rather than competition. Thus, too much government in business and industry and vice versa eventually proved detrimental and counter productive to the conduct of state affairs as also to industry and commerce, workers and unions and consumers and the community.

The following could be considered important developments in the historical evolution of industrial relations in the country. The listing is illustrative, not exhaustive:

- (a) 1910s: Conditions of workers deteriorate in the wake of World War I.
- (b) 1920s: Indian Trade Unions Act and Workmen's Compensation Act were enacted.
- (c) 1930s: Royal Commission on Labor expressed concern over the conditions of labor. 1931 Karachi Session of Indian National Congress passed resolution about the need to safeguard the interests of workers through legislation and other means
- (d) 1940s: First Tripartite Indian Labor Conference under colonial rule. Political independence. Key legislations – Industrial Employment (Standing Orders) Act; Bill for regularization of Dockworkers employment conditions; Industrial Disputes Act; Minimum Wages Act; Payment of Wages Act, etc.
- (e) 1950s: India became a republic with 'justice, liberty and equality' as the ideals enshrined in the Constitution. Economic Planning started. Emphasis on heavy industrialization, which laid the foundation for the growth of public sector to attain the commanding heights of the economy. Nationalization of Imperial Bank and insurance companies. Spirit of voluntarism resulted in the signing of several declarations and codes of practice.
- (f) 1960s: Spirit of voluntarism continued. The first National Commission was constituted in 1966. It submitted its report in 1969 and recommend revamp of labor policy, law and institutions.
- (g) 1970s: Rise of regional parties resulted in further splits in trade unions and increase in tension between the Center and the States on industrial relations issues. Series of nationalizations (banks, coking and non-coking mines, foreign oil companies. etc.). International emergency and abridgement, temporarily, of workers rights and suppression of all India strikes in transport sector. Industrial strife and militancy in West Bengal. Amendments to Industrial Disputes Act to secure job protection. Amendments to Constitution defining duties of citizen and making workers participation in management as part of directive principles of state policy. Tipcart atrophied.
- (h) 1980s: Longest strike in textile industry. Militant phase of union movement in Western India. Piecemeal amendments to labour legislations.
- (i) 1990s. Economic liberalization. Legislature, Judiciary and Executive soft towards unorganized sector and strict towards organized sector. Introduction of family pension and a series of other welfare facilities in favour of disadvantaged and vulnerable groups. Encouragement to private sector, foreign direct investment and multinational companies. Setting up of the Second National Commission with a mandate to recommend changes in labour law taking into account the changes in product market characteristics and an umbrella legislation for the unorganised sector. Seeds sown to liberalise, privatize and globalise the economy. Some unions are very critical about the new policies being anti labor aimed at deindustrialisation and privatization of profits and nationalization of losses. National Renewal Fund (NRF) was established as a social safety net for workers affected by restructuring, but it served mostly to 'voluntarily' retire the 'surplus' staff. Employees' Pension Fund was set up to provide pension benefits to

employees and their family from out of provident fund contributions. Rejuvenation of tripartite dialogue: frequent interactions, but hardly concrete actions. Banking and financial sector reforms and liberalization of banking and insurance. Dismantling of public monopolies in utilities and setting up of regulatory agencies (in electricity, telecom besides stock markets and insurance) began.

- (j) 2000. Modern Bakeries became the first central public enterprise to have been privatized. Significant privatization and second-generation structural adjustment reforms planned. Interest rate on provident fund was reduced by one percent.

### III. DEVELOPMENT OF LEGAL FRAMEWORK

India inherited the colonial legacy in its legal framework governing industrial relations.

- (a) The legal framework for industrial relations has focused more narrowly on the eight per cent workforce in the organized sector. The plethora laws provided little coverage and extended protection to a microscopic minority of the workforce. There is a need to make the coverage universal and get over the mindset of linking applicability of laws based on number of persons employed and amount of wage/salary drawn. In 2000 Maharashtra Government has taken the initiative to provide, for the first time in the country protection for domestic workers. Now they are entitled to weekly off, 15 days paid leave and leave travel concession for home leave, 15 days paid leave in a year and a bonus on the eve of Diwali, the festival of lights.
- (b) In the pre-liberalization era labour was protected in labour market and capital in capital market. In the post-liberalization era both labour and capital feel less protected or unprotected. Indian employers feel that after globalization instead of realizing the opportunities in the global markets, they are not able to compete even in domestic markets. In the past consumer interests were neglected. Now when consumers' rights clash with those of the labour and the capital, the rights of consumers and community seem to prevail over that of labour and capital.
- (c) Indian legislation has focused on dispute resolution rather than on the maintenance of sound labour-management relations. The stress was on adjudication rather than on collective bargaining.
- (d) Labour laws in India are considered not friendly to change and prevent easy exit. Workers and unions are concerned that easy exit means unbridled freedom to hire and fire. Therefore, even sick and unviable units – whatever be the reasons and labour may not be the reason in most cases – are forced to carry on, at least with a view to protect the jobs and livelihood of those employed in them.
- (e) In practice, most labour laws have neither found favour with employers nor with workers' and their unions. Both employers and unions agree on the need for changing labour laws, but not on the content of the proposed changes.

### IV. IMPACT OF LIBERALISATION ON INDUSTRIAL RELATIONS

There are doubts whether liberalization leads to competition. The spate of mergers and acquisitions and the domination of a few brands or major players once again points that in the era of globalization economies of scale matter. Though the number of players has increased first due to easing of entry barriers, eventually few remained. Actually in sectors like oil, air transport, telecom, banking, etc., there are doubts

whether the number of players who will ultimately remain in the field will be fewer than before the number before liberalization. The domestic enterprises find it hard to compete even in home territory because they were not used to competition and mostly operated in a seller's market. Both captains of industry and academics are asking the government to liberalize the domestic economy first before globalization. The private sector is asking to privatize the private sector first. The Eleventh Finance Commission (2000) observed that the economic liberalization did not result in liberalization of the PSEs from government controls. The dismantling of public monopolies is accompanied by the creation of regulatory authorities which are subordinate to political and bureaucratic control. When ineffective regulatory authorities replace inefficient public utilities could result in a transition from a bad to a worse situation. A chamber executive remarked, 'The evil of licensing is replaced by the devil of tendering.'

Technology is redefining competition. After nationalization, nationalized banks expanded their branch network into remote and rural areas and into virtually every street corner in the urban areas. Eventually many of them have remained unviable. The new, foreign banks with latest technology are now saying that they are 24 hours open seven days a week all the 365 days through automatic teller machines. Not just that. E banking has metamorphosed banking industry. The CEO of a foreign bank said that, 'we can not have a bank in every street corner, but we can place one in every home, every phone, every personal computer.'

The government has drafted competition policy. What is important is that the politicians, bureaucrats and the captains of industry should walk the talk and talk the walk. They, thus far, usually walk the walk and talk the talk. The basic ingredients of a competitive environment are still missing in India: demand-supply mismatch, information imperfections and skewed distribution of resources, including purchasing power, etc. More importantly the much-needed reforms eluded the public sector in the real sense. With most of the inputs and infrastructure – social and physical – still being in the hands of the government, unless public sector gears up the rest of the economy cannot. Still critical are reforms in the three pivotal areas: legislature, judicial and executive.

How different countries respond to the requirements of competitiveness may be a function of the stage of development and state of health of the economy concerned. While different countries have different critical moments in history and pursue divergent industrialization strategies, it is usually observed "a less developed country begins the process of industrialization by creating some initial conditions conducive to investment. In industrial relations terms, it may translate to low wages and low unionization. This situation may attract initial investments by firms, which can take advantage of such labour market conditions. However, with increased investment, the initial labour market conditions inevitably change and there are pressures for higher wages and possibly unionization ... This reduces the initial advantage which attracted the new investment in the first place so other inducements are needed in order to retain attraction to external investors. This creates a critical juncture in the development process and places pressure on the existing industrial relations systems." The State at this stage may introduce measures such as wage controls and union repression or, alternatively, take recourse to upgrading skills and linking wages to productivity and shift to high wage, high value industrialization where workers get higher wages but wage costs become competitive. Wage controls cannot be prolonged and union suppression by itself cannot guarantee economic success. Therefore wage controls and union repression is uncalled for. Still, it becomes necessary to create conditions necessary for inducing

investment. Putting jobs before growth is like putting the cart before the horse. There can be growth without jobs, but there cannot be any new jobs without growth.

The policies of the international financial institutions (IFIs) have been generally criticized by most trade unions as being responsible for exacerbating the existing economic and social problems and worsening the industrial relations climate. Their policies would not have mattered much if the country learnt to live within its means. IFIs policies affected urban India directly. Rural India has an indirect and secondary impact. Some sectors were affected badly and others not. Over all, India's performance in the post-reform period was below its potential economically and negative on social dimension. The key criticism against IFIs came from Jalan (1996): (a) the policies are imposed without recognizing the diversity of country circumstances; (b) the one-size fits all approach could cause more harm than good; (c) the social costs of adjustment and reform could cross the limits of tolerance; and, (d) the 'success' stories are few as evident from the need for repetitive IMF assistance in most countries.

However, India did not face economic crisis because of the following reasons: (a) it retained its controls on capital outflows, (b) it did not go in for full convertibility, (c) foreign exchange remittances by migrant workers of Indian origin and investments by NRIs has contributed to the accumulation of a sizeable exchange reserve base, and, (d) it moved cautiously, and on case by case basis, so far, in matters concerning disinvestments, etc.

Industrialization strategies affect the social and labour aspects and influence human resource and industrial relations policies at both the macro and micro levels. These strategies and policies should thus contend with the contextual elements of the labour market to ensure that economic and industrial development is in harmony with social and human progress. From this perspective it is necessary to take stock of some key factors of the labour market in India.

- (a) The supply of labour is in excess of the demand for labour. The demand for capital is in excess of the supply of capital. Open unemployment may be less for reasons explained later. But underemployment and disguised unemployment are high. So is the incidence of poverty and illiteracy. Taken together, these conditions make it difficult, regardless of the nature of laws, strength of trade unions and the political will of the government, to ensure job security and social protection to workers.
- (b) Economic growth per se had not been low in India. But the modest 'Hindu' rate of growth was nullified by the increase rate of growth of India's population. Hard economic conditions make even the government with the best intention, less able to safeguard the interests of workers and unions.
- (c) Gupta's (1999) comparative study of the periods 1983-91 and 1991-98 points out that given the same rate of growth of GDP during both the periods, the incidence of poverty had increased and the rate of growth in employment had decelerated:

*Changes in Poverty and Employment and GDP*

Years	Changes in poverty ratio	Employment growth rate	GDP growth rate
1983-91	-3.1	1.6	5.6
1991-1998	+2.7	1.1	5.7

- (d) Alfred Marshal observed that if either or both the input and output of labour can be substituted, and if the proportionate costs of labour are high, unions capacity to achieve positive outcomes at the bargaining table would be low.
- (e) Political instability may be perceived by some as good, at least in the short term, for workers and unions because in such circumstances governments would not take hard decisions and become increasingly sensitive to political risks.
- (f) Pressure to restructure public finances is leading the government to disinvest in public enterprises mainly with a view to achieve the targets set for revenue realization for reducing revenue deficit. Selling capital assets to wipe out revenue deficits is not a wise proposition.

**V. Employment and Employment Security**

India has a workforce of 380 million. Over 92 per cent are in the unorganized sector, 54 per cent self employed and 15 per cent in regular wage employment. 70 per cent of the 8 per cent employed in the organized sector (over 19 million out of about 28 million) are employed by the government. Between 1991-98 organized sector employment grow by 1.6 million, from 26.7 million to 28.3 million. Private sector, which employs less than one-third of the organized sector labour, accounted for two-thirds of the growth in employment during the 1990s.

Although job creation has been a major concern and objective of successive five-year plans, over the years, fewer jobs have been created per Rs One million investment. In the 1950s a leading economist, Mahalanobis, estimated that an investment of Rs 10 million in infrastructure would create 11,000 jobs. During 1980-87, 70,000 jobs were added in the organized sector and capital formation in the public and private sectors exceeded Rs 700,000 million. Thus, Rs 10 million investment generated just one job on the average in the organized sector through the greater part of the 1980s and the 1990s. The Nhava Sheva port in the public sector employs 10 times less manpower and its wage cost, as a proportion of total operating expenditure was 12 times less than that of Mumbai. A public sector integrated steel mill set up at Visakhapatnam, generated less than 14,000 jobs on an investment of over Rs 80,000 million. A new joint sector steel mill proposed to be set up in Madhya Pradesh soon will entail an investment of Rs 400,000 million with jobs for 400 persons. Two successive changes in technology in telecom – manual mechanical to electrical mechanical to digital cellular – reduced manpower intensity by a factor of 500, i.e., one person is needed where 500 worked previously.

Labour legislation during Emergency in 1975 required prior permission from the government for layoff, retrenchment and closure. Such legal provisions, court judgments and past collective agreements between employers and trade unions created rigidities in the labour market. However, higher adjustment costs seem to have reduced the demand for labour in firms in the organized sector, irrespective of whether they are

owned by the government or by the private sector. A study of employment trends in 34 Indian industries, according to the Annual Survey of Industries Data for the period 1976–1982, pointed to a long-term decline in the demand for labour at around 17.5 per cent (Fallon and Lucas, 1991). The study noted significant inter-industry variations. Employment reduced by more than 5 per cent in 25 of the 35 industries, and by more than 15 per cent in seven of them. The rate of decline in employment was estimated to be over 33 per cent in textiles. Another study of 34 firms in Mumbai estimated an average reduction in employment of 20.5 per cent over the decade of the 1980s (Workers' Solidarity Centre, 1989).

Several studies (Goyal, 1984; Ramaswamy, 1988; Fransen, 1991) pointed to a shift in employment from the organized to the unorganized sector through subcontracting, and the emergence of atypical employment practices where those who work for the organization do not have an employment relationship, but a contractual relationship (Mathur, 1989) during the 1980s itself. The process was accentuated in the 1990s and beyond.

Most enterprises in India have not invested in R&D. In the wake of economic liberalization their prime concern had been to become competitive through cost and/or price based strategies rather than through value addition, creativity and innovation. This means, in traditional manufacturing sector, producing four times more output with one-fourth of the workforce. In the process, even if the wages are doubled, wage bill would be halved and wage costs would reduce by eight times.

During the 1990s Sandoz reduced 90 per cent of workforce. BOC reduced its workforce to one-fourth and multiplied its business four times. The private sector steel giant, Tata Steel is planning to reduce its 70,000 workforce to one-third and its public sector counterpart, Steel Authority of India Limited, is planning to reduce its 220,000 workforce by one-third. The 240-odd central public sector undertakings reduced over 300,000 persons through voluntary retirement between 1999–2000. The Vth Central Pay Commission (India, 1997) has recommended the reduction of civil service personnel by 30 per cent. The Eleventh Finance Commission (2000) recommended 'right-sizing' of the manpower in civil service and observed that several state governments have emphasized the need to reduce the size of the government, privatize state parastatals, avoid filling of vacancies arising out of retirement and across-the-board cut of 10 per cent in non-salary and non-plan expenditure.

Against this background, the country was desperately searching for a middle way. As the then Prime Minister P V Narasimha Rao observed while addressing the World Economic Forum at Davos, Switzerland, in February 1994: Change has to be accepted as a result of deliberate and objective thinking. At the same time, those who wear the shoe and know where it pinches should have full say in deciding how to mend it. In the new-found enthusiasm for change, governments should not go overboard and plunge large chunks of their people into mass misery; they have no right to do that ... each society has to find its own "middle way" suited to its genius and circumstances; and, this should be the approach that accepts change.

Clearly, the Indian case – in terms of both the magnitude and complexity of the challenges calls for a different strategy than elsewhere. Given its strong democratic traditions and vibrant – even if weak and splintered - trade union movement, neither an autocratic one nor a corporatist approach to industrial relations will work. Striking

a balance between the requirements of economic development and social progress has not been an easy task. Therefore, the search for the 'middle way' has not yet produced a model that could be operational on a wider scale, though in certain specific local contexts at the firm/plant level both unions and managements have been able to work out an equilibrium and get into agreements on workforce reductions with higher compensations than envisaged in law. Courts have upheld that if the choice was between retrenchment and closure, agreements proposing the former could not be considered unlawful.

Female participation rate in employment continues to be low: As per 1991 census, the usual status male and female work participation rate (WPR) are 51.9 and 18.4 respectively. There are large variations in female work participation between states: higher in southern and western states and lower in northern (except Himachal Pradesh) and eastern states. The information technology industry has displaced women from some of the traditional office jobs and created new jobs in relatively skilled areas. The higher in hierarchy the greater the gender gap in employment. However, women's presence is improving in higher education, particularly professional courses. While a few states have started implementing 30 per cent reservation for women in education and employment, in many others there is just lip sympathy. In the information technology industry, there is a move to change laws like banning women in night work, etc., so that they can also access to jobs like telework, which is usually round the clock.

Overall, there is a growing concern about jobless growth, reduction of employment and employment opportunities in the formal sector and growth of actualization and normalization of labour. Employers argue for labour law reform to increase flexibility. Unions apprehend that flexibility as euphemism for freedom for employers to hire and fire workforce at will. Unions argue that 92 per cent of the workforce being in the unorganized sector do not enjoy job security or income protection and afford employers full flexibility. Why can't they leave the remaining 8 per cent as it is?

There is no change in the legal framework concerning employment security during the post-liberalization. Both the executive and the judiciary have been showing greater responsiveness to product market requirements. In the past even if companies were sick, employees' interests were secure. Now, even financially sound companies jobs are not as secure. The dominant message is that enterprise success is a necessary, but not sufficient condition for job security. Employers argue about the need for proactive restructuring and justify downsizing as right sizing to prevent sickness and protect the interests of the surviving workforce in the organized sector.

Given the absence of a social safety net for the poor and the unemployed, the incidence of poverty is found to be higher among the employed rather than the unemployed. The really poor do not have the capacity to withhold their labour and settle for any job, even if at below minimum wage subsistence level.

Even though the rate of population growth has marginally receded, given its age distribution, the labour force in the country is projected to increase faster than the demand for labour, over the next decade.

Trade unions have tough time in dealing with situations/arguments like the following:

- Restructuring leads to job loss. Non-restructuring does not avoid job loss. The

job loss could be more with non-restructuring than with restructuring.

- New technologies shed few jobs and create many more jobs. For example, two successive revolutions in telecom – manual mechanical to electrical mechanical to digital cellular – have not only resulted in a loss of a few thousand Group C and Group D jobs in some public sector enterprises and erstwhile departmental undertakings but also created a few million jobs in STD/ISD booths throughout the nook and corner of the country's five lakh villages. Quality is an issue, but for many who do not have a source of livelihood some job is better than no job.
- In some units, – for example, Sindri Fertilizers, some units of Indian Drugs and Pharmaceuticals Limited and Hindustan Engineering Corporation – for years together, there is either no or low production. In others – for instance Hyderabad Allwyn before privatization and Kolar Gold Mines – the losses would have been less without production than with production. The expenses in Kolar Gold Mines to produce 10 gms of gold is nearly five times the market price of the same quantity of gold!
- Consumers and community do not seem to be interested in how a company is addressing itself to social issues like job creation. They are more interested in the cost and quality of products and services. Before the private interests of the consumers and the public interests of community the sectional interests of both employers/managements and workers/unions seem to have become secondary and/or relegated to the background. Consumer courts are awarding judgments undermining the rights of workers and public interest litigation on matters concerning environmental aspects, etc., is resulting in verdicts from courts that subordinate the interests of the workers and employers to those of the wider public and the community.

### Social Safety Nets

Social safety nets are needed to provide assistance for maintenance of self and family livelihood

- (a) in the event of loss or reduction of income due to involuntary unemployment
- (b) for sickness, accident, invalidity, or old age
- (c) redistribution of cash, goods and social services - education, health, subsidized housing, etc. – to the needier sections of the community

When we are discussing social safety nets in the context of increasing globalization, we are mainly concerned with social safety nets for the unemployed, particularly those rendered redundant due to restructuring to make the units that once employed them viable and competitive. Workforce reduction should be the last, not the first, option in restructuring. The provision of a social safety net is intended to take care of the vulnerable. Its purpose is to soften the adverse effects on the people displaced rather than make it easy for employers to get rid of people. It is underlined that not all sick units need to be closed or resort to workforce reductions. Similarly, profitable companies may not remain viable forever unless they adapt to changes. Productivity can be improved not only by denominator management (producing more with less people) or numerator management (producing more with same people) where the demand for the product is not a problem. Experience reveals that the absence of a social safety net resulted in delay or deferment of restructuring. Timely restructuring will avoid closure of units, which would otherwise become chronically sick and lead to closure. The longer the delay in restructuring the problem became more chronic



with harsher impact on labour.

In today's environment a large number of companies want to reduce the numbers they employ and cut the proportionate cost of wage bill. Capital wants security for investment, so is labour concerned about the security of their job, career and earnings. Income security is being considered an alternative to job security. The record of the National Renewal Fund created in 1991 is very disappointing, to say the least. It spent over 90 per cent of the money to 'voluntarily' retire over 200,000 employees in the PSEs. Its record in retraining and redeployment is very poor and it has not done anything regard area regeneration and the setting up of an insurance fund (See, ILO, 1999).

Several countries believed in recent past that redundancy could be fought with retraining and redeployment. Skills obsolescence can be prevented or minimized through retraining. But, when the new jobs created are less than the job losses plus the fresh additions to labour force, redeployment will solve the problem of the redundant workers, not the unemployment of the fresh entrants into the job market. Several companies have introduced schemes, which provide for higher compensation than mandated by law to those who they want to retire 'voluntarily'. Profitable companies proactively restructuring their enterprises through downsizing may have the capacity and commitment to develop such schemes and make payments over above the legally mandated amounts. Sick and closed units, however, do not often have the capacity and commitment to make even the legal dues. Social safety nets are needed to take care of the latter kind of situations. In addition, social safety nets should also be considered for providing subsidies to the economically depressed industries facing financial difficulties with a view to arresting resort to retrenchment of workers (to keep employment within the enterprises during the crisis period) or to minimize the effect of lay-offs and retrenchments. The subsidies could cover in certain cases upto 50 percent of the total wage cost... Also, amend the relevant laws such that in the unfortunate event of closure of enterprises and liquidation procedures, workers' wages, severance pay, unpaid bonus, and other such outstanding payments to workers should be the first charge on the liquidated asset of the concerned company or group of enterprises (ICFTU-APRO, 1998).

## **VI. KEY ISSUES: MNCs, PRIVATISATION AND EPZs**

### **Multinational Companies (MNCs)**

India needs foreign capital and technology resources to make optimal use of its vast natural and human resources and growing market for a variety of products and services. In the past, the policies of self-reliance and import substitution restricted the scope for foreign capital and technology in India. The deregulation of foreign investment in India in 1991, can be considered a watershed. The extent of its liberalization of the foreign investment climate such that as a chief executive of one MNC put it, " India has opened up its economy with far less discrimination than most other countries, including the Fast East and South East Asian economies at their commensurate state of development."

The role of foreign direct investment (FDI) was recognized in India in its Industrial Policy Resolutions of 1948 and 1956 but not in key industries. which are reserved for exclusive growth in the public sector till recently. The Foreign Exchange Regulation Act (FERA), 1973 put, barring certain exceptions, a ceiling of 40 percent on foreign

equity participation in India. Multinational Corporations (MNC's), which did not want to dilute their stake, were asked to leave the country. FERA has been a major deterrent to FDI in India till the New Industrial Policy (NIP).

The Monopolies and Restrictive Trade Practices Act was amended to remove the threshold limits with respect to assets in monopolies and dominant undertakings. In high priority industries, automatic permission is given for foreign equity upto 51 per cent as against 40 per cent in the past. In several areas foreign equity is permitted upto 100 per cent. Prior approval of government is not required for investment in deregulated industries. This gives greater flexibility for MNCs in planning and diversification of their operations. Specific high technology and priority industries are now given automatic approval to conclude foreign technology agreements within certain guidelines. Permission is no longer necessary for the hiring of foreign technicians and the testing of locally developed technologies outside of India. The Foreign Investment Promotion Board (FIPB) negotiates with a number of large international firms to promote substantial investment, improved access to advanced technology and world markets. Bulk of the investment in the 1991-liberalisation era came through the FIPB route.

The MNC's main attraction in India is the size of its market, which is not only large but also is growing phenomenally. A vibrant democracy, credible judicial system, strong bureaucracy, competitive human and natural resources, and continued popularity of English as a business language add to it.

The Indian Industry is concerned about the role of MNCs in India. In the early 1990s many Indian companies had gone in for foreign tie-ups and many foreign companies have increased their stake in Indian operations. A spate of mergers and acquisitions too followed and many alliances got soured too soon for one reason or the other. The established Indian brand names began to be replaced by foreign brand names and a new practice of charging royalty for use of brand names, both by the Indian and the foreign companies, has created a flutter.

Both Indian employers and Indian trade unions share broadly similar perceptions and concerns about MNCs, which are along the following lines:

1. MNC's are interested in capturing the Indian market, but not building a manufacturing base in India. Continued import of components is cited as proof of this allegation. Very few Indian companies are being developed to source parts from India for the overseas operations of MNCs. The few exceptions include the case of Sundaram Fastners which won a global tender to supply radiator caps for General Motors, world-wide. Recently, the Korean auto giant, Daewoo also acquired control over its Indian operations, increased its stake and set its eyes on developing the Indian unit to source auto components for its world-wide operations.
2. MNCs focus on the short-term rather the long-term. MNCs are keen to generate and repatriate profits quickly.
3. MNCs are using India as a dumping ground to bring in technology and products, which are being phased out, in their home countries.
4. MNCs use Indian partners to get a foothold in India on a 50/50 or 40/40 basis,

to get sanctions and approval quickly and once established, they seek to edge out, as the camel and the Arab story, the Indian partner.

5. MNCs have joint ventures with Indian partners and simultaneously they also set in competitive areas 100 per cent subsidiary without Indian partnership. They thus use the insights obtained through partnership with Indian companies in joint ventures to secure unfair advantage and allow the 100 per cent subsidiary to compete with the joint venture firm.
6. A significant proportion of MNCs investment is going either to increase stake in existing businesses or mainly to supply second-hand machinery to relocate their obsolete plant in the home/third country in India. Such MNC investment do not generate many new jobs, even if they do, obsolete plants become the breeding grounds for sickness and therefore job losses.
7. MNCs land in India like "cow boys". They hastily choose a partner, make mistakes and want to break the relationship. Alternatively, they get into alliances with different Indian companies for different product lines. In the telecom sector, all the joint venture partners who bid for cellular tenders have parted company already. The alliances in deregulated airlines industry also soured.
8. MNCs cause deindustrialization. The ghost of East India Company still haunts the average Indian psyche. The East India Company came for business and colonized the country for over two centuries and contributed to the deindustrialization of the country. Now in several industries even established Indian brand names are not able to face or withhold foreign competition due to the financial muscle and brand image of the foreign competitors in auto (two, three and four wheelers), electronics (television sets), white goods (refrigerators, for instance) and soft drinks.
9. An impression is gaining ground, in the wake of renegotiation of certain power projects that the MNCs have a tendency to pitch their investment costs and prices to a rather higher than necessary level and pushing the prices for consumer. Confessions about huge development costs bred suspicious about corruption. The Secretary-General of a Chamber of Commerce even told a public gathering: "The evil of licensing of the past is now replaced by the devil of tendering."
10. The recent revelations about foreign exchange irregularities involving the ITC-BAT and the controversy concerning control of ITC by its UK partner, BAT did not augur well to boost the image of MNCs in India.
11. MNCs are capitalizing on the weaknesses of the traditional and small-scale Indian businesses in rural areas by quickly patenting herbal products (name plant based), indigenous snacks (Bikaner bhujia, for instance) and spreading a feeling of distrust and hatred towards multinationals. The entry of some multinationals into businesses like salt (salt satyagraha launched by Mahatma Gandhi in Gujarat was a emotive movement during the freedom struggle) in border areas of Gujarat, agriculture (Cargill) in Karnataka, ecologically unfriendly chemicals projects in Goa (Dupont's pact with Thapers) and using India as a dumping ground for disposal of dangerous chemicals wastes have rendered MNCs rather unwelcome in the minds of several Indians.

Kumar (1986) found MNCs in Indian manufacturing to be paying higher than their local counterparts. In a subsequent study Kumar (1990) explained this in terms of their tendency to employ qualitatively superior personnel than their local counterparts. Markensten's (1972) study of Swedish MNCs in India and Davala's (1996) case studies on six engineering and chemical firms in Mumbai and Bangalore and confirm this. Davala (1996) characterizes MNCs wage policies as following: "The more you work, the more you get."

Compared to their private sector counterparts, MNCs in India are generally known to adopt a policy of paying above average salaries to their workmen. Recently, when General Motors decided to set up its manufacturing facility in Vadodara, the Vadodara Industrial Employers' Union reportedly met its chief executive and pleaded with him that he should not upset the local wage structure in the interest of maintaining employer unity in the region which predominantly has many medium and small sector units that pay modest wages.

The working conditions in MNCs are usually better than their counterparts in the private sector. A veteran trade union leader commented recently, "...trade unions hate multinationals, but like the pay and perks they offer... (Tulpule, 1993)."

In many large MNCs in chemical and pharmaceutical industry union density rates are fairly higher than the national average. But in electronics industry owned and controlled by the MNCs, unionism is virtually absent even though a few private (ICIM, for instance) and several public sector electronics units are characterized by fairly high union density rates.

Unionism is very strong in both the public and the private sector banks in India, but not quite so in the foreign banks. Several foreign banks have registered unions, but several foreign bank managements do not recognize them. While some like the Grindleys Bank sign agreements with their unionized staff, and a few others chose to become a member of Indian Banks Association and thereby become a party to the industry level collective agreement, many foreign banks refuse to sign agreements directly with their unions. A proper measure of industrial relations in such organizations is not the number of mandays lost, but the number of court cases concerning unfair dismissals and other forms of discrimination and exploitation of labour in which they are embroiled.

Collective bargaining in India is size specific. Large companies employing more than 300 persons typically have collective bargaining, excepting in insurance business. Till now MNCs do not operate in insurance sector, though in future they may. Most MNCs, other than in electronics and a few in banking, have collective bargaining.

The Japanese investors are apprehensive about the "some how" management of unions and industrial relations in the context of multiplicity, plurality, ambiguity and uncertainty. The Japanese MNC representatives of the Kansai Productivity Centre, who recently visited India, told the author that they would like to identify and deal with a collective bargaining agent direct. But unfortunately, the union structures and the recognition policies do not provide such clear-cut arrangements for determining collective bargaining agents.

In India generally higher wages and higher exploitation go together. In many cases, workers could secure higher wages, relative to other firms in the region, through hard

bargaining and militant unionism. The same can be considered generally true of MNCs also particularly in the chemical and pharmaceutical, but not so much engineering industries and certainly not the case with MNCs in electronics.

One MNC located on the outskirts of Delhi signed an agreement in 1995 with its individual employees to the effect that it would increase their emoluments by a few hundred rupees more if they agree not to join/form a trade union.

Typical Indian private sector industrialists are comfortable with the enormous diversity in the legal framework of India and many of them somehow manage the complexity and uncertainty if they are clear about their purpose. MNCs, in contrast, generally expect clear-cut legal measures because they do not want to be seen as good corporate citizens at least with regard to legal compliance.

MNCs provide the social security measures mandated by law. These include provident fund and gratuity, but not pension as of date. Several MNCs, however, have pension funds for their senior executives, not for workers.

The aim of the Tripartite Declaration of Principles on Social Policy for Multinational Enterprises "is to encourage positive contribution which MNCs can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise, taking into account the United Nations Resolutions advocating the Establishment of a New International Economic Order (ILO, 1993; 8)".

Workers' organizations are generally not consulted on investment matters, particularly in regard to policy changes on investment, assets, and other operations of MNCs. The INTUC acknowledges that MNCs are expected to play an important role in promoting economic and social welfare, by providing more employment opportunities and raising the living standards of workers.

The INTUC states that the establishment of MNCs is regulated in accordance with the national development priorities of the Government. Some of the leftist trade unions do not subscribe to this view. The fact is that the Companies Act, the Monopolies and Restrictive Trade Practices Act and the Foreign Exchange Regulation Act regulate the entry and operation of MNCs. The same set of labour laws that are applicable to domestic firms apply to MNCs also. Although there is no separate permanent machinery for consultation with workers' and employers' organizations concerning the operation of MNCs, the existing tripartite machinery and the parliamentary fora are used for discussion on MNCs. The employers and workers in MNCs are represented by their respective central organizations. There are no exclusive organizations of workers and employers for MNCs.

### **Privatization**

Economic liberalization in India since 1991 resulted in a major policy shift permitting the entry of private sector in areas hitherto reserved exclusively for the public sector. This ensured a measure of competition for public sector monopolies in sectors like transportation, electricity, oil, telecom, banking and insurance, to mention a few. Along with this covert route, government has also resorted to disinvestment of less than 20 per cent of the shares of about 50 central public sector enterprises (PSEs). During the 1990s employees were also offered shares in central public sector undertakings as a

stop to ease workers' opposition to privatization. Though some national federations of trade unions opposed the move initially, workers and several unions in some profit earning sectors demanded earmarking a higher proportion (upto 26 per cent) of shares for them. When the shares of several of the enterprises began to decline, the initial euphoria among workers had subsided.

The Government has appointed a Disinvestment Commission in 1996-97 and referred about a quarter of the companies under its control to advise it on their privatization. The Disinvestment Commission made recommendations, from time to time, individually on about 50 central public sector undertakings. Successive governments did not, however, follow up on any of the major recommendations. Scooters India, the first PSE at the national level to have been considered for privatization in early 1990s because of its persistent losses did not find a suitor because the government was not willing to allow any reduction in workforce. It has since diversified its product portfolio and began to earn profits. In 1999 the Government replaced the Disinvestment Commission with Disinvestment Department.

The main elements of Central government's policy on PSEs announced in the Union Budget for 2000-01 include the following: (a) restructuring and reviving the potentially viable PSEs, (b) closing down the PSEs which cannot be revived, (c) bringing down government equity in all non-strategic PSEs to 26 per cent or lower, if necessary, and (d) fully protecting the interests of workers. There are dissensions within the ruling alliance and among the opposition parties, with left parties vehemently opposing disinvestments. In regard to protecting the interests of workers, even if retrenchment is ruled out, downsizing cannot be, particularly because PSEs themselves have started downsizing. Steel Authority of India, which has proposals to reduce its workforce by at least one-third, has even created a board-level position – Director, Restructuring – and engaged international consulting firms to consider shedding non-core activities and divest nonperforming assets. The only major means of dealing with labour redundancy seems to be through voluntary retirements that give four times the normal retrenchment compensation and a promise of employee stock options in disinvested firms. Recent trends in stock market have dampened the euphoria about employee stock options even in the ICE – information, communication and entertainment – industries,

In January 2000, Modern Bakeries became the first central public sector undertaking to have been sold to Hindustan Lever, the Indian subsidiary of Anglo-Dutch multinational, Unilever. Another 17 units were listed for privatization. These include Maruti Udyog where Suzuki is the majority partner, Air India, and some companies in the petroleum sector. Besides several trade unions, there is, however, consider resistance within the alliance partners in the Government as well as from several opposition parties. Among the trade unions, it is only the Indian National Trade Union Congress, which is not showing any ideological opposition to privatization as such even though the Congress Party with which it has strong links and which initiated the economic liberalization has began to question the stripping of national assets. It is seen from Table 1 that disinvestments have picked up in 1999-2000.

Table: Disinvestment in Public Sector Undertakings

Year	Target (Rs crore)	Achievement (Rs crore)
1991-92	2500	3038
1992-93	2500	1913
1993-94	3500	Ni
1994-95	4000	4843
1995-96	7000	362
1996-97	5000	380
1997-98	4800	902
1998-99	5000	5371
1999-2000	10000	1479*

\*(till 31.12.99)

Source: *Economic Survey 1999-2000*, pp. 119.

The finances of some state governments being in a much worse condition than the others and the central government, they had privatized some of the units owned and controlled by them before the central government could do so in respect of units under their ownership and control. Some states like West Bengal, which continue to be under leftfront rule, found it more difficult to mobilize public opinion to sell state level public enterprises like the Great Eastern Hotel in Calcutta. In the largest state of Uttar Pradesh privatization of a cement factory, accomplished with considerable bloodshed and the killing of several people in police firing, had to be reversed in the wake of political instability that resulted in a change in government. The same state had taken a tough stand with striking power workers in early January 2000 over privatization of electricity distribution because of its dependence on international borrowings to carry on reforms for its sustenance.

The experience with several of the private airlines and passenger road transport services in some states was not quite positive. Privatization of electricity transmission and distribution in Orissa was initially held as a success and a model. But when a massive cyclone uprooted the electricity transportation system in most parts of the state, the private sector operators were unable to restore the infrastructure. In the neighbouring state of Andhra Pradesh, privatized distribution was followed by a phenomenal rise in electricity tariffs incurring the wrath of the public. Voltas Limited, an otherwise profitable private sector unit took the refrigeration making units from Hyderabad Alwyn, the state owned public sector giant in Andhra Pradesh. This has adversely affected the company's bottom line and the Chief Executive who favoured the acquisition had to quit. All things considered, there are doubts in certain quarters about the nature of the private enterprise in India and its capacity to mobilize the needed resources and its ability to manage the privatized businesses effectively.

Social dialogue on privatization – particularly deliberations on the future of Indian Iron and Steel Company, nationalized textiles mills and Indian Drugs and Pharmaceuticals Limited – in the special tripartite committee meeting and tripartite industrial committee meetings only helped to delay hard decisions and in the process rendered the sickness of these units more chronic. It is not only trade unions but also the political and bureaucratic leadership, which is against privatization. The absence of civil service and political reforms ensured that neither privatization nor liberalization of public sector managements from political and bureaucratic controls.

The government had offered some of the sick units to trade unions for take over but unions were not quite willing to go for the bait. There is a realization in the government that mere ownership change will not help the companies to improve performance. Therefore, it is now being proposed to disinvestment more than 50 per cent of the shares and brings the management in the effective control of private management. A section of the civil service and politicians themselves continue to resist it because ownership and control of public sector enterprises provided political sustenance for them. There is a move to introduce the concept of golden share.

There is a shift in government's approach to privatization. Yet, there is no clear-cut policy. Ad hocism continues with concern for achieving revenue targets from disinvestment. Perceived political risks and social tensions are prevailing upon the government to make haste slow.

### **Export Processing Zones**

Government is impressed with the success of the Chinese Special Economic Zones (SEZs) and the Union Minister for Commerce is keen to replicate them in India. A section of the Indian employers welcomed the idea in the hope that it would give them the right to hire and fire employees. In the wake of vociferous protests from trade unions, the Minister had to assure that such zones would not be exempt from the labour laws of the country. However, going by past experience, even if the labour laws in such zones are not discriminatory, it would be difficult to unionize and secure protection of the kind that the organized labour in the country enjoy.

In India the organized sector refers to the sector comprising public and private enterprises which are registered and come under the purview of any/some or several of the Acts and maintain annual accounts and balance sheets. Public enterprises include departmental and non-departmental enterprises in the public sector. In the private organized enterprises are included registered manufacturing, mining and quarrying, gas and water supply, private transport companies, registered schools, colleges and hospitals, and corporate trading activities and services.

In contrast, the unorganized sector comprises, exclusively, private sector units, which are if at all, only marginally affected or regulated by labour or industrial laws. Enterprises in this sector are usually very small (typically employing less than 10 persons) and are rarely unionized, wages low, and the working conditions harsh, exploitative and often largely unsafe.

### **Skills Training**

India has, in effect, chosen to give more education at a higher price to a few who have already had more than average education, rather than work for sound education for all. The effect has been to have a trainable total workforce, and a flow of highly skilled people notoriously larger than the number of jobs available (Oxenham, et. al. 1990).

Low literacy, vocational bias against technical skills and occupational preference for non-production jobs, mismatch between skills acquired and skills required, dearth of adequately/appropriately trained technical personnel for non-executive positions are among the major weaknesses that characterize the macro-level situation in India. Emphasis on general education and insufficient interaction between industry and



educational/training institutions exacerbated these characteristics. Together their role in limiting technical and economic advancement of the country cannot be exaggerated (1994).

There is need for attention on the following five aspects in regard to skills development:

*Primary and vocational education.* There is growing evidence in many countries throughout the world that unskilled people are losing jobs and livelihood and skilled people are able to keep their jobs and improve their earnings. With rapid changes in technology, markets and environment, skill obsolescence is growing. Employment is contingent on employability. Employability is contingent partly on skills and largely on attitude. The best insurance against job loss for individual employees and maintaining competitiveness for enterprises is to effectively nurture and nourish a culture of multi-skills in the place of mono-skills. This provides career resilience and career self-reliance, There is a need to encourage continuous modular education and training programmes for workers at all levels in small capsules but at more frequent intervals than is currently happening. Along side, we should also create facilities and opportunities for interactive open learning systems, using multi-media technologies so that workers are encouraged to update and upgrade their skills at their own pace and time.

Government should step up its investment on primary and vocational education and substantially revamp them. We may examine the relevance of the Swiss and the German models of vocational training. We also need to take stock of the Scandinavian experience in proactive labour market policies. Employers and their organizations should take more active interest in shaping and supervising vocational education. Both industry and academic and technical institutions should reach out for each other, develop partnerships, share resources and improve education and training.

*Skills development fund.* Several countries are focusing attention on skills development. Singapore and Malaysia, for instance, have set up skills development funds with contributions from employers as a per cent (usually 1.5%) of the wage bill. The collection and disbursement of funds under the scheme is made simple by using the existing network of commercial banks. Employers' organizations in India are skeptical about such funds being an additional levy on wage bill which will go mainly into payment of salaries and other expenses of the government employees who administer the fund. Kuruvilla and Chua (2000) highlight that in Singapore the skills development system was successful because it was part of an institutional context where several different institutions and practices worked together to increase workforce skills. Also, Singapore had several facilitating factors, which are not common to India. Among them mention should be made of the following: It was fairly narrowly focused, mainly on electronics. Secondly, it had a technocratic government bureaucracy with a high performance oriented culture.

As such India could perhaps consider social funding of education and skills development with community support and corporate funding could be considered. It would be useful if some large industries and local/regional/apex chambers of commerce and employers' organizations consider adopting some training schools and run them as model institutions for possible replication. In areas where skill shortages are considered significant and substantial, even competing firms in the same industry could come together to establish industry/sector based training institutions. Along side, we need arrangements to strengthen the existing mechanism for skills certification and accreditation

and appropriate incentives structure to encourage marketable skills provision and productive job creation.

*Retraining.* The National Renewal Fund (NRF) did not meet its objective. While over 80,000 took voluntary retirement utilizing NRF funds, barely 1000 people were retrained and 100 redeployed. The task is daunting. Several companies have clauses on redundancy and retraining. But, retraining in an unemployment context would result in a situation whereby redundant workers in a family would compete with their younger one's entering the labour market for the first time. Therefore, retraining as a solution may give rise to a new problem or not provide a complete answer to the problem of unemployment. Even so, retraining should be a continuous process than an event if human resource obsolescence due to technological, economic or other structural changes is to be minimized/averted.

*Multiple skills/tasks.* One-person one-skill/task concept is giving way to one-person many skills/tasks. This is helpful to the organization in terms of better utilization of people at workplace. It also helps individuals as all insurance against redundancy since at least some skills are expected to remain marketable and facilitates redeployment. It is rather naive to assume that every one likes variety in job. There is need to clarify purpose and orient not only workers, but also supervisors and managers. Multiskilling requires a thorough review of work process, assignments, appraisal and accountability. This is found particularly useful in assembly operations where sequential performance of operations involves built-in idle time. Several Indian companies have had fair degree of success while an overwhelmingly larger number of firms had a contrary experience.

*Skills pass port.* Companies may issue passport to employees and notify in it the skills which the employee has learnt and acquired master/proficiency. Such passport is deemed a method of recognition of skills acquired by the worker. Such certification of marketable skills helps outplacement in cases of redundancy.

## VII. NEW APPROACHES TO WORK ORGANISATION

Work and employment relations are in a state of flux and transformation. Among the factors that have contributed to this are advanced technology, the forces of liberalization, privatization and globalization, the pressures of mergers and acquisitions, the ever increasing diversity in workplace and cross-cultural interactions, the influence of tile media, increased consciousness about democratization and human/trade union/worker rights, the growing experience and knowledge about the values, attitudes and behaviour of people, growing competition and rise in the expectations of the new workforce flux and transformation in employment relations.

Declining labour intensity is making many wonder that if in the past the tractor has replaced the animal from the farm, the computer is now threatening to replace the man from the factory.

During the twentieth century there was a shift from the Taylorist Fordist systems of division of labour with mono skills and multiple job classifications and pyramidal levels/layers in the organization to Toyotism based on lean production with multiple tasks/skills, fewer job classifications and flatter, slimmer downsized/right-sized organizations. This trend has continued into the new millennium, but with a caveat: 'beyond lean production'. Routine, repetitive and middlemen activities are either

automated, robotized or being reengineered through application of advanced information technology. The cost-plus attitude is being replaced by strategies based on cost cutting and value addition to provide the competitive edge to companies. Work and workplace are being revamped continuously and rapidly. In this scenario, those who learn fast and are adept at adapting to the rapid changes will survive the threat of jobless growth and income insecurity.

The following shifts are taking place in employment relations:

- Shift in power base from land/capital to knowledge
- Shift in the use of human energy from muscle to mind, brawn to brain
- Top-down to transparent two-way communication
- Fear to favour to fairness as the basis of motivation
- Leadership based on direction and control to one based on consensus and commitment
- High, expectations of both workers and organizations. Flexible/Adaptive work organization, continuous training in skills and attitudes, say and stake for employees becoming critical and indispensable
- The new collectives at the workplace will use semi-autonomous work terms. The new workplaces are replacing close supervision with leaders who are coaches, mentors and facilitators
- Improving labour standards and fostering ethical behaviour are becoming business imperatives.

The forms of employment are becoming more diverse:

- Full-time employees
- Part-time employees
- Home workers
- Casual/Contingent/Badli/Substitute workers
- Contract workers
- Migrant intra- and inter-country workers
- Foreign workers
- Tele workers
- Apprentices who are not workers but perform work while learning it
- Bonded labour
- Child labour
- Displaced workers
- Disabled workers
- Rationalized workers
- Self-employed workers, etc.

The major concerns are:

- Already thin employment in the organized sector is becoming thinner. The number of jobs in the sector (28 million plus) are less than the number of people waiting for jobs in that sector as evidenced by the registrations in the employment exchanges around 40 million)
- The new forms of work appear to be less paying and less secure and more drudgerous and more dangerous.
- There is a shift away from lifelong employment to lifelong employability and consequential shift of emphasis from job security to income security.
- There is a need for proactive labour market policies for job search, skills inventory, matching demand and supply, information dissemination counselling, etc.

In the past, many large companies in the private and public sectors encouraged lifetime employment. This is no longer so. In the past people stayed with a company in a single job/career. The new workforce is by and large aggressive, ambitious, footloose and loyal to themselves. With the result, today neither the companies are loyal to neither their employees nor the employees loyal to their companies. Yet, today's organizations are expected to become learning organizations and build a customer base. But with high employee turnover, it is difficult for them to accumulate knowledge and become learning organizations.

Mere commercial contract encourages all instrumental orientation. Companies which fail to create a psychological contract will not be able to involve workers and get their commitment for them to work creatively and to their full capacity. Workers who are not loyal to their employers cannot be expected to build a loyal customer base. Hence, an employment contract with weak attachment on either side can have potentially counterproductive effects if either party pursues and persists in seeking unfair advantage.

Contract work is increasing. Companies generally do not pay the same degree of attention to the recruitment, training and safety, wages, and productivity of contractual workers as they do with their regular employees. Often, when courts order companies to regularize contract workers, they start raising questions and qualifications, experience and suitability. But such arguments are not credible because they were not raised when the particular contract labour was hired in the first instance.

There have been questions about whether the contract is for work or of work. In either case the ultimate tests are the business and dependency tests. On both counts companies usually stand exposed because of the way in which contracts are structured/implemented. Also, when contracting out becomes a source of exploitation of cheap labour and all aggrieved party goes to court, such arrangements are questioned by the judiciary.

There are instances of new employment contracts based on notions of contingent, workforce, which are a crude reminder of the earlier, old putting out system. Trades distributed raw materials and tools to home workers, who would undertake the assigned tasks and bring back the finished products to the traders. Today's producers without factories are akin to such traders. In some cases workers/trade union leaders are turning out to be major labour contractors. In yet other cases, production decisions are left entirely to workers who organize themselves without a foreman or a contractor.

Companies need to draw a line on how much temporary help and contract employment to use and what implicit or explicit continuity to offer employees. The short-term economic and long-term economic and social consequences of new employment practices need to be evaluated carefully. Unfortunately in India we do not have empirical and longitudinal databases and hence we tend to go by hunch, hindsight and anecdotal case histories/experiences. In view of that, it is important to formulate well-thought-out and comprehensive approaches to outsourcing and job security.

**Enterprise Flexibility.** Firms maintain flexibility through organizing their production in diverse ways and through strategic decisions such as the following:

- Parallel production
- Outsourcing

- Lease license manufacturing
- Franchising
- Employment of contingent workforce
- Shifting workforce from contract of employment/work to contract for work, etc.

Flexible practices in labour utilization should not increase rigidity for labour. According to the labour law in several Southeast Asian countries the rights to recruit, reward, transfer, motivate, assign work and adjust workforce are considered managerial rights. In India, however, these are subject of collective bargaining. The applicability of several labour laws increased with the increase in the size of employment. This serves as incentive for managements to reduce employment below certain threshold limits to come out of the purview of labour laws. This has, along with other factors, contributed significantly to the increase in capital intensity and decrease in labour intensity in several industries.

Firms seek labour flexibility on one or more of the following counts:

- Numerical flexibility (size of workforce)
- Skill flexibility (composition of workforce)
- Functional flexibility (job enrichment/job enlargement)
- Locational flexibility (transfer/mobility)
- Time flexibility (flexi time)
- Pay flexibility (flexi pay)

## VIII. INTERNATIONAL LABOUR STANDARDS

As a founder member and as one of the ten countries of chief industrial importance, India holds a non-elective seat in the Governing body of the ILO, India has ratified 38 of the 181 conventions.

The ILO has influenced India and India has influenced the work of the ILO. A tripartite committee on ILO conventions oversees the aspects relating to international labour standards, proposals concerning new conventions/ratification of old conventions, compliance of the provisions in the ratified conventions, etc.

As seen from Table 1, the Constitution of India upholds all the fundamental principles envisaged in the seven 'core' international labour standards. India has also ratified three of the eight core conventions that constitute the fundamental principles. India is also likely to ratify, very soon, two more of the remaining five core conventions: Convention No. 105 concerning abolition of forced labour and Convention No. 182 concerning immediate action to end worst forms of child labour.

Table 1: Components of social clause and Indian Legislation

Social Clause aspect	Indian Constitution/Legislation
Freedom of Association and Right to Collective Bargaining (Convention Nos. 87 and 98 respectively)	Freedom of Association is guaranteed as a fundamental right in Indian constitution. Trade Union Act, 1926 meets with part of the objectives of Convention Nos. 87 and 98. Both conventions are, however, not ratified by the Government of India.

<p>Forced Labour Convention, 1930 and Abolition of Foced Labour Convention, 1953 (Convention Nos. 29 and 105). It provides for progressive abolition of forced labour in all its forms. Convention No. 182 concerning Immediate Action to end Worst Forms of Child Labour</p>	<p>Article 23 of the Constitution and the Bonded Labour System (Abolition) Act, 1976. India has ratified Convention No. 29, not 105. India is moving towards ratifying Convention Nos. 105 and 182.</p>
<p>Equal Remuneration Convention, 1951 (Convention No. 100). Its purpose is to eliminate sex-based discrimination in remuneration and provide for equal remuneration, to both men and women, for work of equal value. The four underlying bases for determination of work of equal value are: skills, efforts, responsibility and working conditions.</p>	<p>The Constitution upholds the principle of equality between men and women. Equal remuneration Act, 1926 seeks to provide for equal remuneration between men and women.</p>
<p>Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111). It covers any discrimination, exclusion or preference ...which has the effect of nullifying or impairing equality of treatment" and which can be the result of not only legislation but also of existing factual positions or practices.</p>	<p>Constitution upholds equality, denounces discrimination and encourages preferential treatment to disadvantaged groups in society.  Convention No. 111 is ratified.</p>
<p>Minimum Age Convention, 1973 (Convention No. 138). It provides that minimum wage for employment should ordinarily be 15 and raised to 18 in dangerous occupations.</p>	<p>The Child Labour (Prohibition and Regulation) Act, 1986 bans employment of children below the age of 14. In several laws the minimum age is variously defined. Employment of children in certain heavy and hazardous industries (Schedule A, part 3) is prohibited by law and government is taking steps to strictly enforce it. Several court judgements under public interest litigation actively support the prohibition and regulation of child labour.</p>

India is actively considering the ratification of Convention No. 105 concerning the abolition of forced labour. India has not ratified Convention Nos. 87 and 98 concerning freedom of association and right to collective bargaining due to "technical difficulties" involving trade union rights for civil servants. This, however, was not a major hurdle because while ratifying the concerned conventions, the government can always exempt certain services. The real intention seem to be, as former Chief Labour Commissioner of Government of India, Nath (1997) opines, "These conventions have not been ratified by India because the policy of the government has been to restrict freedom of association to only manual workers (by defining them as Workmen) and exclude supervisory and

managerial workers....The other interest of the government is not to allow the fight of collective bargaining even to industrial workers in government's departmental undertakings like the Railways, Post and Telecommunications, Central Public Works Department, etc. The government, on the basis of pay commission's recommendations and not through collective bargaining, decides their pay etc..”

Several conferences organized or co-sponsored by the unions and Ministry of Labour, Government of India, including the one held in Mussoorie in 1998 summer, discussed the matter and differed the decision. The employers and the government are one in this regard.

There are certain restrictions on the formation of federations in the telecom sector.

In 1981 the right to collective bargaining was taken away from the insurance sector workers. This was done by the Parliament when it was found that collusive arrangements between the unions and the employers (public sector) has either ignored or undermined the interests of the policyholders. Since then insurance workers engage in consultations, but their pay revisions are notified unilaterally by the concerned department in the Government.

India's record in respecting freedom of association and collective bargaining is much better than many other countries in the region, which have ratified either or both. Mere ratification cannot guarantee the achievement of the underlying objectives. Ratification should be backed up by strong political will, legislative framework and effective vigilance by the other social partners and the constituents and partners in the civil society such as the non-governmental organizations, consumer groups, etc. These considerations, however, cannot be a justification for non-ratification. India has ratified Convention 11 concerning Right of Association for agricultural workers, 1921 way back in 1923. The Union Ministry of Labour in cooperation with the National Labour Institute set up by it in the 1970s has organized several workshops and rural camps to facilitate the organization of rural workers. Still, given the huge social inequities both in terms of caste and land distribution, the density of unionization among rural workers is negligible.

India has a long way to go before it could comply with core labour standards. 92 per cent of its workforce who is in the informal sector would be content at the end of the millennium even if the minimum standards in national legislation – not international labour standards were the maximum. In slate industry in one of the Indian states the trade union leader, an influential policy party and the district government officials wanted to help the workers secure minimum wages. Duly encouraged, the workers went on strike for three days. The employers, who had multiple businesses, did not feel the heat and therefore did not show any eagerness to end the strike. On the fourth day, the workers had agreed to return to work. The employers agreed to take them back after further reducing their wages as a token of punishment for their (workers) temerity to take on them (the employers). In another case, a young and committed Indian Administrative Services Officer in the State Labour Ministry was not amused with the flourishing dollar earning tobacco merchants getting away with paying less than the minimum wages to their poor, non-unionized labour. He computed the differences in the wages payable as per law and wages actually paid to the workers and got the dues paid to the workers under supervision by him and his staff. After the payments were made, he (the labour commissioner) and his staff left. Soon thereafter

the hired *goondas* of the employers emerged to take back the money from the workers with a warning that if they report the matter they would lose their Job and their families could be in danger. In a third case, a government official told the author that he personally got a bonded labourer freed from a landlord in a village in Bihar. The person so freed was given some amount of money with which he bought some buffaloes. The buffaloes fell sick and died. The person wanted to seek employment in the village to eke out a living. The landlord concerned warned the villagers not to take the person into employment, as he is a troublemaker. Finally the person had to return to bondage, this time on even harsher conditions of employment. The above-cited examples are not exceptions. They are common occurrences in many remote and rural areas. In the absence of a proper supervisory mechanism that fully understands and deals with the ground level realities, efforts to improve labour standards could lead to deterioration in labour standards.

In contrast, there are some highly organized and unionized sectors where collectively determined labour standards exceed the national and international labour standards in some aspects. The private sector steel giant, Tata Iron and Steel Company (TISCO) had, during the 1920s and 1930s, introduced a number of voluntary welfare measures long before such measures were incorporated either in the national legislation or international labour standards.

In the past some of the legislative initiatives based on ILO conventions have had the opposite effect. Measures to safeguard the interests of women through maternity benefits and restriction of employment of women in night shifts in factories and in underground mining had resulted in many employers hesitating to employ women and drastic decline in the employment of women in textiles and mines. This should not lead to discontinuance of maternity benefits. Making paternity leave would perhaps restore balance and remove the incentive for employers to employ only males. The ILO Convention on Night Shift Work had been revised in the 1990s to enable the employment of women in night shift. The Government of India is pursuing, rather half-heartedly, changes to some of the labour legislations. The employing ministries have apparently been pressing for some of these changes. They include changes in the Factories Act to permit employment of women in nightshift, particularly in electronic units and export zones.

India is actively pursuing 14 projects to eradicate child labour in hazardous industries by 2002. All India Organization of Employers have undertaken a project in Jalandhar (Punjab) to have all agreement similar to the one in Sialkot, Pakistan, concerning the abolition of child labour in the manufacture of sports goods.

India has advocated the promotion of labour standards within the framework of the ILO Constitution. It has consistently opposed file proposals to link labour standards and trade through 'social labeling,' etc, The non-aligned countries summit organized by the Labour Minister of India at New Delhi in 1995 adopted a resolution to this effect. India played an active role in Seattle in 1999 to prevent linking trade with labour and environmental issues. All the three social partners – Government, employers' organizations and national trade union centres belonging to different persuasions – are all united against the linkage of international standards with trade (for statements of different social partners see: IIRA/FES, 1996) for familiar reasons that are articulated in most developing countries throughout the world: commitment to ILO's pillars of voluntarism, tripartism and free choice of social partners. Mandatory imposition of



labour standards, by whatever name they may be called, contravenes Article 19(3) of the ILO Convention. All the social partners in India stand for upgrading labour standards. But they are against linkages within the context of the WTO as it is currently constituted. For they suspect that the linkage is aimed at putting artificial barriers against competition. Concern for improving labour standards should be more holistic and encompass the entire working class rather than the microscopic minority engaged in production for exports.

Under Article 236 of the Constitution of India labour is in the Concurrent List. Since liberalization there has been a tendency on the part of some state governments to pursue competitive labour policies with a view to attract investments and create jobs. The Constitution Review Committee appointed by the Government of India in 2000 should examine the need to look at this aspect with a view to consider the need for a unified law on matters which fall within the ambit of the eight core labour standards under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up.

A national consultation on international labour standards where several non-governmental organizations and national trade union centres participated made a proposal with the following four components (CEC, 1996). (1) Reject the labour rights – WTO linkage. (2) Uphold the principles of universal labour rights and the need for evolving structures to monitor the enforcement of labour rights. (3) Set up a UN Labour Rights Commission as an alternative, (4) Establish, at the national level, a powerful National Labour Rights Commission to monitor and enforce labour rights. A final point is that 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up substantially addresses the central issue. So long as ILO takes time to make its instruments yield the desired results and the resistance to the WTO continues to build up, initiatives at the industry level through social labeling and community level through consumer boycotts will apply the kind of pressure that apex inter-governmental and international organizations are ill-equipped to exert.

During the 1990s several non-governmental organizations (NGOs) and corporations are making efforts and communicating products and companies which did not involve child labour to consumers through what is now known as 'social labeling' (US Department of Labour, 1987), In addition to creating a child labour-free production environment, some have even provided or funded alternatives for child labourers such as schools, employment for parents, etc.

Social labeling is mainly prevalent in the export segment of four industries, viz., handknotted carpets, garments, leather products and tea.

The main child labour labeling programmes for carpets are: (a) Rugmark; (b) Kaleen; (c) STEP; and (d) Care & Fair. Rugmark and Kaleen are product labels fixed to individual carpets. STEP and Care & Fair are company certification programmes. Participating companies use the labels for advertising and marketing purposes, but not to individual carpets.

Rugmark Foundation was established in India in 1994 and expanded to Nepal in 1995. It is a private voluntary certification programme providing market-driven incentives for carpet manufacturers to produce without child labour. Under the programme individuals and companies in the carpet industry are organized to stop the use of child

labour. An independent, professional and international credible monitoring and certification system for carpets manufactured without use of child labour was put in place. The affected children have been rehabilitated through education. As of May 1997, the Indian Rugmark Foundation had certified the export of about 636,000 labeled carpets from 164 licensed producers/exporters. The programme is monitored and enforced through an elaborate system of license approval, random inspections and carpet tracking. It conducted 1,754 unannounced visits to licensees' facilities, found 143 children illegally working at looms and put them in two schools that it has helped establish.

The Carpet Export Promotion Council (CEPC) established by the Ministry of Textiles, Government of India, as a quasi-government body, established the Kaleen labeling programme in India in June 1995. It is funded partly through government grants and partly through subscription income from industry members. The members of CEPC should commit themselves for the elimination of child labour and register looms of exporters. An independent agency conducts inspections and the Development Commissioner conducts periodic review. All registered exporters pay a fee for child welfare activities. As of May 1997, 572,000 Kaleen labels had been issued to 219 CEPC members, roughly 10 per cent of the total membership.

The STEP and Care & Fair programmes initiated by Swiss and German NGOs in carpet trade respectively are essentially company certification programmes. Through the programme the suppliers in India and elsewhere are obliged to honour the terms of Codes of Conduct which includes elimination of child and bonded labourers and contributing to the health and education programmes for carpet workers and their families.

Among the other labeling programmes, mention is made of Reebok International Ltd, in the soccer ball industry. Through an agreement signed between the company and the exporters from Sialkot in Pakistan in association with the Federation of International Football Association and the International Confederation of Free Trade Unions, the soccer balls produced for Reebok bear the label, "Guarantee: Manufactured without child labour." The three major elements of the programme are: (1) reorganizing all production in a new facility under one room where children below 15 years age are prohibited to enter/perform work; (2) external monitoring to ensure that children are not entering the workplace and soccer ball panels are leaving the factory for stitching, (3) support for the education/vocational training of children in the region. A similar agreement is being planned at Jalandhar in India,

The "Fair Trade" labeling called the TRANSFAIR seal in tea industry is another example. Its objectives are to ensure: (1) the payment of a fair price, which covers production costs plus a fair trade premium that flows to the actual producers; (2) participation by the actual producers decisions regarding use of the fair trade premium, (3) provision for advance payment; (4) promotion of long-term relationship between producers and importers.

The avowed aim of "fair trade" labeling in tea is to "promote producers in the "Third World" who are at a disadvantage under present trading conditions and to help them achieve independence and equality. The additional price paid for the tea is used directly for the improvement of ... the living conditions of tea pickers and plantation workers (for tea plantations) ... the improvement of the smallholders' living conditions (for

smallholders' cooperatives)."

Social labeling exercises are still voluntary and thrive on actual or potential consumer boycott threats. There is a growing awareness and acceptance of the labeling programmes. The costs are born by exporters and importers in several cases. Consumers in developed countries are also reportedly willing to pay a higher price for such labels, particularly under company certification programmes. There is an on-going effort to cover the subcontracting arrangements also under the programmes.

In addition to labeling programmes, two kinds of code of conduct are being popularized by the countries of the North. They concern: (a) actual labour standards: What people are paid, how jobs are designed, the levels of safety, etc.; (b) formal policies which purport to shape corporate conduct in certain ways. These are fundamental conditions, which should apply across workplaces. At the national level, Clinton Administration in the U.S.A. has announced a set of model business principles in May 1995. These cover: fair employment practices, including (a) avoidance of child and forced labour; (b) avoidance of discrimination based on race, gender, national origin or religious beliefs; and, (c) respect for the right of association and the right to organization and bargain effectively. These cover the eight core conventions under the 'Fundamental principles of international labour standards.' Ironically, the U.S. has ratified only one of the seven core conventions of the ILO,

## **IX. RECENT DEVELOPMENTS IN INDUSTRIAL RELATIONS**

The trend towards globalization has tilted the power balance in favour of employers. Technology has reduced labour intensity but also diminished labour's control over jobs. The decline in employment in the organized sector meant decline in union density. Of course, there is considerable potential for increase in the union density in the unorganized sector. So far, with 10 per cent effort unions could achieve 90 per cent, but in the organized sector 90 per cent effort will bear 10 per cent fruits.

### **Collective Bargaining**

Decentralized collective bargaining has reduced the ability of the unions to disrupt and paralyze work and thus reduced its bargaining strength. With the result, many of the cooperative agreements meant assertion of managerial rights and forfeiture of accumulated rights of workers, even if some of them were in the nature of restrictive and wasteful practices. In sick industries unions conceded agreements, which provided for reduction in manpower, reduction/freeze of wages and benefits, suspension of trade union rights like strike for a certain period. In the sick public industries there had been no wage revision since 1992. In the PSEs the current trend is to sign agreements for 10 years as opposed to 3 to 5 year agreements during the 1970s to 1990s. The concept of parity among the PSEs is broken. Even in the Civil Service, the Eleventh Finance Commission proposed that in future there is no need for periodic pay revision because the employees are covered by full neutralization against rise in cost of living.

### **Workers Participation in Management**

There has been much rhetoric about participation since Independence, but in reality it remains elusive to this day. Walker (1975) observed, based on his global survey, that world over it was confined largely to tea towels and toilets. One wonders whether in

India, it has extended even this far (Venkata Ratnam, 1992). The government has introduced many schemes of workers' participation in management since 1940s, amended the constitution of India to incorporate the subject as one of the directive principles of state policy and took steps to encourage workers' participation in equity in the 1980s and introduce stock options for employees in 1990s.

The government's discontentment with the implementation of, voluntary efforts resulted in the convening of a national seminar and the subsequent introduction of a bill in the Rajya Sabha, in 1990 to introduce workers' participation at all three levels – board, plant and shop floor – through legislation. The bill is still (July 2000) to be taken up for discussion.

The issues concerning the mode of representation, scope of the forums, levels of participation, coverage of the schemes, voluntary nature of the schemes, etc. still remain unresolved.

Further, there is ambivalence about the true purpose and role of participation. Is it limited to giving workers and unions a say in management so that they, particularly unions can pursue the sectarian interests of their members more vigorously? To what extent would unions accept the responsibility that goes with participation? Employers are skeptical about whether unions can and would like to accept responsibility. Unions too are generally wary of any scheme of participation that thrusts upon them more responsibility than effective power.

Unions generally want the process to start from the board level and percolate down to the shop floor. Employers want to start it, gradually, and with the shop floor. There are only arguments and hardly any agreement on this.

Consultative processes take time, and managers are wary of the costs and consequences of delays in decision-making. It is apprehended that the greatest obstacle in the way of labour management consultation could be the rapidly changing environment (also see APO, 1991). This is compounded by the adversarial mode of labour management relations, with a lack of mutual trust and, consequently, information sharing, particularly on finances. With the result, even Scanlon-type profit sharing incentive schemes too become non-starters. However, many companies – including in traditional manufacturing sectors – have started introducing stock options to their employees.

### **Aligning Labour Policy**

Labour market policy should balance the interests of the social partners. If one were to merely look at labour market, one would be concerned more by considerations of illiteracy, poverty and unemployment. When one looks at the product markets, one would notice the trend towards increased competition, and the pressure to cut costs and/or add value. Workers/unions harp on labour markets and employers focus on product markets. The labour market impact is a function of the interaction between product market and labour market forces. In quite a few situations industry and product market characteristics strengthen the employers and weaken or make the unions vulnerable. In some others both will be left with limited choices/options and become defenseless, vulnerable or endangered. In the first set of industries employers can marginalize the power of trade unions through parallel production, outsourcing, etc. In the latter set of industries, input costs might be rising and output prices falling,

squeezing both labour and management and leaving both with limited options. They are damned if they cooperate. They are damned if they do not. Labour management partnerships in some cases can become suicide pacts in do or die situations. Given the lack of labour market flexibility, such dilemmas lead to dithering behaviour and preempted the potential for timely and proactive responses from both the labour and the management. It must, however, be said that labour market flexibility is a factor, not the factor. Poor physical and weak social infrastructure may have added to the problems in the labour market. Input and infrastructure bottlenecks reduce the job and income earning opportunities. Recent experience of India's export performance in the post-liberalization period reveal that the industries which did well – software, gems and jewelry and clothing – were the ones which have competitive advantage in labour and skills. They were also – unlike the engineering industry, which is facing serious recession domestically – less dependent on inefficient domestic input producers and infrastructure providers.

At the minimum what the investors, particularly the foreign investors, expect is (Some of the ideas presented in this section were mentioned in Section 1 also):

- A clear enunciation of the rights and responsibilities of employers and workers/unions;
- Unambiguous and easily understandable legal and institutional framework;
- Predictable arrangements concerning union recognition, collective bargaining, skills development, flexibility and workforce adjustment
- Well-defined, clear-cut and time-bound procedures for grievance redressal; and,
- Administrative and judicial system that can be trusted for its transparency, integrity, expedience, efficiency and accountability.

From the workers/unions point of view, labour policy and labour law should stress support for:

- the observance of a minimal number of core/basic labour standards;
- free trade unions and collective bargaining;
- workforce institutions capable of internalizing the enforcement of labour standards/government regulations and effecting changes at micro level smoothly;
- investment in education and training;
- bringing the entire labour force under the purview of minimal, but effective – rational and rationalised – regulatory/administrative framework;
- proactive labour market policies that provide for building skills/competencies reducing/eliminating the existing mismatch between acquired and required skills, facilitating information and counseling facilities for employment; and,
- a culture of non-interference by one party in the affairs of the other party.

Cooperative relations between labour and management are necessary to align the interests of individual employees with that of the organisation through creative and innovative solutions to vexing human problems by integrated win-win approaches that take into account not only the sectional gains of labour and management, but also the other interest groups in the society. Firm's ability to adjust to new business pressures will be contingent on the quality of employment relations at the workplace.

Workplace industrial relations systems should facilitate change, promote flexibility and prepare the workforce to be able, adaptive and attuned to respond to the emerging challenges.

## **Industrial Relations**

Workers have become more instrumental in their orientation and strike as a weapon is getting blunted. Trade unions objectives remain the same even in the new environment, but their means of action to achieve them cannot be the same old ones.

The response of employers and trade union to industrial relations is often driven by the context in which the interface between the two social partners occurs. It is possible to discern at least five distinct scenarios where the balance of power seems to swing in either's favour, influencing the possible outcomes. Based on this typology it should be possible to read the signals early enough and predict the degree of choice and discretion that parties may have in influencing industrial relations outcomes.

### *Scenario 1*

Input costs are rising and output prices declining. Cash flow problems limit opportunities for further investment, modernization and growth. Productivity improvement is imperative to maintain existing levels of profitability. Major constraints persist in continuing to do more with limit resources over a longer period. The resultant squeeze in employment, wages, benefits, etc., creates a sense of helplessness and causes tensions/conflict in human resources/industrial relations. Such companies are too numerous.

### *Scenario 2*

Several companies have, over a period of time, multiplied business turnover and profitability through: (a) setting up parallel production facilities; (b) loan/lease license arrangements; (c) subcontracting; (d) franchising, etc. This rendered production/services became more lucrative for employers. As output/services in a unit become less critical employers seem to develop a sense of independence and force the unions to come to terms with management proposals. Several multinationals (Bata, Hindustan Lever and a host of pharmaceutical companies, for instance) which have conceded whatever unions asked in a cost plus situation are now beginning to take (undue?) advantage of the increased vulnerability of unions in the liberalized environment since the late 1980s.

### *Scenario 3*

When companies become bankrupt due to mismanagement etc., employers have to yield to union pressure to give up control and may be forced to accept employee buy-outs by worker cooperatives, for example. In quite a few cases (Kamani Tubes and Central Jute Mills, for instance) workers are able to revive sick units and sustain their profitability with support from professional management.

### *Scenario 4*

When economic, structural, technological and other changes make enterprises bankrupt, trade unions are agreeing to several concessions of the following type to revive the unit and save threatened jobs: (a) downsizing, including retrenchment of a section of the workforce; (b) wage and benefit cuts and freezes; (c) freeze cost of living and other allowances; (d) suspension of trade union rights for collective bargaining and

industrial action for a certain period; and (e) agreeing to changes in work norms and work practices and greater managerial discretion in maintaining discipline, production and productivity, etc. In almost all the companies – both public and private sector – whose cases are referred to the Board of Industrial and Financial Reconstruction (BIFR) for revival these concessions have become the norm rather than the exception. The latest in the series is the multi-unit public sector firm, Indian Drugs and Pharmaceuticals Limited.

### ***Scenario 5***

When neither the trade union nor the employer seems to show adequate concern and sensitivity to workers' interests, workers are seen to ignore both employers and union and take charge, of the, situation. They neither prefer a strike nor are they prepared to face a lockout. They simply occupy the plant and run it to keep their jobs and earn their livelihood. The most recent such case is that of the Kanoria Jute Mills in Calcutta.

A charitable interpretation of the current industrial relations scene in India would be to call it very complex. A critical view could be that it is chaotic. The dynamic change process warrants a fresh look at the institutional and legal framework as also the roles of the principal actors. Changes in industrialization strategies call for changes in labour management policies too to obtain the requisite balance between social system in our organizations and the technical systems for the performance of organizations towards fulfilling the purposes for which they are created.

Workplace changes point to a reduction in manufacturing employment, downsizing as right sizing, the ascendancy of employer rights and increasing vulnerability of unions due to technological, economic, structural and other changes. In employment relations the following shifts are discernible. The shift to a market economy being decisive and irreversible at least in the foreseeable future, organizations will need to do more with limited resources to be viable, competitive, productive and profitable. The focus will be on productivity, profitability and quality improvement,

## **X. ROLES OF SOCIAL PARTNERS**

Working together should be the spirit of the social partners with the following motto: Together we aspire, together we achieve, and together we share with all our stakeholders. Towards this end, the following agenda is suggested as possible roles of the three key social partners.

### **Government**

- (a) Government should see itself in the role of a facilitator rather than a regulator and controller.
- (b) It should rationalize its role in regard to organized sector and strengthen its role in the unorganized sector.
- (c) Accept responsibility for building a supportive social and physical infrastructure and legal and institutional framework
- (d) Put in place proactive labour market policies including skills provision, supply-demand matching, counseling, social safety net, etc,
- (e) Consult the other social partners in formulating and implementing social and economic development policies in the true spirit of ILO principles of social dialogue. Widen the social dialogue to make it more inclusive,

- (f) Shift focus from dispute resolution to promotion of sound labour management relations.
- (g) Stress support for both efficiency and equity. Strengthen the labour ministry to ensure active participation of labour and other stakeholders for evolving policies for sustaining growth and competitive labour markets, which are critical for ensuring job security and social protection.
- (h) Widen the social dialogue.

#### **Employers**

- (a) There should be a basic change in the operative philosophy of management. They should move away from the concept of control to building policies and practices based on consensus and commitment, accepting workers and unions as partners in developing policies and solving problems, which affect their organization.
- (b) The core values of labour management relations include: fairness and equity, balance in the exercise of power and authority, trust and transparency, and promotion of policies, which are conducive to collective well being. Management being in the driver's seat must take initiative and accept responsibility to ensure that these values are pursued in all earnestness.
- (c) Managers should view their roles as that of leaders, not policemen.
- (d) Management should focus on skills and attitude training for all its employees, including the senior-most managers.
- (e) Management must solicit and implement ideas from rank and file employees and tap fully the expertise of its staff. This in turn enhances employees' self worth and dignity and contributes to the success of the organization.

#### **Trade Unions**

- (a) Trade unions should be the full partners in the development process – both at the macro and micro levels.
- (b) Like managers, they should also change their operating philosophy and behaviour, paving way for cooperative relations between them and the management harmonizing the concerns of their members with the other stakeholders,
- (c) They should focus on increasing the size of the cake and seek a better slice. Cooperate at the workplace level and confront at the, bargaining table to get due share of slice.
- (d) Trade unions should have positive goals and roles than being mere managers of discontent. They should have a vision and create a desirable future for their members, themselves and the society through well thought out goals that looks at the issues in a holistic manner and addresses the issues concerning workers in a pragmatic manner.
- (e) Trade unions need to develop activities other than collective bargaining. Non-bargaining roles and social contributions will improve their image and identity within their membership and with the other social partners in the wider society.
- (f) Even where trade unions feel compelled to oppose some of the policies like privatization, they should articulate them not merely from the point of view of the interests of their members, but from the implications for the consumers and the community. Similarly when they evaluate the impact of the changes, they should look at not merely the consequences of changes, but also consequences of non-change.
- (g) Trade unions should realize the consequences of their actions for members in



the organized sector on the others in the unorganized sector and develop strategies that approach that are not divisive and counterproductive as to result in increased social tensions.

## REFERENCES

- Fallon, Peter R. and Robert E. B. Lucas (1991). "The Impact of Changes in Job Security Regulations in India and Zimbabwe," The World Bank Economic Review, Vol. 5 (3). pp.395-413.
- Frensen, J. (1991). "Subcontracting and Inequality: The case of Hindustan Lever in India". Nijmegen: Third World Centre, Catholic University of Nijmegen.
- Goyal, S. K. (1984). "Small Scale Sector and Big Business". New Delhi: The Corporate Study Group of the Indian Institute of Public Administration.
- Gupta, S.P. (1999). "Trickle down Theory Revisited: The Role of Employment and Poverty," V B Singh Memorial Lecture, 41<sup>st</sup> Annual Conference of the Indian Society of Labour Economics, IGIDR, Mumbai, November 18-20.
- ILO. 1999. *National Renewal Fund*. New Delhi.
- Jalan, B. 1996. "India's Economic Policy: Preparing for the 21<sup>st</sup> Century." New Delhi: Viking.
- Indian National Trade Union Congress (INTUC) (1993) : "25<sup>th</sup> INTUC Session Report: May 1988 to April 1993", Cuttack: INTUC. 1993.
- Johri, C.K. (1992). "Industrialism and Industrial Relations in India:.". New Delhi: Oxford University Press.
- Mathur, A. (1989). "Industrial Restructuring and Union Power: Micro-Economic Dimensions of Economic Restructuring and Industrial Relations in India." New Delhi: ILO-ARTEP.
- Nath, S. (1993). "Tripartism in India", Bangkok : ILO APPOT PROJECT (Mimeo)
- National Commission on Labour (Government of India). (1969). "Report of the National Commission on Labour". New Delhi. Government of India.
- Ramaswamy, E.A. 1988. "Worker Consciousness and Trade Union Response". New Delhi: Oxford University Press.
- Tulpule, B. (1992). "New Industrial Policy, Employment and Structural Adjustment in India." Indian Worker, August.
- United Nations Development Programme (UNDP). (1999). "Human Development Report". New York: Oxford University Press.
- Venkata Ratnam, C.S. (1991). "Unusual Collective Agreements". New Delhi: Global Business Press.
- Walker, K F. (1975). "Workers Participation in Management: An International Perspective": IILS Bulletin (Geneva).
- The Workers Solidarity Centre Against Job Losses and Closures. (1989). "Report of the Workshop on Job Losses and Industrial Closures." Seminar on Social Movements, Human Rights and the Law. 27-30 December 1989. Bombay.



**INDUSTRIAL RELATIONS**  
**AND**  
**INCREASING GLOBALIZATION**

Country Case Study — The Philippines

by

**J. M. Damaso**

# INDUSTRIAL RELATIONS AND INCREASING GLOBALIZATION

## CASE STUDY OF THE PHILIPPINES

by J. M. DAMASO\*

### I. DEVELOPMENT OF INDUSTRIAL RELATIONS SYSTEM

#### A. Historical Perspective

The beginnings of industrial relations in the Philippines stretch back to the early 1900s when the economy was dominated by plantations and primary production for export during the American colonial regime.

In 1953, the Industrial Peace Act officially recognized the right of workers to unionism and collective bargaining and shifted the industrial relations system from Compulsory Arbitration to Collective Bargaining.

A major feature of the industrial relations landscape is the deeply rooted factionalism among workers' organizations. Various attempts by the government to unify the labor movement have not succeeded.

The official policy on industrial relations moved toward negotiated peace in the 1960s, into restricted labor action in the 1970s to early 1980s, into tripartism in the late 1980s and into "open labor vulnerability" in the 1990s.

These shifts in policy have been largely shaped by various economic and political developments identified with specific time frames. Key issues challenging the industrial relations system have been similarly wide-ranging. These issues have recently revolved around the globalization phenomenon.

In consonance with changes in industrial relations policy, legislative action and institution building throughout six major periods are presented here. On the side of legislation, the Magna Carta of Labor (1953), the Labor Code (1974) and subsequent revisions in the Labor Code represent landmark changes in the industrial relations system. On the institutional front, the increasing concern over the "dejudicialization" of the conflict resolution apparatus has seen the replacement of the Court of Industrial Relations (1936) with the National Labor Relations Commission (1974).

#### SUMMARY OF OFFICIAL POLICY ON INDUSTRIAL RELATIONS

Period	Basic Policy	Key Features
1901-1935	Non-Interference/ Laissez Faire	American administration and a small elite class prevailing over a nascent labor movement
1936-1952	Compulsory Arbitration/ Social Justice	Commonwealth regime transiting into political independence; increasingly politicized labor movement; court mechanism installed

\*J. M. Damaso is the researcher recommended by the Trade Union Congress of Philippines.

1953-1972	Negotiated Peace/ Voluntary Bilateralism	Introduction of Collective Bargaining; increasing ILO influence
1973-1986	Restricted Labor Action	Martial Law control of strikes and mass actions; Labor Code Formulation
1987-1997	Tripartism/Cooperation	Cooperative spirit sparked by recovering economy and political renewal
1998-2000	"Open Labor Vulnerability"	Economic crisis and international events overtaking weak political leadership

**LANDMARK LAWS AND INSTITUTIONS IN INDUSTRIAL RELATIONS SYSTEM**

	<b>Laws</b>	<b>Institutions</b>
1901-1935	Employers Liability Act (1908) Women and Child Labor Law (1923) Workmen's Compensation Act (1927) Rice Share Tenancy Act (1933)	Bureau of Labor (1908)
1936-1952	Commonwealth Constitution (1935) Commonwealth Act No. 103 (1936)	Court of Industrial Relations (1936)
1953-1972	Industrial Peace Act or Magna Carta of Labor (1953)	Modified Court of Industrial Relations
1973-1986	Labor Code (1974)	National Labor Relations Commission (1974) Overseas Employment Development Board (1974) National Manpower and Youth Council (1974) Wage Commission (1970)
1987-1997	New Philippine Constitution (1986) Amendments of Labor Code Wage Rationalism Act (1989) Act on Voluntary Arbitration (1989)	Regional Tripartite Wage and Productivity Boards (1992) Revamp of NLRC (1987)
1998-2000	New Labor Code Amendments	Balance tilts in favor of high investors due to unemployment problem

Today, the industrial relations system retains the dominance of lawyers as key players, acting as counsels to both unions and management, personnel managers and labor leaders.

**B. Elements of Industrial Relations**

The 1987 Constitution clearly defines the mandate of the State to guarantee the rights of all workers to self-organization, collective bargaining and negotiations, peaceful group action, including the right to strike, as well as to render a general regime of

industrial peace based on social justice. It also contains a provision on the trade union rights of workers and employees in public service.

Two principles are defined as important components of the industrial relations system in the country: (1) shared responsibility between workers and employers; and (2) the preferred use of voluntary modes of settling disputes, including conciliation.

Four key aspects of that system have evolved various patterns over the last 25 years.

### **Wage Determination**

The minimum wage rate is set by *Regional Tripartite Wage and Productivity Boards* (RTWPB) composed of two representatives each from the labor and management sectors and 3 from the government side. Until 1989 the minimum wage was legislated by Congress on a nationwide basis, and by the Chief Executive during Martial Law years.

Only a little more than 30% of all enterprises are known to follow minimum wage prescriptions however, and barely 45% of all workers are classified as wage and salary earners, while 27% are unpaid family enterprise workers.

Too many and somewhat arbitrary "exemptions" are also granted by the RTWPBs much like in the past, further emasculating the real impact of the minimum wage.

There is growing dissatisfaction with the regional Boards. The process of wage determination is often late and tedious, the actual adjustments fall short of real wage expectations, and the government representatives often side with management.

### **Unionism and Collective Bargaining**

The Labor Code of 1974 was formulated during Martial Law, hence its statutes on unionism and collective bargaining were restrictive. It disallowed the Labor Department from issuing registration to labor federations engaged in organizing activities outside of their assigned industry turf; it banned security guards, managerial employees and government employees from joining and forming unions; it prohibited unions from engaging in activities that were deemed "subversive". Its stiff requirements for certification elections were dampeners on unionism (30% of workers' signature were required for petitioning the elections and 50% for positive results to the union's favor). Unions seeking registration were required to submit a list of union officers attending together with minutes of the meetings; the list of attending members, and the signatures of at least half of workers the union sought to represent.

In 1986, the climate cleared when security guards, supervisory personnel and government employees were allowed to unionize. Automatic certification elections were allowed and the signature requirement was reduced to 20% of all workers concerned.

### **Labor Standards and Working Conditions**

The Constitution recognizes the rights of workers to security of tenure, humane conditions of work and the living wage.

The Labor Code regulates working hours; weekly rest period; holidays with pay; protection in the payment of wages; the employment of women, minors, househelpers and homeworkers. It contains provisions on health and safety and workmen's compensation. The commitment to fair labor standards is reflected in the ratification of 29 ILO conventions by the State.

A major limitation to the enforcement of labor standards is the fact that there are less than 300 inspectors to cover over 500,000 enterprises nationwide.

### **Dispute and Grievance Management**

In 1989, a law was passed (RA 6715) fulfilling the Constitutional mandate to promote voluntary arbitration as the preferred mode of dispute settlement. Grievances or disputes involving the interpretation or implementation of CBAs and those arising from the interpretation or enforcement of company personnel policies should be coursed through the grievance machinery with voluntary arbitration as the final resort. In all other kinds of labor management disputes parties may submit before or at any stage of the compulsory arbitration process their dispute to voluntary arbitration.

There are more than 400 accredited voluntary arbitrators all over the country who have been trained by the Labor Department with ILO support.

### **C. Dualistic IR System**

The formal industrial relations system, which covers barely 20% of the total employed workforce (27.9 million) who are under enforced CBAs exists side-by-side with the informal industrial system. This apparent dualism draws back from the dominance of medium and small enterprises, as well as from the considerable size of the primary and service sector which are more open toward informal employment arrangements.

On the whole, there appears to be increasing informalization in industrial relations even among the traditional enclaves of organized labor owing to the changing economic environment.

MNCs have been more open toward formal industrial relations than family-owned paternalistic local corporations. But export-zone based foreign enterprises are known to be highly resistant to unionism. Korean, Taiwanese and Japanese special zone companies generally promote more informal employment arrangements.

Even in highly unionized firms, however, the role of the union may sometimes be amorphous. Workers' expectations on the role of the union are known to center more around solving mutual aid problems or in organizing social activities in some companies. In other settings, the union is only one of several channels for workers to solve disputes and misunderstandings. Where supervisors play a proactive role in doing so, the role of the union may be minimized. Often, supervisors encourage the *kumpadre* system through their sponsorships at baptisms or weddings<sup>1</sup> of their employees, strengthening their effective influence on many informal leaders within the ranks of workers.

Formalism may be observed primarily in the grievance procedures that are formulated in various CBAs. In some, the procedures may be prescribed to consist of six formal steps (e.g. sectional union representative to foreman to manage/supervisor; to the

personnel relations manager, to the plant supervisor, to the general manager). In others, the union steward may take an employee's grievance with the supervisor, the union president to the personnel manager and finally the voluntary arbitration machinery may be set into motion. In practice, however, the employee may just go directly to the other parties bypassing the foreman or the shop steward.

## II. CHANGING ENVIRONMENT FOR INDUSTRIAL RELATIONS

### A. Economic and Political Issues

The Philippine economy has been riding waves of economic instability over the last 3 decades. In the process significant changes have become apparent in the climate for industrial relations.

The 1997-98 Asian downturn merely exposed the extent and intensity of changes in the economy that workers and trade unions have to adjust to. The wage/compensation issue has become a more emotional matter, but more than this job security has become a major focus of concern. Among the traditional values of employment, it is security of tenure that has continued to lose its protective cloak.

The bargaining chip has clearly turned in the employers' favor, largely because high unemployment has emerged as a major structural flaw of the economy. The rate of unemployment in the current year is estimated at 12-14%.

Given the pressure to generate jobs, the government has to lay down more generous concessions to private investors. Despite the populist electoral base behind the current administration's ascension into power, workers have taken the backseat and have to absorb more setbacks at the bargaining table, both at the national and firm levels.

Globalization has also emerged as a highly contentious issue. The apparent inability of many local businesses to compete price-wise against similar products that are manufactured in China, Taiwan, Indonesia and Thailand is shaking the foundations of the manufacturing sector.

There are also serious reservations expressed by local producers on the ability of the government to maintain the competitive advantages of the economy in terms of labor cost and stability of the industrial relations system.

### DRIFTS IN ECONOMIC AND POLITICAL ISSUES

	<b>Economic Issues</b>	<b>Political Issues</b>
1953-72	Food Production Land Ownership	Nepotism / Corruption Nationalism
1973-86	Wages Oil Prices/High Inflation Overseas Employment Increasing Poverty	Democracy Human Rights Cronyism Corruption
1987-97	High Poverty Structural Adjustment Housing Social Inequity	Political Will New Elitism Corruption



1998-2000	High Unemployment Low Growth Globalization	Leadership Cronyism Corruption
-----------	--	--------------------------------------

**THE NUMBERS SAY IT ALL**

	<b>Economic Growth</b>	<b>Unemployment Rate</b>	<b>Inflation Rate</b>
1953-72	5 – 6%	4 – 5%	4 – 5%
1973-86	2 – 4%	6 – 8%	12 – 15%
1987-97	3 – 5%	8 – 10%	8 – 10%
1998-2000	2 – 3%	12 – 14%	6 – 8%

**B. Changes in Economic Sectors**

Over the last five years, the manufacturing sector has been steadily losing in terms of relative employment generation and production output performance. On the other hand, all service industries except real estate and finance have been generating 5 – 7% more jobs annually.

Major financial setbacks among banks and investment houses continue to hound the finance sector, largely because the real estate sector has not realized a major recovery since the 1997-99 crisis. Loss of confidence in local banks has significantly shifted deposits toward foreign banks.

The foreign exchange rate is depreciating at a rate of 10% alone over the first six months of the year, and speculation is that it is likely to sustain the trend into the next few years.

The level of investors' confidence with the economy is predominantly determined by two factors: the quality of political leadership and the permanence of the Muslim war in the island of Mindanao. Both are likely to remain highly problematic.

The inefficiencies and low productivity problems among the country's key agri-based industries - rice, corn, sugar, coconut are beyond immediate solution. Hence, these too are on a losing streak. Cheap imports that are 30 – 60% lower in price of rice, corn, sugar, chicken and other meat products are threatening local producers. Smuggling and/or quasi-legal importations identified with a new class of privileged groups sustain the assault on local industries.

Textile manufacturing is down by at least 30% from 5 years ago. Paper products could not compete with Indonesian imports that are 20 – 30% lower in price. Confectionery products from Indonesia and Thailand come in via the Southern backdoor and are priced 20-30% lower. Plastic products from China and Taiwan are similarly priced

lower, as are leather products, rubber products and iron and steel products.

### **C. Changes in the Corporate World**

Foreign investors have bought 70% of the equity in all local cement companies since 1977. These companies are now seriously in the red because of cheaper imports from other Asian countries that are priced 20 – 30% lower.

Since 1997, more than 100,000 workers have lost their jobs owing to restructuring programs in various corporations. MNCs like Johnson & Johnson, Colgate Palmolive, Warner Lambert, Philips, Abbott and Van Melle have reduced their operations mostly through sub-contracting of some products to local or regional manufacturers.

Other companies are automating and realigning their operations. Nestle is closing its oldest plant in the next 2 years. Coca Cola is reducing its workforce by 15%. Procter & Gamble just completed the closure of its old plant as well.

In other corporations, computerization is taking its toll on secretaries, accountants, credit and collection personnel, and on banking personnel. The ongoing mergers among banks in order to achieve higher capital bases are often accompanied by retrenchments of 1,000 – 2,000 personnel per merger.

Among firms within the pharmaceuticals industry, the common cause for collapsing some of their manufacturing operations is the shift into contractual tableting arrangements.

In food products, there are rearrangements on the marketing side as dealership and marketing arrangements with nationwide distributors remove or reduce the costs of warehousing and transporting goods all over the archipelago from the manufacturers' standpoint.

Local manufacturing giants have found it necessary to tie up with large international players in order to remain competitive. The local Selecta ice cream brand has allied with Unilever. Concepcion Industries has tied up with Carrier Airconditioning. Pure Foods, a major local producer of meat products has tied up with Hormel Foods, and United Pulp and Paper has teamed up with Siam Kraft.

Perhaps the most dramatic takeover of a local company in recent years was that undertaken by the Metro Pacific Group of Hongkong and Indonesia on the Philippine Long Distance Telephone Company. Additional capital was also supplied by another Japanese partner. The takeover has inputted global managerial expertise and technical resources which have improved the company's service, but it is expected to reduce further the company's workforce from a peak of 20,000 in 1990 to less than half in the next few years.

### **D. Other Relevant Considerations**

Privatization is entering its fourth stage, with added push from the International Monetary Fund. Public sector deficits exceeded P1 million in 1999 and this is expected to be approximated in 2000. The war in Mindanao and the need to pump prime the economy on one hand, and the low tax intake on the other, point to asset disposition

by government as a more convenient route. Borrowing locally would push interest rates higher and borrowing abroad is an imprudent choice given the run-up in the foreign exchange rate.

In the recent bidding for government held shares in the Philippine National Bank, foreign investors stayed away, and the shares ended up being sold to a major alleged economy crony at 30 – 40% less than the desired price.

There is an undeniably strong perception among foreign investors that the economy is not worth betting on while the current leadership is on the wheel.

In a bid to attract more foreign investors, a major legislation opening retail trade to foreigners has been passed. The actual impact is difficult to gauge at this stage, however, as investors are generally on a wait-and-see mode.

In the case of the Philippines the clear conclusion is that *deregulation and liberalization have not been sufficient inducements* to foreign investors. They are looking at many other factors, including infrastructure, political governance, stability of policies, and other qualitative factors.

#### **E. Implications on Industrial Relations**

Activities of trade unions are made more difficult by the climate of economic slowdown and uncertainty, as well as by new realities shaped by a globalizing economy.

Organizing efforts within export zone enclaves have yielded some successes through the use of innovative (e.g. productivity seminars) approaches, but by and large the harvest is lean.

Small trade union federations are experiencing basic survival problems. Those in beleaguered manufacturing industries where actual membership figures have shrunk cannot sustain their activities into the medium term. Organizing activities addressing informal sector groups are being attempted just to expand membership rosters.

Codes of Conduct are known to be increasing in many companies. These keep workers under more stringent control in terms of union related activities.

Significant wage and salary adjustments are more difficult to negotiate given the negative prospects for many industries, as well as the concern over "competitiveness" against real threats from cheaper imported products.

With the tentativeness prevailing in the job market, workers are reluctant to ruffle employers' feathers. Union leaders at the firm level are generally moderating their own approaches and tend to be more cooperative with employers.

### **III. PROSPECTS FOR INDUSTRIAL RELATIONS**

#### **A. Labor Code Reforms**

The changing climate for industrial relations has goaded major players into advancing various reforms in the legal framework via amendments to the Labor Code. Because

the legislative process is long and intense political lobbying is involved, the actual reforms will most likely be late in coming however.

A listing of key reforms being promoted by the labor sector is compared here to the wish list that is being followed by the employers' side.

The "criminalizing" and "decriminalizing" campaigns on both sides accurately reflect the reactions of employers and workers to the changes ushered in by the globalization phenomenon. While the labor sector is working toward more stringent prosecution of employers who are guilty of unfair labor practice, employers are earnestly seeking to decriminalize these offenses.

Employees are seeking the criminalization of workers protest actions that they consider damaging to their businesses, while worker groups are clamoring for stricter compliance with occupational safety and health provisions.

Both parties are dissatisfied with the workings of the regional wage boards, hence there are proposals to review various operational and institutional guidelines governing these boards.

Three reform measures are clearly in response to the changes brought about by globalization: (1) the demand of employers for a "liberalization of employment arrangements"; (2) the need for workers to be protected when the corporations retrench, merge, restructure or go into bankruptcy; and (3) the recognition that some form of unemployment insurance must be seriously considered.

The head-on collision of positions on labor-only contracting had been going on for many years, but the government is inclined to keep a certain level of flexibility that will please employers to some extent.

### THE FIGHT FOR LABOR CODE AMENDMENTS

Concern	Workers' Wish List	Employers' Wish List
Minimum Wage	RTWPB and NWPC should be merged	Replace RTWPB with industry boards Change criteria into more productivity based measures State-mandated "doleouts" should be reduced
Unionism and Collective Bargaining	Industry-wide bargaining Increase term of CBAs from 5 to 6 years Reduce freedom period from 60 to 30 days	Criminalize wildcat strikes and work slowdown Non-employees should not join pickets
Working Conditions	Non-termination of employee relations and respect for CBAs in case of sale, consolidation or	"Regular" employees should excluded seasonal, project, fixed-term and

	<p>other company disposition                  Workers' claim should be a statutory first lien on assets of bankrupt employers                  Prohibit and criminalize labor - only contracting                  Criminalize OSH violations</p>	<p>casual employees                  Liberalize employment arrangements                  Clarify parameters of legitimate job contracting                  Decriminalize unfair labor practices</p>
National Labor Relations Commission	<p>Restore supervisory role of the Secretary of Labor</p>	<p>Members should be subject to fixed term                  All labor arbiters should be endorsed by the Tripartite Board                  Secretary of Labor should be ex-office Chair                  All decisions should be subject to Supreme Court review</p>
Miscellaneous	<p>Profit sharing system for workers                  Authorizing public sector workers to strike                  Mandatory maximum probationary period of 6 months only                  Unemployment insurance for workers</p>	<p>Make fatal diseases ground for termination                  State insurance funds should be overhauled</p>

## B. Economic Performance

In January 1994, a Joint Statement was signed by representatives of Labor, Management, and Government outlining the **Tripartite Response to Structural Adjustment Issues (Parameters of the Action Plan)**

The paper stressed the need to make the economy more globally competitive in order to achieve the country's primary economic goals of growth, stability and equity.

The major assumption behind the tripartite assessment then was relative stability in the macroeconomy over the period 1994-99, a flawed assumption.

Still, the document summarizes the tripartite assessment of what policies and strategies have to be adopted – and accepted on a tripartite basis – for the economy to become globally competitive.

The current Medium-Term Economic Plan (2000 – 2004) targets 5% as the average GDP rate of increase per year. Its unemployment target is 8.2%.

The labor force shall be growing from 31.3 million in 2000 to 34.1 million in the year 2004. The economy needs to generate 800,000 new jobs annually in order to keep the

unemployment rate at 8.2%.

#### **IV HIGHLIGHTS OF TRIPARTITE JOINT STATEMENT ON SAP ISSUES**

##### **A. Key Policies**

###### **– Trade Policies**

- Accelerated trade liberalization under GATT-WTO and AFTA commitments
- Strong export drive
- Foreign exchange liberalization
- Deregulation in production and marketing

###### **– Fiscal Policies**

- More efficient tax collection
- Privatization
- Fiscal spending rationalization

###### **– Investment Policies**

- Investment liberalization
- Rural development
- Regional growth centers development
- Even playing field
- Financial sector liberalization
- Industrial linkaging
- Rational land use

###### **– Institutional Development Policies**

- Streamlining bureaucracy
- Review of Labor Code
- Moral Recovery Program
- Local government units strengthening
- Efficient tripartite monitoring mechanisms

##### **B. Major Strategies**

###### **– Advocacy Programs**

- Ensure greater labor content in investments
- Facilitate inputs to SME development
- Increase public expenditures on social services
- Countryside development

###### **– Safety Nets Programs**

- Emergency loan programs
- Training and retraining programs
- Livelihood and cooperative development
- Wage adjustments
- Public Employment Service Offices (PESO)
- Social amelioration program in sugar, tobacco, fishing and other industries

– **Institutional Mechanisms**

- Tripartite Industrial Peace Council
- Tripartite Technical Committee
- Tripartite labor market information and employment facilities program

The inability of the economy to generate the targeted number of jobs stems from some basic problems of strategy.

As the experience of 1994-98 showed, there has been an overdependence on new foreign investors. They barely accounted for 53,000 of annual jobs created during the period. Concentrating incentives on large enterprises is also put under question by the relatively low 123,000 annual jobs they generated during the same period. In contrast, small enterprises produced over 250,000 jobs annually.

Among major sectors, manufacturing only created 33,000 jobs yearly while community/social/personal services generated 277,000 yearly. Wholesale/retail trade was responsible for over 185,000 jobs, while transport/communication and finance/real estate/business services each generated 116,000 jobs annually.

**C. Short-Term Concerns**

Tripartism is alive and well. Consultations between Management, Labor and Government on the economy are conducted on an annual basis. It is the management's aspirations that often hold sway, as it holds the key to the recovery of the country's weak economy.

The IMF clearly conveyed its own perception that the country must cater more to investors when it said in early August 2000 that while a moderately paced growth is underway, such growth is being hindered by weak business confidence in the government.

The Philippines still has a \$650 million balance from the \$1.4 billion standby loan the IMF granted to the country in order to ride out the 1997-98 financial crisis and pursue major economic reforms. The sixth and final review by the IMF shall be conducted in October, and the remaining balance of the loan shall be released before year end 2000.

In its fifth review of the Philippine economy, the IMF identified five items that are considered critical to the country's economic growth.

- The current budget deficit which may reach at least P80 million
- The power sector reform bill
- The restoration of confidence in the stock market
- The passage of revisions to the Central Bank Law
- The resolution of issues on the sale of the Philippine National Bank

These are the pressure points that the IMF is concentrating on in influencing the current administration in its economic management.

The concerns of IMF do not encompass the more immediate social problems of unemployment and low workers' real incomes however. These are the major flags that the labor sector would often raise at tripartite meetings.

Of particular concern is the growing restiveness within workers' ranks due to worsening economic difficulties. The series of oil price hikes and a 10% deterioration of the peso vis-à-vis the dollar has stoked inflation to newly anticipated high levels. During the first semester of the current year, jobs lost increased by 58% over the year ago levels of 6,823.

Industrial relations at the national sectoral and firm levels will continue to focus on twin issues of high unemployment and increased wages, and the task ahead remains daunting, because these concerns at bottom "depend on Management".

## V ILO CONVENTIONS

### Conventions Ratified by the Philippines

Number	Convention Title	Year
17	Workers' Compensation	1925
19	Equality of Treatment	1925
23	Repatriation of Seamen	1926
53	Officers' Competency Certificate	1936
59	Minimum Age	1937
77	Medical Examination of Young Persons	1946
87	Freedom of Association and Protection of the Right to Organize	1948
88	Employment Service	1948
89	Night Work (Women) Revised	1948
90	Night Work of Young Persons (Industry) Revised	1948
93	Wages, Hours of Work and Manning (Sea) Revised	1949
94	Labor Clauses (Public Contracts)	1949
95	Protection of Wages	1949
98	Right to Organize and Collective Bargaining	1949
99	Minimum Wage Fixing Machinery (Agriculture)	1951
100	Equal Remuneration	1951
105	Abolition of Forced Labor	1957
110	Plantation	1958
111	Discrimination (Employment and Occupation)	1958
118	Equality of Treatment (Social Security)	1962
122	Employment Policy	1964
138	Minimum Age	1973
141	Rural Workers' Organization	1975
144	Tripartite Consultation (ILO Standards)	1976
149	Nursing Personnel	1977
157	Maintenance of Social Security Rights	1982
159	Vocational Rehabilitation and Employment (Disabled Persons)	1982
176	Safety and Health in Manufacturing	1983
179	Recruitment and Placement of Seafarers	1996



# Country Report on the Philippines

by Gilbert P. Lorenzo\*

presented at the ICFTU-APRO/JIL Regional Conference on  
Industrial Relations and Increasing Globalization  
29<sup>th</sup> August – 2<sup>nd</sup> September 2000  
Manila, Philippines

## I. LABOR ORGANIZATIONS FOR 1995 APRIL 2000

Year	Labor Unions		Federations		Private Sector Unions		Public Sector Unions	
	No.	*Members	Labor No.	Centers Members.	No.	*Members	No.	*Members
2000	10,006	3,740	174	-	9,192	3,577	640	163
1999	9,850	3,731	173	-	9,056	3,570	621	161
1998	9,374	3,687	173	-	8,643	3,537	558	150
1997	8,822	3,363	174	-	8,149	3,489	499	146
1996	8,248	3,361	172	-	7,610	3,468	466	143
1995	7,882	3,587	168	-	7,283	3,451	431	136

\*thousands

## II. UNIONIZATION RATES

In the last five years, labor unions registered an annual growth of about 492 unions marking an average of *6% growth rate*. From 7, 882 unions in 1995, it grew to 8,822 in 1997 and 9,850 in 1999. In April 2000, the total number of labor unions was pegged at 10,006 with 3.7 million members.

The number of workers being attracted to sign up as unions members was estimated at 36,000 annually corresponding to a 1% annual increase. The close to 3.6 million union members in 1995 went to 3.731 million in 1999 indicating a 4% increase for a period of 5 years.

As to sectoral distribution, private sector has 9,192 enterprise-based unions covering nearly 100% of the total union members; public sector has 640 labor organizations with 163,000 members.

The 3.7 million organized workers in April 2000 accounted for 11.38% of the total labor force, 12.22% of the total employed, and 26.10% of wage salaried workers.

With regard to gender distribution of union members, the ratio of male to female is 2:1. In percentage, *66% of union members are men and 35% are women*.

## III. NUMBER OF STRIKES/LOCKOUTS AND MANDAYS LOST For the past five years (1996 – July 2000)

Year	Strikes	Mandays Lost	Lockout	Mandays Lost
1996	89	518,563	1	1,495
1997	93	672,728	1	1,235
1998	92	556,796	0	0
1999	58	229,248	0	0
2000(July)	37	206,906	0	0
<b>Total</b>	<b>288</b>	<b>2,184,241</b>	<b>2</b>	<b>2,730</b>

\*Gilbert P. Lorenzo is a General Council Member of the Trade Union Congress of Philippines.

#### IV. LIST OF NATIONAL LAWS ON INDUSTRIAL RELATIONS

1. The labor Code of the Philippines, Presidential Decree No. 442 of November 1972, as amended, and its Implementing Rules and Regulations.
2. Presidential Decree No. 851 dated December 16, 1975: 13 Month Pay Law
3. Presidential Decree No. 1083 dated February 4, 1977: Muslim Holidays
4. Republic Act No. 8291 dated May 30, 1977: The Government Service Insurance System Act of 1977
5. Employees Compensation Commission Order dated June 1, 1987: Rules on Employees Compensation
6. Executive Order No. 180 dated June 1, 1987: Guidelines on the right to organize of government employees
7. Disposition of labor standards cases dated September 16, 1987
8. Revised Guidelines on Implementation of 13th Month Pay Law dated November 16, 1987
9. Teachers overload pay included in computation of 13th month computation dated April 12, 1988
10. Executive Order No. 152 dated July 28, 1989: National Conciliation and Mediation Board Manual of Procedures for Conciliation and Preventive Mediation Cases
11. Republic Act No. 6971 dated November 22, 1990: Productivity Incentives Act of 1990
12. National Conciliation and Mediation Board Primer dated January 31, 1992: Primer on Strike, Picketing and Lockout
13. Republic Act No. 7610 dated June 17, 1992: Special Protection of Children against Child Abuse and Discrimination Act
14. Republic Act No. 7641 dated January 7, 1993: Rules implementing the New Retirement Law
15. DOLE Department Order No. 118 dated May 12, 1994: Rules governing employment of Children
16. Republic Act No. 7875 dated February 14, 1995: National Health Insurance Act of 1995
17. Republic Act No. 7877 dated February 14, 1995: Anti-sexual harassment Act of 1995

18. Republic Act No. 8042 dated June 7, 1995: Migrant Workers and Overseas Filipinos Act of 1995
19. Republic Act No. 8187 dated June 11, 1996: Paternity Leave Act of 1995
20. Philippine Health Insurance Corporation Board Resolution No. 34 dated April 19, 1996: Rules and Regulations Implementing the National Health Insurance Act
21. DOLE Labor Advisory on Payment of Salaries through Automated Teller Machines (ATM) dated November 25, 1996
22. DOLE Order regarding Rules on employment workers in the construction industry dated November 25, 1996
23. The New Rules of Procedure of the National Labor Relations Commission (NLRC) effective December 5, 1996
24. Executive Order No. 203 dated June 30, 1997: List of Regular Holidays and Special days
25. NLRC Manual on Execution of Judgements effective December 5, 1996
26. Republic Act No. 8282 dated May 24, 1997: Social Security Law
27. Wage Orders of the Regional Tripartite Wage and Productivity Boards periodically increasing the minimum wage in the 14 regions of the country

*Note:* All the above are incorporated as Appendices to the Labor Code of the Philippines, a copy of which will be furnished during the seminar. The Code contains a complete list of all the national laws on industrial relations.

#### **V. DISPUTES SETTLEMENT PROCEDURE IN LAW AND IN COLLECTIVE BARGAINING AGREEMENTS**

There are three modes of settling labor relations disputes in the Philippines, namely:

1. *Voluntary Arbitration*
2. *Compulsory Arbitration*
  - a. Before the Labor Arbiter whose decision is appealable to the National Labor Relations Commission (NLRC). The jurisdiction of the LA covers ordinary labor dispute or those not involving national interest.
  - b. Before the National Labor Relations Commission (NLRC).
  - c. Before the Secretary of Labor and Employment in cases involving the national interest (transport strikes, telecommunications strikes, electricity power and water utility strikes, hospital strikes, etc.)

3. *Mediation and Conciliation Services before the National Conciliation and Mediation Board (NCMB) of the DOLE in labor disputes involving:*

- a. Collective Bargaining Deadlocks
- b. Notices of Strikes and Notices of Lockouts

1. **VOLUNTARY ARBITRATION:**

Any and all labor relations disputes may, by agreement of the parties involved, be submitted to voluntary arbitration. In addition, all collective bargaining agreements in the Philippines are required by law to incorporate a provision for referral to voluntary arbitration of all unsettled grievances under the CBA.

**Procedure in Voluntary Arbitration:**

1. Selection of the Arbitrator or the Panel of Arbitrators - This is done by the parties themselves by any means acceptable to them, including the drawing of lots. They may even ask a third party, normally an official from the DOLE, to make the selection for themselves in the event of disagreement.
2. Submission of the issue/s involved by the parties to the V/A through a submission agreement.
3. Conciliation and mediation by the V/A to aid the parties in reaching a voluntary settlement of the dispute.
4. Hearing before the V/A if no settlement is reached. The V/A must in all instances simplify the issue/s, and attempt to draw the parties to stipulations of fact so that only the disputed facts shall be the subject of hearing.
  - a. Testimonies of the witness shall be in affidavit form. At the sound discretion of the V/A, examination of witnesses on direct, cross, re-direct and re-cross, shall be allowed as an aid to determine the real facts. The V/A may propound questions to witnesses as he deems appropriate.
  - b. Closing of hearing. The V/A may require the parties to make oral closing statements or to submit memoranda in lieu thereof.
5. Decision by V/A. In no case shall the decision be issued beyond 20 calendar days from submission of the case for decision.
6. Enforcement of award. This may be done through a writ of execution directed to the Sheriff of the regular (non-labor) courts or through the Sheriff of the National Labor Relations Commission (NLRC), the quasi-judicial body under the Department of Labor and Employment that decides labor disputes through compulsory arbitration.

*NOTE:* Decisions of the V/A are not subject to appeal. However, if the V/A

acted without or beyond his jurisdiction or with grave abuse of discretion, his decision may be elevated for review to the Court of Appeals (the second highest judicial body in the Philippines) and eventually to the Philippine Supreme Court, also on the same grounds.

## 2. **COMPULSORY ARBITRATION**

### A. *Compulsory Arbitration before the Labor Arbiter:*

Cases over which the Labor Arbiter has jurisdiction:

- a. Unfair Labor Practice
- b. Termination disputes\*  
\* Voluntary Arbitrators have original jurisdiction over all unresolved grievances arising from the CBA and company personnel policies, including termination cases arising in or resulting from the interpretation and implementation of CBAs and interpretation and enforcement of company personnel policies initially processed at plant level grievance procedures under the CBA.
- c. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment
- d. Claims for actual, moral exemplary and other forms of damages arising from the employer-employee relations
- e. Cases arising from any violation of Article 264 of the Labor Code, including questions involving the legality of strikes and lockouts, and
- f. Except claims for employees compensation, social security, medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

*Note:*

1. The NLRC shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.
2. Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from interpretation or enforcement of company personnel shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

*Procedure before the Labor Arbiter:*

1. Filing of a verified complaint.

2. Service of summons upon the party respondent/s requiring his/their appearance before the LA at a fixed date and time.
3. Appearance of the parties before the LA as stated in the summons.
4. Conciliation and mediation efforts by the LA to effect an amicable settlement between the parties.
5. If no settlement is reached, the LA requires the parties to submit their respective position papers, together with the affidavits of their witnesses and documentary evidences.
6. Submission by the parties of their reply position papers, if deemed appropriate by the LA.
7. The LA may allow the presentation of witnesses on the witness stand if he deems it appropriate and necessary. He may also conduct his own questioning of witnesses. The course of the proceedings is under his complete supervision and control. After the hearing, the LA may or may not require submission of memoranda.
8. Issuance of decision by the LA.

Note: The detailed procedure before the LA and the appeal from his decision to the NLRC is set forth in the New Rules of Procedure of the NLRC marked Appendix M of the Labor Code of the Philippines.

*B. Compulsory Arbitration before the NLRC:*

Under Article 218, par. e of the Labor Code of the Philippines, the NLRC may issue injunctions in cases involving or growing out from a labor dispute under the following circumstances:

“ART. 218. Powers of the Commission - xxx

“e. To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawfull acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party. Provided, that no temporary or permanent injunction in any case involving or growing our of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and onlly after a finding of fact by the Commission, to the effect:

- “1. That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or

persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

- “2. That substantial and irreparable injury to complainant’s property will follow;
- “3. That as to each item of relief to be granted greater injury will be inflicted upon complaint by the denial of relief that will be inflicted upon defendants by the granting of relief;
- “4. That complainant has no adequate remedy at law; and
- “5. That the public officers charged with the duty to protect complainants property are unable or unwilling to furnish adequate protection.

“Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the chief executive and other public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant’s property: provided, however, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant’s property will be unavoidable, such temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice. Such temporary restraining order shall be effective for no longer than twenty days and shall become void at the expiration of said twenty days. No such temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file and undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expenses or damage cause by the improvident or erroneous issuance of such order or injunction, including all reasonable costs together with a reasonable attorneys fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

“The undertaking herein mentioned shall be understood to constitute the agreement entered into by the complainant and the surety upon which an order may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages, of which hearing complainants and surety shall have reasonable notice, the said complainant submitting themselves to the jurisdiction of the Commission for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity: Provided, futher, that the reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters

who shall conduct such hearing in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission.”

The decision of the NLRC may be elevated for review to the Court of Appeals (the second highest judicial body in the Philippines) and eventually to the Philippine Supreme Court. The review may be based only on the ground that the NLRC acted in excess of jurisdiction or with grave abuse of discretion in issuing the decision.

C. *Compulsory Arbitration before Dole Secretary:*

The exercise of compulsory arbitration powers by the DOLE Secretary is limited to national interest cases and this is governed by Article 263, par. g of the Labor Code quoted as follows:

“ART. 263. Strikes, picketing, and lockouts - xxxx

“g. When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

“In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospital, clinics and similar medical institution shall, to every extent possible, be avoided and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however, legitimate by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics, or medical institutions, it shall be the duty of the striking union or locking out employer to provide and maintain an effective skeletal workforce of medical and other health personnel whose movement and services shall be unhampered and unrestricted, as are necessary to ensure the proper and adequate protection of the life and health of its patients, most specially emergency cases for the duration of the strike or lockout. In such case, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission (NLRC) for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders,



prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking out employer of backwages, damage and other affirmative relief, even criminal prosecution against either or both of them.

“The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.”

The decision of the Secretary of Labor and Employment or the NLRC in the above assumed cases affecting national interest may be elevated for review to the Court of Appeals (the second highest judicial body in the Philippines) and eventually to the Philippine Supreme Court. The review may be based only on the ground that the Secretary or the NLRC acted in excess of jurisdiction or with grave abuse of discretion in issuing the decision.

### 3. *Mediation and Conciliation Services before NCMB*

The NCMB is an office directly under the DOLE Secretary. It is headed by an Executive Director and by a Regional Director in each of the 14 regions of the country. It exercises no coercive powers and uses only mediation and conciliation services in the following instances:

1. Notices of strike by unions or notices or lockout by employers only on the following grounds:
  - a) Unfair labor Practices
  - b) CBA Deadlocks

If the parties reach an agreement, it is reduced in writing and becomes executory between them. Any violation of the agreement may be the subject of another notice of strike or lockout.

If the parties do not come to an agreement they may then declare a strike or lockout after complying with the procedural requirement of the Labor Code. At this stage, the NCMB may continue its mediation and conciliation services. Failure to reach an agreement will result in the parties being left to their own devices and remedies as long as these are not unlawful. The parties may, however, file cases before the Labor Arbiter or the NLRC should they deem it proper.

**NOTE:** The procedure for dispute settlement of grievance in collective bargaining agreements is basically through voluntary arbitration. Where the dispute, however, may also fall within the jurisdiction of the Labor Arbiter (see above), the aggrieved party may opt as an alternative to go before the Labor Arbiter.

## VI. PROCEDURE IN COLLECTIVE BARGAINING DETERMINATION OF BARGAINING AGENT

### *PROCEDURE IN COLLECTIVE BARGAINING:*

The following procedure shall be observed in collective bargaining:

1. When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later ten calendar days from receipt of such notice.
2. Should differences arise on the bases of such notice and reply, either party may request for a conference which shall begin not later than ten calendar days from the date of request.
3. If the dispute is not settled, the National Conciliation and Mediation Board (NCMB) shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue subpoenas requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call.
4. During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes, and
5. The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitrator, in case of failure to reach a compromise agreement.

**NOTE:** In the Philippines, all collective bargaining negotiations is done through collective bargaining agents. The collective bargaining is always at enterprise level. There is no bargaining at national or industry levels.

In companies with branch offices located nationwide (e.g., Metropolitan Bank and Trust Company) **where there is only one collective bargaining agent**, there is only one bargaining process between representatives of the bargaining union, on the one hand, and representatives of the company, on the other hand.

Where the company has nationwide branches **with different bargaining agents scattered nationwide**, the bargaining is not done simultaneously with the different bargaining agents sitting as one group. Rather, the company representatives bargain with the different groups separately. In this situation, there may be a variance in the terms and conditions in the different CBAs in which case it is the CBA with the best terms and conditions for the workers that is followed (e.g. Bank of the Philippine Islands).

***PROCEDURE FOR DETERMINING COLLECTIVE BARGAINING AGENT:***

1. *In an unorganized establishment* \* (\* a firm or company where there exists no recognized or certified exclusive bargaining agent as yet):
  - a. Voluntary recognition – The employer may voluntarily recognize at its option the representation status of the union. The recognition is contained in a joint statement of the union and the employer which is posted in 2 visible places in the company for 15 days. The joint statement must also state: (1)the approximate number of the employees in the bargaining unit, (2)the names and signatures of a majority at least of the members of the bargaining unit, (3) there is no other labor organization operating within the bargaining unit.  
  
The statement must be under oath and submitted to the DOLE Regional Office for recording.
  - b. Filing of a Petition for Certification Election where the employer refuses to extend voluntary recognition to the union. The petition may be filed either by the union or by the employer.
  
2. *In the organized establishment\** (\*a firm or company where there exists a recognized or certified exclusive bargaining agent):
  - a. Voluntary recognition - This is allowed (in practice) only in the event no other union contests the majority status of the existing certified or recognized bargaining union. The same procedure as in an unorganized unit is followed.
  - b. Filing of Petition for Certification Election before the DOLE Regional Office cases where:
    1. There exists 2 or more unions both claiming majority status. The petition may be filed by either or both unions or by the company.
    2. There exists only one union claiming majority status which the company disputes in which case the petition may be filed either by the company or by the union.

*Procedure in Certification Election:*

1. Filing of petition for certification election before the DOLE Regional Office. The petition must contain:
  - a. The name and address of the petitioner union/company. If a union, the date and number of its certificate of registration

issued by the DOLE.

- b. The nature of the business of the company.
  - c. Description of the bargaining unit and approximate number of workers in the unit.
  - d. The names and addresses of other legitimate labor organizations in the bargaining unit.
  - e. If there exists a duly registered CBA, that the petition is filed within the 60-day freedom period of the agreement.
  - f. The signatures of at least 25% of all workers in the bargaining unit. This is dispensed with if the company is an unorganized firm.
2. The DOLE Regional Office requires the posting of the petition in 2 visible places inside the company and at the same time summons all parties to the first hearing.
  3. Appearance of the parties before the DOLE Officer (Med-Arbiter) on the date of the hearing. The Med-Arbiter attempts to convince the parties to agree to a consent election. If no agreement is reached, the parties are required to comment on the petition within a specified deadline.
  4. Filing of the comments before the Med-Arbiter on the date of the deadline. The petitioner may request for time to file a reply. With or without a reply, the case is submitted for decision.
  5. Decision ordering holding the certification election which shall contain the following:
    - a. Name of the employer
    - b. Description of the bargaining unit
    - c. Names of the contending unions
    - d. Order for the employer to submit the certified list of employees in the bargaining unit or the payrolls for the last three months before the decision

**NOTE:** In an organized establishment, another union may file an intervention in the proceedings only during the 60-day freedom period.

In an unorganized establishment, the motion for intervention may be filed at any time before the decision calling for a certification election.

6. Appeal to the DOLE Secretary within 10 days. If there is no

appeal, the process immediately goes to pre-election below.

7. Decision by the DOLE Secretary which is final and executory. However, if the DOLE Secretary acted with grave abuse of discretion or in excess of jurisdiction, his decision may be elevated for review to the Court of Appeals (the second highest judicial body in the Philippines) and eventually to the supreme Court (the highest judicial body in the Philippines) on the same grounds.

Despite the appeal, if the Court of Appeals does not issue a restraining order the proceedings will continue. However, if the Court restrains further proceedings, the DOLE will suspend all further proceedings until final decision by the Court (Court of Appeals or Supreme Court).

8. Holding of pre-election conference before the certification election presided by an election officer of the DOLE to determine:
  - a. The list of qualified voters (inclusion-exclusion proceedings)
  - b. The date, time and place of the election
  - c. The names of watchers and representatives of the parties
  - d. The number and location of polling places or booths
  - e. The number of ballots to be prepared by the DOLE and the names of the representatives of the parties to initial the ballots on the day of the election
9. Posting of the notice of election in 2 visible places in the company premises at least 5 days before the election.
10. Actual conduct of election. A voter may be challenged only on the following grounds:
  - a. Lack of employer-employee relationship between the voter and the company
  - b. The voter is not a member of the bargaining unit.

The election itself may be challenged on the ground of fraud or irregularities in the conduct of the election.

The challenge must be made before the close of the proceedings and recorded in the minutes and formalized in writing in writing within 5 days from closed of the proceedings. Otherwise, the protest is deemed dropped.

11. Counting or canvassing of votes. To have a valid election, at least a majority of all eligible voters in the bargaining unit must have cast their

ballots.

12. Proclamation and certification in writing of election results by election officer. This is possible only if no valid protest has been filed or no challenge or eligibility issue was raised that could materially change the result of the election. Otherwise, the election officer returns the records of the case together with the minutes and the election results to the Med-Arbitrator who shall decide the issues raised in a written order.
13. Issuance of written order by Med-Arbitrator whose decision is appealable to the DOLE Secretary within 10 days.
14. Decision of DOLE Secretary which is subject to review on grounds of lack of jurisdiction or grave abuse of discretion by the Court of Appeals and thereafter to the Supreme Court
15. Finality of Decision and start of bargaining process.

#### *WHEN RUN-OFF ELECTION IS HELD*

When an election which provides for three (3) or more choices results in no choice receiving a majority of the valid votes cast and no objections or challenges have been presented which, if sustained, can materially change the results, the election officer shall *motu proprio* conduct a run-off election within five (5) calendar days from the close of the election proceedings between the labor unions receiving the two highest number of votes: provided, that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

The voters list to be used in the run-off election shall be the same list as that used in the first election. The ballots in the run-off election shall provide as choices the unions receiving the highest number of the votes cast. The union receiving the greater number of valid votes cast shall be certified as the winner.

## **VII. TRIPARTITE STRUCTURES AND FUNCTIONS**

### **1. Tripartite Voluntary Arbitration Advisory Council (TVAAC)**

*Enabling law:* Executive Order No. 251 (Amending Certain Sections of Executive Order No. 126 dated January 30, 1987), Section 4.

*Structure :* The TVAAC is attached to the National Conciliation and Mediation Board (NCMB). It functions as an advisory body to the NCMB on matters pertaining to the promotion of voluntary arbitration as the preferred mode of dispute settlement. On the other hand, the NCMB is the government office directly under the Department of Labor and Employment (DOLE) charged with the task of providing mediation and conciliation services arising from notices of strike filed by unions and notices of lockout filed by employers.

***Present composition:***

*Chairman* : Executive Director of NCMB, DOLE

*Members* :  
1. DOLE Asst. Secretary  
2. labor representatives  
3. management representatives

**2. Employees Compensation Commission (ECC)**

***Enabling law:*** Article 176 to Article 182, Labor Code of the Philippines

***Structure:*** The ECC is the government agency that initiates, rationalizes and coordinates the policies of the tax exempt employees compensation program whereby the employees and their dependents, in the event of work connected disability or death, may promptly secure adequate income benefit and medical or related benefits. It also approves rules and regulations governing the processing of claims and the settlement of disputes arising therefrom and accident prevention in the working environment.

The Commission has the status and category of a government corporation and is attached to the Department of Labor and Employment for policy coordination and guidance.

***Present Composition Ex-officio***

*Chairman:* DOLE Secretary

*Members:* CEO, Social Security System  
President and Gen. Manager - Government Services Insurance System  
Chairman, Philippine Medical Care Commission  
Executive Director of the ECC Secretariat

*Regular* 1 Employer Commissioner

*Members* 1 Employee Commissioner

**3. Social Security Commission (SSC)**

***Enabling law:*** Republic Act No. 1161 as amended by Republic Act No. 8282 or the "Social Security System Act of 1997"

*Structure:* The Social Security Commission is the body created by the SSS law to establish, develop, promote and perfect a sound and viable tax exempt Social Security System which shall provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden.

***Present Composition:***

*Chairman:* Appointed by the President of the Philippines from among the SS commissioners

*Members:* SSS President  
Secretary of Department of Labor and Employment  
3 members from the workers group, at least 1 of whom shall be a woman  
3 from the employers group, at least 1 of whom shall be a woman  
1 general public representative with adequate knowledge and experience regarding social security

**4. Regional Tripartite Wage and Productivity Boards  
(1 RTWPB each for the 14 Regions in the country)**

*Enabling law:* Article 121 to Article 127, Labor Code of the Philippines, taken from Republic Act No. 6727 or the "Wage Rationalization Act of 1989."

*Structure:* The Regional Boards shall determine and fix minimum wage rates applicable in their respective regions, provinces or the industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission and to undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs.

***Present Composition:***

*Chairman:* Regional Director of the Department of Labor and Employment

*Vice-Chairman:* Regional Director of the National Economic Development Authority  
Regional Director of the Department of Trade and Industry

*Members:* 2 members from the workers sector  
2 members from the employer sector



**5. National Wages and Productivity Commission (NWPC)**  
**(There is only one Commission in the whole country)**

*Enabling law:* Article 121 to Article 127, Labor Code of the Philippines, taken from Republic Act No. 6727 or the “Wage Rationalization Act of 1989.”

*Structure:* The NWPC is an agency attached to the Department of Labor and Employment for purpose of policy and program coordination. The Commission shall formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels and to prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels

***Present Composition:***

*Chairman Ex-Officio:* DOLE Secretary

*Vice-Chairman:* Director-General of National Economic Development Authority(NEDA)

*Ex-Officio*

*Members:* 2 workers representative  
2 employers representative  
Executive Director, NWPC

**6. Technical Education and Skills Authority (TESDA)**

*Enabling law:* Republic Act No. 7796 of 1994

*Structure:* RA No. 7796 created the TESDA to provide relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle level manpower responsive to and in accordance with Philippine Development goals and priorities. It is attached to the Department of Labor and Employment for program policy and coordination.

The Authority shall be composed of the TESDA Board and TESDA Secretariat.

***Present Composition of TESDA Board:***

*Chairperson:* DOLE Secretary

*Co-Chairperson:* Secretary of Education, Culture and Sports  
Secretary of Department Trade and Industry  
Secretary of the Department of Agriculture

*Members:* Secretary of Department of Interior and Local Government

Director-General of the TESDA Secretariat  
2 representatives from employer/industry organizations, 1 of whom shall be a woman  
3 representatives from the labor sector, 1 of whom shall be a woman  
2 representatives of the national association of private technical-vocational education and training institutions, one of whom shall be a woman.

TESDA Secretariat Director-General

***Present Composition of TESDA Secretariat:***

1 Director-General – appointed by the President of the Philippines with rank of Cabinet Undersecretary

1 Deputy Director-General for Vocational and Technical Education and Training with rank of Cabinet Assistant Secretary

1 Deputy Director-General for Policies and Planning with rank of Assistant Secretary

## **VIII. PARTICIPATION OF TRADE UNIONS IN SOCIAL DIALOGUE**

Trade unions are represented in a number of tripartite agencies, including those dealing with industrial peace, wages and productivity, labor relations court, voluntary arbitration, social security, health insurance, employees compensation, housing, vocational/technical education, occupational safety and health, overseas employment, overseas workers welfare, bases conversion, economic zones, price monitoring, women's concerns, child labor, informal sector, social reform, industrial councils.

Despite years of representation, unions have been unable to sit in the major economic, investment bodies dealing with monetary policies, economic development, investments, regional development, and energy regulation. Unions are consulted in some cases but they are not given official seats in those agencies.

NGOs, which have no mass bases of their own, have imprinted their contributions in many areas including those which are of direct union concern. In many cases, they have been good union allies in lobbying, representation, and socio-economic projects. In some, they have competed with unions or have been used to keep unions away from certain representation under the pretext that unions have no interest or capacity.

The expansion of the phrase "social dialogue" has included the participation of NGOs and other members of the civil society in the consultation process. In effect, union concerns are diluted and are not given priority importance.

**IX. ILO TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING  
MULTINATION ENTERPRISES AND SOCIAL POLICY**

The said declaration is largely unknown in the Philippines.

Pushed by the ILO and the TUCP, the Philippines government conducted a series of area-based consultations and roundtable discussions on the MNEs and FDIs (foreign direct investment) in 1997. The undertaking resulted in the signing of a Memorandum of Social Understanding by the tripartite partners.

The document adopted guiding principles and courses of action to implement the Declaration, and called on all current and potential investors in the country to respect the provisions thereof.

A Tripartite Oversight Committee was convened to oversee and monitor the implementation of activities, but regular meetings of TOC have not been held due to reasons unknown to us.

