

PART IV

COUNTRY REPORTS

BANGLADESH

I. THE CONSTITUTION

Bangladesh's Constitution, which was drawn up after independence, was one of the best Constitutions in the democratic world as praised by experts both at home and abroad. But subsequently, this Constitution has been amended several times to curtail democratic and human rights. Some of those amendments are as follows:-

- a. The 2nd amendment of the Constitution empowered the government to declare a state of emergency and to suspend constitutional clauses related to basic human and democratic rights in case of external and internal disturbances threatening the integrity and sovereignty of the country. It gives a chance to misuse this power.
- b. The 4th amendment made provision of a one-party political system, presidential form of government and ban on all newspapers, except the four government-owned newspapers.
- c. The 5th amendment stopped the legal proceeding against the killers of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, his family and other leaders.
- d. The 5th and 7th amendments legalized the illegal taking-over of power by the military Junta.

II. HUMAN RIGHTS

Then, there are what are called fundamental rights starting with an article of the Constitution: "Laws inconsistent with fundamental rights to be void". These include: equality before law; equality of opportunity in public employment; right to protection of law; protection of right of life and personal liberty; safeguard against arrest and detention; prohibition of forced labour; protection in respect of trial and punishment; freedom of movement; freedom of assembly; freedom of association; freedom of thought and conscience and speech; freedom of profession or occupation; freedom of religion; right to property; protection of home and correspondence, etc.

The aforesaid amendments of the Constitution and some black laws have infringed human rights, such as:

- a) Special Power Act:- Empowered the government mechanism to arrest and detain anybody without any reason whatsoever for 120 days. Also can ban any newspaper outright.
- b) P.O.9:- Without assigning any reason, government can dismiss any government official.
- c) Press & Publication Act:- Empowers government to cancel the registration of any newspaper and prohibit it to go to any court of justice against the deregistration.

But, recently, the present interim government has partially amended the Special Power Act, and Press & Publication Act related to press freedom.

Even when some democratic rights prevail and people launch movements for greater democracy, the government proclaims "state of emergency" to suppress such movements. The nation has experienced this type of emergency several times.

III. JUDICIARY

Our judiciary is not independent of administration. The government controls appointment, transfer and promotion of judicial personnel. During the Martial Law, government set up special Summary Martial Law Courts or tribunals headed by military officials, to try cases. It was not possible to appeal against this judgement at any higher civil court.

Despite all these limitations, our Supreme Court has given one historical verdict against the 9th amendment of the Constitution.

IV. VIGILANCE ORGANISATION

There are some vigilance organisations and individuals who are active in our country to protect human and democratic rights. They include:

- a) Human Rights Implementation Council
- b) Human Rights Implementation Organisation
- c) Bangladesh Mahila Porishad
- d) Bangladesh Nari Pokha
- e) Youth Advocates Forum
- f) Political Party Legal Aid Committee

- g) Co-ordination Council of Lawyers
- h) Supreme Court Bar Association.

Some of these organisations are working as Non-Governmental Organisations (NGOs). These organisations are now expanding their activities in the rural areas, especially to protect the rights of women.

V. TRADE UNION RIGHTS

Trade union rights have to be discussed against the country's labour laws and practices. Many of these are a hang-over from the past, i.e., prior to 1947, and from 1947 to 1971, when Bangladesh was a part of India and also Pakistan. We have inherited those laws from them. The Factories Law of 1965 and Industrial Relations Ordinance of 1969 are the main sources of labour laws in Bangladesh.

After the independence of Bangladesh, the IRO-1969 continued to operate with appropriate changes taking place in 1972-73. Of course, the changes were very minor, but in January 1975, through constitutional changes, Jatiya Samik League was recognised as the only National Labour Organisation in Bangladesh.

After the assassination of S.K. Mujibur Rahman, Martial Law was promulgated in Bangladesh and all trade union activities were banned. Therefore, from time to time, changes were made in IRO-1969 through ordinances by the government, not through the legislation.

In December, 1975, the Industrial Relations (Regulations) Ordinance was promulgated. Under this Ordinance, no trade union was allowed to be registered, unless the government otherwise directed.

In 1977, another Industrial Relations (Regulations) Ordinance was promulgated. Under it, no full-time trade unionists were allowed to participate in any election of office-bearer of any union in the basic plant. Those who had been elected before the Ordinance, were removed from their position. In case there was no Collective Bargaining Agent (CBA) in any industry, the Registrar of Trade Unions was empowered to select a union as CBA upon his satisfaction. The right to strike had been denied. All this was done in spite of the country's ratification of the two significant ILO Conventions 87 and 98. This Ordinance made a provision that 30% of the total workers of any industry must get written support to form a union. To become a CBA, 33% votes of the total workers is needed.

In March 1982, Lt. General Ershad took over power and imposed Martial Law all over the country and banned all trade union activities.

Again, in the later part of 1982, he promulgated a new Industrial Relations (Regulations) Ordinance by which the Registrar of Trade Unions was empowered to cancel the registration of any trade union without showing any cause.

Despite all the black laws and restrictions on the trade union movement, a large majority of registered national federations agreed to work together and formed a central workers' forum popularly known as SKOP (Sramik Karmaland Okkaya Parishad). The SKOP started the movement and compelled the government to sign an agreement which resulted in the transfer of registration cancellation power of the Registrar of Trade Unions to the Labour Court. Also, transfer of union office bearers from one place to another was prohibited in line with ILO Convention 135, though the Convention itself is not ratified by Bangladesh. The government also agreed to reinstate all the workers dismissed after the promulgation of Martial Law. SKOP was successful in increasing the basic wages of workers. There were some more important clauses in the SKOP-government agreement.

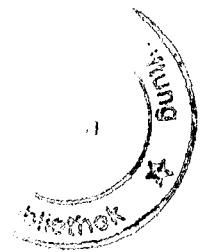
But to our utter surprise, we have noticed that the government did not implement all the clauses of that agreement. This violation led to widespread labour unrest in the country, demanding the full implementation of the agreement and denouncing the government's inability in the matter. The employers exerted pressure on the government, and the government by another Ordinance of November, 1989, stipulated that a dismissed worker cannot hold any office of a trade union. Also, except the President and General Secretary, all other office-bearers of the union can be transferred from one place to another. These were clear violations of the SKOP and the government agreement. The government also changed the definition of 'establishment' in IRO-1969. This was done to curtail trade union rights. These anti-labour laws have become the concern of the trade unions of Bangladesh.

Even when there was no Martial Law and state of emergency, trade unions could not function freely. When workers raised their demands, the governments did not hesitate to declare their jobs as 'essential services', and in doing this, forbid them to go for industrial action as per labour laws. The government used all its weapons to restrict normal trade union activities.

ILO Conventions

Bangladesh has ratified the two significant ILO Conventions 87 & 98 but has not implemented them. Though Bangladesh has not ratified the ILO Convention 100, equal remuneration for the same job is partially implemented in the government and autonomous bodies, but not in the private sector.

Though trade unions are demanding to ratify Conventions 135, 141 and 151, the government has not yet ratified them.



INDIA

This report examines the various issues of human rights as well as trade union rights, primarily in relation to the large number of industrial and agricultural workers in India. An effort has been made, to examine the existing conditions in the organised industrial sector of the country to determine the infringements of workers' rights and also to record appreciation of the advantages and benefits acquired by the working people in this sector.

It may also be mentioned at the outset, that the issue of trade union rights is also being analysed in the context of intractable problems, such as widespread illiteracy, deeply entrenched religious strife and caste antagonisms, which have a significant bearing on the enjoyment of democratic and human rights.

Perpetuation of inequality of landholdings due to the signal failure to carry out radical land reforms initiated at the dawn of independence, and the circumstances that the landless labourers mostly belong to the long-oppressed and depressed caste, accentuate these antagonisms. Under the compulsion of the democratic process, political parties seeking to pander to vote banks have compounded the imminent caste antagonisms, resulting in several layers of the poorer sections of the population being deprived in practice of human and trade union rights, despite a carefully crafted Constitution, conferring democratic, fundamental and human rights, buttressed by the rule of law interpreted by an independent judiciary.

The economic exploitation of India under British rule led to the widespread pauperisation of the Indian people. Even with the gaining of independence, and the nationally accepted objective to build up the economy for a self-sufficient industrial and agrarian growth, the failure to effectively utilise India's biggest resource, i.e., its vast and growing human power, has resulted in massive and rapidly growing unemployment and underemployment and widespread illiteracy, with a substantial proportion of the population living in conditions of dire poverty, depriving them of basic human rights.

The magnitude of the economic problem which India has to solve, if it has to preserve the democratic and human rights conferred by the Constitution, is illustrated by the statistical data formulated below.

COUNTRY PROFILE

(i)	Area	:	3,287,263 Sq. Kms.
(ii)	Population	:	850,300,000 estimated (Census will be held in 1991)
a.	Population growth rate	:	2.1 per cent per annum.
b.	Life expectancy	:	32 years in 1951. 58 years in 1984 - 88.
c.	Death Rate has moved down from	:	27.4 per thousand in 1950-51 to 10.9 per thousand in 1988 - 1989.
d.	Birth Rate	:	Reduction in birth rate from about 40 per thousand to 31 per thousand at present.
e.	Population based on Religion	:	Hindus - 82.63 per cent Muslims - 11.36 per cent Christians - 2.43 per cent Sikhs - 1.96 per cent
(iii)	Per Capita Income (has risen nearly 85% in 38 years)	:	Rs. 1,127 in 1950 - 51 (measured at 1980 - 81 prices) to Rs.2,082 in 1988 - 89 i.e., U.S. \$ 360.
(iv)	Poverty	:	46% below poverty line in 1977 - 78. 37% of total population as per last sample survey.
a.	Rural Poverty	:	40%
b.	Urban Poverty	:	28%
(v)	Agricultural Production	:	50 million tonnes in 1950 - 51 to 172 million tonnes in 1989-1990.
(vi)	Unemployment	:	5.3 million in 1950 - 51 to 20.7 million in 1983 - 88.

ECONOMIC SURVEY

The preservation of human and democratic rights depends on healthy economic growth with distributive justice. It, therefore, becomes incumbent to analyse Indian economic performance. Agricultural production has recorded a compound growth rate of 2.7% per annum, which is only slightly higher than the population growth rate of 2.1%. The record production of food grains of 172 million tonnes in 1989 - 90 is barely sufficient to prevent widespread famine.

Indian industrial growth since independence has been significant, reaching 8% in the eighties. But the number of workers employed in the organised industries is only about 26 million. And, further growth of employment in the organised sector is absent because of rationalisation, mechanisation and computerisation. The public sector industries which have been the engine of growth, occupying the commanding heights of the economy, are now faced with the problem of bureaucratisation, and they are failing to generate adequate resources for sustained growth. An economic crisis is brewing, with the dire need to encourage exports, to reduce the steep fall in the balance of payments and to find the necessary resources to finance essential imports to sustain the rate of growth needed to preserve democratic institutions.

PROFILE OF THE LABOUR MOVEMENT

The second half of the 19th century had some signs of uprising of the workers in some areas. But the real beginning of trade unionism started after the end of the First World War. Professor Wadia in Madras, Mrs. Anusuya Sarabhai in Ahmedabad and Shri Lokhande in Bombay took up the cause of the working class in the second decade of the 20th century. Mahatma Gandhi led a strike of Ahmedabad textile workers for 22 days in 1918 and was responsible for the formation of the Textile Labour Association. In Madras, the workers of B & C Mills went on strike in 1917, and their leaders were hauled up before the Civil Court for payment of compensation for the loss of the mill due to the strike. This led to a huge outcry in the country for legal protection for trade unionism and trade union activities, including strike action.

The formation of ILO in 1919 facilitated the formation of the All India Trade Union Congress, the first central trade union organisation in India. The first representative of workers who attended the ILO Conference was late Shri Lala Lajpatrai, one of the stalwarts of the freedom movement. The

freedom movement, along with the permanent representatives of workers to the ILO Conferences, gave a great push to the formation of the All India Trade Union Congress. Due to the efforts of the AITUC, the Factories Act was amended in 1921, and the government was compelled in 1926 to enact the Indian Trade Union Act, which gave workers the right to form trade unions as also immunity from penal action for going on strike.

At present, there are seven central trade unions: AITUC, INTUC, CITU, BMS, HMS, UTUC and N.F.I.T.U. Some independent unions and federations are also functioning.

The large proportion of the working population outside the organised sector has not been able to exercise its right to organise trade unions to defend and advance their social and economic interests. Consequently, they have not been able to ensure implementation of labour laws designed to provide minimum standards of life or to pressurise the government to ratify several ILO Conventions.

The freedom of association guaranteed by the Constitution, has been exercised in a fairly full measure by the workers employed in organised industries. But, unfortunately, the right to freedom of association has led to multiplicity of unions, emasculating collective bargaining power. Traditions of working class solidarity have yet to mature adequately to enforce its will on government policy practices.

There are various labour enactments in India to protect the trade union and democratic rights of workers. But several cases do occur when employers, both in private and public sectors, violate these enactments or try to deny the workers' democratic and trade union rights. In Calcutta, the Hindustan Lever Co., a multinational company, is denying trade union rights to the workers by not allowing the workers to conduct elections despite court orders to hold the elections. In public sector establishments like Paradeep Port, Indian Rare Earth and Rourkela Steel Plant, violations have occurred like refusal of employment to hundreds of workers, suspension of trade union office-bearers, etc.

Rural and agricultural workers, bidi workers, home-based workers, hawkers, vendors, building/construction workers working in the informal or unorganised sector which constitute more than 80% of the total working population, are not getting the minimum wages and other benefits such as

E.P.F., E.S.I., bonus, weekly holidays, medical benefits etc., which they are supposed to get as per the law of the land.

With a view to improving the wages and living conditions of the workers in the unorganised sector, such as agriculture, construction, mines and quarries, forests, village and cottage industries etc., it is essential to lay down guidelines and standards for determination of minimum wages. The Minimum Wages Act does not stipulate any time-limit for the Minimum-Wages Committee, the government or the judicial courts, as the case may be, to determine the wages or to dispose of the claims of less payment of minimum wages. As a result, the workers and their unions find it a frustrating experience to depend upon these bodies to get justice. It is, therefore, necessary that time-limits are fixed for the above in the Act itself.

As unemployment goes on rising in the rural areas, the surplus of idle labour created by this greatly impinges upon the capacity of the workers to ensure payment of minimum wages. Moreover, the rise in unemployment forces rural labour to migrate to urban areas, creating the same problems in the latter too. Hence, it is imperative, for ensuring proper implementation of minimum wages, to implement employment guarantee schemes in rural areas as is being done in the State of Maharashtra, so that employment potential is increased and the workers' bargaining capacity is strengthened in the rural as well as urban areas.

In the context of rising inflation, minimum wages should be revised once in two years, providing for a component of dearness allowance linked to the Consumer Price Index. Further, to prevent employers from shifting from one State to another to escape from the payment of higher minimum wages, it is essential that the minimum wages be fixed region-wise.

In many areas and in many industries, the minimum wages fixed are not being implemented. The government's implementation machinery is both inadequate and inefficient. It is, therefore, imperative that the machinery is strengthened and streamlined and that the trade unions are also associated effectively with the implementation process.

ILLS OF THE INDIAN LABOUR SCENE

The major ills of the Indian labour scene are the caste system, lack of wage policy, child labour exploitation and women labour exploitation.

Caste System

Caste hierarchy has resulted in the tremendous social oppression of the lower castes by the upper. And, this process, whether expressed in the form of untouchability or other socio-cultural discrimination, has had an economic impact through the extraction of forced labour, religious levies and in some cases, even discriminating employment and payment of wages.

Lack of Wage Policy

India has no national wage policy. There are no uniform pay scales either. The government of India has appointed a forum called Bureau of Public Enterprises to regulate and keep the wages and service conditions of public sector undertakings in check. State government employees are paid less wages than the central government employees. Technology is not taken into consideration while fixing wages. A bread manufacturing unit worker in the public sector is paid as high a wage as the steel plant workers, and the hi-tech aviation industry is asked to fall in line with other public sector undertakings. Collective bargaining is controlled by the whims and fancies of the government in power. Industry-wise collective bargaining in the public and private sectors is seldom in practice. Unless public sector undertakings are given the freedom to bargain with labour directly, without the interference of the government, the collective bargaining process will only be a sham. And the ILO Convention on Collective Bargaining to that extent shall remain unimplemented.

Child Labour

The ILO Convention on Minimum Age (Industry) No. 5-1919, and the Minimum Age (Non-industrial Employment) Convention, 1932, lay down that children under 14 years of age should not be normally employed. Article 24/35 of the Indian Constitution decrees that children below the ages of 14 should not be employed in a factory, mine or in any other hazardous occupation.

The Child Labour (Prohibition & Regulation) Act, 1986, also defines various processes and industries where employment of child labour is prohibited. In spite of all these provisions there is no beginning nor end to the health hazards children are exposed to. Thousands of children working in the glass bangles factories of Firozabad work in the vicinity of raging fires, which exposes them to eye diseases, asthma and bronchitis. Yet another example of child labour exploitation can be seen in Sivakasi

in the State of Tamilnadu, where children work under hazardous conditions in match-work and firework factories.

Surveys on child labour indicate an extremely depressing picture when it comes to the areas of children exposed to severe health hazards at their place of work, as in the case of children working in the slate factories of Mandsur in the State of Madhya Pradesh, who are driven to an early death due to silicosis caused by continuous inhalation of slate dust over a period of time. Similarly, young hands engaged in brassware work in Aligarh are vulnerable to tuberculosis and diseases of the respiratory tract such as asthma, breathlessness and acute headaches.

Women Labour Exploitation

The National Policy on Education of 1986 drew attention to the urgent need for removal of disparities in education between boys and girls and emphasised that education be considered an agent of bringing about changes in women's status.

In the organised sector, men and women do equal work and are paid equal salary. The employers, however, grudge the additional concession of maternity benefits to the female employees. The government has not provided a satisfactory implementation machinery under the Maternity Benefit Law. The administrative and skilled workers in the organised industry and services have started getting maternity benefits, but an unskilled female worker employed in cottage industries or the construction industry cannot hope to get such benefits. Unskilled female workers are normally employed because an employer can pay them less wages for the same or similar work.

The government also lacks political will in this direction to implement the ILO Convention on Maternity Benefits, and relating to working hours, overtime, night work, weekly off, holidays, paid vacations and equal wages.

In the unorganised or informal sector, the lot of women needs greater attention in our country. It is a common sight to see a female construction/brick kiln worker carry a young child to her place of work. While the mother works, the child is moving about freely in the vicinity of the construction sites, facing risk of accidents. At times, if the child is too young to be left alone, the female worker carries the child on her back and continues her

work. ILO Recommendations regarding creches and such other amenities are not strictly followed.

HUMAN AND DEMOCRATIC RIGHTS

We have explained that most of the trade union rights in India are, by and large, adhered to in the organised sector. But the conditions in the informal or unorganised sector are extremely bad in this respect.

Freedom to Organise

Many groups of public sector workers are denied the right to join unions such as fire fighters, law and order staff, prison staff, judicial officers, government engineers and managers and the defence forces.

Trade Union Immunity

In India, while trade union immunities are adequate, the government has enacted laws empowering it to declare a service as essential and to ban strikes in such a service.

Trade Union Security Agreements

Industrial Disputes Act amended in 1982 provides that "to coerce workmen in exercise of their right of self-organisation or to refrain them from joining any trade union" is an unfair labour practice.

Independence from Public Authorities

- Trade Unions in India may freely decide their own rules and constitution.
- Trade unions may conduct elections and ballots according to their own rules.
- Trade unions may elect or appoint their own representatives.
- Trade unions may freely hold meetings without prior authorisation.
- In India, discrimination against a worker because of his trade union membership is illegal. It is also illegal to refuse to employ or dismiss a worker because of his/her trade union membership.
- Determination of bargaining agents and recognition for the purpose of collective bargaining exists in some States only, whereas in other States of India, registration under the Trade Union Act does not confer the right to be recognised. The recognised unions have the right to bargain with the employers. Also, there is no law for the certification

of collective bargaining agents. In case of multiplicity of trade unions in a plant/industry, especially in the public sector, the employer may recognise more than one trade union at the same time to negotiate as bargaining agents.

Collective Bargaining Rights

The principle of collective bargaining is part of the machinery set up in the Industrial Disputes Act which includes grievance procedures, labour courts and industrial tribunals.

Right to Strike

Industrial Disputes Act, 1947 is applicable to all disputes. Under the Act, workers other than in public utility and essential services are permitted to go on legal strike after due notice. The strikes under the Essential Services Maintenance Act can be declared illegal. It is also noted that the government is using the National Security Act and the ESMA against the working class movement. These two Acts are to be abolished.

RECOMMENDATIONS

- A) A sustained endeavour should be made to reach consensus amongst the central organisations of labour for the framing of an Industrial Relations Act which will foster genuine collective bargaining:
 - to provide for selection of a representative union by an agreed democratic process and to augment the effective collective bargaining power of trade unions;
 - to reduce splintering of unions and to consolidate the trade union movement;
 - to eliminate interference by the government in respect of all matters relating to industrial relations; and
 - to constitute an impartial autonomous body for mediation and resolution of industrial disputes and inter and intra-union disputes and for ensuring correct compilation of the Consumer Price Index.
- B) The trade union movement should unitedly compel the government to:
 - accept and implement all the ILO Conventions;
 - ensure provision of fair wages and pension and full protection of their value against rising prices;
 - eliminate all ceilings contained in all labour laws, such as bonus, gratuity, P.F., E.S.I., etc.

C) A united and sustained agitation should be mounted by the entire working class for mobilising the poor peasants and landless labourers for:

- effective land reforms, including consolidation of fragmented holdings under the slogan of "land to the tiller";
- adoption and effective implementation of employment guarantee schemes in all rural areas throughout the country;
- encouragement, through grant of loans at low rates of interest, of the growth of rural industries, animal husbandry, aquaculture, horticulture and other self-employment schemes, to reduce migration to overpopulated urban areas; and
- creation and financing of Land Armies for execution of minor irrigation projects and their maintenance and for providing potable water.

D) The unions in the organised sector should be persuaded to extend financial and organisational support to help the toiling masses in the unorganised sectors like small-scale, tiny, cottage and construction industries, for the effective implementation of labour legislation including minimum wage legislation. The unions should also be persuaded to give full support for effective implementation of laws for preventing exploitation of women and children and for provision of civilised amenities such as medicines, creches, etc.

E) The entire working class should be encouraged to mount an agitation for the installation of an Unemployment Insurance Scheme, financed by the employers and the government to give effective social security protection to the workers rendered unemployed by technological changes, internal and external competition, mismanagement or erroneous government policies, to train such workers for employment in the rising industries and through legislative measures, reserve jobs for such retrained workers.

F) The workers employed in the public sector industries should be mobilised with a view to foster social and socialist consciousness, to achieve liberation of such industries from bureaucratic control and to enable them to function with such efficiency that they will not only ward off the danger of privatisation, but will also generate adequate resources to fulfil the basic aim for which they were created, viz. to be the engines of rapid economic growth with distributive justice.

G) The whole country should be mobilised against the danger of neo-colonialism by appealing to the international working class for acceptance of a moratorium on all international debts, and against imposition of unfair conditions by the World Bank and the IMF and the economically powerful countries in the guise of encouraging free trade. We should appeal to the international working class to ensure that multi-nationals do not impose exploitative terms and conditions on their workers employed in the developing countries.

H) We should also appeal to the international working class to get the ILO restructured, so that it will function as an effective protector and promoter of working class interests, and also to safeguard the interests of the immigrant workers in the developed countries and in the Middle East.

I) All those who genuinely believe in the preservation of democratic rights and institutions, should be alerted against the rise of authoritarian and fascist tendencies which seek to mislead the masses by encouraging communal strife and instigating caste antagonisms.

J) We should agitate not only for a New Economic World Order, but also for the genuine promotion of inter-dependence and joint-development of the less developed countries, in the first instance, through regional groupings such as SAARC.

NEPAL

I. INTRODUCTION

Nepal, one of the world's least developed countries, is the second poorest in the world after Ethiopia [World Bank report] with an extremely low level of per capita income of US\$ 170/-. The growth performance of Nepal has been dismal over the two decades of development, and its per capita food production [availability], an important index of welfare in such overwhelmingly agrarian and poor societies, has declined. Nepal has a geographical area nearly as large as Bangladesh, but has less than 1/6 of the population of Bangladesh. This low density of population may mislead, if we do not view the scarcity of cultivated land, which is only 26,533 sq. kilometers, or 18.02% of the total area. In terms of cultivated land per person, Nepal is one of the most land-scarce countries of the world, but agriculture is the source of livelihood for an overwhelming proportion of the population.

The land-locked country, Nepal, surrounded by India in the East, South and West, and by China in the North, is topographically divided into three distinct altitudinal regions: Terai - the plains in the South [23.1%], Pahad - the hills in the middle [41.68%] and Himal - the high mountains in the North [35.22%]. Such a natural division of the country has made it very difficult to connect it by a transport network. As a result, mobility of goods is limited and the cost of such mobility is very high. In Himal, the high mountains in the North, salt is a very scarce commodity and people prefer to present one or two kilos of it to best wishers on special occasions. In conclusion, we see that difficult terrain and dispersion of population over a large area make the per-capita income cost of providing transport and infra-structure facilities extremely high in this country.

Finally, as another main cause of lowest development, one can note the political history of the country, especially of the past 200 years: the feudal, autocratic Rana regime till 1950, when it was thrown out by an armed revolution under the leadership of the Nepali Congress Party, and after that, the political instability because of illiteracy and lack of awareness among the people till 1958, and again after 1960, the dictatorial Panchayat monarchy till 8 April, 1990.

There was a lack of major thought and national effort to stimulate development. As all political parties in the country were banned and the right of association of the working class was not tolerated, the nation had no

institution to protect it from policies that were leading it inexorably towards disaster.

II. HISTORY OF THE TRADE UNION MOVEMENT

The history of the trade union movement in Nepal is not very old and this is not surprising in a traditional, agrarian society and feudal political system.

Nearly 50 years ago, in 1947, when there were only 2-3 jute mills and match factories in Biratnagar and Birganj of Terai in Nepal, the first trade union was organised as an association of jute mill workers of Biratnagar under the leadership of Mr. Girija Prasad Koirala. It was named 'Nepal Mazdoor Sangh'. The formation of Nepal Mazdoor Sangh, which was the first activity of the Nepali Congress Party [NCP] aimed at throwing out the feudal Rana regime, resulted in a mass strike in the jute mills of Nepal. Though demanding an increase in wages, the main objective behind it was to support the NCP, formed and led by the veteran socialist leader, the late B. P. Koirala.

This mass strike awakened the people, who saw the struggle for unity. The strike was successful and the demands of the workers were fulfilled. But, as soon as the workers returned to work, the trade unionists and their leaders were arrested and charged for their activities against the Rana regime. Here, the fact to be noted, is that the first organised movement asserted the natural right of the working class, namely its right of association.

III. RANAS AND HUMAN RIGHTS

During the final years of the Rana's regime, when Ranas were the real power behind the throne, a Constitution for Nepal was promulgated by His Majesty, the King, on 26 January, 1948. Part II of that Constitution sets out fundamental rights and duties of citizens. The wording of the relevant articles is as follows:

"Subject to the principles of public order and morality, the Constitution guarantees the citizens of Nepal freedom of person, freedom of speech, liberty of press, freedom of assembly and discussion, freedom of worship, complete equality in the eye of the law, cheap and speedy justice, free compulsory elementary education, universal and equal suffrage for all adults, security of private property . . .

"Subject to his physical, mental and economic capacity, it shall be the duty of every citizen to promote public welfare, to contribute to public funds, to be ready to labour physically and intellectually for the safety and well-being of the Realm and bear true allegiance to His Majesty, Sree V and His Highness, the Maharaja Sree III and to be faithful to the State and its Constitution."

That Ranas, who had the reputation of being autocrats, should have agreed to Article 4 above, seems to be remarkable. But, possibly, the safeguard for them were the opening words of the Article: "Subject to the principles of public order and morality". These could have subjective overtones, capable of manipulation.

IV. NEPAL'S CONSTITUTION [1962]

Article 16 of Part 3 of the Constitution of Nepal, which deals with fundamental rights provides "right to constitutional remedies" and refers to Article 71 of the said Constitution, which in turn stipulates "extraordinary jurisdiction of the Supreme Court providing necessary remedies by way of writs, namely of habeas corpus, mandamus, prohibition, que warrant and certiorari". It may also be mentioned that in Part 3 of the Nepalese Constitution, the rights conferred on the citizens of Nepal are basically human rights, such as right to equality, right to freedom of speech and assembly, right to religion etc. Thus, enforceability of human rights is assured on account of their embodiment in national laws, which have the complete sanction of the State behind them. And there can be little doubt that the soundest and most efficacious method of enforcing the provision of international law, is through the instrumentality of national laws. Also from the point of view of the individual, redress through a national setup can be more easily perceived than that, which is available by recourse to something international, which is too distant, too diffused.

V. WOMEN'S RIGHTS

This part of the report may conclude with a welcome statement. A newspaper report headlined: "*Nepal takes two-pronged approach to uplift women*", states: "*Nepalese delegation member to the UN General Assembly, Mrs. Shilupyari Karmacharya has said that Nepal is taking a two-pronged approach to the early and total elimination of discrimination against women.*"

The first prong is to persuade the government to legislate anti-discrimination laws and to provide equal opportunities to women and the second prong is to educate and encourage people to overcome traditional prejudices. She added that in the recent pro-democracy movement in Nepal, women from different professions, economic backgrounds and political beliefs played a vital role, together with men. The Nepal Women's Association [NWA], which was first established in 1947, had reopened its doors after 30 years of banishment. It adheres to the principles of democratic socialism, nationalism and fundamental human rights, aims at bringing women to the mainstream of the development process by making them socially and economically self-reliant. According to Mrs. Karma-charya, who is also the general secretary of NWA, democracy would have little meaning unless women themselves participate actively in removing backwardness, discrimination and exploitation. It would be interesting to watch Nepal developments in pursuance of this statement.

VI. GOVERNMENT'S VIEW

Discussions with the Secretary, Labour Ministry, revealed some interesting aspects of the trade union movement in Nepal. While he corroborated all that was mentioned about the dormant state of workers, both with respect to their organisations and their relations with employers, he was not prepared to regard the current sporadic get-together of workers as trade unions. He was conscious that workers have grievances and that several employers were apathetic to workers' demands. The best that the government could do was to give them an element of satisfaction by getting the local officials with law and order responsibilities to intervene. Currently, labour inspectorate/labour officers help the district authorities.

The present government is keen on having both a trade union and industrial relations legislation, the ILO experts' drafts of which are eagerly awaited. The present multi-party government has authority and does wish to establish the two pieces of legislation. It need not wait for the government under the new Constitution to be in the saddle for this purpose.

There was a lot of unrest in labour circles from April to August, 1990, the lid of repression being off. Now, things have somewhat settled down. Meanwhile, all eyes are currently focused on seeing what shape the new Constitution will take. The Labour Ministry Secretariat's officers are also busy in sounding the leaders on establishing unity among trade unions in the future. The Secretary himself took the initiative in urging leaders to

shed their 'colours' and come together in the interest of the workers. They, the leaders, indeed met, discussed and reached a common understanding about union representation at the undertaking level through secret ballot. And this is a good sign! The Secretary is also urging the prospective trade union leadership to have a more robust approach to building up trade union finances.

VII. TRADE UNION LEADERS' VIEWS

This said, the trade union leaders have developed tremendous enthusiasm to work for the upliftment of the underdog, but without concrete notions about how to proceed. Workers' spokesmen for the most part are persons pursuing liberal professions with minimum contact with the ground level. They are all hoping to derive inspiration from Dhaka or Israel where democratic trade unions are holding regional or sub-regional conclaves; or are hoping for guidance from their trip(s) to Moscow. They are committing the same mistakes that their brothers and sisters had committed in the past. All complain about how the National Labour Organisation [NLO] operated in the last thirty years, but all seem to be keen on receiving patronage from one political party or the other, forgetting conveniently that NLO had government patronage too. Fortunately, none referred to securing funds from their respective political mentors, but talked about seeking funds from the government for running their trade union activities. Some even went to the extent of seeking the employers' financial help in running unions.

Some other developments seem to be heartening. Reports have it that leaders of prospective unions/federations are coming together for eventually establishing a confederation; this may mean 'no raiding' agreements between different federations. Thanks to the initiatives taken by the government, unions of all labels are at least seriously discussing steps to minimise trade union rivalries at the operating level by agreeing to some form of secret ballot. And yet in private discussions, distrust or even something more harmful often came to surface. This is distinctly unhealthy for a trade union movement in the offing, but who will find a way out? Will collective wisdom of leaders with appropriate guidance be of help?

But even more appealing are the ideas of the leadership about union finances. They all know that the collection of dues at the current level is ruinous to the movement. They all know that this is the most unpleasant topic of discussion with the workers. And yet, no one is prepared to take the lead

on this subject. The result will be a dangerous movement in a vicious circle of 'low dues' [if at all regularly collected] and inadequate funds leading to slowing of union activities and the inability of unions to show something concrete, which in turn leads to refusal by the membership to pay 'dues'. Something needs to be done in this priority area.

VIII. TRADE UNIONS IN MULTI-PARTY SYSTEM

After the restoration of the multi-party system in Nepal, almost all political parties are organising their own national trade unions and the oldest trade union, 'Nepal Mazdoor Sangh', has now been renamed the 'Nepal Trade Union Congress' [NTUC] and is to be affiliated to ICFTU. The leftist trade unions, which are nearly 12 in number, are mostly affiliated to the WFTU.

The main characteristics of the trade unions in Nepal can be summarised as follows:

- a] These trade unions are labour wings of the political parties. Political parties guide, control and finance the trade unions. It is the main obstacle to national unity and the formation of a general federation of the working class in Nepal.
- b] As their activities are carried out as per the directions of the mother parties, these trade unions are not solely for the protection of workers' interests in Nepal.
- c] The activities of these trade unions aim to bag support for their mother political parties. The leaders are not qualified and neither know the non-collective bargaining activities of trade unions, nor are they aware of the responsibilities and the role of trade unions in the process of national development.
- d] The cadres and trade union activists are new and untrained, finding themselves unable to organise the workers well.

At the same time, workers are being associated under their independent unions with democratically elected executives. Perhaps, this trend will lead them to associate independently in future, and the result may be the formation of a national general federation of relatively independent unions, solely devoted to and for the protection of workers' rights and their interests.

IX. PROBLEMS

The labour force in Nepal is unskilled, unorganised and lacks awareness of natural rights as in the case of most of the developing countries. The situation in the rural areas, where 96.3% of the total labour force lives, is the worst.

But the labour force in the urban areas, which comprises 3.7% of the total labour force, is also not well organised. The area of activities of the trade unions in Nepal is limited - they are only active in urban industries.

Trade unions themselves are not aware of their functions and responsibilities towards organising the workers and improving their working conditions. They merely provide the required means of expression for the workers' views on societal problems. They are mostly guided by the political interests of their respective parent political parties. The main function of the trade unions is to organise and mobilise workers for political goals only. They are being used in party-political manoeuvres.

X. NEED FOR TRADE UNION EDUCATION

It is only education that can solve the above-mentioned problems of the trade union activists in Nepal. We want to convince the workers of the need for organisation. We want to develop loyal trade unionists, to transform the unions into solid organisations which will have a considerable effect on the development of organic democracy in all spheres of human activities. We want to stimulate and create a fundamental understanding of the society in workers. To achieve these goals, trade union education is essential, and perhaps the first step in countries like Nepal.

NTUC believes that trade unions had a great role to play in restoring human and democratic rights in the nation. In this respect, NTUC is already a step forward at unit and district levels.

PAKISTAN

I. WORKERS' RIGHTS IN PAKISTAN

The Labour Force

When India was partitioned in 1947, only 2.6 percent of the factories and 6.5 percent of the labour force of undivided India were all that Pakistan got of its share. It inherited a very limited railway network and a small merchant navy, two small textile mills, two cement factories, two biscuit factories, eleven cotton ginning units, one engineering unit, one tramway company operating in Karachi, a few power houses and a small number of purely commercial oil companies - in the non - agricultural sector. The rest of the economy was agricultural and was in the firm grip of feudal lords.

According to Pakistan's first census of 1951, the total population then was 75.8 million: 44.78 million in East Pakistan (now Bangladesh) and 31.02 million in West Pakistan. Of these, the workforce was 9.51 million: 6.19 million in the agricultural sector and 3.32 million in the non-agricultural sector. By the same year, the number of registered factories was 1,985, of which 370 were in East Pakistan and 1,615 in West Pakistan.

From 1952 - 53, the number of industrial and non-industrial workers was 808,900. Of this, factory workers were 190,870; railway workers 209,940; merchant navy personnel 73,000; port workers 14,700; inland water transport workers 222,800; tea plantation workers 86,745 and other categories 10,845.

In 1988, that is, 17 years after the creation of Bangladesh, Pakistan's population was 103.82 million. Of this, the workforce numbered 28.99 million of which 21.29 million were in the agricultural and 7.7 million in the non-agricultural sectors.

Trade Unions and their Membership

In 1947, when Pakistan came into being, the two major trade union federations in undivided India were the communist-led All India Trade Union Congress (AITUC) and the reformist Indian Federation of Labour (IFL), led by Dr.M.N.Roy. These two re-constituted themselves as Pakistan Trade Union Federation (PTUF) and the Pakistan Labour Federation (PLF) respectively after partition. By 1948, the PTUF had 38 affiliated unions while in 1949, the PLF had 49 affiliated unions. The railway workers

formed the major component of PTUF, whereas the Port Trust Workers were the mainstay of the PLF.

The PTUF came under heavy attack soon after its formation. Its President, Mirza Ibrahim, was arrested in 1948 and its Secretary, Faiz Ahmed Faiz, was implicated in a conspiracy case in 1951. Most of its members were harassed and hounded for their trade union activities. By 1954, when the Communist Party was banned, the PTUF had already been made totally ineffective and had to close down. It could not re-constitute itself till 1970.

On the other hand, the PLF was extended full patronage by the State, and in 1950, a new organisation by the name of All Pakistan Confederation of Labour (APCOL) was created, through the merger of various reformist trade unions. APCOL was headed by Dr.A.M.Malik who was also the Central Labour Minister of Pakistan. State patronage of APCOL was so blatant that in the 1955 labour policy, it was stated openly that it would do everything in its means to increase the membership of APCOL.

In 1951, the number of registered trade unions was 209 with a total membership of 3,93,000. Towards the end of the Z.A. Bhutto government in 1977, the number of registered trade unions had risen to 8,332 with a membership of more than 1,050,000. In 1978, one year after General Zia-ul-Haq imposed Martial Law, the number of trade unions had dropped to 7,894 and the membership to 1,012,309. In 1979, the number had further dropped to 6,869 and the membership to 983,999. In 1980, i.e., after three years of Martial Law, the number of registered trade unions stood at 6,551 and the total membership at 8,69,000. One year later, the figures had dropped to 6,227 and 746,364 respectively.

When Martial Law was lifted and the Junejo government took over following Zia's partyless elections, there were 6,170 registered trade unions in the country with a membership of 859,517. Between 1977 and 1985, when Martial Law was in force, 2,162 unions with a membership of 191,271 had disappeared from the list of registered unions. In other words, this meant that 25.94 percent of the registered unions and 18.19 percent of the membership had been alienated from the mainstream.

In 1988, when Benazir Bhutto's People's Party came to power after party-based elections, the number of registered unions was 6,428 which means

that there was an increase of 258 unions during the quasi-civilian government of Mohammad Khan Junejo.

The Right to Form Unions, The Right to Strike and Collective Bargaining

It cannot be said that in Pakistan all the workers have the right to form trade unions or the rights to strike and bargain collectively.

Same is the case with the right to frame the constitutions, rules and regulations for their unions. While some are totally excluded from trade union activities by law, even those who may have the right to form unions can be deprived of the right to bargain collectively by, for example, being brought under the purview of the Essential Services Act, 1952. Similarly, the right to strike is not an unconditional right. It is subject to the fulfilment of lengthy and cumbersome mandatory procedures which are so frustrating that the right to strike, even when allowed, becomes meaningless.

To understand the legal mechanism through which workers' rights are denied or when the rights are given, the freedom to exercise them is severely curtailed, a study of the labour laws enacted from time to time in Pakistan is necessary.

Labour Laws

Pakistan inherited an elaborate institutional framework from the British at the time of independence. The British had permitted the growth of trade unions and a system of collective bargaining within specific limits embodied in the Trade Unions Act 1926, the Factories Act 1934 and Industrial Disputes Act 1947.

The Trade Unions Act, 1926 recognised workers' right to form trade unions and provided for their optional registration with the Registrar of Trade Unions appointed by the government. The Registrar had the powers to cancel such registration in case the provisions of the Act were not fulfilled or were violated.

The Act allowed the unions to be formed freely, but their effective functioning was conditional upon their recognition by the employers. However, the most important aspect of the Act was that through it, the trade unions were for the first time recognised as legal entities, and its officers and members were granted immunity from criminal conspiracy and civil offences.

The Factories Act 1934 provided for comprehensive standards pertaining to working conditions at the work place.

While the **Industrial Disputes Act of 1947** was mainly in the nature of amending certain provisions of the Trade Unions Act of 1926, especially those related to the modes of resolving conflicts, its main thrust was on restricting strikes and securing settlement of disputes through compulsory conciliation and arbitration procedures.

The government of Pakistan adopted the above framework of industrial relations. In addition, it set up a tripartite consultative machinery, composed of the representatives of the government, employers and employees and consisting of Pakistan Tripartite Labour Conference and the Standing Labour Committee.

On the face of it, this system of industrial relations looked quite liberal but in practice, the situation proved to be the opposite. The State intervened quite decisively through legal and administrative means to curb the workers' fundamental right to organise and bargain collectively on a regular basis.

To achieve the objective of transforming trade unions into instruments for controlling the workers, a series of amendments to the inherited framework of industrial relations were enacted, and new laws were promulgated which restricted both the right to organise and to bargain collectively.

In 1952, the government promulgated the **Pakistan Essential Services (Maintenance) Act**. The Act gave wide powers to the government to apply it to any establishment. The application of the Act deprived the workers of either the right to organise or bargain collectively, or of both the rights.

Immediately after the promulgation of the Act, all central government employees were deprived of the right to organise and bargain collectively.

A large number of workers employed in industries declared as 'Public Utility Service' by the government were denied the right to collective bargaining.

This came as a crushing blow to the labour movement as most of the unionisation in the pre-independence days had developed in the services and the state sectors.

The Industrial Disputes Ordinance 1959 followed the announcement of a new labour policy by Ayub Khan's military regime on 28 February, 1959. The years preceding the imposition of Martial Law in 1958 had seen an unprecedented level of workers' militancy. They had been protesting against the continuous decline in their wages and blatantly anti-union attitudes of the employers. The State-backed APCOL had proved increasingly incapable of controlling workers' protests. Strikes had become a regular phenomenon despite stringent controls over 'legal' strikes. In the years 1956 and 1957 there were 300 work stoppages involving 299,832 workers and resulting in 683,236 mandays lost.

The military regime after seizing power prohibited strikes in all types of enterprises. However, to appease the protesting workers, it announced the new labour policy wherein it was pledged that the labour laws shall be based on the ILO Conventions and Recommendations ratified by the government of Pakistan.

However, when it came to translating the policy commitments to laws in the form of the Industrial Disputes Ordinance 1959, the reality proved to be entirely different.

The Industrial Disputes Ordinance 1959 superseded the earlier Industrial Disputes Act 1947 and was, therefore, the first major piece of legislation on industrial relations in post-independence Pakistan. It resulted in a severe curtailment of the right to strike and collective bargaining and sought to render the trade unions ineffective wherever these were allowed to be formed. Besides other provisions obstructing free trade unionism, the Ordinance drastically enlarged the list of 'Public Utility Services' to cover almost all major categories of industries. Almost all industrial workers were either immediately deprived of their fundamental rights or could be deprived whenever the government wished.

The Ordinance was amended through the **Trade Union (Amendment) Ordinance 1960** which provided for the compulsory recognition of trade unions by the employers. However, this recognition was dependent on a prior recognition of the union by the Registrar of Trade Unions after the complicated requirements laid down by the Ordinance were fulfilled. The recognition could still be withdrawn by the employer, with the permission of the Industrial Court.

Even with its serious shortcomings, this amendment was a positive step

forward, but this minimal relief for the trade unions was also to be proved short-lived as the Ordinance was further amended to debar 'outsiders' from becoming trade union office-bearers.

This amendment was the most serious blow to the growth and effectiveness of the trade union movement. The 'outsiders' were usually those employees who had been dismissed due to trade union activities or such educated individuals who sympathised with the workers' cause. The individuals belonging to the category of 'outsiders' were particularly important for the growth and effectiveness of trade unions at that particular juncture, as the mostly illiterate, first generation workers were hardly equipped to deal with an extremely complex legal system where all the proceedings were conducted exclusively in the English language.

The West Pakistan Trade Unions Ordinance 1968 further restricted the scope of unionisation and enhanced the regulatory powers of the Registrar of Trade Unions. It also increased the list of exclusions and now, in addition to the personnel of the armed forces and the police, the employees of Watch and War, security services, managerial and administrative personnel and non-industrial government servants including the employees of prisons and hospitals were denied the right of association.

The mass movement against the Ayub regime which began in October 1968 culminated in its overthrow in March 1969 and its replacement by another Martial Law regime headed by General Yahya Khan. Although the workers did not participate in the movement in its early days, once they came out of their inertia, the impact was tremendous.

In the three months between January to March, 1969, there were 285 work stoppages involving 184,982 workers and loss of 1,220,337 man-days. The strike activity was accompanied by a substantial growth in unionisation during that period. The total number of registered unions grew from 1,041 in 1968 to 1,486 in 1969 and the membership grew from 512,912 to 600,401.

The most notable feature of this wave of protest was that the workers had totally rejected the prescribed legal channels of conflict resolution. Encouraged by the increasingly militant mass political movement, they also resorted to direct militant actions like encircling the managements till their demands were accepted. Some large textile factories were occupied by the workers. In the process, the leadership had also passed on to the shop

floor leaders, and the official trade unions' federation level leadership was thoroughly isolated.

It was against this background that the new labour policy was announced in 1969. The most immediate objective of the government was to achieve an end to work stoppages and contain the militancy among the workers. The policy consisted of a package of measures aimed at re-constituting the industrial relations on a more liberal and healthy basis. It contained a wage and welfare policy including revisions of minimum wages and certain welfare measures.

The policy repeatedly emphasised the 'need for strong trade unions and strengthening of the collective bargaining process'. It also underscored the need to limit the role of the government 'to providing a legal framework and to encouraging the environmental conditions for the growth of trade unions, for settlement of disputes peacefully and for protecting the right of the individual and his collective rights'.

The apparently pro-labour slant of the policy statement, naturally, was successful in creating a relative calm coupled with high expectations among the workers. However, when the policy was finally translated into law in the shape of the **Industrial Relations Ordinance 1969**, it proved to be a mere re-hash of the previous ordinances. It had taken all the elements of the previous laws regarding the formation and functioning of trade unions, collective bargaining and conflict resolution, and incorporated them with minor changes into the new law.

The IRO also further enhanced the list of establishments where trade unions could not be formed. The procedures for registration and certification of unions were further tightened and in the name of strengthening collective bargaining, the formation of more than one union in a single plant was allowed. This provision conferred additional powers on the Registrar in according recognition to the Collective Bargaining Agent (CBA) and institutionalised factionalism among the workers.

The IRO 1969 was amended successively in 1970, 1972, 1973, 1974, 1979 and 1981, resulting in the eventual forfeiture of the fundamental rights of another large chunk of workers as well as more stringent regulation of their unions.

The government of Zulfikar Ali Bhutto, which came to power in December

1971 following the separation of East Pakistan, announced a new labour policy on 10 February, 1972. A series of high-sounding promises were made to the workers such as free medical aid, group insurance, free education up to matric for one child per worker, old age pension, appointment of auditors to be nominated by workers for the checking of stores, workers' share in profits to the extent of 2 1/2 per cent to 10 per cent and three days' notice prior to strike.

The policy, announced with great fanfare, when translated into the **1972 labour laws** gave the workers no more than three or four minor benefits. Under the Social Security Scheme, they got some medical aid facilities. As a result of consistent struggle, some of them got 5 percent share in the profits of some factories. The new labour policy finally ended up as a package of broken promises.

1972 witnessed widespread labour unrest throughout the country and the brutal suppression of workers' protest by the police and various other civil armed forces. Scores of workers were killed, hundreds of workers and labour leaders were jailed. How bad the shape of things became during the Bhutto period, when the workers had nursed great hopes and expectations after long spells of Martial Law, can be seen from the following data of workers' protests:

- ** In 1972, there were 779 strikes with 361,149 workers taking part.
- ** In 1973, there were 536 strikes with 233,568 workers taking part.
- ** In 1974-75, there were 370 strikes with 301,753 workers taking part.

During 1975-76, the State machinery in the shape of police, Federal Security Force, Sindh Constabulary, Sindh Rangers, Sutlej Rangers, Frontier Constabulary and other repressive organs of state power was wantonly employed to crush, foil or pre-empt the strikes of workers of sugar industry, cement industry, ghee industry, rice mills and ginning factories. By 1976, the labour movement had been rendered largely ineffective.

After the imposition of Martial Law in 1977, workers' strikes became very rare. For instance, there were 81 major strikes in 1977, involving 49,000 workers, but in 1988, there were only 18 strikes involving 8,231 workers. This sharp fall in the number of strikes occurred not because the workers were happy and content and had no problem. The reason lay elsewhere.

The Zia era, particularly the period between 1977 and 1985, saw the worst form of suppression of the basic rights of the workers. Not only did the military regime run rough-shod over the political rights of the people as a whole, but the rights of the workers were also most ruthlessly jackbooted. Not only were labour strikes forbidden, but striking workers were subjected to every conceivable form of repression - arrest, imprisonment without trial, trial and punishment by special military courts in violation of all international norms, flogging and also shooting and killing. Firing upon protesting workers of Multan's Colony Textile Mills in January 1978, hardly 6 months after the imposition of Martial Law, which caused the death of scores of workers, is one grisly example.

In 1980, Zia-ul-Huq convened a labour conference in Islamabad which was attended by the representatives of the labour federations. The outline of a labour policy which he presented to the Conference was such that the labour leaders almost unanimously rejected it. Some salient features of the proposed policy were:

- ** The workers of industrial or other enterprises where their number is 50 or less cannot form a trade union. This affected the workers of 7832 factories.
- ** The employees of educational and research institutes and organisations cannot form trade unions. This affected the employees of 15 universities, 99 professional colleges and 499 other colleges, 5,920 primary schools and 3,464 high schools.
- ** Besides railway, postal, telegraph and telephone workers, the employees of all government establishments and also of local authority bodies cannot form trade unions.
- ** Persons employed in the departments of construction, irrigation, agriculture, public health and engineering are also barred from forming trade unions.
- ** No trade union shall be accorded registration unless 30 percent of the total number of workers of the enterprise concerned have accepted the membership of the union.
- ** In cases of more than one enterprise having separate central offices, though owned by a single owner, the workers of those enterprises are

not allowed to bargain collectively from a single trade union.

- ** No trade union can be formed on the basis of commonality of industry or trade; they have to be plant or establishment-based.

After the rejection of these proposals by the labour federations, the military regime went ahead with its own plans to further curb the workers' rights. Not satisfied with the series of amendments introduced in the Industrial Relations Ordinance 1969 from time to time, to progressively curtail workers' rights, the Zia regime promulgated the Martial law Regulation - MLR 52 - on 15 August, 1981. Through this Regulation, all unions, organisations and associations of workers and employees of any type were dissolved in the Pakistan International Airlines Corporation, affecting around 30,000 workers. Similarly, the registration of labour unions in Pakistan Steel Mills, Pakistan Security Printing Corporation and through several other enterprises was cancelled.

Although Martial Law was lifted in 1985 following the partyless elections and a civilian government headed by Mohammad Khan Junejo was installed in power, it could do nothing to change the status quo because all the Martial Law rules, regulations and ordinances were provided constitutional protection and in any case, the Junejo government was nothing more than a civilian extension of Zia's military regime.

However, after the death of Zia and the subsequent general elections, when the Pakistan People's Party led by Mrs. Benazir Bhutto, the first woman ever to become head of government in a Muslim country, came to power in spite of eleven years of systematic depoliticisation of the society and attempts to spread all sorts of irrational and obscurantist ideas, the people in general and the working class in particular, expected a change for the better.

The People's Party during its election campaign had promised to undo the injustices done to the workers, repeal the anti-labour laws like the Essential Services Act, abolish the 'contract labour' system which had reduced a large number of workers to the status of personal servants of their unscrupulous employers, and introduce a pro-worker labour policy.

In its twenty-months rule, the Benazir government did nothing tangible for the workers. It restored the labour union in the Pakistan International Airways Corporation and re-instated some workers here and there. A

labour policy was only talked about. It never materialised. Neither was the Essential Services Act repealed, nor was the contract labour system abolished.

ILO Conventions and Pakistan

Pakistan ratified the ILO Convention No.87 relating to the right of workers to organise in 1951, and Convention No.98 pertaining to the right to bargain collectively in 1952.

However, the sad truth is that the various laws enacted and implemented in Pakistan from time to time have either been in conflict with the ILO Conventions or have amounted to their violation.

For instance, Section 1, sub-section 3 (A to H) of the Industrial Relations Ordinance 1969 which, with all the subsequent amendments, is still a valid law, contravenes ILO Convention No.87.

Similarly, sub-sections 38A to 38H of the same Ordinance and sections 32, 22, 45, 46 and 46A declaring a strike to be illegal at any stage, as also the Essential Services Act, violate the ILO Convention 115.

Under the West Pakistan Water and Power Development Authority Ordinance 1958, which is applicable to the present Water and Power Development Authority of Pakistan, the workers are denied the rights allowed to them by ILO Conventions 87 and 98.

Section 25 of the Export Processing Zone Authority Ordinance 1980 and rule Nos.3 and 4 under it constitute a gross violation of the ILO Conventions and Rules.

While professing to observe the ILO Conventions, successive governments in Pakistan have, through various laws and administrative measures, either circumvented them or grossly violated them. This applies to the right to form trade unions and frame constitutions and rules for the unions, the right to strike and collective bargaining and other basic workers' rights.

Contract Labour System

Taking advantage of the persistent denial of basic rights to the workers, the exploiters have devised what is known as the 'contract labour system' in place of regular employment of workers. This has drastically

reduced the chances of workers getting organised. Under this system, the worker loses more than one-third of his legitimate wages. He enjoys no rights whatsoever to form trade unions, to strike or collectively bargain.

His services can be disposed of at the sweet will of the employer without giving any notice. This explains why, despite an increase in population, official statistics show a decrease in the number of workers whereas the truth is otherwise. In spite of consistent demands by workers and various political organisations and the promises made by various governments, this crude anti-worker practice is widely in vogue in the country.

Forced labour

Another glaring instance of violation of basic human rights and the international norms governing the dignity of labour is the practice of forced labour which has existed since the establishment of Pakistan.

Forced labour is prohibited by Pakistani law. The Security of Pakistan Act 1952, Political Parties Act 1962, Industrial Relations Ordinance 1969, Pakistan Penal Code, Merchant Shipping Act 1923 and a number of the other laws prescribed imprisonment of persons charged with extraction of forced labour from any citizen on the ground that he has opposed the established political and social system or violated any law or rule or on any other ground.

Illegal bonded labour is still widespread despite all these prohibitive laws. Bonded labour is quite common in the brick, carpet, glass and fishing industries and extends to agricultural and construction work in rural areas. Even a sort of compromise ruling issued by the Supreme Court of Pakistan on a representation by a workers' association of Punjab in respect of the workers of the brick kiln industry in which the Court in March, 1989 re-enforced prohibitions on forced labour and forcible collection of debts, and limited pay advances to one week's wages, has not improved the situation to any appreciable extent. There are still reports of widespread violation.

Polarisation Among Workers on Ethnic and Religious Lines

The mushrooming of political organisations on narrow ethnic and linguistic lines under the patronage of the military regime since 1977 had badly harmed the workers' interests. Split into ethnic and linguistic factions, and driven into internecine confrontations, the workers are unable to unite and wage a collective struggle for the promotion and protection of their rights.

This harmful trend got a big push after the partyless elections held by military ruler Zia-ul-Huq in 1985. In other elections, no political party was allowed to put up candidates or propagate its programme. As a result, the election campaign was conducted by contesting individuals on the basis of ethnic, linguistic, clan, tribal and sectarian affiliations. Naturally, the trade union movement could not remain unaffected.

On the other hand, there was also the religious element. The State has often encouraged and patronised religious fundamentalist organisations to increase their influence both in the working class neighbourhoods and among the unions. This has led to the division of the workers on religious sectarian lines.

II. HUMAN RIGHTS IN PAKISTAN

Only during short periods when civilian governments were in power had Pakistan had a semblance of freedom of association, freedom of assembly, freedom of movement and action, freedom of expression and communication, freedom to take part in political activities, etc. But even in these periods, the government had permitted the police to freely violate them. Seldom has the government taken the offending policemen to task.

The period following the imposition of Martial Law in 1977 saw the worst form of suppression of human rights in Pakistan. Between 1977 and 1985, innumerable persons disappeared without a trace. This was particularly so in Sindh. Many were done to death in prisons, many were executed for political reasons but were charged falsely with criminal offences, including Prime Minister Zulfikar Ali Bhutto. Political activists were publicly flogged and their family members harassed and intimidated. Hundreds of political workers were put in prison without trial.

The 1983 movement for the restoration of democracy was brutally suppressed, particularly in Sindh, where scores of people were killed. Thousands of cases were tried in special military courts and without following the international norms of justice, political workers were sentenced to long terms of imprisonment.

Every government has in one way or the other tried to manipulate the freedom of the press through 'press advices' to newspapers and discrimination in the allocation of government advertisements.

Censoring of private mail of citizens and tapping of telephones have continued throughout, with different degrees of strictness though.

During the brief twenty-month rule of Benazir Bhutto, there certainly was an effort to show greater respect to basic human rights and freedoms, but the police and law-enforcing agencies have always acted in total disregard of these rights and were never taken to task for their excesses, so much so that in some of the known crimes, personnel of these forces were found involved.

Violence against innocent citizens has been an ever-present menace. Kidnapping and ransom violence have continued especially in Sindh. Government forces have at times violated individual rights and used excessive force in efforts to combat dacoities and in the process caused suffering and death to innocent citizens.

Widespread police abuse of prisoners, including their murder while in custody, have been common occurrences, but no government has taken adequate measures to bring to trial and punish the personnel committing such excesses. Arbitrary arrests and detention of citizens without charge or trial still continue. Religious minorities are very often harassed and discriminated against.

Anachronistic laws based on fundamentalist interpretation of religion have drastically interfered with the basic rights of the people. No government dares to get rid of these laws, the worst of which were introduced during Zia-ul-Huq's military rule, for fear of being branded as anti-Islamic by the Mullahs. Some of these laws interfere with man's freedom of conscience, his freedom to have the faith of his choice.

Generally speaking, much has to be done to bring the level of human rights in Pakistan to conform to the stipulations of the Universal Declaration of Human Rights of the United Nations, the International Covenant on Economic, Social and Cultural Rights of the United Nations and the International Covenant on Civil and Political Rights, also of the United Nations.

Right of Women

Women have been among the worst victims of the abuse or curtailment of basic human rights in Pakistan. Zia's military regime particularly directed its offensive, in its plans of so-called Islamisation, at institutionalising an inferior status for women. This has found an immediate

correspondence with the existing feudalistic attitudes among the majority of men from all classes.

Although the women constitute only a small percentage of the country's labour force at the moment, the re-enforcement of these archaic ideas has important implications not only for the labour movement but also for the country's vital interests, as women who form half of the country's population are sought to be kept out of its social and economic activity.

The social and legal oppression of women in Pakistan is a gross violation of basic human rights. Abuse of women, including rape, often goes either unreported or unpunished. A woman who is raped risks being prosecuted for adultery, as her testimony is a priori considered unreliable, having to be supported by that of four reliable Muslim male witnesses. There had been several cases in which the innocent victims of rape have been sent to jail under the Haddood Ordinance. Similarly, under the Law of Evidence, the testimony of two women is needed to equal that of a man.

Women are banned from taking part in international and domestic sporting events. They are now in a position to contest general elections. They are not adequately represented in the country's social, economic and political institutions. However, there are a small number of reserved seats for women in the National Parliament as well as in the Provincial Assemblies where they are elected by an exclusively male electoral college consisting of members of the respective assemblies.

Even the government of the Pakistan People's Party headed by a woman, in its twenty months' rule, could not do much to better the status of women, for fear of inviting the wrath and fury of the religious fundamentalists.

Attempts to organise symposia, seminars and discussions to highlight the discriminatory measures against women by various women's organisations and the supporters among the intelligentsia, students, etc. of the women's cause have so far made only a minimal impact as generally the response from the male population has been lukewarm, not forthcoming or even hostile.

III. ISLAMIC LAWS AND HUMAN RIGHTS IN PAKISTAN

Mohammad Ali Jinnah, the founder of Pakistan, who had categorically stated that Pakistan would never be a theocratic State, died within a year

of its birth. Since then, the Islamic fundamentalist forces had mounted a campaign to impose a theocratic system on the country. But, those who succeeded Mr. Jinnah, though less committed to a modern democratic order, were also not in favour of an Islamic theocratic State; so they went only so far as to introduce some cosmetic measures, more to keep the Islamic fundamentalists in good humour than really to "Islamize" the Pakistani society.

However, General Zia-ul-Huq, on seizing power in a military coup in 1977, took a series of steps aimed at severely curtailing the fundamental and democratic rights of the people. Apart from Martial Law and military courts, he contrived a network of laws through Martial Law orders and ordinances, purportedly to Islamise the society, but in reality to perpetuate his personal dictatorship. Today, two and a half years after Zia's death and four non-military governments (two of them elected political governments) later, these laws are not only in force but new laws have been added to the existing list. These laws are discussed below with special reference to their effect on human rights, particularly on the fundamental and democratic rights of the women and the workers in Pakistan.

Hudood Ordinance

The Hudood laws were promulgated in 1979 and enforced in 1980. Collectively known as Hudood Ordinance, these comprise five criminal laws, namely:

- **The Offences Against Property Ordinance** which deals with the crime of theft and armed robbery;
- **The Offence of Zina Ordinance** which relates to the crime of rape, abduction, adultery and fornication. (A man and a woman are said to commit Zina if they wilfully have sexual intercourse without being validly married to each other). The word Zina covers adultery as well as fornication;
- **The Offence of Qazf Ordinance** which relates to a false accusation of Zina;
- **The Prohibition Order** which prohibits the use of alcohol and narcotics;
- **The Execution of Punishment of Whipping Ordinance** which prescribes the mode of whipping for those convicted under the Hudood Ordinance.

The above laws have fixed a **Hadd (limit)** for the punishments to be meted out which are:

- **for theft:** amputation of a hand;
- **for robbery:** amputation of a foot or thirty whippings or death penalty according to specific circumstances enumerated in the law;
- **for rape or Zina:** if committed by adult, married Muslims, Hadd punishment is stoning to death; for adult non-Muslims, it is 100 lashes. Same for adult single Muslims;
- **for Qazf:** eight lashes;
- **for drinking alcohol:** eight lashes (for Muslims only).

The Hadd punishments are very often highly disproportionate to the crime committed. For instance, if a man is seen by two adult Muslim males to be stealing an object worth Rs. 2,200 (US\$100/=) from an **enclosed place**, he shall be punished by amputation of his hand. On the other hand, millions of dollars in cash or kind can be stolen by an adult Muslim in the sight of several women and/or non-Muslims, yet the offender escapes Hadd punishment and is given only Tazir punishment, which is only a token punishment.

Testimony of non-Muslims is allowed only where the accused is himself a non-Muslim. Thus, if a Muslim steals from a non-Muslim's house, the latter's evidence is not treated as evidence.

A female's evidence is not acceptable in awarding Hadd punishment, particularly in rape, where the victim's own evidence is of no value. Thus, a gang of men can rape all the residents of a women's hostel, but lack of ocular evidence of four Muslim males will rule out the imposition of Hadd punishment. Testimony of a Muslim female is totally unacceptable.

A minimum of two eye-witnesses are needed for all Hudood crimes except that of Zina and rape, for which four eye-witnesses are required who, in turn, should be adult male Muslims, except where the accused is a non-Muslim.

Obviously, these laws severely curtail the fundamental rights of the citizens, particularly the women and the minorities. These are in effect

discriminatory as far as they are concerned.

The Qanoon-e-Shahadat Order (Procedural Law of Evidence) of 1984 further aggravated the situation, as thereby the evidence given by a female either became totally unacceptable or was only worth half the evidence of a male, i.e. the evidence given by two Muslim females was equal to that of one Muslim male.

All the above laws were promulgated as presidential ordinances by the military regime of General Zia-ul-Haq but were given validation and indemnity against challenge in any court of law by the Constitution (Eighth Amendment) Act 1985.

Implications of the Eighth Amendment: The Eighth Amendment not only substantially changed the nature of the 1973 Constitution with respect to very fundamental and important provisions, but it has also generated a conflict and dichotomy with constitutional provisions.

On the one hand, the Constitution guarantees equality before the law (Article 25) and equal protection of law, while on the other, through the Eighth Amendment, it validates and protects laws which create inequality on the basis of sex, religion or sect and violate the very rights conferred by the same Constitution.

Under the Constitution, the courts are empowered to enforce fundamental rights and to hold any law contravening these rights to be void but in the presence of the protection given in the Constitution to discriminatory laws by the Eighth Amendment, this power of the courts has been severely abridged. As a result, all the constitutional guarantees for upholding the fundamental rights and the equality in legal status have become meaningless, particularly for the women and the minorities, as also to the workers.

How These Laws Affect Women's Rights?: The foregoing and several other legislations exist which deny the women of Pakistan their fundamental right to equality and basic human freedoms. The provisions for protective legislation have been used in a manner which negatively affect the rights of women. Under the garb of protection, certain laws violate women's fundamental human rights and also their basic civic and political rights.

For instance, apart from the Procedural Law of Evidence Order 1984 and

the Hudood Ordinances, which reduce the women of Pakistan to half-citizens and non-citizens, there is another law which discriminates even against their children. That is the Citizenship Act 1952. Under it, the children of a Pakistani mother do not acquire her citizenship, whereas the children born of a Pakistani father are entitled to Pakistani citizenship as a matter of right. In the area of personal status (family) laws also, no effort has been made to give equality to the legal status of women. In the area of divorce, the consequential financial settlements and the custody of the child, Muslim Pakistani women suffer a special disadvantage.

Before the Hudood Ordinances were introduced, adultery was a social crime, not a crime against the State. Today, anyone - husband, brother, mother-in-law or anyone in the street can simply accuse a woman of having committed Zina, which is now an offence as serious as murder. In effect, women who make the mistake of reporting a rape to the police have in many cases, faced the penalty of **Qazf** (false accusation of **Zina**).

The Qanoon-e-Shahadat (Procedural Law of Evidence) Order 1984 and the provision regarding proof of offences dealt with by the Hudood Ordinances severely curtail the legal competency of women with respect to the acceptability of their evidence in a court of law and their competency as attesting witnesses to any document dealing with financial matters or future obligations.

This is a deliberate derogation of the legal status of women. The Offence of Zina Ordinance of 1979, in particular, has clearly shown that not only does it deny women equality in the eyes of the law, but also denies them equal protection under law as guaranteed in the Constitution.

These discriminatory laws against women are responsible for the presence of hundreds of women, mostly from the lowest social stratum of society, in the various jails of Pakistan, the majority of them convicted of Zina.

This is the instance of a woman who spent four years in jail on the charge of Zina before being tried. When she was convicted, she was sentenced to serve only four months. The four years she spent awaiting trial went unaccounted.

How do these laws affect the minorities? Article 18 of the Covenant adopted by the UN General Assembly in 1966 defines the right to freedom of thought, conscience and religion. This right in an abridged form is also conferred on Pakistani citizens by Article 20 of the Constitution of Pakistan.

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What is really happening is that the minorities are blatantly discriminated against.

While non-Muslims, i.e., members of the minority communities, can be tried under the Hudood Ordinances, non-Muslim lawyers cannot appear in the Federal Shariat Court nor can non-Muslim judges preside over it. In other words, a non-Muslim cannot engage a non-Muslim lawyer to defend him in a Hudood case against him, nor will there be a non-Muslim judge in the final appellate court for Hudood cases.

Thus, these Islamic laws operating in Pakistan violate the UN Conventions as well as the provisions of Pakistan's own Constitution in that they curtail the fundamental rights of the members of the religious minorities.

Qisas and Diyat Ordinance 1990

This is in fact the Criminal Law (Second Amendment) Ordinance (VII of 1990) promulgated by the President of Pakistan on 5 September, 1990. This replaced the previous legislation regarding offences against human life. This Ordinance generated a massive protest from vehicle drivers of Pakistan because it bound them to pay from their own pockets the 'diyat' - compensation payable to the heirs of the victim of rash or negligent driving.

Before the introduction of this Ordinance, if a fatal accident took place, the company which had insured the concerned vehicle and the Pakistan Motor Transport Federation jointly paid compensation of Rs. 16,000 to the family of the deceased and in case of accidental casualty, only a few thousand Rupees. Now, the employers would refuse to pay monetary compensation worth about 50 tolas of gold to the family of the person who gets killed in a road accident. The worth of the said weight of gold at the present rate is estimated to be between Rs. 150,000 and 170,000. The driver who normally draws a meagre salary would not be able to pay the compensation from his own pocket.

It was but natural, that the drivers who invariably come from the poorest stratum of society revolted against this unjust law. In October, 1988, the entire transport in the country came to a standstill as drivers all over the country went on strike and refused to budge till the law was annulled. This direct assault on the fundamental rights of the drivers, in the name of Islam, was so successfully resisted by the drivers that the government was forced to back out and prescribe group insurance covering both the drivers and the

owners, to take care of the payment of **diyat** in the event of accidental death at the hands of the drivers.

IV. THE OUTLOOK FOR THE TRADE UNION MOVEMENT AND HUMAN RIGHTS IN PAKISTAN

The foregoing assessment shows that in the post-independence period, an extremely restrictive system of industrial relations has developed in Pakistan.

Devised basically to fulfil the needs of rapid industrialisation with phenomenal profits for the local as well as foreign capital while ensuring their secure and unhindered operation, this system is geared towards securing permanent subordination of the workers on the one hand, and the removal of conflicts from the work place, besides preventing such conflicts from developing into class conflicts, on the other. To this end, the system seeks to turn the unions, whenever and wherever they are allowed, into instruments for disciplining the workers.

In the system, the prominent elements relating to the two main rights of the workers, i.e., the right to organise and to bargain collectively, are:

1. It allows the right to a small number of workers, as is evident from the list of exclusions in the Industrial Relations Ordinance 1969 as amended from time to time.

However, even when the workers may have the right to form unions, they may be deprived of the right to bargain by, for example, being brought under the purview of the Essential Services Act 1952. On the other hand, the non-availability of an unconditional right to strike has the effect of severely limiting the capacity to bargain with the employers. As the right to strike has been made conditional on fulfilling lengthy mandatory procedures, the attempts to use this right often prove extremely frustrating and counter-productive.

2. The law only provides for the formation of plant or establishment-based trade unions. It also allows multiplicity of unions in each plant and for compulsory registration and certification of unions and their consequent regulation and policing by the Registrar of Trade Unions. As a result, the independence of the unions is drastically curtailed. The multiplicity of unions at plant level and the inability to form industrial unions militate against any effective collective action on the part of the workers.

3. And, finally, the mandatory conciliation, arbitration and adjudication processes have the effect of keeping the trade union leaders involved in spending most of their working time away from the work place and the membership.

The unions, thus, end up having to waste their scarce financial resources on very often fruitless legal activities rather than being able to use them in strengthening their organisation or in the welfare of their members.

The State coordinates the above system of labour control through, mainly, the Ministry of Labour and various other administrative agencies.

The system, for the most part, functions quite effectively. However, there are times when rank and file workers, frustrated by the multiplicity of procedures and the impossibility of achieving any meaningful redress through the prescribed channels, are forced to resort to collective actions. These actions invariably take a militant form.

It is at this juncture that the State comes out with the ultimate weapon - State terror - which is then let loose on the peaceful workers. Arrests of the activists, imprisonment without charge or trial, physical torture and finally the indiscriminate killings of scores of workers are the end result. The senseless killing of workers in Karachi in 1951, 1963, and in 1972, in Faisalabad in 1958 and in Multan in 1978 are but a few examples from the past.

Apart from these extreme cases, police intervention in industrial disputes, invariably on the side of the employer, is a matter of daily routine in the industrial estates of Pakistan.

Recurring political instability, long periods of Martial Law and the accompanying suppression of all basic rights, polarisation of the people on narrow ethnic, linguistic, religious and sectarian lines and the frequent spells of depoliticization are some additional factors inhibiting the development of free trade unionism in Pakistan.

Outlook for the Immediate Future: Following the October 1990 general elections, a new government headed by Mian Mohammad Nawaz Sharif, a leading industrialist, has come to power in Pakistan. It is dominated by the Islami Jamhoori Ittehad (Islamic Democratic Alliance) - IJI - an alliance comprising the Pakistan Muslim League as its major component and

comprising a number of small parties including religious fundamentalist groups like the Jamaati-Islami and the Jamiatul Ulema-i-Pakistan (Niazi group). The new government leadership was closely associated with the Zia era, and Prime Minister Nawaz Sharif and some of his close colleagues have been strong defenders of Zia-ul-Huq's international and external policies.

The new government has already initiated moves to de-nationalise State-owned industries, banks and autonomous corporations and to launch an industrialisation programme, with private entrepreneurs playing the dominant role. When this programme gets going, tens of thousands of workers are going to lose their jobs.

There is going to be widespread labour unrest and the government will most surely step in to defend the industrialists whose sole aim will be to net maximum profits. There will be more stringent measures to curb the rights of the workers and further limit their trade union activities. Labour protest can assume violent proportions which will invite more repressive laws and actions from the government.

The Gulf Crisis is going to further aggravate the situation. On the one hand, thousands of workers are returning from the Gulf and will be desperately looking for jobs, which the country does not have. The sharp fall in foreign remittances which had, for many years, constituted the major portion of the country's foreign exchange earnings, is already contributing to a deepening of the general crisis in the economy. The massive increase in the price of petroleum products - 11 per cent - and the resultant rise in the prices of various commodities and services of daily use have made life intolerable for the common masses.

All these point to the possibility of the new government adopting ruthless measures to contain public resentment and further curtail their basic rights and freedoms, particularly the workers' right to trade union activities.

In such a situation, the outlook for not only the trade union movement, but for human and democratic rights of the people in Pakistan is rather bleak.

SRI LANKA

I. THE SOCIO-ECONOMIC HISTORICAL BACKGROUND

Forty-two years after becoming an independent nation, Sri Lanka's record in the sphere of trade union, democratic and human rights has sunk to a low level. It can fairly be said that the country has a facade of democracy, but little of the substance of a truly democratic structure.

Sri Lanka (formerly Ceylon) never had an authentic nationalist movement, committed to a struggle for independence from colonial rule. From 1931 to 1947, Ceylon had a State Council, elected on the basis of universal adult franchise under the Donoughmore Constitution, which granted a limited degree of self-rule, subject to the power of veto of the British Governor. In 1947, Britain granted the Island a new Constitution (the Soulbury Constitution), which permitted antonomous rule in respect of domestic affairs. Dominion Status was granted in 1948. Simultaneously, the government signed a defence treaty with Britain, allowing the use of the naval base of Trincomalee and the air force base at Katunayake by the British. This treaty remained in force for eight years after independence, until it was abrogated by the government of S.W.R.D. Bandaranaike in 1956.

Although sections of the Ceylonese middle class were inspired and influenced by the epic Indian struggle for independence, the national political leadership never, at any stage, contemplated launching a similar nationalist movement in this country. Instead, it relied entirely on petitions to the British Secretary of State for the Colonies and negotiations with the British government for constitutional reforms. Independence, when it came, was a by-product of the Indian independence struggle. Britain's interest in Ceylon was primarily due to its strategic importance to the defence of the British Indian Empire. With the demise of the British Raj in India, Britain's interest in maintaining its colonial regime in the Island became redundant, particularly as the country's political leadership at the time was willing to protect British economic interests.

The historical background explains the country's lack of economic development since independence, which lies at the root of widespread social unrest and the growing authoritarianism to control and contain it. In the absence of a nationalist struggle for independence, there was no commitment to break clear from a colonial type economy and launch a programme of progressive industrialisation, without which the country could

not be developed, both economically and socially. Sri Lanka's economy remains predominantly agricultural and the country's export earnings are dependent mainly on primary products. The tea & rubber plantations remain the cornerstone of the national economy.

Adverse global market trends and falling foreign exchange earnings have compelled various governments since independence to start various industries. The basic trend, however, has been towards achieving self-sufficiency in food production. The bulk of capital investment by the State has been in multipurpose irrigation schemes designed to increase the area of cultivable land in order to increase food production and, at the same time, alleviate the problem of landlessness and mass unemployment. Whatever industrialisation has taken place, has been for the limited purpose of import substitution, in order to reduce growing balance of payments problems.

All major basic industries, such as steel, petroleum refining chemicals, fertiliser, ceramics, etc. have been launched by the State. The private sector's contribution towards industrialisation has been mainly in light manufacture and confined to production of footwear, readymade garments, soft drinks, cigarettes, liquor, beer and food processing. While production of various rubber goods has been developed to some extent, the overwhelming bulk of Sri Lanka's natural rubber is still exported as the raw product. Statistically, readymade garments have displaced tea as the largest source of foreign income from exports; but these statistics are misleading. About 80% of the inputs of the readymade garments industry are imported and only 20% of its export value represents net foreign exchange earnings. By and large, the private sector in Sri Lanka is oriented to the import-export trade and not to industrial production.

Since 1977, the UNP governments of President J.R. Jayewardene and R. Premadasa have established what is called an "open economy". What it has meant in plain language is unrestricted imports, mostly of non-essential goods, whose main impact has been the strangling to death of a number of local industrial units and consequent unemployment. A number of small and medium industries have been opened in the Export Free Zone by foreign firms in collaboration with local investors, but their impact on the balance of payments and unemployment problems has been marginal.

In the context of virtual economic strangulation during the 42 years since independence, ever increasing unemployment and underemployment became the major destabilising factors in Sri Lankan society. According to the

last national census (1981), only one-third of the population above the age of ten years was identified as being economically active. Far more important is the fact that the growth of the labour force is lagging behind the growth of the population. In the ten-year period (1971-1981) the population registered a 17 per cent increase, while the labour force increased by 11.8 per cent only. This is a steadily widening gap and there is little doubt that this year's census will show a greater discrepancy in the two growth rates. The situation has been exacerbated by Sri Lanka's high literacy rate of 88 per cent, the result of free education from primary to university levels. This is exceptionally high even by international standards and second only to Japan in Asia. This means that the overwhelming majority of young persons entering the labour market annually have had a formal secondary education, while a substantial number possess university degrees.

At the time of the presidential election in December, 1988, it was admitted by the government that over 50 per cent of the population was in receipt of food stamps. This indicates that more than half the families in this country are unable to earn their means of subsistence and live below the poverty line. An official report of the Medical Research Institute in 1986 stated that over half of those in the school-going age group were suffering from malnutrition and that this was a major problem among adults too.

What is called the "ethnic conflict" in the northern and eastern parts of the country, is in fact an armed conflict between State forces (mainly Sinhala in composition) and a Tamil separatist movement. Unrest, particularly amongst the Sinhala youth in the rest of the country, led to widespread armed violence in 1971 and again from 1987 to 1989. Both the conflicts in the North and the East, and the violence in the South, are directly linked to the deteriorating economic situation and the inability of the national economy to provide gainful employment to an increasing segment of the population, mainly its educated youth.

The inability of successive governments to take meaningful steps to develop the national economy has brought the country to a state of near bankruptcy. Since 1977, in particular, the government has been totally dependent on massive borrowing, both foreign and domestic, to balance the annual budget. Servicing the foreign debt now absorbs about 30 per cent of total export earnings. Inflation is rife and the purchasing power of the Rupee has been steadily eroded. The cost of all essential goods and services has

risen to unprecedented levels. The efforts to contain the resultant social unrest have led to increasing authoritarianism and the systematic erosion of the fundamental rights of the people.

II. TRADE UNION RIGHTS

The right of workers to form trade unions is recognised in the Constitution of Sri Lanka; but Convention No. 87 of the ILO on Freedom of Association of workers, has not been endorsed by Sri Lanka up to now. There is also no legislation to protect workers from victimisation by employers for joining a trade union in the public or private sectors.

The Trade Unions Ordinance of 1935 provides for the registration and control of trade unions by a labour authority, the Registrar of Trade Unions. The Ordinance requires submission of annual returns to the Registrar, with other particulars relating to the office-bearers and executive committees of trade unions, their rules, etc. Cancellation of the registration of a trade union would make its continuance unlawful. In certain instances, emergency regulations have been used to proscribe trade unions. This happened in the case of the Public Service United Nurses' Union, when its members in State hospitals went on strike, on pay and other demands in 1986.

The right of workers to strike is implicitly recognised by the definition of a strike in the Trade Unions Ordinance as "the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under the common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment". There is no law, however, to protect workers against dismissal or replacement during a strike. Termination of employment by reason of a strike can, however, be made the subject of an industrial dispute under the Industrial Disputes Act, which provides for adjudication on such a matter. Reinstatement can be ordered in such a case. In July, 1980 about 40,000 workers, mainly in the public sector, were declared to have vacated their posts under an Emergency Regulation, and were dismissed, as a result of an abortive attempt of several trade union organisations, led by Opposition political parties to stage a "general strike".

Despite complaints made to the ILO and repeated protests and appeals in Parliament and outside, most of the dismissed strikers were denied reemployment for several years. Ultimately, those in the government services were reemployed on various conditions, or treated as having been compulsorily retired.

During World War II, Defence Regulations were framed banning strikes and providing for compulsory arbitration in industrial disputes. Despite the illegalisation of strikes, however, major strikes took place, especially on the plantations, which were then mainly owned by British companies. A major stay-in-strike in a large textile mill also took place in open defiance of the Defence Regulations. At the end of the War, the Defence Regulation lapsed. Major strikes took place thereafter, at the end of 1945, and in 1946 and 1947, involving tens of thousands of workers in the public and private sectors. In what became a virtual general strike in May/June 1947, the police fired on a demonstration of workers on strike, killing a government clerk and injuring several others.

Thereafter, the British Governor enacted the Public Security Ordinance, providing for the declaration of a state of emergency and the banning of strikes and processions, press censorship, arrest and detention without trial, and various other forms of suppressing or restricting democratic rights and civil liberties, including trade union rights. Since then, there have been repeated declarations of and prolonged states of emergency, under the Public Security Ordinance and the Public Security Act, which replaced the Ordinance after the parliamentary form of government was established in 1947. Under the circumstances, repression of trade unions and the suppression or illegalisation of strikes, under "Essential Services Orders", have been prevalent in Sri Lanka.

In October, 1979, the Essential Public Services Act was enacted, to enable the President to illegalise any strike in any service he might declare to be an "Essential Public Service", before or during a strike. This was at a time when there was mounting protest against the repressive legislation enacted by the UNP Government headed by President J.R. Jayewardene. It followed the attempt made by that government to dismember the entire trade union movement under draft legislation published in a White Paper on Industrial Relations. As a result of mass trade union protest, backed by international trade union protest, the government withdrew the White Paper.

It was in this context that Mr. S. Thondaman, President of the Ceylon Workers' Congress, a major union of plantation workers, affiliated to the ICFTU as a "national centre", voted for the Essential Public Services Bill. He then stated that he supported the Bill as President of the CWC and not as a minister of the government, to which he had been appointed by President J.R. Jayewardene. The CWC was subsequently disaffiliated in 1981 from the IUF, to which it was also affiliated, on a decision of the 19th

World Congress of the IUF, by reason of Mr. Thondaman's support of the Essential Public Services Act and for his support of the use of emergency powers subsequently, to repress the July 1980 strike previously mentioned, in which about 40,000 workers were dismissed, including workers under his own ministry.

Trade union rights in the public services have been restricted ever since a major strike in the public service, that took place in May, 1947. The Trade Unions Ordinance was amended in 1948 to include special provisions applicable to trade unions of public officers. This was a direct result of a major strike of trade unions of government workers and associations of public officers belonging to a loose organisation called the Public Service League. They had demanded full trade union and political rights. The strike collapsed following police firing at a combined demonstration of workers on strike in the public and private sectors, in which a government clerk was killed, as mentioned earlier. By the Trade Union Amendment Act of 1948, restrictions were placed upon trade unions of public officers, whereby the registration of trade unions of public officers including any person in the employment of the government of Sri Lanka, was confined solely to public officers in any one specified department or service of the government or belonging to any specified class or category of public officers. Furthermore, associations of officers in the judicial, prison and police services and members of the armed forces were deemed not to be trade unions, and were thus denied the right to strike. The result of the restrictions imposed upon trade unions of public officers resulted in the compartmentalisation of their unions, making it extremely difficult for them to combine effectively for collective bargaining. One result of this has been that such unions have become linked to a large extent with political parties through which they have sought to protect and promote their interests.

The trade union movement in the public sector has been gravely weakened both by the compartmentalisation of trade unions in the public services as well as by the political divisions within it. In the private sector, the trade union movement is unevenly developed and is also adversely affected by political divisions. In the circumstances, the implementation of labour laws is very difficult in respect of vast numbers of unorganised or ineffectively organised workers, especially in rural and semi-urban areas.

Even the implementation of minimum wage legislation, and decisions of Wages Boards on other terms and conditions of employment, such as working hours, overtime, leave and holidays and legal provisions for provi-

dent fund payments are incapable of enforcement for large sections of the country's workforce.

Trade union organisation itself and trade union education are also severely hampered by employer hostility to trade unions and their denial of leave and other facilities for holding meetings in workplaces, for trade union or workers' education purposes.

Restriction or suppression of democratic rights such as right to picket and the right of public processions or demonstrations are of special importance to workers' organisations, like the trade unions, as mentioned in the section of this report relating specifically to democratic rights. In fact, such rights including the right of free speech and publication and public assembly are essential to the organisations of workers. Throughout the post-war history of (Ceylon) Sri Lanka, the use of emergency powers to restrict or suppress these rights has been a feature of all the parliamentary governments that have held office, especially since 1970. This has been a major movement in the country, which has in turn facilitated the undermining of the parliamentary democratic system itself, as mentioned elsewhere in this report.

III. DEMOCRATIC RIGHTS

Universal adult franchise was introduced in Sri Lanka (then Ceylon) by the Donoughmore Constitution and the country's first popularly elected legislature, the State Council, came into being in 1931. Thereafter, elections in Sri Lanka, including those to local government bodies, were based on universal franchise. This position was radically changed in respect of the vast majority of plantation workers, numbering nearly one million persons of recent Indian origin, by legislative acts of the first parliamentary government that took office under a new Constitution, introduced in 1947, as explained later.

The minimum voting age was originally 21 years, but this was reduced to 18 years in 1959. The units of local government are Municipal Councils, Urban Councils, Town Councils and Village Committees. District Councils were established in 1981 and later replaced by Provincial Councils.

The State Council was divided into various Executive Committees, each dealing with a particular subject or subjects. Each Executive Committee elected its Chairman, who became the Minister in charge of that subject or subjects. The Board of Ministers comprised the Chairmen of the various

Executive Committees plus three ex-officio members, the Chief Secretary (who was Chairman of the Board of Ministers), the Financial Secretary and the Legal Secretary. These three were government officials and were not elected but appointed by the British Governor.

There was no party system and elections were contested largely on personalities, with racial, caste and religious factors predominating. Even after the development of the party system, these considerations played a dominant role, with a few notable exceptions. Political parties generally selected their candidates in accordance with the ethnic, caste and religious composition of the electorate. In the context of the social changes that have taken place during the last twenty years, however, these considerations have lost much of their former importance.

There was no cabinet responsibility in the State Council, as in a parliamentary system, and the colonial Governor continued to hold the reins of power. The parliamentary system, with collective cabinet responsibility, was introduced in 1947 by the Soulbury Constitution; and after independence in 1948, the Head of State was the Governor-General, appointed by the Queen (as Head of the Commonwealth) on the advice of the Prime Minister.

The first parliamentary general election held under the Soulbury Constitution, in September, 1947, was based on universal adult franchise, as under the previous Donoughmore Constitution. The first UNP government, that took office following the results of that election, enacted a series of legislative measures whereby the vast majority of plantation workers of Indian origin were denied the right to Ceylon citizenship, and also deprived of the franchise, which was limited only to Ceylon citizens by descent or by registration, under the new laws.

The immediate and main reason for this attack upon the basic democratic rights of a major section of the population of Ceylon in 1947, on grounds of racial origin, was that seven representatives of the Ceylon Indian Congress (CIC), who were elected to the first parliament in the plantation districts, in which workers of Indian origin predominated, joined the Opposition in that parliament, which was headed by a left (Socialist) Party, the Lanka Sama Samaja Party (LSSP), at the time. This gave rise to what came to be known as the "Indian problem", that is, the problem of nearly a million people, mostly plantation workers of Indian origin, having been rendered stateless.

The "Indian problem" became an issue between successive governments of India and Ceylon. It also became an issue in Ceylon between the working class movement and successive Ceylon governments, as the removal of a major section of the working class from the arena of parliamentary and local government politics, the so-called democratic political process, mainly benefitted the right-wing political parties, based upon the Sinhala masses, namely the UNP and the SLFP (Sri Lanka Freedom Party), headed by S.W.R.D. Bandaranaike and a section of the UNP, that broke away from the governing party in 1951.

As a result of negotiations between the SLFP government of Mrs. Sirima Bandaranaike, elected in 1962, and the Shastri government in India, an agreement was reached between the two governments, known as the Sirima-Shastri Pact. Under that agreement, in 1964, 375,000 persons of Indian origin in Ceylon were to be granted Sri Lanka citizenships, and 600,000 persons were to be granted Indian citizenships, and repatriated to India. This agreement ignored the wishes of the hundreds of thousands of human beings who were to be dealt with under it. Despite the pressures brought to bear upon them and inducements offered to them to conform to the terms of the agreement, which was to be implemented or to lapse in 15 years, that is, in October 1981, only 506,000 applied for Indian citizenship, but with no desire on the part of most of them to be repatriated to India. 94,000 persons applied for Sri Lanka citizenship, in addition to the 375,000, who were eligible to apply under the agreement. In practice, the agreement was not implemented in respect of most of those persons who had applied for either Indian or Sri Lanka citizenship. The result was that they remained "stateless", and hereby shut out from the "democratic political process", till 1985, that is, for over 35 years since the "Indian problem" was created, under several successive governments. These included the United Front (coalition) government of 1972-1977, headed by Mrs. Bandaranaike's SLFP, with the LSSP and CP participating in it. In the meantime, the Ceylon Indian Congress Labour Union (CICLU), set up by the CIC, representing Indian business interests, in 1939, had changed its name to Ceylon Workers' Congress (CWC), headed by Mr. S. Thondaman.

Despite the CWC's affiliation to the ICFTU and representation at ILO Conferences, the issue of statelessness of the majority of plantation workers in Sri Lanka does not appear to have been raised in these bodies by the CWC. The main reason for this was probably that the CWC sought to settle the "Indian problem" by negotiations with the successive UNP and

SLFP regimes. J.R. Jayewardene, who headed the UNP government elected in 1977, with the full support of the CWC, included Mr. Thondaman as a Minister in his Cabinet, representing the "political wing" of the CWC.

Even thereafter, Mr. Thondaman's collaboration with the UNP regime did not resolve the problem for several years. Finally, in 1986, the UNP government enacted a law called the Grant of Citizenship to Stateless Persons (Special Provisions) Bill, under which the stateless persons who were to receive Sri Lanka citizenship were to be granted certificates of citizenship. Over 230,000 remained stateless in that category. In addition over 237,000 who were to have been granted Indian citizenship, also remained stateless. This category was subject to threat of repatriation, whilst remaining in the country without political rights. This deplorable situation, which is comparable to that of the 'blacks' of South Africa, has hardly received any attention in the United Nations or elsewhere internationally.

A senior government minister, Lalith Athulathmudali, presented the Grant of Citizenship to Stateless Persons (Special Provisions) Bill to Parliament on 9th November, 1988, shortly before a presidential election was to be held. In doing so, he stated that the Bill was intended to resolve the problem of statelessness, the history of which he recounted. He concluded his speech by quoting the Leader of the Opposition, Mr. Anura Bandaranaike (son of Mrs. Bandaranaike), as having promised plantation workers that the SLFP would attempt to grant citizenship rights to Tamil estate workers if they would vote for the SLFP in future elections.

Mr. Bandaranaike had requested the support of Mr. Thondaman, as President of the CWC, in his speech made on 31 August, 1988. It is thus clear the UNP government tried to secure and in fact secured Mr. Thondaman's CWC's support in the presidential election of December 1988, and in the General Election of February, 1989, by enacting the abovementioned Bill. Nevertheless, even today, it is difficult to say how many stateless persons still remain, due to the administrative delays that have stood in the way of the registration of stateless persons, either as Indian or as Sri Lanka citizens. In any case, over 200,000 persons registered as Indian citizens remain without political rights and under the threat of repatriation, i.e. deportation.

In 1972, Sri Lanka became a republic and the Governor-General was replaced as Head of State by a President, who was appointed by the Prime

Minister. This was a purely ceremonial post, the President being a constitutional Head of State, with strictly limited powers.

The United National Party contested the 1977 parliamentary general election on a pledge to introduce a new constitution, providing for an executive presidency, and this was introduced in 1978. The first Executive President (J.R. Jayewardene) was elected by Parliament, but the Constitution provided for the President to be elected thereafter by popular vote on a nationwide basis. Under the 1978 Constitution, the Executive President exercises the entire executive power of the State or delegates his powers at will. He is both Head of State and Head of Government and appoints the Cabinet of Ministers and presides over its meetings. The Prime Minister is prime minister in name only. It has been Sri Lanka's tragic experience that the system of executive presidency has been an unmitigated disaster. It has led to a virtual presidential dictatorship and has fatally undermined the parliamentary democratic political system. The country is officially known as the Democratic Socialist Republic of Sri Lanka; but in practice it has retained only the appearance of parliamentary democracy and is completely subject to global capitalism.

Under the Donoughmore and Soulbury Constitutions, the life of the legislature was limited to five years. (During World War II, the term of the second State Council, which was due to expire in 1941, was extended by the British Governor until 1947, when it was replaced by the first parliament elected under the Soulbury Constitution.) The electorate was divided into constituencies and members were elected on a "first past the post" basis. Under the present Constitution, this has been replaced by a system of proportional representation worked out on a district basis. The cut-off point was originally fixed at 12 per cent, but this has been reduced to 5 per cent.

The first republican Constitution of 1972 increased the life of parliament from five to six years and the present Constitution provides for the same period. Sri Lanka is probably the only country in the world where an elected legislature can remain in office for six years, unless it is dissolved by the President earlier.

In the period 1942-1977, the parliamentary and local government electoral system operated to effect political change. Eight parliamentary general elections were conducted during this period and on no fewer than seven of these occasions, the party in office was defeated. The only party to win two consecutive terms of office up to 1977 was the United National Party, in 1947 and 1952.

By the device of a referendum held in December, 1982, the term of the parliament elected in 1977 was extended for a further six years by a bare majority of votes. This referendum followed a presidential election held in October, 1982, in which President Jayewardene was elected for a six-year term. Both the presidential elections and the referendum were conducted in a manner that resulted in public confidence in the electoral process being gravely undermined. Intimidation of voters took place openly and ballot rigging as well.

In his official report to parliament on the referendum, the Commissioner of Elections himself commented on open and widespread breaches of electoral laws. In relation to the presidential election, Rohana Wijeweera, the JVP leader, who was himself a candidate, filed a petition in the Supreme Court challenging the election of J.R. Jayewardene as President, alleging several election malpractices. His petition was dismissed for default of his appearance when the petition was taken up by the Supreme Court, because the JVP had been proscribed by that time, and Wijeweera had gone into hiding.

Apart from undermining the parliamentary democratic system and public confidence in the electoral process for changing governments, President J.R. Jayewardene's UNP government also seriously undermined the previously existing system of local government. It established a system of District Councils, and later, Provincial Councils, with inadequate powers and means of serving the needs of their constituents. In the District Council elections and in the Provincial Council elections also, there was open intimidation and interference with the electoral process.

It is in this context that the breakdown of the rule of law in Sri Lanka and the turn to violence and terrorism by substantial sections of the population, particularly among the youth, has to be considered.

Apart from undermining the entire democratic electoral process, the UNP government, elected in 1977, like the previous United Front government headed by the Sri Lanka Freedom Party (SLFP), and including the two traditional left parties, the Lanka Sama Samaja Party (LSSP), and the Communist Party of Sri Lanka (CPSL), curbed or suppressed democratic freedoms, under prolonged states of emergency by emergency regulations. The democratic right of public procession (demonstration) has been suppressed since 1970. The only exception was May Day, the traditional International Workers' Day. In 1971, however, public meetings or public

processions were disallowed even on this day, by the then United Front government.

Under the Emergency Regulations, likewise, both the United Front government and the UNP government have repeatedly suppressed or restricted other democratic freedoms, like the freedom of press and publication, freedom of association and meeting, etc. Both governments have likewise resorted to mass arrests and detentions without trial, as well as massacres of large numbers of people suspected of being "subversives" or terrorists. The UNP governments elected in 1977 and 1989 have resorted to attacks upon democratic rights and civil liberties on a much larger scale than the previous SLFP-led government did. This has been due mainly to the armed struggle of the LTTE and other Tamil separatist groups that had developed in the Northern and Eastern provinces since 1979, and due to the political violence and terrorist activities of the JVP between 1987 and 1989.

The population of Northern and Eastern provinces have lost all their democratic freedoms under the conditions of civil war that have developed due to the armed struggle of the LTTE and other separatist Tamil groups.

It is necessary to recognise the fact that both the JVP, calling itself the "People's Liberation Front" and the LTTE, claiming to champion the cause of the "liberation" of the Tamil-speaking people from discrimination and/or oppression by Sinhala-dominated governments, have shown total disregard for the democratic as well as human rights of all groups and persons who did not conform to or opposed their policies and activities. They have thus contributed in large measure to the adoption of repressive and counter-terrorist policies of the governments against which they took to armed violence. They have served at the same time to provide these governments with a pretext for suppressing and restricting peaceful forms of working class and mass activity both on the trade union front and in the political area.

IV. HUMAN RIGHTS

Violation of human rights in Sri Lanka brought the country into international disrepute. Its record in this respect compares with the situations that have existed in certain African countries, like Uganda under Idi Amin, and in Latin American countries, like Argentina, Chile and El-Salvador, under military dictatorships. Terrorist killings have taken place on a large scale,

accompanied by counter-terrorism by State forces, resulting in the deaths and disappearances of tens of thousands of people.

The spiral of violence in the country had developed especially after a UNP government took office in July 1977, with an 80% majority in parliament, and established a virtual dictatorship under a presidential constitution, a year later.

In the Northern and Eastern provinces, an armed struggle has developed since on a demand for the creation of a separate State for the Tamil speaking people in those two provinces (Eelam). This was headed by the Liberation Tigers of Tamil Eelam (LTTE), which was responsible for the killing of an army officer and 13 soldiers (all Sinhalese) by a land mine in July 1983. This incident served as a pretext for the launching of an anti-Tamil "programme" in Colombo and various other parts of the country, on a scale and with a degree of brutality that shocked local and international public opinion.

The government claimed that the anti-Tamil violence was the result of what is called "a Marxist terrorist plot" to overthrow it; but this was totally discounted by responsible observers, including the representatives of the international media who rushed to the scene. It was widely accepted that the violence, in which a large number of innocent Tamils were killed and extensive damage was done to Tamil-owned business and property, was led by sections of the ruling United National Party (UNP).

In order to lend colour to its charge, the government proscribed the Communist Party, the Nava Sama Samaja Party and the Janata Vimukthi Peramuna (JVP) and detained a number of their leading members, including a Communist Party member of parliament. After a brief period, the proscription of the CP and NSSP was lifted and their members who had been detained were released. The JVP leaders, however, evaded arrest and went into hiding. The entire organisation went underground. Eventually, the JVP launched its own campaign of violence in the rest of the country, especially in the Southern province where it was particularly strong.

The JVP came into existence during the late 1960s with a radical programme that gained support for it mainly among Sinhala youth in rural areas or who had entered the universities from those areas.

During the parliamentary general elections in 1970, it campaigned for the Sri Lanka Freedom Party/Lanka Sama Samaja Party/Communist Party-United Front, which won a two-thirds majority in parliament and formed the new government.

Hardly a year later, the government began to repress the JVP, by arrests of its members, who were suspected of subversive activity, that is of an intent to overthrow the government by force. In March 1971, a state of emergency was declared by the Prime Minister, Mrs. Sirimavo Bandaranaike, and about 4,000 youths were rounded up in various parts of the country, particularly in the Southern Province, and detained with trial. Large numbers of them were beaten up by the police in the process. The JVP retaliated by an attempt at an armed uprising against the government, which commenced with attacks on several police stations on 5 April, 1971. Armed mainly with shotguns and illegally manufactured hand-bombs, the JVP groups that resorted to these attacks were easily repelled by the police in most areas, and the uprising was crushed by combined police and military action in a few days.

Thereafter, what followed was a virtual massacre. An emergency regulation provided for the cremation or burial of dead bodies without identification or inquest. Thousands of youths were killed and their bodies were disposed of under this regulation. About 18,000 others were arrested and detained, without trial, for prolonged periods. Many of them were subjected to torture, and information and confessions were obtained from them thereby.

After 1977, the UNP government of President J.R. Jayewardene and his successor, President R. Premadasa, have repeated the same methods of repression and counter-terror that the SLFP-led government of 1970-1977 did. Many of the emergency regulations used by the successive governments have been the same, including the regulation mentioned above permitting the disposal of dead bodies without identification or inquest.

Amnesty International has published a comprehensive report on extrajudicial executions, disappearances and torture in the period 1987 to 1990. The following paragraph from the introduction to the Amnesty report is sufficient to indicate its contents :

"Gross and widespread human rights violations in Sri Lanka have persisted for over seven years against a background of armed opposition to the government. Disappearances and extra-judicial executions have been reported with increased frequency since mid-1983. For four years, these serious human rights violations were concentrated in the northeast of the island, where since the late 1970s, opposition groups have engaged in an armed struggle to establish a separate Tamil State. After July 1987, however, armed opposition to the government also escalated in the Sinhala majority areas of southern Sri Lanka; reports of "disappearances" and extra-judicial executions in the south increased alarmingly during counter-insurgency campaigns there, which were particularly intense in the second half of 1989".

An aspect of human rights that is often overlooked but is receiving increasing attention in the United Nations is the right of human beings to decent conditions of existence, apart from the right to life and liberty, and freedom from torture or other forms of inhuman treatment.

The United Nations adopted a declaration in May 1986 on the "Right to Development as a Human Right", and the U.N. Human Rights Commission held a global consultation on the implementation of the right to development in January, 1990. In Sri Lanka, and most other countries of the Third World, that is, the ex-colonial and semi-colonial countries of Latin America, Africa and Asia, as well as Oceania, the masses of substantial sections of the population live in conditions of extreme poverty and misery, in slums of big cities, as well as in villages and hamlets. Their conditions of life result in human degradation. Women and children are more often than not the worst sufferers.

Amnesty International has stated that it believes that resorting to excessive measures to counter violence often contributes to escalation rather than reduction of conflict and violation of human rights.

It has also reiterated its belief that extrajudicial executions, "disappearances" and torture can never be justified, even when armed opposition groups resort to widespread violence, as has been the case in Sri Lanka. While these beliefs are justified, it must be borne in mind that the primary cause of strife and human degradation in Third World countries is the

exploitation of the resources by the so-called First World. The transnationals, the international financial institutions like the World Bank and the International Monetary Fund, and the governments that collaborate with them in the exploitation of the resources and the peoples of the Third World must also, therefore, be held responsible for violations of human rights and the denial of the right to a decent existence of human beings in these countries, together with the governments and ruling elites in them.

1. The undersigned hereby certifies that the information furnished in the foregoing is true and correct to the best of his knowledge and belief, and that he is not aware of any information which would cause the foregoing to be false or misleading.

PART V

DECLARATION

DECLARATION

PREAMBLE

The General Situation

In South Asia, only less than 10% of the total workforce is organised in trade unions. These unions are mainly plant or enterprise-based unions. Only in a few sectors like banking, insurance etc., industrial unions do exist. However, this is an almost negligible phenomenon. There exists a multiplicity of unions within each plant/enterprise.

The unions in turn are affiliated to a large number of central trade union organisations/national federations. These federations are often formed around different political and/or ideological preferences.

The trade union movement in South Asia is extremely fragmented, divided and therefore, weak and limited in scope. Another important characteristic is that almost all the unions and the membership exist in the organised/formal sectors of industrial and services sectors. These sectors employ on an average around 10-15% of the total labour force. Thus, the overwhelming majority employed in the informal and agriculture sectors remains unorganised.

Although women form a substantial part of the workforce, their numbers in the membership as well as in the leadership of trade unions remain negligible.

Reasons for the Low Level of Unionisation

The low level of unionisation can be attributed to the existing economic, social, cultural and legal structures on the one hand, and to the inadequacies of the existing forms of organisation, their way of functioning, their focus and leadership on the other hand. The technological changes and the changing forms of work organisation have also had the effect of restricting, even effecting a decline in the number and membership of trade unions.

The intervention of countless political parties has also had the effect of dividing and weakening trade unions. Cultural biases militate against active participation of women workers and other marginalised groups.

However, the repressive and anti-labour nature of the South Asian States constitute the major obstacle in the way of workers' organisations and the

development of independent, strong and democratic trade union organisations. Very high rates of unemployment, dire poverty and illiteracy only add up to the above factors to further deteriorate the situation.

In the light of the above, the following **DECLARATION** was adopted by the Conference in its closing session on 15 March 1991:

"It is agreed that the participating unions shall collaborate with each other multi-laterally and bilaterally in relation to trade union, human and democratic rights in South Asia.

In pursuance of the above, we have adopted the following recommendations:

- * A Co-ordination Committee consisting of 3 members from each country (preferably representing the 3 ITSs) be formed to carry out follow-up activities.
- * Formation of a permanent monitoring/research and education cell on trade union/democratic and human rights in South Asia.
- * Arrangements for dissemination of Conference materials in local languages in each country.
- * Holding of national Conferences on the theme in all South Asian countries within the year 1991 in co-operation with the 3 ITSs. At least one representative of all the participating organisations in the Conference to attend each national Conference, if possible.
- * To work jointly for compilation of a South Asian labour history highlighting the impact of colonial/imperialist rule in our countries.
- * All participating organisations to take measures to ensure effective participation of women members at all levels. For example, efforts should be made to nominate at least one woman in the delegation to Conferences organised by either an ITS or a national centre.
- * Special efforts to be made to facilitate organisation of women workers as well as their adequate representation at all levels in trade union organisations.

- * The trade unions in South Asia should take practical steps to organise the workers in the home-based/informal/unorganised sectors as well as in the agricultural sectors.

Further, concerted efforts should be made to achieve the following :

1. A unified Labour Code on basic labour rights in South Asia.
2. Ratification and implementation of all fundamental Conventions of ILO by South Asian countries and deletion of all escape clauses from the ILO Conventions/relevant Articles of all country Constitutions/from all relevant labour laws, to bring them in line with the provisions of the Universal Declaration of Human Rights.
3. The trade union movement to oppose military action by one country of South Asia against another. It will further work towards creation of conditions for lasting peace in the region.
4. The abolition of prior visa restrictions on visits with each other by workers' representatives and citizens of South Asian countries.
5. Closing of ranks by the working class of South Asian countries to counter the mounting imperialistic onslaught and evolving of joint strategies to respond to organisations like the International Monetary Fund (IMF) and the World Bank.
6. Fixing of one day to be observed by the South Asian trade unions as a "Trade Union, Human and Democratic Rights' Day".

The Conference is of the view that the advancement of the trade union movement of South Asia and the achievement of the objectives agreed upon by this Conference require unity among trade unions and their independence from governments."

PART VI

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This is a highly detailed and dense black-and-white illustration. The central focus is a collection of prominent international labor union logos, including FIET (International Federation of Textile Workers), IUFUTA (International Union of Furniture and Timber Workers), igfi (International General Federation of Industrial Workers), MIFBVFIM (International Federation of Metalworkers and Ironworkers), ISETU-FIET (International Union of Shipyard Workers), IFPAW (International Federation of Public Affairs Workers), ITFPAW (International Transport Federation of Airway Workers), and others. These logos are interspersed with a vast array of small, whimsical cartoon drawings depicting people in various work environments: factory workers, office employees, students, farmers, and individuals in specialized roles like a chef or a scientist. The overall composition is a vibrant representation of global labor diversity and solidarity.

**INTERNATIONAL TRADE SECRETARIATS ARE
WORLDWIDE ORGANIZATIONS OF NATIONAL UNIONS
FROM A PARTICULAR TRADE OR BRANCH OF INDUSTRY**

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