भारतीय मजदूर संघ
BHARATIYA MAZDOR SANGH

A Firm

'No'

to Labour Reforms

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Bharatiya Mazdoor Sangh

On

Labour Law Reforms

I. The Background

The Mirage of New Reforms

In the new era of globalisation, workers are looking upon every change proposed in labour laws with caution. So changes that can create confidence among workers are required.

Since 1990s, on the basis of LPG (Liberalisation, Privatisation and Globalisation), New Economic Policy is being experimented in our country as is done in many other countries of the world. As a part of the New Economic Policy and LPG, a package of labour reforms is also being introduced in our country. In content it is only the old western principles of exploitation in new form. Previously several reports which are controversial like Narasimham Committee report, Montek Singh Ahluwalia Committee report on 'employment opportunity', Geetha Krishnan Committee report on expenditure reforms, Rakesh Mohan Committee report on privatisation in Railways, planning commission sub committee report, Report on "review of laws" of 2nd National Commission on Labour etc. have been instrumental to propagating this Capitalist ideology while

making their recommendations. They discuss about curtailing the rights of workers and giving unfettered rights to employers against workers. But the subsequent year saw policy correction in form of special group emerging under Leadership of Dr. S.P.Gupta. The so called new reforms have put reverse gear to the advent of workers of the country to their long cherished dreams of decent work as said by ILO and decent wages.

Western Model of industrial relations

Industrial Disputes Act is the base law on industrial relations in our country. It was the result of the British idea of industrial relations which is adapted from the west. There the industrial relations were based on the concept of master-servant relations. It was only a refined form evolved from the practice of slavery and feudalism prevalent there. It was industrial revolution that transformed the status of workers. Still in content it reminds us of the feudal principles. Master has all the powers to deal with the worker according to his whims and fancy. That is why even today the reformists in our country are shy to recognise workers as human beings. They do not consider work with dignity. Previously employers and their organisations were shy of using the word 'hire and fire'. It was considered as an uncivilised term. But on the advent of the new reforms it has assumed status. Now employers and their organisations in the country have started demanding their unfettered 'right of hire and fire'!

Decent work

Our traditional concept of industrial family, the ILO concept of decent work, idea of social partners etc. are indicative of the basis for an alternative paradigm. Historically, when the western labour scenario of the olden times was gripped in slavery and feudalism, India had a long period of ordinary worker having dignified and respectable position in the society. Viswakarma who was the propounder of many types of works was elevated to the position of a 'deva'. This points to a shift in present paradigm.

Industrial Family and Class conflict theory

Major part of last century witnessed our labour relations being based on class conflict theory. Interests of employers and workers were moving parallel without a meeting point. The western concept of industrial relations proposed collective bargaining as the method of resolving strained industrial relations. Employer and workers sitting on both sides of the table bargaining for their economic gains was the method. The 'class' which had the maximum bargaining power naturally will win the game. The western concept of survival of the fittest and struggle for existence and the similar class conflict theory became the order of labour field. Industrial harmony and industrial peace remained hollow slogans unfitting to the said paradigm. Propounders of conflict see conflict in every social institution. Where as we put forward concept of industrial family. Hence a paradigm shift is needed in labour thinking.

Dignity of labour

The word 'labour market' is commonly used by the propagators of globalisation. Not only the Government documents, but even trade unions by mistake use the word. The word 'labour market' indicates that workers are mere commodity subject to purchase in the market, as vegetables can be purchased in vegetable market. This show the reforms fail to recognise the worker as a human entity.

Similarly there are several terms indicative of specific ill motivated concepts that are ruling the labour scenario which requires correction, such as employment market, industrial 'disputes' act, adversary, class feeling, etc.

Flexibility should have a positive meaning

Flexibility should mean bending without breaking. According to Indian industrialists, flexibility means right of management to "adjust" their labour force from time to time according to their whims and fancy. For the purpose they cited China as an example. But during our study visit to China by 2nd National Commission on

Labour, it was seen that in special economic zones of China foreign investors want flexible licence procedures devoid of technicalities and red-tapism and not flexible labour laws. So in successful Chinese industrial sectors flexibility has a positive meaning. In China, foreign investors claim right to open new ventures. But in India the word "flexibility" has an entirely different and negative meaning. Here management associations are more upon right to closure of an undertaking. Instead of talking about developing viability of establishments, they talk of closing down 'unviable' establishments. This thinking of unsuccessful employers is the root cause for the controversy around Chapter VB of Industrial Disputes Act.

Vanishing local industries

In our country, small-scale industry and cottage industry are sounding their death knell, with the onslaught of multinational giants entering the domestic markets in the name of FDI. There is depletion in indigenous entrepreneurs, not to speak of local job creators, giving rise to other allied problems like increase in crime rate, migration and avoidable urbanisation.

Industrial sickness is basically due to management failure

Industrial sickness is basically due to management failure. The present tendency is to shift all the blame in the industrial field on the shoulders of workers. Reserve Bank of India has come out with annual surveys on industrial sickness. They have found that 65% of the cause is contributed by inefficient management. Only 3% is contributed by workers and their strikes. The rest are because of various other reasons. Mismanagement is the major hindrance to high level performance of our industry in the time of competitiveness. Labour demand mitigation of the loss due to mismanagement. For the failure of management, worker should not suffer. So it is fundamentally wrong to say that labour laws are a hindrance to industrial progress. There should be evolved a fool proof system of developing management skills in the country. Skill development of workers comes only next to it. Marketing is an

area where generally our entrepreneurs fail and where Multinationals succeed.

Worker's interest is national interest

The impression expressed by many including the Hon'ble Supreme Court in the Government employees' strike case, that a worker is different from the common man requires correction. 40% of the population of the country are workers. Adding their family members to it, it covers major part of the population. Hence it can be reasonably presumed that the 'interest of the workers is the nearest equivalent of National interest'.

Slogan of Employment Generation

New reforms have many deceptive slogans. 'Employment generation' is one such catching caption commonly used. In the name of employment generation, they propagate retrenchment, closure, flexibility etc. which are basically contradictory and against employment principles. Many of those representing employers are not ashamed to propagate this contradiction. The new reforms have resulted in down-sizing the organised sector and pushing it into the unprotected unorganised sector.

Labour Displacing Technology

Our National economy badly requires employment-generating technologies. In the west they have more capital and less number of workers. In countries like Japan where there is paucity of human resources, labour displacing technology is appropriate. That is why at one time they thought of engaging robots for different types of works. But India is a country where there is a large army of unemployed youths in the waiting. It is a crime to add a part of our working population also into such a group in the name of down sizing etc. We find the labour displacing philosophy of unsuccessful employers in closures, exit policy, VRS, downsizing (or the deceptive term -"right sizing") ban on recruitment, NRF, closing PSUs or privatization, thoughtless mechanization or computerization, shifting regular jobs to contract

system, 'hire and fire' slogan etc. Hence all our planning and reforms should be labour intensive and not labour displacing.

'Technology without retrenchment'

Because of the shameful failure of our planners, any new machine coming to our country throws hundreds of workers out of their jobs. Hence Bharatiya Mazdoor Sangh had been demanding the Government to constitute a National Technology Commission or to appoint national technological ombudsman to monitor technological advancement. BMS is further demanding since 1993 for a round table conference of Economic interests to formulate a comprehensive technology policy. Even the term 'appropriate technology' is given an undignified meaning. The appropriate paradigm would say that India requires labour intensive technology, labour intensive planning and labour intensive deployment of labour instead of the present labour displacing ones. Maximum production by maximum hands; or productions by masses instead of mass production are maxims which are relevant even today. Idea of 'Technology without retrenchment' should form a part of our technological policy.

Concept of Social partners

The western capitalist society in their own country had discovered that giving worker the status of partner in the business is more productive and profitable for them. Many Companies prefers to give their shares first to workers, before they are being allotted to others. The idea of social partners recognises three groups interested in the industrial progress, viz. the employers, workers and the consumers. The fruits of gains and demerits of the industry should be shared by all the three partners alike. Then only they will display a real sense of belonging to the industry. Then only the rise and fall of the industry will become a do or die business for the worker as well. This paradigm shift is the immediate need of the hour in our country.

Every change in our labour scenario should be friendly to

all the social partners. The present technological policy is not labour friendly. When technology advances the fruits of technology should be shared by the three social partners, viz. employer in the form of profits, worker in the form of higher wages and reduction in working hours, and consumers in the form of reduction in prices. Mechanisation or computerisation for the worker means displacing or replacing worker with machines. Arrival of a new machine should help workers to reduce their working hours and their burden rather than displacing the workers out of work. Machines and computers are to assist human beings and not to displace them, nor become their masters. In reality what happens is that by the introduction of mechanisation or modern technology employer reduces the number of employees thereby reaping more profits for him and adding to unemployment in general in the society without any benefit to the society by way of reduction of price.

Mistaken notion about Work Culture

Every transformation has to be basically cultural. Transformation of a system is possible even by changes in the statute. History has many such examples. But changing the mindset of the society is a difficult task, which requires Himalayan efforts and will-power of National leaders.

We have to bear in mind that India is the country that had taught the world for the first time about work culture (Vritti dharma) by saying 'work is worship'. Today many of those who show their concern on industrial development advice the workers about the importance of work culture. It is true that the concept of work culture has not gained much significance in the present social set up. Countries like Japan had progressed miraculously and became the leading industrialised nation in the world within a short span of time, mainly because the Japanese people showed a high sense of work culture. Hence by showing a high degree of work culture at all levels which is a non-economic factor of development, no doubt our country can progress in the industrial field as well.

But at the same time there is another side of the coin. Generally work culture is mistaken as workers' culture alone, increased working hours and decreased holidays. It is not a one-way traffic. Work Culture is not worker's culture alone, it includes employer's attitude as well. Only contented and satisfied workers can contribute to the development of industry. Work culture should start from above. The employer also has to display a high work culture. In countries like America, this is distinctively named as 'corporate ethics'. When employers of our country show Shylockian attitude, how are they justified in advising their workers to show work culture? So a beautiful blending of work culture and corporate ethics will result in a healthy industrial culture. For that change in mindset or attitude of the management is required. Trade Unions also should be able to discard their bread butter trade unionism and resort to genuine trade unionism.

Strike and Alternate redressal mechanism

B.M.S. is of the view that strike should be peaceful and used as a last resort when all other attempts to settle the issue have failed. But workers can think of discarding strike altogether as a means of redressal, only if there is an effective alternate redressal mechanism. From the time of Mahatma Gandhiji, strike was used as an effective means of establishing worker's rights. It is only natural that when the doors of protest are closed there should be an alternate opening to ventilate the grievances. Complex and protracting Court procedures can never be a solution for the immediate problems of the labour sector. When different sectors of the society like lawyers, government servants etc. are one by one denied this basic right by the various Court verdicts, it can be anticipated that the same fate will follow for the other sections of the working people.

There should be effective redressal mechanism to make strike superfluous. Any constraint on strike or giving exemption to certain sectors from labour laws should be preceded by a "self restrictive, alternate and effective redressal mechanism" evolved

through consultation with trade unions. Then the strike can be the last resort. The effectiveness of such a mechanism will be such as to render the strike superfluous. Hence to achieve harmonious industrial relations, Government should evolve a mechanism that would render the right to strike a superfluity. By restraint on strike in many public utility services the employer's benefit or profit is safe where as only worker's rights are affected.

Work culture and Token strike

In countries like Japan where employers show a high level of work culture strike is almost a superfluity. There token protests by workers are heavily honoured. Token strike has relevance only in a world where conscientious employers show high moral level. Unfortunately that is miserably lacking in our country. The situation in India is just the reverse. During the recent Kerala Government employees strike, only after nearly one month of strike Government was ready for even to talk to the striking employees, that also under heavy public pressure. How can such Government be given the power to prohibit strike? Hence in the present situations, the main purpose of strike is to pressurize the employer, which will not be achieved by token or symbolic strike. We oppose strike ballot also on the same lines.

The Supreme Court verdict is fundamentally wrong

Supreme Court verdict in the case of Tamil Nadu Govt. Employees' strike, that Government servants have no right to strike is hasty and fundamentally wrong. The passing reference on sections of workers other than Government employees is not technically binding on the worker community of the country as Central trade unions were not heard on the matter. Supreme Court ought to have sought the opinion of the recognised Central trade unions before passing its far reaching remarks on such a subject. The experience of those who are associated with labour problems for many decades should have been considered by the Supreme Court. Any way we can hopefully expect that the Supreme Court will reconsider it in the review petition pending before it.

Behind legislating innumerable labour laws and establishing workers right there is a long history of struggle and strikes. In the present globalised society, where lakhs of people are thrown out of jobs and the labour issues are getting more and more complex, this verdict will not serve any national purpose. Hence BMS will try its level best to retain the right to strike.

Government employees' Strike

In Government service and public utility services, imposing restrictions only on employees and nothing upon State or employers is unwise. It will give unfettered right to management to exploit workers. By restraint on strike in many public utility services (termed as socially essential services also) the employer's benefit or profit is safe where as only worker's rights are affected. Government should not have the authority to prohibit a strike as that will only ignite the emotions of the workers and strike will there by be shrouded with sacrifice.

Lock-out Versus Strikes

The strikes are down and Lockouts are rising. It is amazing that in countires like U.S., percentage of lockouts is very high (2% strike and 98% lockouts). The economists have articulated an index called intellectual intensity of strikes. That helps calculating as to, on an average how many days the strikes went on and as to how many days the lockouts endured. This shows that the man-days lost in lockout are three times more (11,500 man days on strikes while 34500 man days in lockouts during 1991-2000).

Report of 2nd National Commission on Labour

The report of the 2nd National Commission on Labour appointed by the Central Government contained both pro labour reforms as well as anti labour reforms, on which dissenting note was submitted by the BMS. The Note of Dissent of BMS now has become a part of the Labour Commission's Report and hence a part of history. It was a sad thing that the INTUC representative has endorsed fully the anti-labour proposals in the report. There

were mainly 8 issues on which BMS had submitted its dissenting note. They are:-

1. Chapter VB of Industrial Dispute Act should not be scrapped, instead its scope should be enlarged.
2. Regular work should not be converted to Contract labour.
3. Strike ballot was opposed as any attempt to restrict right to strike will be objected by BMS.
4. No. of Holidays should not be reduced.
5. Working hours should not be increased from 8 hours to 9 hours.
6. There shall not be exemption to labour laws in any work.
7. Commission's recommendation on outside leadership and on political fund was opposed.
8. On basic philosophy and approach like certain terminology used, flexibility of labour laws etc, and on issues like secret ballot, bonus ceiling, right to work etc.

II. Specific Issues on Labour Laws

Anti labour amendments

BMS feels that the present labour laws are outdated and do not cater to the solving of present day industrial problems. But on the guise of reforming it, the new legislations should not turn anti-labour. All such anti labour proposals in the new legislations should be filtered.

Chapter VB

Chapter VB prescribes prior governmental permission for retrenchment, lay off and retrenchment in large industries having more than 100 workers. Retrenchment, lay-off and closure are

detrimental even to the society. Intention of Ch. VB is to discourage them through prior permission procedure. Provision for Government scrutiny will discourage unscrupulous and malafide closure, retrenchment and lay off.

Hence BMS would recommend for -

1. Removing the limit of applicability of even 100 workers
2. Applying Ch. VB to all establishments in which employer-employee relations exist apart from the present position of application only to factories, plantations and mines.
3. Workers be protected well in the event of unavoidable retrenchment or closure, by adequate compensation and provision for re-employment.

Job security should be a basic right of worker

2nd National Commission has rightly recommended that after 2 years of working a worker should be treated as permanent worker. Job security is an important right of the worker accepted for a long period of time. But in many industries workers are retained in the name as contract workers, low paid women workers, badli, casual, temporary, part time, trainees, probationary, apprentice, migrant labour, child labour, bonded labour etc. They are retained for even beyond 10 years in permanent vacancies. This is a clear abuse that is to be totally curtailed and penalized. Hence job security should be a basic right of worker.

B.M.S. Demands Total Prohibition of Contract Labour

In spite of the Nation entering the new millennium, workers in our country are still under primitive working conditions. Contract labour is an area where workers are exploited in inhuman working conditions. Supreme Court has pointed out in Gujarat Electricity Board case that the system of contract labour is equal to human trafficking. This decision is not overruled in spite of the recent judgement in SAIL case which permitted contractualisation of sweepers etc. in government establishments. The present law on

the subject viz. Contract Labour (Regulation and Abolition) Act, 1970 is inadequate to recognise the gravity of the problem or to meet the challenges posed by it.

The ground realities are that the employers favour contract labour, as exploitation of worker becomes easy. They prefer contract labour system because of two main reasons, viz. workers need be given only lower wages and they can be thrown out at any time. This is sheer exploitation. Hence the direction of reforms should be to do away with the modern method of human trafficking in the name of contract labour. Contract labour causes down sizing of permanent employees and those entire jobs get shifted to Secondary jobs. There is big chasm between levels of decency in primary jobs and secondary jobs.

Exploitative philosophy of capitalism in the name of flexibility uses insecurity brought about by contract system as a method to create artificial efficiency. The tragic plight of contract worker is still worsened by the advent of labour law reforms during the 1990s. The reformists strongly advocate and pressurise the Government to legislate progressive contractualisation of regular jobs. Consequent to it various Governments like Andhra Pradesh have brought new anti labour amendments to the existing law. Amendment to Industrial Employment (Standing Orders) Central Rules was also brought about in 2003 to facilitate contractualisation. These are all against the concept of decent work advocated by I.L.O. BMS strongly opposes such moves and demand the following:

1. After two years of working every worker should be treated as a permanent worker as recommended by the 2nd National Commission on Labour.
2. Regular work should not be converted to contract labour. Any attempt to shift regular work to contract work should be punishable under law. An illegal activity should not be legalised. It is a country wide phenomenon that regular jobs

in organised sector are being converted into contract jobs. Many industries have even 80% percent of their regular work being allotted to contract work permanently. Due to ban on recruitment since last more than 25 years, vacancies of work in quasi governmental services are being managed through contract or casual workers. For example in Andhra Pradesh State Electricity Board, 50% of the workers are contract workers.

3. The schedule to contract labour should be amended to include all employments under its purview, instead of the present way of covering only a small number of scheduled employments.

4. Contract labour and other exploited categories like women, badli, casual etc. should be given the wages and all other benefits which a regular worker gets, so that the employer will not engage contract labour for the purpose of monetary gain. Principle of "Equal pay" for equal work for contract workers should be modified to "equal pay and all other benefits" on par with regular workers. There after principal employer will not employ contract labour for the sake of undesired monetary gain. Principal employer, being the ultimate beneficiary, should be held liable not only for all the wages under Sc.21 (4) but also all benefits payable to the contract worker.

5. The legal body for recommending abolition of contract labour should also be empowered to order absorption of contract labour by Principal employer.

6. Effective steps should be taken to prevent contractors and the principal employers from not registering or obtaining license under the Act so that they are made accountable to the labour enforcement machinery. Some of the exploitative advantages of the employers through contractualisation includes: Non payment of proper wage or low wages, no necessity to pay allowance, fringe and other benefits, no

contribution to social security measures like EPF & ESI, easy dispensability by termination of contract, Unspecified work load and working hours, absence of trade unions, squeezing worker to the maximum under force, coercion and fear of insecurity, minimum litigation etc.

7. All the working conditions should form part of labour contract and principal employer should be held directly responsible for all these in case of default by contractor. While considering the lowest rate and quotation for contract works from the contractor, principal employer usually do not specify the work load and job content, number of workers to be engaged, payment of proper wages & other benefits including leave and holidays, 8 hours working, ensuring safety requirements at the work place, fulfilling social security obligations like EPF & ESI, gratuity, bonus etc. As a result the contractor employs less number of workers than are required, makes them overwork, more often for more than eight hours a day. In many places contractors deduct contributions to Social Security schemes from the wages of the workers, but they abscond without depositing even their own contributions.

8. Existing contract labour should be abolished and contract workers should be absorbed as permanent workers of the principal employer. Contracting out or specifying in the labour contract about fixed period of service and termination after that, is denial of the basic right of job security.

9. Right for continuity in service and job security should be treated as basic rights of worker. In perennial and continuous jobs, successive contractors are engaged by principal employer. At every termination of contractor, there is an artificial break and the contract labour also gets terminated. In such a compelling situation, hapless contract worker has to compromise with poor working conditions without protest. Contract workers also lose job when contractors desert them. There is no reemployment or extension of service. Hence

continuity of service is to be assured to the worker when contractor is changed. It shall be mandatory for the principal employer as well as new contractor to engage the same contract workers already in job when there is change in contractors.

10. Principal employer should not be given chance to split up the contracts into several smaller units of less than 20 workers with the malafide intention of taking the establishment out of the purview of labour laws including contract labour Act. Andhra Pradesh has rightly has made the Act applicable to contractors employing even 5 workers.

11. Principal employer or contractor should not be permitted to bypass legal provisions on prohibition of contract labour. Sometimes licence for engaging contract labour is obtained for non-prohibited jobs but workers are compelled to perform prohibited jobs. The workers are recruited for non-prohibited jobs and attendance is marked for such jobs. In some establishments contract workers are recruited for certain jobs and are made to work as domestic servants in the residence of officers and supervisors. Their work load is also added to the remaining workers.

12. We reject the recent attempt by the Governments to create a new category in perennial (permanent) jobs called "non-core activity" and to exclude non-core activities from the purview of Contract Labour Act. The terminology of core and non-core activity is thoroughly unrealistic. Andhra Pradesh Government has brought a recent amendment to classify jobs into core and non-core activities. Non core activities includes jobs like: security services, canteen, house-keeping, hamalies, electrical maintenance, air conditioning equipment maintenance, water supply and sewage, sweeping and scavenging, gardening, horticulture repairs, maintenance of building and roads etc. Thus principles of natural justice and fair play are violated.

13. Government of India should encourage vigorously the policy decision to give labour contracts to labour co-operative societies so that outside exploiting contractors can be eliminated. This decision had been implemented only in a few establishments.

14. Ensure implementation of the provisions of various labour acts to the contract labour.

15. Contract labour engaged in organised sector should not be classified under "unorganised sector", but be termed as an "exploited sector", as the employer can be identified and the establishment can be located.

16. Unions should enrol contract labour in Unions of permanent workers. Many a time union demands are confined to future contractualisation of regular jobs and not on the plight of the existing contract workers. For granting recognition to unions, membership among contract, casual workers etc. are excluded. There shall not be separate unions for regular and contract-casual etc. type of workers.

17. Compelling contract and casual workers to attend duty when permanent employees go on legitimate strike should be made punishable as it is an unfair labour practice under Schedule V of Industrial Disputes Act.

18. Home based workers should be included in the definition of "worker" under Sc. 2(i)(c) of the Act like that in Beedi and Cigar workers (conditions of work) Act, 1966.

19. Both the Central as well as State Governments should appoint committees to investigate the establishments in which contract labour is engaged.

Central Government should convene a trade union meeting to bring about the pro labour amendments to the Contract Labour Act.

Right to Strike

Supreme Court verdict that Government servants have no

right to strike had flared up nation wide controversy. Any move to restrict the right to strike is undemocratic. Right to strike should be included as a fundamental right in the Constitution. It is to be protected as a basic right.

Simplification and codification of existing labour laws

Codify labour laws into the following categories:- 1.Industrial relations 2.Wages 3.Social Security 4.Safety 5.Welfare and working conditions.

Right to work and 'Decent work'

BMS demand that right to 'decent work' should be made a fundamental right in Constitution. The so called new reforms have put reverse gear to the advent of workers of the country to their long cherished dreams of decent work as put forward by ILO and decent wages. Prosperous India is not in their agenda.

Decent Wages

Decent work includes decent wages and decent working conditions. There should be a National policy on Minimum wages with regional variations. One major reason for Migrant labour is wage disparity from region to region.

Wage and inflation

During sixties the proponents of capitalism propagated an academic theory that inflation is the result of increase in wages of workers especially the salaried sector. But later on the theory met with natural death. Such pseudo-theories or deceptive concepts are being created and propagated by the Goebels of Globalisation even today. Unfortunately our intelligentsia as well as those at the top of our Country are carried away by such propaganda.

Bonus

Bonus is differed wage until the gap between the living wage and the actual wage is removed. BMS view is that-

1. 8 1/3% should be the minimum bonus even for the small enterprises

2. There shall not be ceiling on maximum percentage of bonus payable. Employer's discretion to share his profits with workers as a token of their contribution to the success of the establishment should not be curtailed by such an irrational ceilings.
3. Ceiling of eligibility limit (Rs. 3500 now) and calculation limit (Rs. 2500 now) of salary also should be raised to the level of living wages.

Wages and Productivity

BMS demands that-
Productivity should not be automatically linked with wages. But beyond minimum wages productivity can be a subject for negotiation with unions as in workload agreements.

Working women

Working women are always a symbol of sacrifice, shouldering multifaceted responsibilities such as that of working woman, family responsibilities etc. Rights of working-women have to be recognised. Hence in the labour sector two vital issues concerning women are the subject of contentions among the various women movements all over the world. They are:

1. Advancement on women's paid work:- Equality bargaining is the new area where working women's issues are settled.
2. Recognition of women's unpaid work:- This addresses the issue of employment Vs family responsibilities. For example, in a family where both husband and wife are employed, wife alone is burdened with the additional functions of domestic work and child care apart from the job work. This has to be mitigated by providing corresponding concessions and flexible working arrangements at the work place. Women organisations have demanded to include unpaid work in national statistics and accounts. Further the definition of "economically active persons" should include women performing unpaid productive tasks.

ILO has identified the economic and social impact of Structural adjustment programmes on women at the global level as the following: -

- Women' increasing poverty and marginalisation
- Deteriorated conditions of work
- Feminisation or massive representation of women in informal sector activities -Rural women deprived of land, credit, and technology
- Increasing female heads of households
- Lack of data on women's productive activities and contributions to national development

These points to the need for special attention to rights of women in the background of changed global economic scenario.

2nd National Commission on Labour in spite of its shortfall of advocating present reforms, has rightly corrected the commonly used patriarchal term of 'workman', and instead proposed the gender neutral term of 'worker'. For the purpose amendments in all the existing laws is required.

Some other broad issues concerning women are:-

1. Equal (non-discrimination) opportunity for appointment to jobs, employment and training
2. Equal treatment in job and remuneration (paid work)
3. Recognition of women's unpaid work and harmonizing family and job responsibilities
4. Health (Increase life expectancy, maternity and nursing) and family welfare
5. Promotion of peace at home and working place- against violence and sexual harassment at work place
6. Improved working conditions like prohibition of night work etc.

7. Enforcing protection laws, labour inspection and supervision
8. Gender auditing and machinery to deal with women issues
9. Women's autonomy and empowerment of women workers; participation in decision making process in workplace as well as in organisations
10. Women literacy, training and education (eliminate illiteracy and legal literacy)
11. Financial support to vulnerable group of women workers and Social security coverage
12. Gender Budgeting- Every budget from the point of women has to contain:
    1. Gender specific provisions- intended only for women.
    2. Gender neutral provisions- common to both men and women.

Closure of Industrial Units due to pollution

Development versus environment' or 'Sustainable development' is a contentious issue among different sections of social activists. It assumed new dimensions when an order of Supreme Court of India resulted in near closure of several industrial establishments. Supreme Court on 14-10-03 issued directions to comply the provision of Hazardous Wastes (Management and Handling) Rules, 1989. There was also a 'Joint Parliamentary Committee on Pesticides residues in and Safety Standards for Soft drinks etc.' appointed for the same purpose. SCMC(Supreme Court Monitoring Committee) also directed KSPCB (Kerala State Pollution Control Board) to close down forthwith as per Rules of 1989 all erring Industrial Units. In Kerala alone as per recommendations of SCMC, KSPCB has issued closure notice at the first stage to 247 major industrial establishments. SCMC also recommended, "closure of entire Udyogamandal Industrial Estate", the largest industrial area in Kerala, in case of non compliance of its directions.

BMS view on Pollution

Environment is a much greater concern for Trade Unions when compared to other NGOs. No Trade Union can support pollution of industrial units as the workers would be the first victim of pollution. But Jobs and earning for food are equally essential just as air and water. Hence BMS urged the Government to take steps to curb environmental pollution by Industrial units instead of the 'solution' to down shutters.

Even though several Trade Unions including BMS placed representations on their grievances on closure of industries, the SCMC plainly ignored their views. SCMC's views are biased and reflect the extreme views of the environmentalists and ignore a sustainable solution. The decision was unilateral and emotional and not a deep thought one. It would paralyse the industries and productive sectors of the State. BMS has demanded the State Pollution Control Board to constitute LAEC (Local Area Environment Committee) as directed by the Supreme Court (See Para 52, 55 of its order dt. 14-10- 03) with representatives of affected people and Trade Union representatives besides NGOs who demand closure. It will function at the cost of PCB and will conduct environmental audit of all units and perform other activities.

Lack of funds also should be mitigated by the Government. Obsolete technology & products, disposing hazardous wastes to rivers, lack of TSDF, contaminated ground water, open flouting of Air and Water Acts etc. are some of the environmental challenges resulted from the lapses of KSPCB, industrial management and the Government. Due to irresponsibility of them, workers should not suffer. Even though SC had issued the order 11 months ego, KSPCB did not care to act promptly by giving warning to the management. Installing of TSDF (Treatment, Storage and Disposal Facility) for effluent treatment and pollution control mechanisms would require time up to at least 6 months. It also involved heavy financial burden worth crores to the industries which many of them cannot afford. So, common TSDF for several industrial units lying nearby has

been suggested. Trade Unions urged action against the erring officials of the Board for their lapses and delays. Those employers who are responsible should be properly punished. Many of the units are owned by the Government, and closure will not be a worry for the management. Officials of such units also should be punished. Instead punishing those responsible for the sudden state of affairs, it is the poor workers and their innocent families who are getting punished on closure. Lakhs and Lakhs of workers and their families are being thrown in to the streets.

Social Security

India Labour Conference in 2003 was almost unanimous on the issue of bringing out a comprehensive package for social security. It would cover crores of workers of the unorganised sector and self employed low income earners (we call it Vishwakarma Sector). Subsequently it went into the cold storage due to objections from the finance ministry, since improving the unorganised sector comes last in their priorities. First priority of Finance ministry seems to be to woe their foreign masters. When Trade unions have raised the issue of social security bill, Government thought of postponing the legislation by again redrafting the already approved Social Security Bill.

Comprehensive law for unorganised sector

For unorganised sector, a comprehensive law is required. A central welfare fund for them is required. Budget allocation should be provided for Social Security and welfare of unorganised sector workers. Further BMS demands raising of the ceiling limit of EPF & ESI in tune with the periodic rise in wages and expanding its coverage to newer section of workers.

Exempting from labour laws

Commission was right in rejecting the demand for exempting export processing zones and special economic zones from the purview of labour laws. The SEZs and EPZs in India and elsewhere are slaughterhouses for employees. The labour laws being

prescribing minimum conditions, they must govern all the Industrial activities relating to workers. Government should not be given the arbitrary power to grant exemptions for the above reasons. Supervisory and managerial staff also should have right to redressal with regard to many of their wage and service conditions and should not be exempted from the purview of labour laws.

On Holidays

Instead of proposing reduced holidays (by saying tnat Indian workers have addiction to holidays), overtime work, encashment of holiday or extra wages for those workers who are already employed, we have to think of converting all these into additional employment as a part of our labour-intensive planning suitable for a country like India. Recently in Japan due to recession, unemployment increased and work decreased. Japanese Government immediately shifted their policy by encouraging workers to avail holidays and carrying on the propaganda about the benefit of taking holidays and spending time with families, so that additional work can be distributed among the jobless. This is the responsibility shown by the Government there.

8 hours working

Strangely according to 'reformists' flexibility of working hours means increase in working hours. Maximum 8 hours working per day is universally recognised. But this vision has not yet dawned in the minds our reformers. It is shameful that many of the Central statutes and some State statutes still prescribe 9 hours working per day.

8 hours working has got a scientific basis. A human being shall have 8 hours work, 8 hours rest and 8 hours leisure to constitute 24 hours a day. Leisure, rather than being a right, is a basic necessity of human beings. Law cannot and should not compel workers to be workaholic by over work. Basic principle that we have to bear in mind is that the level of human endurance and physical tolerance has got a saturation limit. Squeezing a worker

by overwork will not help the industry ultimately. Productivity graph of a worker goes down as he works for hours together. In order to reduce exhaustion, stress and strain and to generate more employment also it is necessary to reduce working hours. Even in the existing framework, in banking sector ATM, 24 hours-banking etc. are working successfully. First National Commission has suggested that working hours should be reduced from 48 hours to 40 hours. But 2nd National Commission put reverse gear to this proposal.

IT industry also poses health and mental problems to those who work continuously before computers. The radiation from computers adversely affects the health of such worker. A new branch called 'ergonomics' is to be introduced in labour laws, especially with regard to the newly developing I T industry. It also affects the worker by way of muscular-skeleton diseases (MSD) and monotony. Without a scientific study on ergonomics, it is dangerous to fix working time even for 8 hours. So there shall not be any exemption from Labour Laws to IT industry.

Separate law for Small enterprises

A proposal is pending before the Government in the light of the recommendations of 2nd NCL for a new legislation on the small scale establishments. The objective is to reduce procedural aspects and simplify the law as applicable to them and not to curtail the existing rights of the workers. Hence BMS has proposed in the dissenting note to the 2nd NCL, the following important clause to be added in the new Act:- "Notwithstanding anything contained in this Act, any existing provision in any of the laws which is more favourable to the worker shall continue to apply to them." Self-certification should not replace totally the existing inspectorate. BMS feels that there should be a bifurcation between conciliation officers and enforcing or inspecting officers.

Trade Union Recognition

With regard to recognition, BMS demands-

a. There should be secret ballot of all unionised workers and not check off system. Check-off system has its own inherent defects. In the long run it creates distance between members and the union thereby making the union to loose its grip over its members. This may be the intention of management.

b. Composite bargaining agency should be constituted on the basis of proportional representation instead of sole bargaining agency. Recognition procedure should not end in elimination of Trade Unions. Therefore instead of leading to sole bargaining agent, the system of composite bargaining agency should be evolved.

c. Unions getting less than 15% votes can be excluded.

Outside leadership

Trade union movement has progressed because of the initiative of outside leaders. Whatever idealism trade union movement had in the past and has even today is due to outside leadership. We should not forget that Indian Trade Union movement was initiated by great people like Mahatma Gandhi. So outside leadership should not be diminished, but a healthy proportion between outsiders and insiders in leadership has to be maintained. But outside political leadership or interference should be curtailed. Sc. 16 of Trade Union Act is such a provision providing for political fund which encourage out side political involvement.

Abuses in Trade Union field

Abuses in the field of trade union are not only a headache to employers but also to the trade union movement as well. Abuses include proxy or benami works done by some leaders, sale of jobs by workers, closed shop system, dadagiri trade unionism, professional trade unionism, politicisation of trade unions, criminalisation, union leader taking up contract work to earn money etc. These issues should be addressed directly and prohibited. Instead, many a times these issues are generalised and wrong remedies are proposed like taking away normal trade union rights, right to strike etc.

Inhuman working Conditions

Except in two states (Punjab and Kerala) out of 28 States, the average worker in the country especially in the village unorganised sector is compelled to work in inhuman working conditions and with inadequate wages. Migrant labour generally is the result of such inhuman situation.

Compulsory attendance in Conciliation

Trade unions have given evidence before the Commission that much conciliation fail because the management does not participate in conciliation proceedings in response to the notice of conciliation issued by the conciliation officer. So Commission should recommend in the chapter on review of laws that conciliation officer should have power for compulsory attendance of parties as in Civil Procedure Code.

Ratification of I.L.O. conventions

India still is a country that has not ratified many of the important ILO conventions. There should be an effective tripartite body to expedite and see, which all conventions should be ratified, and in what priority.

Skill development funding

Training and skill development should be basically an employer's liability, since he is the ultimate beneficiary by that. For that purpose a fund to be constituted with the source from employers' who are benefited by it. Ear mark a certain percentage of GDP for Social Security fund and not for training and skill development.

Problem of Unemployment

The wait list of 3.40 crores at the beginning of the last decade, swelled to 3.95 crores at the end. The youths registered at the 945 employment exchanges in the country were of the order of 4.11 crores in Feb 2004. As per the latest Survey published by GOI, the unemployment ratio is as high as 7.32% while in left

dominated states like Kerala and West Bengal it is 20.97% and 14.99% respectively.

With the advent of every couple of year the Technology is more labour saving. Indian Industry in order to pick up speed is downsizing Employees. Govt. has pursued the policy of ban on recruitment in Government jobs since 1986. The self employed sector, the Small Scale sector and tiny sector, if could pick up, can cater the needs of today.

The tireless hunt for jobs domestically and internationally by Indian capable youths is causing anxiety and frustration. Indian delegation to ILO in year 2001 had demanded the West to open up doors for jobseekers. The US is using the H1B Visa quota for Indians as a tool to force Indian interests to take to knees. The migrant Indian artisans, Engineers and Doctor do not get fair wages, fair treatment and equal opportunity. Opening foreign doors for Indian job seekers is major task for the Govt of India. The discriminatory regime must end.

Role of Government

In all these turmoil the role of Government is all the more ridiculous. It is identifying too much with the employers. Government also has started thinking trade unions as an unnecessary element in labour scenario. State Governments also are not behind this game. For example, In All India food & allied worker's Union case, State of Haryana was asked by the Supreme Court to submit a report whether in a particular job contract work is to be abolished. The Haryana Government filed a fake report against the contract workers which was caught red handed by the Supreme Court and the State Government was asked to pay exemplary costs of Rs. 10000 as a punishment (See (2002) 9 SCC 377). Thus the workers in the country would have become orphans, but for the Trade Unions.

Now the basic question arises as to whether the Government should act as a welfare State or as an umpire. With respect to

unorganised sector Government should act as a welfare state. In the organised sector it can play the role of an umpire.

Recent Legal issues

1. Management is pressurising Government to delete Chapter VB of the I.D.Act and to bring anti labour amendments to the Industrial Disputes Act, Workmen Compensation Act and other labour laws.
2. Amendment to Industrial Employment (Standing Orders) Central Rules was brought about in 2003 to facilitate contractualisation. It brings in a new category of workers called fixed term employees who are out of the purview of Labour laws. The appointments for a definite period are now legalised. Andhra Pradesh had made amendments affecting adversely the contract workers. The contractual system which so far had entered from back door now has legal sanction.
3. Proposal to eliminate labour inspectorate totally will raise exploitation of workers to the highest level. Corruption attached to inspectorate if any should be addressed in a different way. Head should not be chopped off to cure head ache.
4. Bonus (Amendment) Bill of 2002 enhancing the ceiling and eligibility limit has been put to cold storage.
5. Unorganized sector workers' Bill and comprehensive Social Security Bill are now lying in the cold storage. Provide budget allocation for Social Security and welfare of unorganised sector workers. Provide sizable budget allocation for the Fund to be constituted under Social Security Bill & unorganised sector workers bill.
6. The old Workers' Participation in management Bill also was promised to be revived but it was later abandoned. A session at Indian Labour Conference did discuss this topic at length. But the Employers do not think labour as a social partner to be around them on the Board of Directors. A grand opinion rousing wave on this issue could change the present impasse.

7. The law of recognition of trade unions in various industries are still primitive and ineffective that the subject is handled by the management at their whims and fancy.

8. There are concerted attempts to exempt important labour laws and social security benefits in Special Economic Zones, Export Processing Zones, foreign companies and joint ventures in states like Gujrat.

9. The snowballing Non Performing Assets in the financial Sector, brought integrity of industry into question and as such the policy makers felt the need to legislate the Securitisation Act. Recovery of previous resources created out of common savings was a major concern of all. But at the same time the enactment did not provide any protection to the labour's dues. BMS raised this issue before the Central Govt. and had demanded the labour's legal dues to be kept on par with revenue recovery in cases where the Securitisation Act came into play.

10. 12% Interest on PF.

11. Higher Courts in the country had been instrumental in protecting the rights of workers and evolving a worker friendly labour jurisprudence for the last 4 decades. Judgments like that in Bangalore water supply case etc. had given a new direction to industrial jurisprudence. But subsequent to the advent of LPG reforms, the trend had been reversed and several worker hostile pronouncements have come recently. The historic Gujrat electricity Board case highlighting the tragic plight of contract workers is still not reversed, but pronouncements that are against the spirit of the case has been made in SAIL case etc. which permitted contractualisation. Similarly the SC pronouncement on right to strike had created lot of controversy. Verdict on eligibility limit of Rs. 1600 in ID Act is another example.

Conclusion

All these reforms reigns not because there are no alternative, but because it is being propagated by powerful capitalist lobby in whose hands lay the entire media capable of influencing our intelligentsia. It is unfortunate that Globalisation has received a divine position in the hearts of many of the opinion makers. The peculiarity of the present reforms is that it is not created by us, but is thrust upon us from outside. The said reforms do not have a positive direction and does not display a paradigm suitable to our situations. It is not based on our ethos, cultural values or tradition. Hence it is not late for us to review it and substitute it with a paradigm suitable to our Nation.

वन्दे मातरम्

वन्दे मातरम्।
सुजलां सुफलां मलयजशीतलां।
शस्य श्यामलां, मातरम्।।
शुभ्र–ज्योत्सनां पुलकितयामिनी,
फुल्ल–कुसुमित–द्रुमदल–शोभिनी,
सुहासिनीं सुमुध्र भाषिणीं
सुखदां वरदां मातरम्।

कोटि–कोटि कंठ–
कलकल–निनाद–कराले
कोटि–कोटि भुजैर्धृतखरकरवाले,
अबला केनो माँ एतो बले
बहुबल धरिणीं, नमामि तारिणीं
रिपुदलवारिणीं, मातरम्।

तुमि विद्या, तुमि धर्म।
तुमि हृदि तुमि मर्म,
त्वं हि प्राणाः शरीरे।
बाहुते तुमि माँ शक्ति,
हृदये तुमि माँ भक्ति,
तोमारइ प्रतिमा गड़ि
मन्दिरे मन्दिर।

त्वं हि दुर्गा, दशप्रहरण–धरिणीं
कमला कमल–दल–विहारिणीं,
वाणी विद्या–दायिनी नमामि त्वां
नमामि कमलां, अमलां, अतुलां,
सुजलां, सुफलां, मातरम्।

श्यामलां, सरलां, सुस्मितां, भूषितां
धरणीं, भरणीं मातरम्। वन्दे मातरम्।।

Can China be a Model?

China is described by some as a concentration camp of workers. Violation of labour laws has become order of industrial establishments. Complaints like workers being compelled to work for more than 12 hours, non payment-under payment or delayed payment of wages, frisking of women workers etc. are piling up. In China minimum wages is less than that in India in terms of its purchase value. Men and women are discriminated on the retirement age. Women are compelled to retire 5 years earlier. Accepting labour contract as the normal method has skyrocketed unemployment problem in China. In Central China increasing sudden closure of establishments due to globalisation has culminates in several incidences of killings of managers by frightened workers, as they feel they have no other means to ventilate their grievances. One of the largest numbers of occupational hazards in the world is reported from the mines of China situated in remote areas due poor safety and other working conditions. There are 3000 EPZs in the World and out of that 75% EPZs are said to be in China alone. In those zones there are no labour laws to protect the interest of labour, their job security is in peril and there is no decent level of life for their workers.

After the so called contradictory "Socialist Market economy" has come into being in China in 1978, number of Industrial Disputes and unemployment has increased. In the mad race for FDI, worker's interest had been the first casualty there. To resolve industrial disputes, they are turning to India. Today there is sharp rural-urban divide due to residential and work permit in China. 3 crore workers in China are getting only less than 77 US dollars per year! (See 'China Daily' dt. 16-1-02). 35 crores of people are living below poverty line. Beggars and unauthorized occupants/street vendors are rampant even in Cities.

But in China there is no voice for workers to complain, and the will of the people does not matter there. There is no independent trade union to pressurise the Government or strike on Labour issues. Chinese authorities try to conceal these things by arranging 'conducted tours' to those who comes form outside. Thus still another form of iron curtain prevails in China.