

Holding of Public Meetings X. No union will be allowed to hold any public meeting within or outside the premises of the establishment within 24 hours preceding the date of election. No person/official of the union will be allowed to canvass during working hours within the premises of the establishments.

Estt. of Polling Stations XI. The polling stations will be set up as near the premises of the establishments as practicable and the polling will start and close at the time to be specified by the Returning Officer. For this purpose, one or more voting compartments may be set up in accordance with the requirement.

Ballot Boxes XII. The ballot boxes will be provided by the management and these would be sealed before the start and after the close of the polling in the presence of representatives of the participating unions and the Returning Officer of his representative, as the case may be.

Counting of Votes XIII. After the close of the polling, the ballot boxes will be opened and all votes counted in the presence of the representatives of the unions concerned and the Returning Officer. The result will be compiled on the basis of valid votes polled in favour of each union.

Declaration of Result XIV. The results will be on the basis of simple majority of votes.

XV. The Returning Officer will send a report of the result of polling on the basis of the votes polled in favour of each union in the prescribed proforma, in duplicate, to the CLC(C) who will send the same to this Ministry with their comments.

XVI. The Ministry of Labour, on the basis of reports would communicate the results of the Secret Ballot to the management for confirmment of recognition on the majority union.

Period of recognition XVII. A union recognised on the basis of the result of Secret Ballot will enjoy its recognised status for a period of two years and there shall not be any change in its status for a period of two years from the date of its recognition. It can continue its recognised status even beyond the period of two years till any other union challenges its recognised status. In that event determination of a majority union would be initiated and till any other union is recognised, the recognised union will keep on enjoying its status.

Inadmissible Votes XVIII. All votes which are marked more than once, spoiled, cancelled or damaged etc., will not be taken into account.

ANNEXURE-III

Number of the Establishments in which secret ballot was adopted for recognition of trade union through secret ballot from 1987 to 1995.

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| 1987: | 1. | Bharat Gold Mines Ltd. |
| | 2. | Indian Oil Corporation Pipeline and Marketing Division. |
| | 3. | Air India. |
| | 4. | DGE&T |
| 1988: | 1. | Indian Rare Earths Ltd., Udyog Mandal, Cochin. |
| 1989: | | No verification was conducted through secret ballot in establishment. |
| 1990: | 1. | Oil India Ltd., Duliajan. |
| | 2. | Bharat Gold Mines Ltd. |
| | 3. | Kudremukh Iron Ore Mines. |
| 1991: | | No verification was conducted through secret ballot in any establishment. |
| 1992: | 1. | Agnigundala Project. |
| 1993: | 1. | Indian Rare Earths Ltd. |
| | 2. | Bharat Gold Mines Ltd. |
| | 3. | Kudremukh Iron Ore Mines. |
| | 4. | Nuclear Fuel Complex, Hyderabad. |
| 1994: | | No verification was conducted through secret ballot in any establishment. |
| 1995:- | 1. | Oil and Natural Gas Commission Ltd. |
| | 2. | ERPC, Nazira and Assam. |
| | 3. | Food Corporation of India Ltd. |
| | 4. | Kudremukh Iron Ore Co. Ltd. |
| | 5. | Govt. of India Press. |
| | 6. | Agnigundala Project of Hindustan Zinc Ltd. |

ITEM 7 : AMENDMENT TO THE I.D. ACT, 1947 INCLUDING NOTIFICATION OF SECTION 2 (j) OF THE I.D. ACT

7.1 The above item was included in the agenda of the meeting of the Standing Labour Committee held on 13.9.96. The Committee, however, could not discuss this. Subsequently, the Central Trade Union Organisations and Employees Organisations were requested to send their considered views in writing by 4.10.96. The State Governments were also requested to send their considered views at the earliest.

7.2 The response received from the Central Trade Union Organisations, the Employees Organisations upto 14.10.96 have been annexed to the Agenda Note which was earlier submitted to the Standing Labour Committee. The Indian Labour Conference is requested to deliberate on the proposals in the light of the responses received.

Proposal for Comprehensive Amendment of the Industrial Disputes Act, 1947

7.3 Attempts were made by the Government from time to time for amendment of the Industrial Disputes Act, 1947 with a view to facilitating the mechanism for speedy and effective Industrial Disputes Resolution. Despite these efforts, however, major amendments in the I.D. Act could not be effected in view of reservations expressed by various interest groups. The National Commission on Labour (1969), Sanat Mehata Committee (1983) have carried out studies on various labour related issues and made useful recommendations for appropriate policy formulation/ amendment. Subsequently, the Government constituted a Bipartite Committee in 1990 under the Chairmanship of Shri G. Ramanujam to formulate specific proposals for a new Industrial Relations Law. The Committee submitted its report in October, 1990. The recommendations of the Committee were examined in various fora with a view to arriving at a consensus on the New Industrial Relations Law. While no consensus could emerge on major policy issues concerning Industrial Relations Law owing to varied perceptions, the basic thrust of the Committee's recommendation for promoting bipartism in Industrial Disputes Resolution so as to avoid third party intervention, providing higher lay-off and retrenchment compensation for the workers, reforming the process of industrial disputes resolution etc. had wider acceptability and should provide the broad framework for any comprehensive amendments to the Industrial Disputes Act.

7.4 It may be recalled that a detailed Agenda Note was circulated in the Thirty Second Session of the Indian Labour Conference held in November, 1995 proposing to exempt certain categories of services/employments engaging less than 10 workmen from the purview of the I.D. Act for which an amendment to Section 2(j) of the I.D. Act was proposed for consideration. The ILC however decided that the matter may, in the first instance be placed before the Standing Labour Committee as a part of the comprehensive amendment of the ID Act. Accordingly, the same item is incorporated as Part (I) of

the comprehensive amendment proposals to the I.D. Act. Besides, certain other amendment proposals formulated on the basis of recommendations of various Tripartite forums, recommendations of the Ramanujam Committee, and representations received from various interest groups have also been included in Part II of the Paper for consideration.

PART - I

PROPOSAL TO EXEMPT CERTAIN CATEGORIES OF SERVICES/ EMPLOYMENT FROM THE PURVIEW OF THE INDUSTRIAL DISPUTES ACT, 1947 - AMENDMENT OF SECTION 2(j) OF THE INDUSTRIAL DISPUTES ACT, 1947.

1. The scope and coverage of the Industrial Disputes Act, 1947 have been the subject of discussion for quite some time. One of the contentious issues concerns the definition of the term "Industry".
2. The Hon'ble Supreme Court, in their judgement in the Bangalore Water Supply and Sewerage Board Vs. Rajappa (1978) case, gave a wide interpretation to "Industry" and observed that Government might restructure the definition of the term appearing in the I.D. Act through suitable legislative measures. Accordingly, attempts were made to redefine the term "Industry" to exclude inter-alia certain institutions/activities such as Hospitals and Educational, Scientific, Research and Training Institutions from the purview of the I.D. Act in view of the exclusive character/needs of such institutions as distinct from other industrial/commercial undertakings.
3. The first attempt to revise the definition of "Industry" was made through the Industrial Relations Bill, 1978 which remained unsuccessful as the Bill lapsed before it could secure passage through Parliament. From the very beginning it was recognised that whereas Hospitals and Educational Institutions etc. had special and distinctive characteristics which rendered necessary to maintain in these institutions an atmosphere that eschewed strife and conflict, the employees engaged in these institutions nevertheless needed some form of legal protection. The Ministry of Law have also consistently advised that exemption from the purview of the I.D. Act can be granted only to such establishments as may have devised suitable alternative grievance redressal machinery for its employees. Accordingly, the Hospitals and Educational Institutions (Conditions of Service of Employees and Settlement of Employment Disputes) Bill of 1978 was introduced in Parliament concurrently with the Industrial Relations Bill of 1978. However, the Bill lapsed with the dissolution of the Lok Sabha.
4. Subsequently, the Industrial Disputes (Amendment) Bill, 1982 was introduced in the Lok Sabha to amend, inter alia, the definition of the term "Industry". The Government simultaneously introduced the Hospitals and Other Institutions (Settlement of Disputes) Bill, 1982 in the Rajya Sabha. Whereas, the former Bill was enacted, the Hospitals and Other Institutions (Settlement of Disputes) Bill was not pursued further because of opposition to various provisions of the Bill both inside and outside the Parliament. As a consequence thereof, the amended definition of the term "Industry" could not be brought into effect in the absence of alternative grievance machinery for employees in Hospitals, Educational Institutions, etc. who would have been denied the protection

of the I.D.Act, 1947. Another attempt was made by introducing the Hospitals and Other Institutions (Redressal of Grievances of Employees) Bill, 1987 but the Bill lapsed with the dissolution of the Lok Sabha in 1989.

5. The revised definition of the term "Industry" contained in Section 2(j) of the I.D.Act as amended in 1982 excludes the following activities/ establishments from the purview of the Act:

- (i) Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity and such other activity is the predominant one; or
- (ii) Hospitals or dispensaries; or
- (iii) Educational, scientific, research or training institutions; or
- (iv) Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
- (v) Khadi or Village industries; or
- (vi) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by departments of the Central Government dealing with Defence Research, Atomic Energy and Space; or
- (vii) Any domestic service; or
- (viii) Any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
- (ix) Any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals in relation to such activity is less than ten.

6. The revised definition of "Industry" contained in Section 2(j) of the I.D.Act was to be made effective from the date of its Notification. As has been explained above, the revised definition has not been brought into effect for want of alternative grievance redressal machinery for the employees of establishments/undertakings who would be denied the protection of the I.D.Act.

7. Based on the recommendations of the Sanat Mehta Committee, the Government introduced the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 in the Rajya Sabha. This Bill was not, however, taken up for consideration in Parliament because of opposition expressed against various provisions of the Bill. The matter was further discussed at the 29th session of the Indian Labour Conference held in April, 1990.

8. Accordingly, the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 was withdrawn and a bipartite committee comprising representatives of Central Trade Union Organisations and Employers' Organisations was constituted under the chairmanship of Sh. G.Ramanujam on May 8, 1990. The Ramanujam Committee furnished its proposals for the formulation of the New Industrial Relations Law in October, 1990. Based on the recommendations of the Ramanujam Committee and the discussions held thereon in various fora and taking into account the views of the Inter-Ministerial Group on Industrial Restructuring, specific proposals to amend the Industrial Disputes Act, 1947 and Trade Unions Act, 1926 have been formulated.

9. The recommendations of the Ramanujam Committee are not unanimous. In so far as the definition of the term "Industry" in Section 2(j) of the I.D.Act is concerned, the Worker's group desired a broader definition of the term and recommended in effect that the 1982 amendment of the term "Industry" should be replaced. The Employers' Group on the contrary, felt that the 1982 amendment of the term should be enforced. With the exception of West Bengal, the Labour Ministers of Maharashtra, Tamilnadu, Uttar Pradesh and Andhra Pradesh headed by the then Minister of State for Coal and Labour were in favour of creating a separate grievance redressal machinery for doctors and teachers and for enforcing the 1982 amendment of the term "Industry".

10. As discussed above, the revised definition of the term "Industry" contained in Section 2(j) of the I.D.Act as amended in 1982 has not been brought into effect as no alternative grievance redressal machinery has yet been put in place for the protection of employees engaged in hospitals and educational, scientific, research or training institutions, etc. as advised by the Ministry of Law.

11. The National Dairy Development Board (NDDB) under the Ministry of Agriculture have been requesting Ministry of Labour to exempt small dairy cooperatives employing less than 10 workers from the purview of the I.D.Act, 1947. The matter was considered by the Empowered Committee under the chairmanship of the Cabinet Secretary on different occasions and Ministry of Labour was advised to seek the opinion of the Ministry of Law in the matter. Accordingly the matter was remitted to the Ministry of Law, seeking advice on the following points :

- (i) Ministry of Law may examine whether a conditional notification that will apply only in respect of institutions where an adequate grievance redressal machinery is established, can be issued;
- (ii) Ministry of Law may examine whether appropriate amendment to Section 2(j) of the I.D. Act can be made to the effect that the excluded categories could be notified together or individually. It may also be examined whether, in addition, an area specific notification can be issued for cooperatives.
- (iii) Another possibility which could be examined is to amend Section 36-B of the I.D. Act to enable State Governments to grant exemption in cases of cooperatives engaging less than 10 workman, provided a grievance settlement mechanism is established within the cooperative system in the State.

The Ministry of Law in their advice have categorically stated that:

the definition of 'Industry' under Section 2(j) of the I.D. Act has to be brought into force in its entirety and the definition cannot be bifurcated for the purpose of bringing its different parts into force on different dates. The Ministry of Law are also of the opinion that the question of further amending the definition itself for the purpose of notifying the various categories together or individually is a matter of policy. As regards area-wise Notification, Ministry of Law have stated that once a particular nature of institution is notified for the purpose of exclusion, then it may not be legally feasible to discriminate other similar institutions in the area. The Ministry of Law have further opined that the question of amending Section 36-B of the I.D. Act for bringing cooperative societies engaging less than 10 workmen within the purview of that Section is also a question of policy.

12. In the case of NDDB it has been pointed out that the nature of the job in small dairy cooperative societies is such that its employees are engaged on part time basis for collecting milk supplied by the members of the society. Quite often the employees of the cooperative societies are themselves milk producers and their relationship with the management is manifold and not necessarily that which exists between an employer and employee. The procedures involved in handling matters relating to dispute resolution under the ID Act require knowledge of the relevant legal provisions. Under the ID Act every employee can be represented by a trade unionist who might be well-versed with the labour laws whereas the Chairman of the

cooperative society, who may be an illiterate or semi-literate villager, is required to handle his case personally without any legal background.

13. A similar request for exemption from the purview of the I.D. Act has been made on behalf of Khadi and Village industries.

14. In relation to Khadi and Village Industries (KVI), the High Powered Committee on KVI sector under the chairmanship of the Prime Minister has recommended that statutory notification may be issued for exemption of KVI from the purview of the ID Act. The main argument is that KVI artisans such as spinners, weavers, etc. are basically self-employed and the concerned KVI institutions are primarily functioning as agencies for providing escort services to such artisans in matters relating to supply of raw materials, marketing of their products, etc. and employer-employee relationship does not exist between KVI institutions and the artisans.

15. It may be pointed out that the Hospitals and other Institutions (Redressal of Grievances of Employees) Bill, 1987 sought to put in place an alternative grievance redressal machinery only for the exempted categories mentioned in items (ii), (iii), (iv), and (v) of Section 2 (j) of the ID Act. In case of KVI the alternative grievances redressal machine was proposed only for institutions employing 10 or more persons. The Bill did not cover agricultural operations, activities carried out by the Government, domestic service, professional service or activities carried out by cooperative societies or clubs, etc. In fact, clause 19 of the 1987 Bill specifically excluded from its purview:-

- a) An establishment owned or controlled by Government; and
- b) Societies registered under the Societies Registration Act.

16. In other words, had the Hospitals and other Institutions (Redressal of Grievances of Employees) Bill, 1987 become an Act of parliament, both KVI institutions employing less than 10 workers as well as cooperative societies would have got excluded from the purview of the ID Act consequent upon notification of Section 2(j) of the Act without any alternative grievances redressal machinery for the employees of such institutions. The rationale of the 1987 Bill appears to have been to exempt certain activities/establishments from the purview of the ID Act where setting up of alternative grievance redressal machinery is either feasible or desirable.

17. There have been persistent demands from various quarters to enforce Section 2 (j) of the I.D. Act. But Section 2 (j) has remained on the statute book and repeated attempts to put in place an alternative grievance redressal machinery have remained unsuccessful. Ministry of Agriculture have suggested that for small dairy cooperatives of the NDDB,

the State Cooperative Societies Acts or the Multi-State Cooperative Societies Act could be suitably amended to provide for an alternative grievance redressal machinery for cooperative societies. However, this will not meet the points raised by the Ministry of Law.

18. The alternative of amending Section 36-B of the I.D. Act has not been considered feasible. For one thing, Section 36-B in its present form may be applied only to industrial establishments or undertakings carried on by a Department of Government where an alternative grievance machinery is in place. So far no exemption has been granted under Section 36-B to any departmental undertaking and it is unlikely that dairy cooperative societies would be able to claim the exemption under this Section. The only viable solution appears to be to restructure the definition of "Industry" under Section 2 (j) of the I.D. Act.

19. An analysis of Section 2(j) of the ID Act would reveal that items (viii) & (ix) of the excluded categories read as under:-

- a) Any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than 10; and
- b) Any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals in relation to such activity is less than 10.

20. We have also seen that the Hospitals and Other Institutions (Redressal of Grievance of Employees) Bill of 1987 sought, in effect, to exempt KVI institutions employing less than 10 persons from the purview of the ID Act. This would indicate that the intention of the law-makers was to exempt certain activities from the purview of the ID Act based on the nature of the activity and/or the number of persons employed. Based on this premise, it is proposed to discuss in the Indian Labour Conference the question of redefining the term "Industry" under Section 2 (j) of the ID Act by excluding from its purview the following activities/establishments:

- (i) Any agricultural operation employing less than 10 persons; or
- (ii) Hospitals or dispensaries employing less than 10 persons; or
- (iii) Educational, Scientific, research or training institutions employing less than 10 persons; or

- (iv) Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service employing less than 10 persons; or
- (v) Khadi or Village Industries employing less than 10 persons; or
- (vi) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by Departments of the Central Government dealing with Defence Research, Atomic Energy and Space; or
- (vii) Any domestic service; or
- (viii) Any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of the individuals in relation to such profession is less than ten; or
- (ix) Any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals in relation to such activity is less than ten.

21. The above proposals would meet the requirements of both small dairy cooperative's of the NDDB and artisans in the KVI sector as well as similar small establishments, including domestic service, where setting up an alternative grievance redressal machinery is found not feasible. It will also exclude from the purview of the ID Act such activities of the Government relatable to its sovereign functions including activities carried on by departments of the Central Government dealing with Defence Research, Atomic Energy and Space, etc.

Part II

I. Scope and coverage of the I.D. Act

i) Preamble and Title of the Industrial Disputes Act.

The preamble of the ID Act spells out its objective as "making provision for the investigation and settlement of industrial disputes." The focus of this preamble is on the adversarial juxtaposition of the employers and workers rather than on their complementarities to be bonded by industrial harmony. The preamble of the Act is proposed to be amended to project the objective as "regulation of the relations between employers and workmen so as to promote and maintain industrial harmony". The title of the Act also may be amended as "The Industrial Relations Act" (vide Section (1) (1)).

ii) Definition of "Workman"

The existing definition of workman under the I.D. Act inter alia includes supervisors drawing wages upto Rs. 1600/- per month and carrying out functions of non-managerial nature. There is however, no monetary limit of wages for non-supervisory workmen. The limit of Rs. 1600/- was fixed way back in 1982 and has little relevance to the present wage structure. The differentiation between workman and supervisory and administrative staff on the basis of wages also requires a relook, since persons categorised as workmen in some of the industries e.g. pilots, are drawing monthly emoluments, which are many times the emoluments drawn by supervisory staff in other industries. The definition of workman, therefore, could be extended to cover all supervisory and administrative staff as well and the existing ceiling on supervisory staff to be considered as workman under the Act could be dispensed with.

iii) Appropriate Government

The issue of appropriate Government as defined in section 2(a) of the ID Act has been a contentious issue and subject to a number of judicial pronouncements, some of which have given interpretations quite divergent from the scope of the definition originally envisaged by the Government under the Act. Therefore, there is a need to redefine the jurisdiction of the appropriate Government so as to preclude any ambiguity in its interpretation.

Section 2(a)(i) of the ID Act enlists the establishments/ industries carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to industrial disputes concerning a list of specific establishment/industry in the Central sphere for which Central Government is the appropriate Government while remaining industries/establishments are in the State sphere.

The expression "by or under the authority of the Central Government" has often been interpreted by the judiciary to include activities of all Central Public Sector Undertakings including those registered as Companies under the Companies Act, 1956. Besides, any change in the nomenclature of the establishments enlisted in Section 2(a)(i) in the Central sphere and any addition/deletion of the establishment enlisted necessitates amendment in the definition.

With the advent of economic reforms, the nature and status of many of the Central Public Sector Undertakings are undergoing a change and this process is expected to continue. This would also necessitate frequent amendments to the definition.

Therefore, with a view to removing anomalies of the existing definition and also with a view to making simplistic definition, it is proposed that the Central Government may be appropriate Government in respect to :

- i) All Central Public Sector Undertakings/Companies where Central Government holds majority of the paid up capital;
- ii) In respect of an establishment or undertaking having branches in more than one State;
- iii) Multi-national Companies;
- iv) Disputes of national importance as may be specified by the Central Government through a notification.

In relation to other industrial disputes the respective State Governments will be appropriate Government under the Act.

The definition of "workman" under the ID Act includes contract labour also. In recent years, a number of judgements of various courts including the Apex Court have been pronounced for regularisation of contract labour. Such situations often gave rise to problems of jurisdiction as under the present law the State Governments are the appropriate Government for the contract labour even in respect of most of the industries in the Central sphere. It is, therefore, proposed to bring contract labour also within the Central sphere in respect of all industries for which Central Government is the appropriate Government.

iv) **Status of Union Territories**

The ID Act 1947 while differentiating between the jurisdiction of the Central Government and the State Governments, does not make specific reference to the status of Union Territories. This issue has generated legal controversies and ambiguity. It would therefore be appropriate

to specifically provide in the ID Act that "The term State Government used in this Act shall mean State Governments and Union Territories for the purpose of this Act."

v) **Power to Exempt**

Section 36-B of the ID Act, 1947 inserted through an amendment in 1982 contains a provision where the appropriate Government had been given the power to exempt any industrial establishment or undertakings carried on by a Department of that Government where adequate provisions exist for the investigation and settlement of industrial disputes. The provision, however, has not been used till date by the Central Government. As the existing provision is considered to be rigid and restrictive, it is for consideration that this provision may be amended so as to give powers to appropriate Government to exempt such industrial establishment or undertaking having adequate provisions for investigation and settlement of disputes.

vi) **Delegation of Powers**

Section 39 of the ID Act inter alia provides for delegation of powers by the Central Government to an officer or authority subordinate to it or to the State Government or an officer subordinate to the State Government. Similarly the State Governments may delegate their powers to an officer or authority subordinate to them. However, there is no provision by which the State Government could delegate its powers to an officer or authority subordinate to the Central Government. Such a provision is considered desirable in the larger interest of industrial relations/ implementations of provisions of I.D. Act, 1947.

II. Reforming the Existing Dispute Resolution Mechanism

i) **Direct Access of Dismissed Workmen to the Labour Courts/Industrial Tribunals**

It is also proposed to add to the existing Section 2-A a provision for direct access to labour tribunals by an individual workman in cases relating to termination of service after failure of conciliation. The provision relating to reference of dispute under Section 10 (1) need not be necessary in such cases.

ii) **Belated Disputes**

The present Industrial Disputes Act contains no limitation of time for raising an industrial dispute. As a result sometimes such industrial disputes were raised which are 15 to 20 years old and even where the Government refused to make adjudication reference on the ground of belatedness, they have been struck down by the judiciary on the ground that there is no provision to this effect in the ID Act. This has also given rise to a number of fictitious disputes. With a view to reducing the pendency of the disputes while at the same time

giving adequate opportunity to the workmen/unions for raising genuine industrial disputes, it is proposed that a time limit of five years may be prescribed in the Act from the date of occurrence of the cause of action for raising the industrial disputes.

iii) **Appellate Tribunals**

Suggestions have been made from time to time for providing an appellate forum for the industrial tribunals. The Ramanujam Committee had also recommended in its favour. A case for consideration is for setting up of four National Industrial Tribunals in four major Metros who could be designated as National Appellate Tribunals.

iv) **Publication of Awards**

Requests have been made from time to time that the requirement of publication of Awards in cases of individual disputes should be dispensed with. As an alternative it has been suggested that copy of the Awards could be given to the contending parties and that there is no need for publication of the Awards. There appears to be merit in this suggestion which could be considered so that necessary amendments to the law can be brought about.

v) **Relaxing Qualification of Presiding Officer**

Section 7 and 7-A of the I.D. Act deals with appointment of Presiding Officers in the Labour Courts/Tribunals. Experience has shown that in view of the rigid requirements of qualification and experience, it is often difficult to appoint required number of Presiding Officers to various Labour Courts and Tribunals and also to retain the persons selected. It is, therefore, considered necessary to relax these norms relating to qualification and experience. It would be pertinent to mention that many of the State Governments have already carried out necessary amendments in this regard. If this suggestion is approved in principle, the norms for relaxation in qualification and experience could be reexamined in consultation with the Ministry of Law.

vi) **Penalties**

The Ramanujam Committee recommended that the penalties under the Act should be made more rigorous to have desired deterrent effects. The existing penalties which provide for imprisonment or fine or both are considered too light particularly monetary penalties. These provisions have often been misutilised. At the same time, as breach of provision of labour laws largely arise out of the non-fulfilment of contractual obligations between the employers and employees, penalties are not made too drastic as a matter of convention. Keeping this in view, it is proposed that the monetary penalties stipulated under the ID Act may be doubled in quantum. Sections 26 to 31 and 25-Q, 25-R and 25-U may accordingly be amended.

III. Suggestions towards Alternative Industrial Dispute Resolution Mechanism

The number of industrial dispute pending for adjudication in the industrial tribunals/labour courts have gone up considerably over the years. While there is a need to expand the existing industrial relations machinery, the more fundamental issue of the type of industrial disputes raised and the disputes that need to be adjudicated upon requires to be addressed. It is important that most of the disputes should be amicably settled at the conciliation stage and/or through arbitration particularly concerning the interest disputes, leaving only the rights disputes for adjudication. It may be mentioned here that "Rights Disputes" arise out of application, interpretation or operation of laws, statutes and rules and regulations made thereunder, standing orders, contract of employment, agreements, settlements or awards while "Interest disputes" are raised with the intent to create and procure new rights through agreements, settlements or arbitration awards. The interest disputes, therefore, need not be referred for adjudication. It is only the "Rights disputes" that require to be adjudicated upon.

i) Need for Effective Arbitration

Section 10-A of the ID Act provides for voluntary reference of disputes for arbitration. However, this provision has seldom been used as a method of resolving industrial disputes. This is partly because of its voluntary nature and partly owing to the inherent inclination of the parties for a judicial settlement. This has contributed to the large scale pendency of industrial disputes in various labour courts requiring adjudication. The problem is likely to aggravate further in future if no alternative method of grievance settlement is adopted. Seen in this perspective arbitration can play an important role in resolving industrial disputes in the initial stage itself.

A case for compulsory arbitration is also sometimes made out as a substitute for adjudication. In Australia there is a system of compulsory arbitration and if the disputes are not resolved in conciliation, the parties must choose one or more arbitrators from the panel of arbitrators within a specified time and if they fail to do so the arbitrator is nominated by the conciliator. Thus whenever the dispute ends in failure of conciliation, the arbitration machinery gets activated and Arbitration awards are given within the specified time which becomes binding on all parties. If this system is adopted in this country, the conciliation machinery would become more effective and even arbitration, which hitherto has not been explored at all, would gain due importance. This idea needs detailed deliberation by all the social partners.

ii)

Negotiating Councils

With a view to encourage bipartism and minimise third party intervention, the Ramanujam Committee had recommended for setting up of Negotiating Councils in industrial establishments employing 50 or more persons. The Negotiating Councils can play an effective role in diffusing industrial relation problems in the initial stage itself. These Negotiating Councils would function as collective bargaining forums to bilaterally settle industrial disputes, particularly the interest related disputes. A negotiating Council may consist of equal number of representatives of unions/workmen and employers. Unions may get proportionate representation on the basis of this strength which can be verified through secret ballot if the need arises.

It may be recalled that an amendment was brought about to Section 9-C in 1982 providing for setting up of Grievance Settlement Authorities for reference of certain individual disputes. The objective of this amendment was to contain grievances of individual workmen within the industrial establishment, failing which only the appropriate Government could refer the same for Conciliation and/or for adjudication. However, this amendment could not be brought into effect as the rules required for the purpose could not be framed despite repeated attempts. The draft rules were published in 1983 against which divergent opinions were received.

On the basis of tripartite consultations, the draft rules were revised and republished in June, 1987 for obtaining the views of workers' and employers' organisations before placing the matter in the Standing Labour Committee. Meanwhile, the Trade Unions and Industrial Disputes (Amendment) Bill 1988 was introduced in the Parliament, which provided inter alia direct access to industrial tribunals by any workman in cases relating to discharge, dismissal, retrenchment, termination or change in the conditions of service. Had the proposed amendment been carried out the grievance settlement procedure contained in Section 9-C would have become redundant. The question of framing rules under Section 9-C was therefore not further pursued. Subsequently, based on the recommendations of the Indian Labour Conference in April, 1990 the Trade Unions and Industrial Disputes (Amendment) Bill 1988 was withdrawn and the Bipartite Committee under the Chairmanship of Shri G. Ramanujam was constituted in May, 1990 to formulate specific proposals for a new Industrial Relations Law.

The Ramanujam Committee, having gone into the matter, emphasised the need for special and maximum efforts for settlement of disputes of individual workmen on bipartite basis. It has called for elaborate grievance settlement procedures at the establishment level - in terms of two appeals and right to individual workmen for seeking remedies through arbitration or Negotiating Councils or adjudication. (At

present, under the Act, arbitration is based on agreement between parties and adjudication is based on reference by the appropriate Government).

It is desirable that Section 9-C of the Act is replaced by a new Section elaborately providing for the establishment of a grievance redressal machinery to redress grievances (distinct from disputes) at the establishment level so that the grievances do not mature into disputes. It requires the employer to set up a primary authority within the establishment for grievance settlement and also superior authority to which representations against decisions of the primary authority shall lie; only when an individual workman is not satisfied with the decision of the superior authority he can take recourse to third party intervention by way of arbitration, conciliation or adjudication.

iii) **Case for an Independent and Autonomous Industrial Relations Commission**

The National Commission on Labour had recommended setting up of an independent Industrial Relations Commission (IRC) on a permanent basis both at the Centre and in the States. The IRC was intended as an authority independent from the executive. As a large number of industrial disputes pertain to different Government Departments/Departmental Undertakings/Public Sector Undertakings, an authority independent of the executive is expected to perform the industrial relations functions particularly pertaining to conciliation and mediation more judiciously. The proposed IRCs will have comprehensive jurisdiction over various industrial relations functions relating to conciliation, mediation, arbitration and adjudication of industrial disputes. Resolution of disputes in the IRC will be less time consuming and no reference of the disputes for adjudication would be necessary. The requirement of publication of the Award would also not be necessary. The existing functions of Central Industrial Relations Machinery and State level Labour Administration Machinery could also be integrated within the overall structure of the IRC.

Subsequent to the National Commission on Labour, the Ramanujam Committee had also gone into the question of setting up of Industrial Relations Commission. There was however, no consensus regarding the structure of the proposed IRC and its jurisdiction. Considering the justification for providing an independent industrial relations machinery to meet the challenges of changing industrial scenario, the case for an independent and autonomous Industrial Relations Commission merits consideration. If this concept finds favour in principle, detailed modalities could be examined by a Sub-Committee subsequently.

IV. Rationalisation and Simplification

There are certain provisions of the ID Act which have seldom been operative and have mostly remained in the statute book. As simplification and rationalisation of labour law is a desired objective, it is proposed that these provisions may be deleted. These provisions are listed below :

i) **Section 5 & 13**

Under Section 5 of the I.D. Act the appropriate Government has been empowered to constitute a Board of Conciliation for promoting the settlements on industrial disputes. Since the Act provides for appointment of conciliation officers who take care of all conciliation matters, the provision for a Board of Conciliation does not appear necessary. The Central Government has never constituted any Board since the inception of this provision in 1947. The State Governments also do not have any Board of Conciliation. It is, therefore, proposed to delete Section 5 and 13 of the I.D. Act.

ii) **Section 6 & 14**

Section 6 of the ID Act provides for constituting Court of Enquiry by the appropriate Government to enquire into any matter appearing to be connected or relevant to an industrial dispute. This provision has also hardly been used and does not appear necessary. Even in major disputes the need for a Court of Enquiry has not been resorted to. It is, therefore, for consideration that the provision of Courts of Enquiry under Section 6 and 14 of the I.D. Act may be deleted.

The Board of Conciliation as well as the Court of Enquiry have financial implications. Besides, the conciliation officers under Industrial Relations Machinery set up in the Central and State spheres are working satisfactorily and they take care of all types of industrial relations situations.

iii) **Section 3**

The provision relating to Works Committee (Section 3) have not been effectively used. The Central Government has required only some of the establishments for constituting the Works Committee. The objective of Works Committee is to promote measures for securing and preserving amity and good relations between employer and workman. These functions can be adequately catered to by the proposed Negotiating Councils. In view of this, the provision relating to setting up of the Works Committee may also be deleted.

V. Review of some of the Existing Restrictive Provisions of the I.D. Act.

i) Special provisions relating to lay-off, retrenchment and closure

Chapter V-B of the Industrial Disputes Act is concerning special provisions relating to lay-off, retrenchment and closure. This Chapter applies to industrial establishments of factories, mines and plantations employing not less than 100 workmen. These provisions, inter alia, stipulate that employers before effecting lay-off, retrenchment or closure should get prior approval of the appropriate Government following the prescribed procedure. These provisions were not earlier stipulated in the ID Act, but came into existence in 1976, through an amendment by which prior permission of the appropriate Government became mandatory for industrial establishments factories, mines and plantations employing not less than 300 workmen. This provision was further amended in 1982 removing legal infirmities and to make it applicable to all industrial establishments of factories, mines and plantations employing not less than 100 workmen.

With the process of economic reforms, some of the interest groups have opined the existing provision to be restrictive and militating against investments. The experience in the past has shown that the Governments at the Centre and States have often been inhibited in granting necessary permission even when the economic compulsions justify such granting of permission. It has also come to the notice of the Government that many of the industrial establishments irrespective of the provisions of law effect lay-off, retrenchment and closure when they apprehend that the appropriate Government may not grant permission thereby negating the basic objective of introducing such provisions. Consequently, the unit remains in a state of suspended animation for years and the workers are deprived of their terminal benefits. Besides, many a time the constitutional validity of these provisions have also been challenged in various courts. It is, therefore, suggested that keeping pace with the ongoing economic reforms the present limit may be enhanced to 300 workmen which in effect would mean retaining the provision at the level when it was introduced in 1976. The Inter-Ministerial Working Group on Industrial Restructuring set up by the Planning Commission in February, 1992 had also made a similar recommendation.

The powers relating to permission for lay-off, retrenchment and closure under Section 25 (M, N and O) lies with the appropriate Government. As stated in the preceeding paragraph, there are inherent difficulties in granting of such permission by the appropriate Government even when there are adequate economic justifications. In view of this, the case for entrusting this power with a deeming provision to any Labour Court/Tribunal notified by the Government also merits consideration.

There is also a need to enhance the scale of compensation payable for lay-off and retrenchment including redundancies arising out of closure of industries. The enhancement of compensation, apart from scaling up relief for the affected workers could also hold a deterrent effect on lay-offs, retrenchments and closures. In view of this, the lay-off compensation, the period qualifying for lay-off compensation and the retrenchment compensation need to be suitably enhanced.

ii) **Strikes and lockouts**

Under the existing law, there is prohibition of strikes and lockouts in public utility services without a minimum of 14 days notice. There is however, no provision for such notice in the case of non-public utility services. Public utility services are defined under section 2(n) as services in the Railways, Transport, Port or Dock, Posts and Telegraphs, Telephones, Power, Light or Water Supply and public conservancy or sanitation. First Schedule of the I.D. Act contains a list of public utility services which could be notified by the appropriate Government for the purpose of prohibition of strikes and lockouts.

Based on the recommendations of the Ramanujam Committee and subsequent deliberations, it is proposed that a mandatory notice of one month should be stipulated for strikes and lockouts in all services whether they be Public utilities or not. Furthermore, in industrial units, where a strike or lockout takes place the essential services connected with safety, water supply, electricity, health shall be exempted from both strikes and lockouts. Strikes and lockouts may also be prohibited during the pendency of proceedings before Negotiating Councils and during the pendency of conciliation, arbitration and adjudication.

Often, strike situations are brought about by precipitate action taken by individual unions or groups of workmen, even though they may not represent the majority of workers in an establishment. In this context, the question whether or not there should be a strike ballot amongst workers before launching a strike was examined by the Ramanujam Committee. There was no unanimity of opinion in regard to this matter amongst the Central Trade Union Organisations. However, it would be fair to stipulate that strike notices should be accompanied by resolutions supporting strike action by a union or unions that are on the Negotiating Council and which represent at least 51% of the workers in an establishment. Sections 22 and 23 of the Act may, accordingly, be amended.

VI. Recent Judicial Pronouncements

1. The Hon'ble Supreme Court in the case of Ms. A. Sundrambal Vs. Govt. of Goa, Daman & Diu has held that although Educational institution is an "industry", a teacher working in an educational institution is not a workman under the I.D. Act. The Hon'ble Supreme Court has, however, directed that the Government should take necessary steps to bring an appropriate legislation providing for adjudication of disputes between teachers and management of educational institutions. There are millions of teachers in the country affected by this Judgement.

2. Amendment of Section 48 & 49 of the Life Insurance Corporation Act, 1926 brought about in 1981 has excluded the insurance employees from the purview of the Industrial Disputes Act in respect of terms and conditions of service of employees. The issue has been raised time and again by the concerned unions and also in the Parliament.

3. The Hon'ble Supreme Court in a recent judgement in the case of Sub-Divisional Inspector of Posts Vs. Theyyam Joseph etc. delivered on 2nd Feb., 1996 has held that telecommunication Services is not an industry on the ground that it performs sovereign functions of welfare nature. According to the Apex Court, welfare measures partake the character of sovereign functions. The Directive Principle of State also enjoins diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. Providing Telecommunication Services to the general public is an essential part of the sovereign functions of the welfare state.

The implications of this judgement would be far reaching and many other welfare functions of the Government like water supply, electricity, railways, construction work etc. could also be construed to be excluded from the purview of definition of "industry" based in similar reasoning. This judgement also runs contrary to the judgement of Hon'ble Supreme Court given in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa (1978) in which it was held that welfare activities of economic adventures undertaken by the Government would not be excluded from the definition of "industry".

4. The Indian Labour Conference may deliberate on the implications of the above judgements on the industrial relations situation in general and the excluded categories of the workmen in particular and offer their considered suggestion, if any amendments to the I.D. Act is called for in view of these judgements.

Comments received

I. United Trade Union Centre - (Lenin Sarani)

1. It may be noted at the outset that the Central Trade Unions including ours had, in the past, on various occasions, expressed and submitted their views in the matter. In the last session of ILC the issues were also deliberated upon. In fact, so far we understand when CTUOs in the last SLC agreed to the proposal that Union Labour Minister should have had separate discussion with the employees, employers and the State Governments, they felt such discussions were necessary in view of the complexity of the issues and for sorting out and minimising differences particularly in relation to the amendments of the I.D. Act, 1947.

This purpose, was apprehend, whether can be served by sending views as desired by the Ministry. Hence we would request you to have a re-thinking in the matter.

2. The issue of amendments of the I.D. Act, 1947 was placed in 33rd session of SLC in two parts- I & II. Part I relate to proposal of exemption of certain categories of Services/ Employments, Institutions from the purview of the I.D. Act, 1947 whereas Part II relates to other matters with a view to effecting comprehensive restructuring of I.D. Act.

3. So far the issue of exemption of certain categories of services and employments from the purview of the I.D. Act is concerned, we are of the view that unanimous recommendation of the workers' group in Ramanujam Committee, be accepted by the Government. You will kindly recall that the workers' group unanimously, in effect, rejected 1982 amendments, and defined 'Industry' incorporating those services and employments which are now being proposed to be exempted. Naturally we cannot agree to such exemption even in a limited sphere as has been proposed in view of the fact that the reasons for the same are not convincing.

4. There are so many proposals in Part II. We would like to place our views in respect of all of them and also suggest some other proposals during forthcoming ILC Session. We are constrained to do so as we require some time to discuss among ourselves. At this moment, we can go to the extent of suggesting that the unanimous recommendations of workers group in Ramanujam Committee may be accepted.

II. All India Trade Union Congress (AITUC)

1. Exemption from the purview of the I.D. Act

The AITUC is totally opposed to give exemption to any industry, service, establishment or undertaking, or any branch or section thereof, from the purview of the I.D. Act, except an activity of the Government relatable to sovereign functions of the Government.

Any suggestion for revising the definition of "industry" to exclude agricultural operations, cooperative societies including dairy cooperatives, educational and research institutions, hospitals, medical or health services, besides other professional services, practised by an individual or individuals, etc. is tantamount to curtailing the right of the concerned employees to bargain collectively. It would go against the letter and spirit of ILO conventions to which the Government is committed.

Incidentally the shops and Commercial Establishments Act applies to all establishments including those employing even one employee. Such an employee can approach conciliation machinery and also secure adjudication. Shop employees irrespective of numbers can also raise an industrial dispute for their demands. Surely the employees of the industries/operations, etc. sought to be excluded from the purview of the I.D. Act stand on the same footing.

It might be mentioned that the Govt. of India has fully backed the ILO convention adopted in the last ILO Conference on extending legal protection to Home-based workers on the same footing as to other workers.

In suggesting exemption for employees of educational, research, and medical, etc. services the Govt. is perhaps trying to wriggle out the obvious effect of the Supreme Court judgement on definition of "industry".

The AITUC is also opposed to any limitation on the Right to Collective Bargaining and Right to Strike of any section of employees; including those working as supervisors, technicians or scientists and even managerial personnel not vested with the power of direction and control. This position is fully accepted by ILO in its relevant Convention.

We agree that a grievance redressal mechanism can be set up with a view to avoid strikes by expeditious settlement of disputes. But if the machinery fails to resolve a dispute, the right to strike must be ensured. In fact a time has come when the I.D. Act could be metamorphosed into an "Employment Relations Bill".

The change in the definition of "Industry" from time to time has had a historical passage. But the definition of "Workman" has remained too narrow to meet the changing socio-economic situation marked by rapid & revolutionary

scientific-technological advance. For example the existing definition of 'Workman' has been interpreted by courts in a manner which in several cases excludes persons/employees working by brain. While holding that education is an "industry", the Supreme Court in a different case ruled that teachers are not workmen within the definition contained in the I.D. Act. With fast growing commercialisation of schools, teaching/institutions as well as medical and health services etc., this narrow concept of "Workman" is facilitating ruthless exploitation of a growing army of teachers, medical personnel, etc. at the hands of unscrupulous/greedy promoters of such institutions. Besides, non-existence of security of job, in a large number of cases, the employees in these institutions are not even paid the minimum wages prescribed for unskilled workers under the Minimum Wages Act.

The AITUC is of the considered opinion that the definition of "industry" and of "workman" must be based on the sole criterion of existence of employer-employee relationship in order to eliminate the chances of getting involved in legal quibblings leading frequently to repeated bouts of litigation. The relationship may be direct, or indirect (as in case of contract labour); that should make no difference. The paymaster, the real source of payment, must be identified as the employing agency since without it 'Workman' or employee has no existence.

I. Scope & Coverage of I.D. Act - some other suggestions/ amendments

1. Preamble - After the words "regulation of the relations industrial harmony"add "without in any manner infringing the right to collective bargaining, including the right to strike".

2. Definition of 'Workman' - As already pointed out the definition of "Workman" in section 2(s) of the ID Act, requires to be made unambiguously comprehensive, yet simple. Taking into consideration the continuing modernisation and/or technological upgradation, including computerisation which is increasingly characterising industrial and service operations, we are inclined to suggest the following to substitute the existing definition:

" 'Workman' means any person employed in any industry, directly or through any intermediary, to do any work, whether physical or by brain or by both, for hire or reward, whether the terms of employment be express or impliedetc."

3. Appropriate Government - The suggestion clarifying the meaning, content of the term 'appropriate Govt.' is agreed to.

4. Contract Labour - With the increasing dimensions of contract work and consequential increase in the number of contract workers, it is necessary that apart from making the Central Govt. the appropriate Govt. in the relevant spheres, it has become absolutely necessary to bring them within the

definition of : "Workman" as proposed in (3) above. Contract workers must be put on the same footing as other (regular) workers in an industry/establishment. They must be enabled to raise disputes against the principal employer directly.

5. Status of Union Territories - The Ministry's suggestion is accepted.

6. Power of State Govts. to exempt (Sec. 36(b))

AITUC strongly disfavours giving power to any State Govt. to grant exemption in respect of any category of employees.

7. Delegation of Powers (Sec.39)

The suggestion is accepted.

II. Reforming the existing Dispute Resolution Mechanism

i) A dismissed/terminated workers should be free to approach the Joint Negotiating Machinery, conciliation or adjudication machinery directly.

ii) Belated disputes - suggested period of 5 years is reasonable.

iii) There is merit in the suggestion regarding revival of Labour Appellate Tribunal.

iv) Publication of award in cases involving individual disputes may be dispensed with and a copy of the award should be given to the contending parties.

However, the adjudicator/Labour Court should pass an appropriate decree enforceable through the appropriate Revenue Authority.

v) Relaxing qualifications of Presiding Officers

We do not agree with the proposal. With the restructuring of the industry involving complex techno/economic changes, industrial disputes are coming to acquire new content. Only well qualified competent and experienced judicial personnel, whose personal integrity is assured, would be able to meet out justice to workers who are increasingly having to face mighty industrial houses and multinationals. In this context the question of downgrading the status or qualifications of Presiding Officers should not arise. There is no substance in the contention that the required number of Presiding Officers are not available. Low remuneration offered by Govt. alone stands in the way of attracting the required talent. This remedy has to be applied if justice, social or personal is to be made available to the working people.

VI. Penalties: We suggest that amount of fine and term of imprisonment must be raised 5 times the present one in case of illegal lockouts or breach of other provisions of industrial law.

III. Alternative Industrial Disputes Resolution machinery Disputes involving rights can be settled through voluntary arbitration, while interest disputes should be resolved through collective bargaining as a first resort. Arbitration/adjudication should be voluntary.

IV. Rationalisation & Simplification

The three proposals put forward are agreed to, though the comment that conciliation machinery is working satisfactorily is hardly tenable.

V. i) The contention that this particular provision designed to prevent unjustified lay-off and retrenchment, is inhibiting investment, is without substance. The suggested amendment is tantamount to giving the concerned employers the right to hire and fire.

As a matter of fact there is all the justification for bringing factories employing 50 or more workers under the purview of the clause instead of 100 as at present. there is no gain saying the fact that modernisation and/or technical upgradation has automatically led to reduction of working strength along with increase in production and profits. Productive operations previously performed by 100 workers can with modernised apparatus be performed by even less than 50 workers. Hence the case for downward revision of the floor-limit from 100 to 50 or even less.

The proposal to transfer the power to consider applications for lay-off or retrenchment from the Govt. to Labour Court or Industrial Tribunal merits serious consideration.

It is strongly felt that punishment/penalty in cases of infringement of the provisions pertaining to retrenchment, layoff, etc. should be more stringent or deterrant, since there is an increasing tendency among employers to resort to shut-down or suspend production without obtaining the required permission from the competent authority. In case Industrial Tribunals/Labour Courts are vested with the power to grant or not to grant permission for lay-off, retrenchment or closure, they should also be empowered (by suitably amending the ID Act) to impose financial penalties in case of any action, or continuance thereof, prejudicial to the interests of the workers-including lay-off, retrenchment, suspension of production or closure.

Enhancement of rate of compensation

While agreeing to the proposal on enhancement of rate of compensation in case of retrenchment or closure, it is strongly felt that payment of at least 3 (three) months' consolidated wages for each year of service should be laid down statutorily. In fact many employers are known to be offering compensation at even a higher rate in such cases.

An additional clause should be introduced to cover cases of relocation of factories/establishments due to environmental or other reasons. Such of the workmen as do not wish to move to new sites, must be covered by the enhanced compensation provision mentioned above.

ii) **Strike notice and lockout** 14 days notice as required at present is quite sufficient in case of public utility services since conciliation process, including submission of report to the Govt. take extra 2-3 weeks. No notice of strike should be necessary for non-public utility and private industries, establishments or services.

The process of conciliation must be time-bound. In fact time-limit also requires to be prescribed in case of adjudication/arbitration. The present blanket restriction even on strikes launched for securing demands other than, or not connected with, the matter under dispute /conciliation/ adjudication or arbitration, should be done away with.

There is no objection to the proposal that a strike notice, where necessary, should be accompanied by a resolution, or resolutions, from unions representing 51% or more, of the workforce employed in the establishment, favouring the strike. However, in case of a spontaneous strike triggered by any provocative action of the management, including violation of statutory, contractual, customary or conventional right of the workmen, the requirement of a strike-notice must be dispensed with.

Provided further that in case of a strike resorted to in response to a general strike call given by a national Trade Union Centre or Centres, on issue or issues of general policy on which no conciliation or adjudication is possible or practicable. mere prior intimation, without attracting any stipulation as to the period of strike notice. shall be considered sufficient.

Strike period Wages We consider it totally unjust that workers should be deprived of wages for strike period even when such a strike is justified solely on merits - as, for example, in case of provocation offered by the management, or patently intransigent attitude of the management in negotiating on grievances or demands of workers. There should be a provision in the Act to entitle workers to wages for strikes held to be justified on merits. Such a provision will have a salutary effect on both the social partners.

ITEM 8 : THE BILL OF WORKERS' PARTICIPATION IN MANAGEMENT

8.1 The above item was included in the agenda of the meeting of the Standing Labour Committee held on 13.9.96. The Committee, however, could not discuss this. Subsequently, the Central Trade Union Organisations and Employees Organisations were requested to send their considered views in writing by 4.10.96. The State Governments were also requested to send their considered views at the earliest.

8.2 The response received from the Central Trade Union Organisations, the Employees Organisations upto 14.10.96 have been annexed to the Agenda Note which was earlier submitted to the Standing Labour Committee. The Indian Labour Conference is requested to deliberate on the proposals in the light of the responses received.

8.3 In accordance with the 1975 amendment of the Constitution under the Chapter on Directive Principles of State Policy, successive schemes for Workers' Participation in Management were introduced and taken up for implementation. Keeping in view the shortcomings of the various schemes implemented from time to time and also the experience gained in this regard Government decided to give legislative cover to the concept. Accordingly, the participation of Workers in Management Bill, 1990 was drawn up and introduced in the Rajya Sabha in May, 1990. This evoked a large number of notices for amendment of various provisions of the Bill, which has not yet been taken up for consideration by the Rajya Sabha. In 1994, the Bill was remitted to the Parliamentary Standing Committee on Labour and Welfare for examination and report. Following a preliminary hearing the Parliamentary Standing Committee has suggested that Government may review the Bill keeping in view the need for incorporating necessary amendments in the context of the changing socio-economic scenario of the country.

8.4 It is, therefore, proposed that the provisions of the Bill, alongwith the notices for amendment received from the Members of Parliament, may be examined by the Indian Labour Conference and the Government's position with reference to the Bill formulated on the basis of the tripartite examination and review. A copy each of (i) background note on the Participation of Workers in Management Bill, 1990 (ii) the Bill as introduced in the Rajya Sabha and (iii) The consolidated list of Notices of amendment given by the Members of Parliament is enclosed.

BACKGROUND NOTE ON THE PARTICIPATION OF WORKER'S IN MANAGEMENT BILL, 1990

1. The rationale of labour participation in management lies not only in the support it gives for raising productivity and promoting industrial peace but also in creating a sense of involvement of the workers in the enterprise. In 1975 the Constitution was amended and Article 43A was inserted in the Directive Principles of State Policy. This Article provided that "the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in the industry."

2. Scheme of Worker's Participation in Management (1975)

In accordance with the 1975 amendment in the Constitution, the scheme of Workers' Participation in Management in manufacturing and mining industries was formulated in 1975. The Scheme was meant for implementation at shop and plant levels and covered only those manufacturing and mining units which employed 500 or more workers. The Scheme was required to be implemented in both public and private sectors as well as in departmentally run units. Shop and Plant levels were assigned specific functions relating to production and productivity, management of waste, reduction of absenteeism, safety, maximising machine and manpower utilisation etc.

The scheme did not lay down norms for the nomination of representatives to the participative councils. This made for considerable confusion. It was left to the management to work out an acceptable formula for representation to the councils. Providing for flexibility in the nomination of representatives seemed to make matters more difficult, except where a single union was the dominant union and interested in such bipartite functioning.

3. Scheme of Workers' Participation in Management (1977)

Two years later, commercial and service organisations with 100 or more employees were brought within the purview of a participative scheme, broadly similar to the 1975 scheme. It was applicable to institutions like hospitals, P&T, Railways and State Electricity Boards. While both the 1975 and 1977 schemes generated considerable enthusiasm initially, with a large number of organisations constituting such forums, after 1979 there was a sharp decline. Various problems surfaced. Apart from the perennial controversy about the criteria for determining representation to the participative forums, the exclusion of grievance redressal, the restriction to consideration of only work-related issues, the inadequate sharing of information, the lack of a supportive participative culture, the indifference of management, the involvement of

second rung union officialdom etc. contributed in different ways to the ineffective functioning of any forums and their subsequent closure.

4. **Comprehensive scheme for Employees' Participation (1983)**

In December, 1983, following a review of the progress of participative schemes in industry, a new scheme was prepared and notified.

This scheme was applicable to all central public sector enterprises, except those specifically exempted. It envisaged constitution of bipartite forums at shop and plant levels. In enterprises considered suitable, it was also to be implemented at the Board level. the mode of representation of workers' representatives was to be determined by consultation with the concerned unions, and parity in representation between the management and unions continued to be the norm.

The scheme brought within the ambit of the councils a wider spread of work-related issues. At the plant level, the council could discuss issues relating to personnel, welfare, environment and community development, plant operations and functioning, and also take up financial matters relating to profit and loss statements, balance sheets, operating costs, plant financial performance, labour and managerial costs etc.

5. **The Participation of Workers in Management Bill, 1990**

Keeping in view the shortcomings of the various schemes implemented from time to time and also the experience gained in this regard, the Government decided to review the concept of workers' participation in its entirety and to evolve a fresh approach to make workers' participation in management more effective and meaningful. A stage had been reached when some kind of a legislative back-up was thought to be necessary to make further progress in the matter.

The Participation of Workers in Management Bill was, therefore, drawn up and introduced in the Rajya Sabha on May 30, 1990.

6. A copy of the Bill is attached as Annexure I.

7. The main features of the proposed Bill are as follows:

(i) The law will determine the basic framework and structure of workers' participation while the details will be specified in one or more schemes to be framed by the Central Government under the law.

(ii) The law will cover all the industrial establishments or undertakings as defined under the Industrial Disputes Act, 1947. However, the Central Government will have the power to

notify the classes of industrial establishments to which the Act will apply with reference to the date specified in the notification. Different dates may be appointed for different provisions of the Act and for different classes of industrial establishments.

- (iii) The Bill envisages representation of workmen in forums at the levels of shop floor, establishment and in the Board of Management and also of other workers in the Board of Management.

A worker means any person employed in any industrial establishment to do any manual, unskilled, skilled, technical, operational, clerical, supervisory, managerial or administrative work for hire or reward.

A workman means any worker but does not include any such worker -

- (a) who is employed mainly in a managerial or administrative capacity, or
- (b) who, being employed in a supervisory or administrative capacity, draws wages exceeding rupees one thousand six hundred per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.
- (iv) The Bill provides for formulation of one or more schemes to be framed by the Central Government for giving effect to the provisions of the law which will include, among others, the manner of representation of workmen at all the three levels and of other workers at the Board level, nomination of representatives of employers on the shop floor and establishment level councils, procedure to be followed in the discharge of the functions of the Councils, etc.
- (v) The Central Government will be responsible for enforcing the law in all cases where the Central Government is the appropriate Government under the I.D. Act, 1947 and also in enterprises where the Central Government holds 51% or more of the paid up share capital. In the remaining cases, the responsibility for enforcement will be that of the State Government.

- (vi) Workers' Participation in management is envisaged at three levels - the shop floor level, the industrial establishments level (popularly known as plant level) and the Board of Management level.
- (vii) At the shop floor level and the industrial establishment level, bipartite councils are to be constituted by the employers with equal number of workmen's representatives and employers' representatives.
- (viii) The persons to represent the workmen in the councils at the shop floor and at the plant level shall be elected by and from among the workmen of the industrial establishment by secret ballot or nominated by the registered trade unions in accordance with the scheme.
- (ix) The subject matters to be discussed at shop floor level and industrial establishment level have been specified in the schedules.
- (x) At the board of Management level, the persons representing workmen shall constitute 13% and the persons representing other workers shall constitute 12% of the total strength of the Board of Management.
- (xi) The persons to represent the workmen on the Board of Management shall be elected by and from among the workers of the industrial establishment or establishments by secret ballot or nominated by the registered trade unions in accordance with the provisions of the scheme.
- (xii) The persons to represent the other workers on the Board shall be elected by and from among the other workers of the industrial establishment or establishments by secret ballot in accordance with the scheme.
- (xiii) Contravention of any provision of the Bill or the scheme made thereunder would entail punishment with imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees, or with both. The proposed law also provides for the appointment of inspectors by the appropriate Government for the purpose of this Act.
- (xiv) The Bill further provides that a Monitoring Committee comprising equal number of members representing the appropriate Government, the workers and the employers may be constituted by the appropriate Government to review and advise

them upon matters which arise out of the administration of this Act, any scheme or any rules made thereunder.

- (xv) The appropriate Government will also make rules to carry out the provisions of the proposed legislation.

8. The Bill could not come up for detailed consideration in the Rajya Sabha. Notices for amendment to the Bill were, however, received from several members of the Rajya Sabha. These notices have been consolidated and attached as Annexure-II.

AS INTRODUCED IN THE RAJYA SABHA ON

Bill No. XXVIII of 1990

THE PARTICIPATION OF WORKERS IN MANAGEMENT BILL, 1990

A

BILL

to make provisions for the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Participation of Workers in Management Act, 1990.

Short title,
extent
and
commen-
cement.

5 (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, after giving not less than three months' notice of its intention so to do, by notification, appoint and different dates may be appointed for different provisions of this Act and for different classes of industrial
10 establishments.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) "appropriate Government" means,—

(i) in relation to an industrial establishment—

(1) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government,

14 of 1947. 15

(2) carried on by a company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government,

(3) owned by a body corporate having industrial establishments in more than one State,

5

the Central Government, and

(ii) in relation to any other industrial establishment, the Government of the State in which that other establishment is situate;

(b) "Board of Management", by whatever name called, means 10
a body which is entitled to exercise all or any of such powers and to do all or any of such acts and things as the body corporate is authorised, by law under which it is incorporated, to exercise and do in relation to the industrial establishment or establishments owned by it;

15

(c) "Council" means a Shop Floor Council or an Establishment Council constituted under section 4;

(d) "notification" means a notification published in the Official Gazette;

(e) "other worker" means a worker other than a workman; 20

(f) "prescribed" means prescribed by rules made by the appropriate Government;

(g) "Scheme" means a scheme framed under section 3;

(h) "shop floor" means a unit of an industrial establishment where any activity severable from other activities is carried out at 25
a single place or contiguous places;

(i) "worker" means any person employed in any industrial establishment to do any manual, unskilled, skilled, technical, operational, clerical, supervisory, managerial or administrative work for hire or reward, whether the terms of employment be express or 30
implied, but does not include any such person—

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

45 of 1950.
46 of 1950.
62 of 1957.

(ii) who is employed in the police service or as an officer or other employee of a prison;

35

(j) "workman" means any worker but does not include any such worker—

(i) who is employed mainly in a managerial or administrative capacity, or

(ii) who, being employed in a supervisory or administrative 40
capacity, draws wages exceeding rupees one thousand six hundred per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(k) words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 shall have the meanings respectively assigned to them in that Act.

3. The Central Government may, by notification, frame one or more
5 schemes for giving effect to the provisions of this Act.

Participa-
tion of
workers
in Manage-
ment
Schemes,
Consti-
tution of
Councils.

4. (1) There shall be constituted in every industrial establishment one or more Councils at the shop floor level and a Council at the establishment level in accordance with the provisions of the Scheme.

(2) Notwithstanding anything contained in sub-section (1), Councils
10 at the shop floor level shall not be constituted in an industrial establishment having only one shop floor.

(3) Each Council at the shop floor level (hereinafter in this Act referred to as the "Shop Floor Council") and Council at the establishment level (hereinafter in this Act referred to as the "Establishment
15 Council") shall consist of equal number of persons to represent the employer and the workmen.

(4) The appropriate Government shall, in consultation with the employer and after taking into account the following factors, namely:—

(a) total number of workmen in the shop floor or industrial
20 establishment;

(b) total number of representatives of the employer including the other workers in the shop floor or establishment;

(c) the number of levels of authority in the shop floor or establishment;

(d) the number of shop floors in an establishment; and
25

(e) such other factors as may be specified in the Scheme,

determine the number of persons who shall represent the employer and the workmen in a Council.

(5) The persons to represent the employer shall be nominated by
30 the employer in such manner as may be specified in the Scheme.

(6) The persons to represent the workmen shall be elected by, and from amongst, the workmen of the industrial establishment, by secret ballot or nominated by the registered Trade Unions, in accordance with the Scheme;

35 Provided that a person representing the workmen shall cease to be a member of the Council when he ceases to be a workman in that industrial establishment and the vacancy so caused shall be filled in such manner as may be specified in the Scheme.

(7) The Chairperson of each Shop Floor Council and Establishment
40 Council shall be chosen by, and from amongst, the members thereof.

(8) The term of office of the members of each Council shall be three years from the date of the constitution of the Council.

(9) The procedure to be followed in the discharge of their functions by and the manner of filling vacancies amongst, the Chairpersons and other members of the Councils shall be such as may be specified in the Scheme.

(10) The Shop Floor Councils and Establishment Council shall meet 5
as and when necessary but not less than four meetings of a Council shall be held every year.

(11) Every Council shall conduct its business in such manner as may be specified in the Scheme:

Provided that in a case where a matter under consideration is beyond 10
the jurisdiction of—

(a) a Shop Floor Council, the said matter shall be referred to the Establishment Council;

(b) an Establishment Council in relation to a body corporate, the said matter shall be referred to the Board of Management: 15

Provided further that in a case where the representatives of the employer and the representatives of workmen fail to agree on any matter, such matter shall be referred to the employer for decision.

Powers
and
functions
of
Councils.

5. (1) A Shop Floor Council shall exercise such powers and perform such functions as it may deem necessary in relation to the matters spe- 20
cified in Schedule I.

(2) An Establishment Council shall exercise such powers and perform such functions as it may deem necessary in relation to the matters specified in Schedule II:

Provided that where no Shop Floor Council is constituted, the Estab- 25
lishment Council shall exercise such powers and perform such functions as it may deem necessary in relation to the matters specified in Schedule I also.

Board of
Manage-
ment.

6. (1) Notwithstanding anything contained in any other law for the time being in force, the Board of Management of every body corporate 30
owning an industrial establishment or establishments shall include persons to represent workmen and other workers employed in that establishment or those establishments and the persons representing workmen shall constitute thirteen per cent. and the persons representing other workers shall constitute twelve per cent. of the total strength of such 35
Board of Management:

Provided that in case of a fraction of a number, such number shall be rounded off to the nearest whole number and, for this purpose, where such fraction is one-half or more, it shall be increased by a whole number and if such fraction is less than one-half, it shall be ignored: 40

Provided further that where the total strength of the Board of Management is not sufficient for giving representation to any workman, the Board of Management shall include at least one such person.

(2) The persons to represent the other workers shall be elected by, and from amongst, the other workers of the industrial establishment or 45
establishments, by secret ballot, in accordance with the Scheme.

(3) The persons to represent the workmen shall be elected by, and from amongst, the workmen of the industrial establishment or establishments, by secret ballot, or nominated by the registered Trade Unions, in accordance with the Scheme.

5 (4) The term of office of the representatives of the workers shall be three years from the constitution of the Board of Management:

Provided that a person representing the workmen or, as the case may be, other workers shall cease to be a representative on the Board of Management when he ceases to be a workman or other worker in an
10 industrial establishment owned by the body corporate and the vacancy so caused shall be filled in such manner as may be specified in the Scheme.

(5) For the removal of doubts, it is hereby declared that every representative of the workers shall exercise all the powers and discharge all the functions of a member of the Board of Management and shall be
15 entitled to vote.

(6) The Board of Management shall review the functioning of each Shop Floor Council and the Establishment Council of the industrial establishment or establishments concerned.

7. If any person contravenes any of the provisions of this Act or the
20 Scheme made thereunder, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees, or with both. Penalty.

8. (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was
25 in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Offences by companies.

Provided that nothing contained in this sub-section shall render any
30 such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is
35 proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and
40 punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Cognizance
of offences.

9. No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government.

Inspectors.

10. (1) The appropriate Government may, by notification, appoint such persons as it thinks fit, to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise their jurisdiction. 5

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with,— 10

(a) require an employer to furnish such information as he may consider necessary;

(b) enter any establishment or any premises connected therewith at any reasonable time and with such assistance, if any, as he thinks fit, and require any one found in charge thereof to produce before him for examination any books, registers and other documents relating to the employment of persons; 15

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been a worker in the establishment; 20

(d) make copies of, or take extracts from any book, register or other document maintained in relation to the establishment;

(e) exercise such other powers as may be prescribed. 25

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code. 45 of 1860.

(4) Any person required to produce any account, book, register or other document or to give information by an Inspector under sub-section (1) shall be legally bound to do so. 30

Monitoring
Commit-
tees.

11. (1) The appropriate Government may constitute a Monitoring Committee to review and advise the said Government upon matters arising out of the administration of this Act, any Scheme or any rules made thereunder.

(2) The members of the Monitoring Committee shall be appointed by the appropriate Government and shall be of such number and chosen in such manner as may be prescribed: 35

Provided that the Monitoring Committee shall include an equal number of members representing—

(i) the appropriate Government, 40

(ii) the workers, and

(iii) the employers.

(3) The Chairperson of the Monitoring Committee shall be one of the members appointed to represent the appropriate Government, nominated in this behalf by the appropriate Government.

(4) The appropriate Government shall publish, by notification, the names of the members of the Monitoring Committee.

12. The appropriate Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Act. Power to exempt.

10 13. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. Effect of provisions of the Act inconsistent with other laws.

14. (1) The appropriate Government may, by notification, make rules to carry out the provisions of this Act. Power of appropriate Government to make rules.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) the powers which an Inspector may exercise under clause (e) of sub-section (2) of section 10;

(ii) the number of the members of the Monitoring Committee and the manner in which they shall be chosen under sub-section (2) of section 11;

(iii) any other matter which has to be, or may be, prescribed under this Act.

15. (1) Every rule and every Scheme made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the Scheme, or both Houses agree that the rule or the Scheme should not be made, the rule or the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or Scheme. Laying of rules and Schemes.

35 (2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House.

16. Section 3 of the Industrial Disputes Act, 1947 shall be omitted. Amendment of Act 14 of 1947.

SCHEDULE I

(See section 5)

1. Production facilities.
2. Storage facilities in a shop. 5
3. Material economy.
4. Operational problems.
5. Wastage control.
6. Hazards and safety problems.
7. Quality improvement. 10
8. Cleanliness.
9. Monthly targets and production schedules.
10. Cost reduction programmes.
11. Formulation and implementation of work system.
12. Design group working. 15
13. Welfare measures related particularly to the shop.

SCHEDULE II

(See section 5)

Operational areas

1. Evolution of productivity schemes taking into account the local conditions. 20
2. Planning, implementation, fulfilment and review of monthly targets and schedules.
3. Material supply and its shortfall.
4. Storage and inventories.
5. House keeping. 25
6. Improvements in productivity in general and in critical areas in particular.
7. Encouragement to and consideration of suggestions.
8. Quality and technological improvements.
9. Machine utilisation knowledge and development of new products. 30
10. Operational performance figures.
11. Matters not resolved at the shop-level or concerning more than one shop.
12. Review of the working of the shop-level bodies.

Economic and financial areas

1. Profit and loss statement and balance-sheet.
 2. Review of operating expenses, financial results and cost of sales.
 3. Plant performance in financial terms, labour and managerial costs, market conditions, etc.
- 5

Personnel matter

1. Absenteeism.
 2. Special problems of women workers.
 3. Initiation and supervision of workers' training programmes.
 4. Administration of social security schemes.
- 10

Welfare areas

1. Operational details.
 2. Implementation of welfare schemes, medical benefits and transport facilities.
 3. Safety measures.
 4. Sports and games.
 5. Housing.
 6. Township administration, canteen, etc.
 7. Control of gambling, drinking and indebtedness.
- 15

Environmental areas

1. Extension activities and community development projects.
 2. Pollution control.
- 20

STATEMENT OF OBJECTS AND REASONS

Article 43A of the Constitution requires the State to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. So far, all the schemes pertaining to participation of workers in management have been non-statutory. At present, there is no central law on the subject. The non-statutory schemes have not been able to provide an effective frame-work for a meaningful participation of workers in management at all levels.

2. This Bill, *inter alia*, intends to—

(i) provide for specific and meaningful participation of workers in management at shop floor level, establishment level and board of management level in industrial establishments;

(ii) provide for formulation of one or more schemes to specify detailed *criteria*, such as, the manner of representation of workmen on the shop floor and establishment level councils, and of workmen and other workers on the Board of Management nomination of representatives of the employers on the shop floor and establishment level councils, procedure to be followed in the discharge of the functions by a council, the manner of filling the vacancies amongst the chair-persons and members in respect of shop floor and industrial establishment councils and conducting their business, etc;

(iii) provide for the principle of secret ballot for determining the representation of workmen on the shop floor and establishment level councils and of workmen and other workers on the Board of Management.

(iv) provide for rules to specify the power which an Inspector may exercise, the number of members of the Monitoring Committee and the manner in which they shall be chosen, etc.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 25th May, 1990.

RAM VILAS PASWAN.

FINANCIAL MEMORANDUM

Under the Participation of Workers in Management Bill, 1990, the Central Government is the appropriate Government for the administration of its provisions in relation to an industrial establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government. The Central Government is also the appropriate Government in relation to an industrial establishment carried on by a company in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government and in relation to an industrial establishment owned by a body corporate having industrial establishments in more than one State. For other establishments, the State Government in which such other establishments are situated is the appropriate Government. Clause 10(1) providing for appointment of Inspectors and clause 11 providing for constitution of Monitoring Committee involve expenditure on the part of the Central Government as the appropriate Government.

2. The Participation of Workers in Management Bill, 1990 is an enabling legislation and is to be applied at all the three levels, that is, shop floor level, industrial establishment level and board of management level. The Central Government is the appropriate Government in respect of large number of industrial establishments as defined in the Industrial Disputes Act, 1947. Hence, for the present, it is proposed to appoint the existing officers of Central Industrial Relations Machinery as Inspectors under the Act. Therefore, no additional expenditure is proposed to be incurred under this item.

3. The Monitoring Committee may meet once in a year or at any other suitable interval as may be specified and may undertake tours to different parts of the country to review and advise the State Governments upon matters arising out of the administration of this Act, any Scheme or any rules made thereunder. It is not possible at this stage to quantify the recurring expenditure likely to be incurred in connection with the meetings of the Committee. A token provision of Rs. 5.00 lakhs for the financial year 1990-91 has been made.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 empowers the Central Government to frame one or more schemes by notification for giving effect to the provisions of this Act. Since a scheme will have to specify, among other matters, the manner of representation of workmen on the shop floor and industrial establishment level councils and of workmen and other workers on the Board of Management, nomination of the representatives of the employers on the shop floor and industrial establishment level councils and also will lay down the procedure to be followed in the discharge of the functions of the members at all levels and the manners of filling vacancies among chairpersons and members, the framing of a scheme will, therefore, require consultation with and advice of the relevant Ministries or Departments of the Central Government, State Governments and Union territories. It would, therefore, be convenient to delegate these powers to the Central Government.

2. Clause 12 empowers the appropriate Government to make rules, by notification, to carry out the various provisions of this Act on matters relating to the powers of Inspectors, manner in which the members of the Monitoring Committee will be chosen and any other matter which may be prescribed under the Act. Since the rules to be made under this clause would be of a very detailed nature and would be made after thorough examination, it would be convenient to delegate this power to the appropriate Government.

3. The matters in respect of which the rules may be made under clause 13 are essentially matters of details and procedure. The delegation of legislative powers is thus of a normal character.

ANNEXURE

EXTRACT FROM THE INDUSTRIAL DISPUTES ACT, 1947

(14 OF 1947)

* * * * *

CHAPTER II

AUTHORITIES UNDER THIS ACT

3. (1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926.

Works
Commit-
tee.

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

RAJYA SABHA

A

BILL

to make provisions for the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected therewith or incidental thereto.

(Shri Ram Vilas Paswan, Minister of Labour and Welfare)

CONSOLIDATED LIST

RAJYA SABHA
NOTICE OF AMENDMENTS

THE PARTICIPATION OF WORKERS IN MANAGEMENT BILL, 1990
(As introduced in the Rajya Sabha)

(To be moved at a sitting of the Rajya Sabha)

(CLAUSE - I)

BY PROF. CHANDER P. THAKUR :

1. That at page 1, line 3, for the word "workers" the word "employees" be substituted.

BY SHRI AJIT P.K. JOGI :

2. That at page 1, line 3 for the word "workers" the words "workers and employees" be substituted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

3. That at page 1, for lines 6 to 10, the following be substituted, namely:-

"(3) it shall come into force on such date as the Central Government may, by notification, appoint."

BY DR. JINENDRA KUMAR JAIN :

4. That at page 1, for lines 6 to 10, the following be substituted, namely

"(3) It shall come into force at once".

BY SHRI AJIT P.K. JOGI :

5. That at page 1, for lines 6 to 10, the following be substituted, namely:-

"(3) It shall be deemed to have come into force on the 1st day of August, 1990".

BY SHRI V. NARAYANASAMY :

6. That at page 1, for lines 6 to 10, the following be substituted namely:-

"(3) It shall come into force on the date of notification issued by the Central Government for all industrial establishments".

BY SHRI SANTOSH BAGRODIA

7. That at page 1, for lines 6 to 10, the following be substituted, namely:-

"(3) It shall come into force after one year from the date of notification issued by the Central Government for all industrial establishments."

BY SHRI SURESH PACHOURI :

8. That at page 1, for lines 6 to 10, the words "It shall come into force with immediate effect" be substituted."

BY SHRI SANTOSH BAGRODIA :

9. That at page 1, line 7 for the words "three months" the words "one year" be substituted.

CLAUSE - 2

BY SHRI VIREN J. SHAH :

10. That at page 2, lines 12 to 15, for the words "the body corporate is authorised, by law under which it is incorporated, to exercise and do in relation to the industrial establishment owned by it" the words "may be delegated by Board of Directors" be substituted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

11. That at page 2, lines 20 to 22, be deleted.

BY SHRI S. MADHAVAN :

12. That at page 2, lines 41-42, the words "draws wages exceed in rupees one thousand six hundred per mensem or" be deleted.

13. That at page 3, after line 3, the following be inserted, namely:-

"(1) industrial establishment means an industry involving manufacturing activities in which one thousand or more workers are employed."

BY SHRI SANTOSH BAGRODIA :

14. That at page 3, after line 3, the following be inserted, namely:-

"(1) industrial establishment means an industry involving manufacturing activities in which one thousand or more workers are employed."

15. That at page 2, lines 10 to 15 be deleted.

16. That at page 2, for lines 24-26 the following be substituted, namely:-

"(h) 'Shop floor' means a floor or floors of an industrial establishment where any activity or activities of similar nature severable from other activities of that industrial establishment are carried out at a single place, or contiguous places."

Explanation No.1 : The services rendered by auxilliary departments exclusively to any production department will be deemed as one shop floor relating to that production department only.

Explanation No.2 : Any clarification given by the officer appointed by the appropriate Government shall be final to decide as to whether certain activities will be deemed under one shop floor or not."

BY SHRI SANTOSH BAGRODIA
SHRI SURESH PACHOURI :

17. That at page 2, lines 41-42 for the words "one thousand six hundred" the words "two thousand five hundred" be substituted.

CLAUSE - 3

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

18. That at page 3, lines 4-5, for the words "one or more schemes" the words "a scheme" be substituted.

BY SHRI VIREN J. SHAH :

19. That at page 3, lines 5, after the words "this Act" the words "in consultation with the organisations of workers and employers" be inserted.

BY SHRI N.E. BALARAM
SHRI GURUDAS DAS GUPTA
SHRI CHATURANAN MISHRA :

20. That at page 3, line 4, after the word "may" the words "after consultation with Central Trade Unions" be inserted.

BY SHRI SANTOSH BAGRODIA :

21. That at page 3, line 5, after the words "this Act" the words "in consultation with the organisations of workers and employees" be inserted.

CLAUSE - 4

BY PROF. CHANDRESH P. THAKUR :

22. That at page 3, lines 6, for the words "Industrial establishment" the word "organisation" be substituted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN

23. That at page 3, line 18, after the word "employer" the words "and the workers" be inserted.

BY SHRI V. NARAYANSAMY :

24. That at page 4, line 18, for the words "to the employer for decision" the words "to the Joint Committee comprising of employer and workmen representative for decision" be substituted.

BY SHRI VIREN J. SHAH
SHRI S. MADHAVAN

25. That at page 3, line 33, the words "or nominated by the registered Trade Unions" be deleted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN

26. That at page 3, line 36, for the words "ceases to be a workman" the words "retires or resigns from service" be substituted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN

27. That at page 3, after line 38, the following provisions shall be inserted, namely:-

"provided further that the representative of the executive shall be proportion to their strength among the workers;

provided also that a suspended, discharged, terminated or dismissed workers whose case is in dispute will be treated as worker for the purpose of this Act."

28. That at page 3, line 40, after the word "thereof" the words "in such manner that workers and employers representatives shall be elected by rotation" be inserted.

29. That at page 4, lines 16 to 18 be deleted.

BY SHRI SANTOSH BAGRODIA :

30. That at page 3, line 33 the words "or nominated by the registered Trade Unions" be deleted.

BY SHRI SURESH P. ACHOURI :

31. That at page 4 line 6 for the word "four" the word "two" be substituted.

32. That at page 4 line 6 for the word "four" the word "twelve" be substituted.

33. That at page 4, line 6-7 for the word "four meetings of a Council" the words "one meeting of a council shall be held in every quarter of a year" be substituted.

34. That at page 3, line 7, for the words "one or more Councils at the shop floor level" the words "one Council at one shop floor level" be substituted.

35. That at page 3, line 11, after the words "shop floor" the words "and an industrial establishment having maximum 4 shop floors may exempted to constitute shop floor level Councils provide permission to this effect is obtained in writting from the appropriate Government who is satisfied that the Council at establishment level shall be enough to do the work of shop floor level also be inserted.

BY SHRI SURESH PACHOURI :

36. That at page 4, line 18, for the words "such matter shall be referred to the employer for decision" the words "such matter shall be referred to Monitoring Committee" be substituted.

37. That at page 3, after line 33 the words "or nominated by the registered Trade Unions" be deleted.

BY SHRI SURESH PACHOURI :

38. That at page 3, after line 38 the following proviso be inserted, namely :-

"provided further that one seat in the Council shall be reserved for a lady workman"

39. That page 3, after line 38 the following proviso be inserted, namely :-

"provided further that to represent the workmen, it is mandatory to be a member of some registered trade unions and only such trade unions shall represent the workmen the membership of which is not less than twenty percent of the social strength of workmen and that if any person after having been elected as representative of workman, is removed from service he can represent workmen, if he so desires, after he ceases to be a workman."

BY SHRI SANTOSH BAGRODIA

40. That at page 3, line 40 for the words "the member thereof" the words "the member nominated by the employer" be substituted.

BY SHRI SURESH PACHOURI :

41. That at page 3, lines 41-42 for the words "three years" the words "five years" be substituted.

BY SHRI SANTOSH BAGRODIA

42. That at page 3, line 42 after the words "the Council" the words "unless and until 3/4 members of the existing Council resign voluntarily and demand the reconstitution of any particular Council" be substituted.

BY SHRI CHATURANAN MISHRA :

43. That at page 3 and 4 lines 35 to 38 and 10 to 18 respectively be deleted.

CLAUSE - 6

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

44. That at page 4, line 32, the words "workmen and other" be deleted.

45. That at page 4, line 33, for the word "workmen" the word "workers" be substituted.

46. That at page 4, line 34, for the word "thirteen" the word "fifty" be substituted.

47. That at page 4, lines 34-35, for the words "other workers" the word "executives" be substituted.

BY SHRIMATI SUSHMA SWARAJ

48. That at page 4, -

(i) line 34 for the words "thirteen per cent." the words "twenty six percent" be substituted.

(ii) line 35, for the words "twelve per cent" the words "twenty four per cent" be substituted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

49. That at page 4, line 35, for the words "twelve per cent" the words proportionate to the strength in the establishment" be substituted.

50. That at page 4, line 42, for the word "workman" the word "worker" be substituted.

51. That at page 4, after line 43, the following proviso be inserted, namely :

"Provided also that on the Board of Management an office bearer of a union shall be treated as a worker."

52. That at page 4, lines 44-45, for the words "other workers" wherever they occur the word "executives" be substituted.

53. That at page 5, for line 1 to 4, the following be substituted, namely :

"(3) (a) wherever the trade unions and functioning of executive associations in an industrial establishment/undertaking the persons to represent the workers shall be nominated by registered trade unions/ executive associations in proportion to their strength reflected through secret ballot.

(b) Wherever the trade unions/officers Associations are not functioning in an industrial establishment or establishments the workers shall be elected by and from amongst the workers in the establishment by secret ballot."

BY SHRI VIREN J. SHAH
SHRI S. MADHAVAN
SHRI V. NARAYANASAMY :

54. That at page 5, line 3, the words "or nominated by the registered Trade Unions" be deleted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

55. That at page 5, lines 7-8, for the words "the workmen or, as the case may be, other workers" the words "the worker or as the case may be, the executive" be substituted.

56. That at page 5, line 9, for the words "ceases to be a workman or other worker" the words "resigns or retires from his service or ceases to be a member of the union/officer association, as the case may be" substituted.

BY SHRI N.E. BALARAM
SHRI GURUDAS DAS GUPTA
SHRI CHATURANAN MISHRA

57. That at page 4, line 34, for the words "thirteen percent." the words "twenty percent." be substituted.

58. That at page 5, line 6, for the words "three years" the words "two years" be substituted.

BY SHRI SANTOSH BAGRODIA :

59. That at page 5, line 3, the words "or nominated by the registered Trade Unions" be deleted.

60. That at pages 4-5 clause 6 be deleted.

61. That at page 5, line 3 the words "or nominated by the registered Trade Unions" be deleted.

BY SHRI SURESH PACHOURI :

62. That at page 5, after line 4 the following provision be inserted, namely :

"provided that to represent the workmen, it is mandatory to be a member of some registered trade unions and only such trade unions shall represent the workmen the membership of which is not less than twenty percent of the total strength of workmen and that if any person, after having been elected as representatives of workmen, is removed from the service can represent workmen, if he so desires even after he ceases to be a workman."

63. - That at page 5 after line 4 the following provision be inserted, namely :

"provided that one seat in the Board of Management shall be reserved for a lay workman."

64. That at page 5 line 6 for the words "three years" the words "five years" be substituted.

BY SHRI SANTOSH BAGRODIA :

65. That at page 4 line 36 after the words "Board of Management" the words "excluding the representatives of workmen and other workers" be inserted.

BY SHRI CHATURANAN MISHRA :

66. That at page 5 for lines 1 to 4 the following be substituted namely :

"(3) Wherever the trade unions/organisations of employees exist in an industrial establishment/undertakings, the person to represent the workers shall be nominated by the

Trade Unions/other employees organisations in proportion to their strength reflected through secret ballot within their respective quota."

CLAUSE - 7

BY SHRI VIREN J. SHAH

67. That at page 5 line 20, after the words "made thereunder" the words "wilfully or with malafide intent" be inserted.

BY SHRIMATI SUSHMA SWARAJ :

68. That at page 5, lines 21-22, the words "or with fine which may extend to twenty thousand rupees, or with both" be deleted.

BY SHRI SANTOSH BAGRODIA :

69. That at page 5, line 20, after the words "made thereunder" the words "wilfully or with malafide intent" be inserted.

CLAUSE - 8

BY SHRI VIREN J. SHAH :

70. That at page 5 - (i) after line 28, the following proviso be inserted namely :

"provided that where a separate official/director has been authorised to discharge matters relevant for purposes of this Act, only such person shall be deemed to be guilty of the offence.

(ii) Line 29, after the word "Provided" the word "further" be inserted.

BY SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN :

71. That at page 5, line 44, after the word "partner" the words "or a proprietor" be inserted.

CLAUSE - 9

BY SHRI S. MADHAVAN

72. That at page 6, line 3, after the words "appropriate Government" the words "or by the elected representatives of the workers under this Act" be inserted.

CLAUSE - 10

BY SHRI VIREN J. SHAH :

73. That at page 6, line 8, after the word "may" the words "on prior authorisation of a superior officer of not less than the rank of Labour Commissioner" be inserted.

BY SHRI SANTOSH BAGRODIA :

74. That at page 6 line 8 after the word "may" the words "or prior authorisation of a superior officer of not less than the rank of Labour Commissioner" be inserted.

75. That at page 6 lines 28 to 30 be deleted.

CLAUSE - 11

BY SHRI SURESH PACHOURI :

76. That at page 7 after line 5 the following be inserted, namely :

"(5) the annual report of Monitoring Committee shall be laid as soon as possible by the appropriate Government before each House of Parliament or State legislature, as the case may be, where it consists of two Houses or where such legislature consists of one House, before that House however the said report shall essentially be required to be laid before the expiry of ensuing financial year".

CLAUSE - 12

BY SHRI S.S. AHLUWALIA
SHRI SUKOMAL SEN
SHRI SUNIL BASU RAY
SHRI MOHAMMED AMIN
PROF. CHANDRESH P. THAKUR
SHRI V. NARAYANASAMY

77. That at page 7, clause 12 be deleted.

CLAUSE - 15

BY SHRI SANTOSH BAGRODIA

78. That at page 7 line 24 the words "as soon as may be after it is made" be deleted.

79. That at page 7 lines 25-28 the words "while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the Session immediately following the session or the successive sessions aforesaid" be deleted.

80. That at page 7 line 31 the word "thereafter" be deleted.

81. That at page 7 lines 32-34 the words "so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme" be deleted.

82. That at page 7 line 38 after the words "that House" the words "if house or houses, as the case may be, agree in making any modification in the rule or agree that the rule should not be made, the rule shall be effect only in such modified form or made, the rule shall be of effect only in such modified form or be of no effect as the case may be" inserted.

83. That at page 9 lines 1 to 5 be deleted.

SCHEDULE - II

BY SHRI VIREN J. SHAH :

84. That at page 9, lines 1 to 5 be deleted.

BY PROF. CHANDRESH P. THAKUR :

85. That at page 9, after line 5, the following be inserted, namely :

"4. Wages, salaries and other benefits of employees".

BY DR. JINENDRA KUMAR JAIN :

86. That the Bill to make provisions for the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members (names to be given at the time of moving the motion) with instructions to report by the last day of the next Session of the Rajya Sabha.

BY SHRI S.S. AHLUWALIA :

87. That the Bill to make provisions for the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected therewith or incidental thereto, be referred to a Joint Committee of the Houses consisting of 30 members; 10 members from this House (names to be given at the time of moving the motion) and 20 members from the Lok Sabha;

That in order to constitute a meeting from the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

That in other respects, the Rules of Procedure of this House relating to Select Committees shall apply with such variations and modifications as the Chairman may make;

That the Committee shall make a report to this House by the end of the 157th Session of the Rajya Sabha and

That this House recommends to the Lok Sabha that the Lok Sabha do join in the said Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Joint Committee.

BY SHRI KAPIL VERMA :

88. That the Bill to make provisions for the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected therewith or incidental thereto, be referred to a Joint Committee of the House consisting of 30 members; 10 members from this House (names to be given at the time of moving the motion) and 20 members from the Lok Sabha;

That in order to constitute a meeting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

That in other respects, the Rules of Procedure of this House relating to Select Committee shall apply with such variation and modifications as the Chairman may make;

That the Committee shall make a report to this House by the first day of the next Session, and

That this House recommends to the Lok Sabha that the Lok Sabha do join in the said Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Joint Committee.

BY SHRI AJIT P.K. JOGI :

89. That the Bill to make provisions for the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry and to provide for matters connected therewith or incidental thereto, be referred to a Joint Committee of the Houses consisting of 30 members; 10 members from this House (names to be given at the time of moving the motion) and 20 members from the Lok Sabha;

That in order to constitute a meeting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

That in other respects, the Rules of Procedure of this House relating to Select Committees shall apply with such variations and modifications as the Chairman may make;

That the Committee shall make a report to this House by the first day of the next Session; and

That this House recommends to the Lok Sabha that the Lok Sabha do join in the said Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Joint Committee.

Comments received

Indian National Trade Union Congress (INTUC)

CLAUSE 1

1. That at page 1, for lines 6 to 10, the following be substituted, namely:

"It shall come into force with immediate effect."

CLAUSE 2

2. That at page 2, line 24, the words "of an industrial establishment" be deleted.

3. That at page 2, line 31, after the word "implied", the words "and it would include any person working as casual or on contract basis either in the same industrial establishment or in any other industrial establishment/s for the benefit of the principal employer/contractor whether the terms of employment be express or implied".

4. That at page 2, line 41 and 42, the words "rupees one thousand six hundred per mensem" be substituted by words "rupees three thousand and five hundred per mensem".

CLAUSE 3

5. That at page 3, line 4, after the word "may", the words "in consultation with the national trade union centres" be substituted.

CLAUSE 4

6. That at page 3, line 16, after the word "employer", the words "workmen and other workers" be substituted.

7. That at page 3, line 18, after the word "employer", the words "and workmen representative/s nominated by the registered Trade Unions" be substituted.

8. That at page 3, line 20, after the word "establishment", the words "including casual and contract workers working either in the same industrial establishment or in any other industrial establishment/s for the benefit of the principal employer/contractor whether the terms of employment be express or implied;".

9. That at page 3, in lines 22 to 24, the word "establishment" be substituted by the word "establishments".

10. That at page 3, lines 32 and 33, the words "by secret ballot or" be deleted.

CLAUSE 6

11. That at page 4, lines 16 to 18 be deleted.
12. That at page 4, in lines 34 and 35, the words "thirteen percent" and "twelve percent" respectively, each be substituted by words "twenty-five percent".
13. That at page 4, line 44, the words "elected by" be deleted.
14. That at page 4, line 46, the words "by secret ballot" be deleted and be substituted by words "nominated by the registered Trade Unions".
15. That at page 5, line 1, the words "elected by" be deleted.
16. That at page 5, line 3, the words "by secret ballot, or" be deleted.
17. That at page 5, line 11, after the word "Scheme", the words "unless such person continues to work as casual or on contract basis either in the same industrial establishment or in any other industrial establishment/s for the benefit of the principal employer/contractor whether the terms of employment be express or implied."

CLAUSE 9

18. That at page 6, line 3, after the word "Government", the words "or on a complaint made by or under the authority of either the employers' representative/s or the workmen's representative/s or the workers' representative/s in the Board of Management" be inserted.

CLAUSE 11

19. That at page 6, line 41, after the word "workers", the words "as nominated by the registered Trade Unions" be inserted.
20. That at page 7, lines 6 to 9 be deleted.

CLAUSE 16

21. That at page 7, line 39, after the word "omitted", the words "except for the purposes of establishing the minimum number of workmen at any industrial establishment for the application of the Participation of Workers in Management Act and, to include in such number, any person working as casual or on contract basis either in the same industrial establishment or in any other industrial establishment/s for the benefit of the principal employer/contractor whether the terms of employment be express or implied".

All India Trade Union Congress (AITUC)

AITUC is in general agreement with the objectives and intention behind this proposed piece of legislation. Yet it would like that its provisions be so modulated as to ensure genuine participation of the workers, through their chosen representatives, in all major issues connected with management and operation of the industry concerned.

At this stage we would like to confine ourselves with making a few comments or suggestions which could be accommodated without any difficulty.

I. Clause 1(3) In our opinion all the provisions of the Act should be applied simultaneously for all industrial establishments throughout the country. Choice of different dates for application of different provisions for different classes of industrial establishments, leaves scope for injudicious exercise of discretion and might be found lacking in transparency in certain cases.

Clause 4: The proviso to sub-clause II, below item (a) and (b) leaves decision of a matter on which agreement is lacking to the employer alone. We are not in agreement with this proposal. Some other bipartite or independent mechanism has to be thought of to bring about a reasonable solution of the differences.

Though it was agreed that workers' representatives shall be on the Board of Directors, the Bill provides only for workers representatives shall be on the Board of Management. The financial policies will not be decided by the Board of Management and so decision-making on vital matters will remain outside the purview of the proposed participative fora.

The AITUC has at an early stage given its views on some other aspects of the proposed legislative measure. It is expected that the proceedings of a previous meeting convened to discuss the Bill will be gone into by the Ministry to fully acquaint itself with the AITUC's suggestions.

United Trade Union Centre (Lenin Sarani) (UTUC (LS))

Views on the Bill will be placed in the ILC meeting.

Confederation of Indian Industry (CII)

NOTE ON WORKERS PARTICIPATION IN MANAGEMENT IN PRIVATE SECTOR

CII notes the initiative of the Government of India for instituting Workers Participation in Management.

At the outset CII would like to point out that the appropriate term for the subject should be Employee Involvement in Management. This is because there is no reason why participation should be confined to workmen. As a matter of

fact, even supervisors, junior and middle management should participate in a Company's day-to-day working etc. to improve the effectiveness of the organisation.

The ultimate goal of employee involvement would be to maximise productivity and quality and bring about improvement in national welfare. Economic gains in today's changed global business environment can only come about if management and employees work together in a spirit of true collaboration. This has been amply demonstrated by Japan where they have been following a policy of collaboration between management and employees.

Some of the important objectives of employee involvement could be as follows :

Management can get better quality, productivity, efficiency etc. through employee involvement which would result in improving profits.

Employees would feel a sense of ownership in the company, will feel that they have been respected and consulted, would be able to share in the improved gains through their contribution and should be able to raise their living standards.

Thus if employee involvement can be implemented in its true spirit then it will benefit everybody in the country. However, a legislation in this area will have far reaching implications because it will touch the working of almost all organisations in the country.

II. Some Practical Problems

Industrial democracy has been a concept which though tried out in many parts of the world, has not taken firm shape or roots anywhere, as yet. Hence legislation to introduce industrial democracy in India will be a difficult one to implement.

A practical problem which is likely to be faced would be that since, by definition, legislation cannot force cooperation or participation, it would appear more practical to consider a progressive and stage-wise approach. This would be consistent with the experience that in practice it is easier to achieve success in small steps. Such success provides encouragement and confidence for proceeding with the next step.

Considering that there are lakhs of industrial enterprises in the country, each with substantially differing profiles, it may be more practical to adopt a flexible, rather than uniform approach. There can be three levels of participation.

Shop Floor/ Office

Unit Level

Board Level (To be introduced at a later date)

a) Shop floor/Office Level Participation

This is the basic operating level participation and consultative machinery. Here, the system could be as follows:

- * Union in consultation with workers (General Body of the Shop/Office) will put up representatives who could be either workmen as per Act or any other employee.
- * Management will similarly nominate equal Representatives (2 for 100 employees).
- * Chairperson will Shop In-Charge
- * Representatives would serve for a period of one year.

Role of Member: Idea generation, Joint Consultation, Participation in implementation, monitoring/review etc.

Role of Chairperson: Generate team work, give direction encourage consensus, overall implementation, give final decision in case of difference of opinion for use fall back method.

PROCESS

The process would be :

- Listening to all viewpoints
- Consensus building
- Equal participation/participative approach
- Involvement of all
- Team work
- Quality of Process/Review of process etc.

Linkages with Union/Management Structure

Output of this forum would be the input to the Management and the Union. The indicative list of subjects to be covered are :

- Basic Shopfloor Systems
- Quality Circles
- Absenteeism Sugestions
- Overtime
- Housekeeping

- Waste Control Reduction in Rejection
- Safety
- Working Conditions etc.

b) Unit Level Participation

Participation would be by the Unit-level Union (no outsider) with Unit Level Management (no Head Office representation).

The provisional list of issues to be dealt with could be items such as :

Production	Credit Society
Productivity	Medical Aid
Time Study	Transportation
Incentives	Housing
Value Analysis	School
Cost Reduction	Employee Welfare
Safety	Annual Day/Founders Day
Discipline	Excursions/Tours
Education & Training	Sports etc.
Quality	
Modernisation	
Canteen	

It would be extremely important that the Trade Unions are fully involved and supportive of this Plan.

c) Board Level Representation

It would be desirable to start very gradually in this direction.