

THIRD INDIA-EU SEMINAR ON EMPLOYMENT RELATIONS AND RESOLUTION OF CONFLICTS

(NEW DELHI – SEPTEMBER 22-23, 2008)

India and European Union (EU) have entered into a Joint Action Plan to have a policy dialogue and cooperation in the fields of employment and social policy to share experience, periodic exchange of views and information on the following issues:-

- (i) Labour and employment issues, including employment policies, restructuring, the global employment opportunities and requirements for trained manpower;
- (ii) Human resource management in particular through training and skills development; and
- (iii) Social Security.

2. In line with the Joint Action Plan, the Ministry of Labour & Employment, Government of India has signed an Memorandum of Understanding (MOU) with the European Commission to strengthen dialogue and exchange of views and information on issues of common interests within the area of employment and social policy such as: skills, training and employment, social security, occupational health and safety; workers' participation in management; and other relevant issues jointly identified. The structured dialogue consists of exchanges of experience, best practice, views and information on topics of common interest, trends and policy developments related to the above areas. As a part of this structured dialogue, it has been agreed upon to organize a joint seminar on mutually identified issues every year. These seminars will bring together EU and India government experts, social partner representatives, academic experts and other relevant stakeholders to exchange views, information, experience and best practice on topics of common interest.

3. Accordingly, the first Seminar on Skills Development and training was held on 27 & 28th November, 2006 at New Delhi. The second seminar on social security and social protection was held on 17-18th September, 2007 at Lisbon, Portugal. It has now been decided to organize the 3rd seminar on "Employment Relations and Resolution of Conflicts" on 22-23 September, 2008 at Symposia Hall, NASC Complex, Indian Council of Agricultural Research, DPS Marg, Pusa, New Delhi-110 012. The seminar will have the following thematic sessions:-

- (i) Trends in Employment Relations and Social Dialogue
- (ii) Collective Bargaining
- (iii) Worker's Participation in Management
- (iv) Labour Dispute Resolution – Challenges, strategies and Best Practices.

BACKGROUND NOTE

SESSION I: TRENDS IN EMPLOYMENT RELATIONS AND SOCIAL DIALOGUE

Employment and industrial relations scenario in India has been undergoing rapid transformations, coinciding with the advent and spread of globalisation. There are four broad temporal phases (1947-1965, 1966-1977; 1980-1991, and 1991 till date) in the employment and industrial relations history in India. The first phase (1947-1965) was characterized by the development of state-led industrialization, based on import substitution and employment-intensive public sector enterprises. This was a period, which witnessed rapid growth of unionization. Their membership also trebled during this period. The public sector emerged as a major arena for unionization. The tendency towards collective bargaining was effectively curbed as tripartism rather than bipartism became the norm. This was the phase when wage setting was conducted through setting up of wage boards for several key industrial sectors. This phase was marked by comparative peace and relatively low levels of industrial disputes.

The second phase (1966-1977) coincided with severe industrial stagnation and low rates of employment growth. This phase saw a dramatic increase in the levels of industrial disputes owing mainly to the tightening of the labour market. Both strikes and lockouts increased, as did the number of man-days lost due to disputes. Centralized structures of industrial relation system showed signs of crisis.

The third phase (1980-1991) coincided with the beginning of liberalization and gradual withdrawal of the state from economic activities and the industrial relation scenario. While no overt changes in the labour law and labour market policies were made (except for the 1982 and 1984 amendments to the Industrial Disputes Act, 1947 which lowered the ceiling of establishment size for requiring permission for closure and retrenchment to 100 workers and introduced the unfair labour practices schedule), there emerged significant subterranean changes affecting the industrial relations system at the level of individual firms, specific industries, and regions. This was also a period characterized by jobless growth – “the best decade for economic growth but the worst decade in terms of employment generation”. This period also saw the beginning of a trend where firms engaged in the production of consumer non-durables began subcontracting and outsourcing their production to the unorganized sector.

The final phase (1991 – till present), coinciding with a vigorous acceleration of economic reforms, has seen greater decline in public sector employment. The changing role of the State, competitive pressures of globalisation, technological changes, and changing work organisation, along with the resultant contractualisation and outsourcing, have impacted the employment relations scenario in the country.

An overall trend in the industrial relations system in the post-independence period is also seen, especially in relation to the change from a state-dominated industrial relations system and centralized wage bargaining structure to a more pluralistic and decentralized industrial relations system. Further, long term trends in industrial disputes and the related/causative factors are also witnessed during the period.

Promoting social dialogue (at the national and enterprise level) is considered as one of the most effective strategies to address the emerging challenges as well as to reap the possible advantages available to the economy, in a phase of growing integration and interdependence of nations and markets. This is particularly important, towards highlighting the centrality of labour and industrial relations, while evolving effective and inclusive socio-economic policies, aimed at higher levels of economic progress. Discussion centering on strengthening social dialogue also assumes significance at this particular juncture, for three counts. Firstly, there is discernable trend that the processes and outcomes of social dialogue in the formal sector have been moving away from their conventional standards and practices, and thereby bringing in newer dimensions to the subject. Secondly, it has been widely acknowledged that there is hardly any social dialogue process in the continuously expanding segment of the workforce, namely the unorganised sector. Finally, as many of the agendas being carried out by social partners in the world of work have strong linkages and complementarities to the concept of social dialogue, there is a requirement to delineate, understand and establish the connections between closely situated domains such as social dialogue, tripartism, industrial relations, corporate social responsibility and so on.

India has a long tradition of social dialogue. Tripartite consultations among government, employers' and workers' organizations in industry commenced as early as in 1944 with the establishment of the Indian Labour Conference(ILC), the Standing Labour Committee (SLC) and over 35 tripartite bodies to deal with issues like minimum wages, social security benefits, education and training, safety and health etc. both in the organized and unorganized sector. The government's Joint consultation machinery and the three-tier Permanent Negotiation Machinery in Indian Railways are exemplary

steps in the recognition of the mechanism of social dialogue. The Kerala example of social dialogue which is lauded as a major initiative to provide job, income and social security to the workers in the unorganized sector head-load workers and workers in fisheries etc. and Maharashtra's similar schemes with respect to headload workers are notable. In India social dialogue produced useful accords in the 1950s and 1960s. Since the 1970s, however, it got atrophied and has generally produced less significant results. In the post-liberalisation era, the effects of deregulation and decentralisation are taking a toll in banking and other industries as well where unions are becoming less powerful.

As India is passing through process of Liberalisation, Privatisation and Globalisation, there is a dire need to strengthen social dialogue for promoting harmonious employment relations, both at the national and state level as under the Constitution States have concurrent jurisdiction on matters concerning labour and society. Social dialogue at the sectoral level also needs to be enriched because of the diverse needs and circumstances of different sectors such as IT and Services on the one hand and traditional industries like jute, textiles, mining etc. on the other hand. A strong foundation of social dialogue at the sector and state levels is a pre-requisite to a solid structure of social dialogue at the national level.

SESSION II : COLLECTIVE BARGAINING

Collective Bargaining is a process involving discussions and negotiations between two groups representing Labour and Management regarding terms of employment. Collective Bargaining, a collective and continuous process, involves formation of bargaining agreements and the implementations of such an agreement. It is a flexible approach that attempts in achieving peace and discipline in the Industry. The principle of 'give and take' has been infused in the principle of Collective Bargaining. As the workers mainly in the formal sector are organized, collective bargaining is more commonly in vogue in the formal sector.

In India the workers working in the formal sector, who constitute only seven percent of the total workforce are generally, in a position to gain from the collective bargaining mechanism and the vast majority of the workers engaged in the informal sector are largely untouched by this instrument in its standard form for improvement of their terms of employment. Generally, all enterprises which are either registered under the purview of any one of the acts like the Indian Factories Act, 1948, Mines and Minerals (Regulations and Development) Act, 1957, Plantation Labour Act, 1951 the Companies Act, 1956 the Central/ State Sales Tax Act, Shops and Establishments Acts of the State Governments are defined as part of the organized sector. Also included are all government companies, Departmental Enterprises and Public Sector Corporations. Also, all workers in the agricultural sectors except those working in the plantations are regarded as informal sector workers. The Directorate General of Employment and Training (DGET), Ministry of Labour & Employments considers all organisations in the Public Sector irrespective of their size and non-agricultural establishments in the Private Sector employing ten workers or more as organized sector.

In India, Collective Bargaining and rise in Trade Unionism came into existence mainly in the early 20th century. The movement got impetus from Constitutional, statutory and voluntary provisions. Article 19(c) of the Indian Constitution guarantees freedom of association as a fundamental right. The Trade Unions Act passed in 1926 provides for registration of Trade Unions of employers and workers and in certain respects, it defines the law relating to registered Trade Unions. It confers legal and corporate status on registered Trade Unions. The Amendment to the Trade Unions (Amendments) Act, 1926 in 2001, enforced with effect from 9.1.2002 provides for reducing multiplicity of Trade Unions, orderly growth of Trade Unions and promoting internal democracy.

India has not ratified ILO Conventions No.87 (Freedom of Association and protection of the Right to organize) and No.98 (Right to organize and collective bargaining) due to “technical difficulties”.

In India, in the formal sector some important forms of collective bargaining agreements concluded at various levels – Plant, Industry, Sectoral, Regional and National level are -

Sectoral Collective Bargaining At National Level

Since the early 1970s, sectoral bargaining has been occurring at national level mainly in industries where the Government is a dominant player. These include banks and coal (employing approximately 8 lakh workers each), Steel and ports and docks (employing two and half lakh each).

Industry-Cum-Regionwide Agreements

Agreements of this nature are found in Cotton, Jute, Textiles, Engineering and Tea which are dominated by the Indian Private Sector. But such agreements are not binding on enterprise management in the respective industries/regions unless they authorize the respective employer associations in writing to bargain on their behalf.

Decentralised Agreements; Enterprise Or Plant Level

In the rest of the industries, whereas the employers press for decentralized negotiations at plant level, the unions insist on bargaining at least at company level where the employees are formed into federations combining several plants/locations. However, in some cases the employers in multi-unit private sector enterprises bargain with trade union federations at company level.

TRENDS IN COLLECTIVE BARGAINING

In recent years, in India as in almost elsewhere, collective bargaining has faced the challenges stemming from falling trade union membership, increasing individualization of labour relations and the difficult quest for greater competitiveness and flexibility in a situation of economic globalization. In this context, certain trends in India could be enumerated as follows.

- (i) Coverage of collective bargaining is high in the formal sector and very low portion of workers in the informal sector are covered by collective agreements.
- (ii) Bargaining at the enterprise level is increasing

- (iii) Other forms of bargaining and new issues
 - a) Bargaining in the public sector largely staying at the same level.
 - b) Other forms of bargaining like individual employer-employee bargaining, work councils, bargaining on individual work contracts, bargaining directly with workers' representatives, work place consultations based on performance targets etc. are on the increase.
 - c) The new issues in the bargaining are bankruptcy, equality, career-developments, leisure time, evaluation systems etc. and overall the issues covered in collective bargaining are broadening.

COLLECTIVE BARGAINING IN THE INFORMAL SECTOR

In India, about 93% of the workers are engaged in the informal sector. There have been numerous efforts to bring to the workers in the unorganized sector the benefits those are enjoyed by the more organized workers of the formal sector. It seems clear that instead of merely approximating established forms of collective bargaining originally created for permanent employees, new forms need to be developed which can be applied even to workers who have not been able to be represented in the more established collective bargaining systems. The key elements of an effective collective bargaining system for the informal sector may be identified as follows.

- (i) Identifying the appropriate negotiating partner
- (ii) Recognition/accreditation of representative workers' organizations in the informal sector.
- (iii) Independence/autonomy of representative organizations participating in collective bargaining on behalf of the workers in the informal sector.
- (iv) Democratic Collective bargaining procedures
- (v) Agreed organizational rights and responsibilities through workers' education and awareness building.
- (vi) A shift in the nature of negotiated agreements and their status from that of a casual and ad-hoc one that of greater commitment.

- (vii) Making provisions and developing mechanisms to cope with the eventuality of change of legal persona of either the workers or management arising out of the flexibility of informal economy and the instability of organizations of the employers and workers and ensure continuity.

- (viii) Development of Innovative Strategies as regards the last resort for workers in lieu of strike such as legal action or public demonstration with a well-worked out media strategy for maximum publicity as a way of pressurizing the other party in the negotiations.

There are as yet very few tried and tested collective bargaining mechanisms in place in the informal economy. In India, in addition to the bipartite collective bargaining mechanism at various levels, there are decentralized Tripartite Boards in certain states regulating welfare and social security for certain types of informal work.

SESSION III : PARTICIPATION OF WORKERS IN MANAGEMENT

Since independence, various schemes have been formulated by the Government of India to encourage workers participation in management, which are briefly given below.

Works Committee:

1. The Industrial Disputes Act, 1947 has a two fold purpose: prevention, and settlement of industrial disputes. The section 3 empowers the appropriate government to require employers, employing 100 or more workmen in Industrial Establishments to constitute Works Committees. The main objective of works committee is to promote measures for securing and preserving amity and good relations between employers and workmen. However the works committee mechanism has not been a success, except in isolated cases.

Joint Management Council

2. In 1958, Joint Management Councils were introduced. The JMC's were entrusted with the administrative responsibilities in various matters relating to welfare, safety, vocational training, preparation of schedule of working hours and holidays. They were to be consulted in matters of change in work operation, general administration and alteration in standing orders, rationalization, closure etc. in order to encourage smooth work operations and enhanced productivity. The JMC's were to consist of equal number of representatives of management and workers. Representation of workmen to the JMC's was based on nominations by the recognized trade unions.

3. JMC's did not receive much support from the unions or the managements. It was perceived that JMC's and Works Committees appeared similar in scope and function and that multiplicity of bipartite consultative bodies served no useful purpose. When the membership strength of unions was disputed, composition of the council became a contentious issue.

Constitutional Amendment and Scheme of Workers Participation in Industry, 1975.

4. In 1975, the Constitution was amended and Section 43-A was inserted in the Directive Principles of the Constitution. This Article provided that "the State shall take steps by suitable legislation or in any other way, to secure the participation of workers in management of the undertakings, establishments or other organizations engaged in any industry." In accordance with this amendment, the scheme of Workers Participation in Management in manufacturing and mining industries was notified in 1975. The scheme

provided for formation of Joint Councils at Plant level and Shop level. It covered only those manufacturing and mining units both in public and private sectors as well as in departmental run units employing 500 or more workmen. In 1977, the Government extended the scheme to the commercial and service organizations of the public sector as well. The basic objective was to devise a system which would generate mutual trust and confidence between workers and management, so as to promote active involvement of workers in the work place.

Comprehensive Scheme for Employees Participation in Management, 1983

5. The Government of India on 30th December, 1983 introduced a new scheme for employees' participation in management. This scheme was applicable to all Public Sector undertakings except those undertakings, which are given specific exemption from the operation of the scheme by the administrative Ministry/ Department concerned in consultation with the Ministry of Labour, taking into account the nature of the undertaking, the products it manufacture etc. The scheme is still operative in public sector.

6. It envisages constitution of bipartite forums at shop and plant levels. In undertakings, considered suitable it was also to be implemented at the board level. The scheme provided equal representation of workers and management in the forums. The mode of representation of workers' representatives was to be determined in consultation with the concerned unions.

PARTICIPATION OF WORKERS IN MANAGEMENT BILL, 1990

7. The issue of workers participation in Management has also been deliberated in various sessions of Indian Labour Conference (ILC). There was a general agreement that participation should be ensured through legislation, or by mutual agreement between the employees and the employers of selected Industrial Establishment. As the non-statutory schemes have not been able to provide an effective framework for a meaningful participation of workers in Management at all levels. Hence to provide for specific and meaningful participation of workers in Management at shop floor level, establishment level and Board of Management level in Industrial Establishment, a Bill titled "Participation of Workers in Management Bill, 1990" was introduced in the Rajya Sabha on 30th May, 1990.

The Bill was referred to the Parliamentary Standing Committee on Labour and Welfare for their examination and report. The Parliamentary Standing Committee on Labour and Welfare has submitted their report on 18.12.2001. The Committee has given its recommendations/observations on

the clauses of the Bill. The Ministry of Labour & Employment has decided that observations of the Committee will be taken into account while framing rules and/or taking other subsequent actions.

It has been decided to pursue the Bill with some modifications to reflect changes in economic and social parameters since 1990 after discussion/consultation with social partners in tripartite fora. It has been discussed in various Tripartite Committee meetings to arrive at necessary consensus. But no consensus could be reached. Employers' representatives were agreeable for participation at the shop and plant level but not at the Board level. Workers representatives are of the view that the workers participation in management would not be acceptable without participation at the Board level. The matter is under consideration of the Government.

SESSION IV : LABOUR DISPUTES RESOLUTION – CHALLENGES, STRATEGIES AND BEST PRACTICES

The international standards in the area of resolution of labour disputes are general in nature. India has formulated its own system of disputes resolution based on established practices and ILO conventions and recommendations. The Industrial Disputes Act, 1947 provides for voluntary conciliation machinery to assist in the prevention & settlement of disputes except in the cases where disputes relate to strike notice pertaining to public utility services for which conciliation is compulsory. Section 10-A of the Industrial Disputes Act, 1947 also provides for reference of disputes to voluntary arbitration where both the parties to the dispute agree on a reference and on arbitrator/s.

The public policy in India on industrial conflict resolution has been through collective bargaining. As per the provisions of the Industrial Disputes Act, 1947 and Central Rules made thereunder, bipartite settlement is enforceable if registered with the appropriate government (conciliation officer). The conciliation officer also encourages parties to settle the disputes between the parties amicably. The Act also provides for constitution of works committee in industrial establishments employing 100 or more workmen consisting of equal number of representatives of employers and workmen for securing and preserving amity and good relations. This bipartite committee has been assigned with a preventive role in the matter of differences between the employer and the worker. As regards grievances of one or several workers against certain measures or situations concerning labour relations or employment conditions, if not settled within the undertaking are settled through conciliation, arbitration or adjudication.

The provisions of Section 11-A of the I.D. Act empower the tribunal to go beyond the order of termination of employment and find out the real motive which actuated the termination. If the motive is something else with termination simpliciter, then the tribunal has the power to set aside the order of discharge or dismissal, and direct the reinstatement of the worker on such terms and conditions as it thinks fit or give such other relief to the workmen including lesser punishment in lieu of discharge or dismissal as circumstances of the case may require. Though the tribunal is not an appellate court, in such cases the tribunal acts as an appellate court.

The Industrial Disputes Act empowers the appropriate government to constitute a court of enquiry into any matter relevant to an industrial dispute. The main difference between a Board of conciliation also constituted under the Act and a court of Enquiry is that the former is constituted with the fundamental object to promote the settlement of an industrial dispute whereas the latter with the primary object to enquire into and reveal the causes of an industrial dispute.

The final phase of the settlement of disputes which are not resolved either through bi-partite negotiations or through conciliation or voluntary arbitration is adjudication. The adjudication machinery provided under the Industrial Disputes Act consists of Labour Courts, Industrial Tribunals and National Tribunals. The above authorities acquire jurisdiction to adjudicate in a dispute under the order of reference issued by the appropriate government and pass orders known as awards bringing out resolution of the industrial dispute.

The Voluntary machinery for the settlement of industrial disputes in India is largely based on the Code of Discipline for industry which was formally announced in June, 1958. This code was approved by all central organizations of workers and employers at the Sixteenth Session of the Indian Labour Conference and has also been accepted by a large number of other employers' and workers' organizations. The code applies to all public sector companies and corporations except defence, railways and ports and docks. The code applies with certain modifications to the Reserve Bank of India, State Bank of India and the Department of Defence Production.

Among the voluntary institutions, Permanent Negotiating Machinery (PNM) is operating in the Railways and Post and Telegraph industries.

There is a Joint Consultative Machinery (JCM) for dealing with issues related to service conditions in the Government sector. This not only covers the industrial employees of the Central Government who come under the definition of a workman under the Industrial Disputes Act but also class III and class IV employees of different Ministries and their subordinate organisations which may not be industrial in character.

Of late, Labour Lok Adalat has been recognized as a mechanism for quick resolution of dispute with no expenditure of the parties. This system dispenses justice on the basis of discussions, counselling, persuasions and compromises. Lok Adalats helped resolving cases pending for a long time. In Central sphere several labour Lok Adalats have been organized. It has been observed that many long pending cases which can be settled by awarding compensation are settled in Lok Adalat.

It may be mentioned that conciliation is the most extensively used machinery for prevention and settlement of industrial disputes. Conciliation is the process of peacemaking by application of the art of gentle persuasion. It aims at helping disputant parties to reduce their differences with a view to arriving at a settlement with the help of a neutral third party whose services are sought for assuring orderly discussions.

The main challenges or obstacles in conciliation are:

- (i) Conciliation not effective in Rights Disputes
- (ii) Conciliation proceedings not taken seriously.
- (iii) Delay in conciliation
- (iv) Delay in Adjudication makes conciliation proceedings ineffective
- (v) Employer's aversion to conciliation
- (vi) Weak collective bargaining
- (vii) Multiplicity of Trade Unions.
- (viii) Weak Trade Unions
- (ix) Workload of conciliators
- (x) Multiple functions of the conciliator
- (xi) Inadequately trained conciliators/lack of experience, and
- (xii) Low status of conciliators

There is a need to review the industrial disputes resolution system in the context of the policy of economic liberalization and restructuring. The changes taking place due to market-driven economy demand that the approach of voluntary resolution of disputes should take prime place and be strengthened over the legalistic approach of settlement of disputes by the courts. The workplace cooperation between the employers and the workers need to be improved. The focus should be on bipartite consultation, building of trust by information sharing at enterprise level and voluntary arbitration rather than resolution of disputes through adjudication.
