

ITEM NO.1 (a): All Issues connected with contractualisation of Labour

Background

1. Contract Labour is a significant and growing form of employment. It is prevalent in almost all industries, in agriculture and allied operations and in service sector. It generally refers to workers engaged through an intermediary and is based on a triangular relationship between the user enterprises, the contractor (including the sub contractor) and the workers. These workers are millions in number and generally belong to the unorganised sector. They have very little bargaining power, have little or no social security and are often engaged in hazardous occupations endangering their health and safety. They are often denied minimum wages and have little or no security of employment. On the other hand, reasons like sporadic nature of work, difficulty in ensuring closer supervision by the employer or cost effectiveness, flexibility in manpower deployment, concentration in core competencies etc., justify the system of contract labour.

2. Recognizing the need for protecting the interest of contract labour, the Contract Labour (Regulation and Abolition) Act, 1970 was brought on the Statute Book to regulate the employment of Contract Labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into force on 10.2.71. The Constitutional validity of the Act and the Central Rules was challenged before the Supreme Court in Gammon India Limited vs. Union of India 1974-I-LLJ-480. The Supreme Court upheld the constitutional validity of the Act & Rules and held that there is no unreasonableness in the measure. The Act & Rules were enforced w.e.f. 21.03.1974.

Provisions of the Act & the present status

4. The Act applies to every establishment/contractor in which 20 or more workmen are employed or were employed on any day in the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months, 20 or more workmen. It does not apply to establishments where the work performed is of intermittent or seasonal nature. An establishment wherein work is of intermittent and seasonal nature will be covered by the Act, if the work performed is more than 120 days and 60 days in a year respectively. The Act also applies to establishments of the Government and local authorities as well.

Appropriate Government

5. The Jurisdiction of the Central and State Government has been laid down by the definition of the 'Appropriate Government' in Section 2(1) (a) of the Act, as amended in 1986. The Appropriate Government, in respect of an

establishment under the Contract Labour (Regulation and Abolition) Act, 1970 is the same as that in the Industrial Disputes Act, 1947.

The Central and State Advisory Boards

6. The Central Government and State Governments are required to set up Central and State Advisory Contract labour Boards to advise the respective Governments on matters arising out of the administration of the Act as are referred to them. The Boards are authorized to constitute Committees as deemed proper.

7. The Central Advisory Board - a tripartite Body was reconstituted on 24th June 2002 and the non-official members hold office for a term of three years. Seventy-three meetings of the Central Advisory Contract Labour Board (CACLB) have been held so far. The last meeting was held on 2nd June, 2008. Re-constitution of the CACLB is under process. Hon'ble Minister of State (IC) for Labour & Employment has been appointed as the chairman, CACLB on 23.12.2008 for a period of three years.

8. The existing Central Advisory Contract Labour Board has held two meetings during 2008-2009 and considered various issues relating to abolition of contract labour system in certain establishments. The working of the Act was also reviewed in this meeting. The 74th meeting which was to be held on 16.1.2009 had to be postponed due to unavoidable circumstances.

Registration

9. The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour, except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules.

Facilities for Contract Labour

10. The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same.

Payment of Wages

11. The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the

contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971.

Penal Provisions

12. For contravention of the provisions of the Act or any rules made there under, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/-.

Other Provisions

13. The Act makes provisions for the appointment of Inspecting staff, for maintenance of registers and records and making of Rules for carrying out the purpose of the Act. In the central sphere, officers of the Central Industrial Relation Machinery (CIRM) have been appointed as Inspectors.

Prohibition

14. Apart from the regulatory measures provided under the Act for the benefit of contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

Sub-section (2) of Section 10 lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment. The guidelines are mandatory in nature and are: -

- Conditions of work and benefits provided to the contract labour.
- Whether the work is of a perennial nature.
- Whether the work is incidental or necessary for the work of an establishment.
- Whether the work is sufficient to employ a considerable number of whole-time workmen.
- Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

15. The Central Government on the recommendations of the Central Advisory Contract Labour Board has prohibited employment of contract labour in various operations/category of jobs in various establishments. So far 76 notifications have been issued since inception of the Act.

Exemption

16. The 'appropriate government' is empowered to grant exemption to any establishment or class of establishment or any class of contractors from applicability of the provisions of the Act or the rules made thereunder on such conditions and restrictions as may be prescribed. Fifteen notifications granting exemption to establishments in exercise of this power in the Central sphere have been issued.

Enforcement

17. In the Central sphere, the Central Industrial Relations Machinery (CIRM) has been entrusted with the responsibility of enforcing the provisions of the Act and the rules made thereunder, through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under the Act.

18. Regular inspections are being conducted by the Field Officers of the CIRM and prosecutions are launched against the establishments, whenever violations of the Act/Rules/notifications prohibiting employment of contract labour are detected. In order to ensure compliance with the labour laws from time to time, instructions/directions have been issued to the field officers of CIRM and State Government for proper implementation of the Act.

19. Complaints alleging violation of Contract Labour Act are investigated and remedial action taken in accordance with the provisions of the law by launching prosecutions if considered necessary. References are received for regularisation of the contract labour or abolition of the contract labour system on the ground of perennial nature of work/ ordinarily done through regular workmen etc. Writ Petitions are also being filed by Union/Workers seeking absorption where the contract labour system has been abolished or pleading that the contract is sham. The requests for abolition of contract labour system are examined in consultation with the Central Advisory Contract Labour Board and notifications abolishing contract labour system in various establishments in different jobs have been issued. So far as the regularisation of the workers is concerned, no such provision, either express or implied, exists in the Act. This has also been affirmed by the Constitution Bench of the Supreme Court in the matter of Steel Authority of India Limited Versus Water Front Worker's Union on 30th August, 2001.

20. A statement indicating the number of inspections carried out, prosecutions launched, licences issued, establishments registered, and number of cases received during the last three years under rules 25(2)(v)(a)&(b) of the Contract Labour (R&A) Central Rules, 1971 relating to payment of wages is annexed as ***Annexure-I***.

EMERGING ISSUES/PROBLEMS

21. In the context of globalisation, privatisation and liberalisation, in March 2000 a GOM was constituted to examine the proposal of the Ministry to suitably amend the provisions of the Act with a view to facilitating outsourcing of activities to specialized firms having professional experience and expertise in the relevant area and at the same time to provide for a safety net to contract labour in such outsourced activities. Such a measure, it was felt, would generate employment growth. The GOM held a series of meetings in the years 2000, 2001 and 2003. After in-depth deliberations on the issues involved it was agreed that certain activities which form support services of an establishment be excluded from the application of Section 10 of the existing Act, which provides for prohibition of employment of contract labour in certain circumstances. However, the same could not be finalized.

22. While the trade unions have demanded that the Act should be amended to provide for automatic absorption of contract labour in the event of prohibition of employment of contract labour, the employers' organizations are vehemently opposed to it. According to them such a step would lead to capital-intensive measures like mechanization, automization, etc. and fall in employment. Their view is that the employers should be given flexibility to determine the composition of the workforce for the industry to survive in the competitive environment. Further, according to them, contract labour should not be abolished in non-core activities of an establishment and should be allowed to be parcelled out to specialized agencies, which have grown rapidly, for better time management, better operational efficiency and high percentage of consumer satisfaction.

23. Some of the State Governments, in tune with the changing times, have proposed measures to liberalise the Act to spur the growth of industry, as for example, grant of exemption to Special Economic Zones and Export Oriented Units from the applicability of the Act to boost exports. The Government of Andhra Pradesh have amended the Contract Labour Act with a view to prohibiting employment of contract labour in the core activities of an establishment and to allow engagement of contract labour in none-core activities of an establishment such as watch and ward, sanitation, cleaning works, etc. The Government of Goa has introduced a bill in the legislature to abolish contract labour in core activities of an establishment.

INDIAN LABOUR CONFERENCE (ILC)

24. The issues concerned with contractualisation of Labour were also discussed during the 41st session of the Indian Labour Conference (ILC) held on 27-28 April, 2007.

The conclusions arrived at during the ILC and the Action taken thereon is enclosed as ***Annexure-III***.

As decided in the 42nd session of the Standing Labour Committee (held on 13.12.2007) this issue is again placed before this session of ILC.

STANDING LABOUR COMMITTEE (SLC)

25. The 42nd session of the Standing Labour Committee (SLC) was held on 13.12.2007. The SLC traditionally approves the Agenda for the Indian Labour Conference (ILC). The issues concerned with contractualisation of labour were discussed as a separate Agenda Item. In the true spirit of Tripartism, the Workers and Employers Organisations were requested to furnish their suggestions in this regard. A gist of items suggested by the Workers and Employers' Organisations is enclosed as **Annexure-II**.

This issue was deliberated at length during the SLC. The view points of the Employees' Organisations, Employers Organisation and State Governments are enclosed as **Annexure IV (a) (b) & (c)** respectively.

CONSULTATIVE COMMITTEE

26. The issues relating to Contract Labour were also deliberated in the meeting of the Consultative Committee attached to Ministry of Labour & Employment held on 24.1.08. The Hon'ble Members drew the attention of the Government to the exploitation of Contract Labour by way of low wages, long hours of work, absence of amenities etc. They emphasized that the enforcement machinery should be strengthened to check the exploitation. The absorption of contract workers who had rendered a certain period of service was also debated. It was assured by the Hon'ble LEM that the Government would approach the Cabinet to lift the ban on fresh recruitment, since this ban has created a severe shortage of manpower thereby necessitating the employment of Contract Labour even by the Central Ministries/Departments.

ISSUES FOR CONSIDERATION

27. There is no doubting the fact that contractualisation is on the increase as more and more jobs are being outsourced. This is apparently in tune with the practice that is being adopted globally. The key issues, therefore, are:

- (a) Whether the trend towards contractualisation be discouraged through more stringent measures, legislative or otherwise, or
- (b) Recognising contractualisation as a part of the process of increasingly integrating Indian economy with the global one, regulate and protect the interest of contract workers.

The existing legislation lays emphasis on curbing contractualisation rather than focussing on protecting the interest of contractual workers.

The Consultative Committee attached to Ministry of Labour & Employment in its meeting held on 24.1.2008 also deliberated upon this issue.

Annexure-I

**ENFORCEMENT OF CONTRACT LABOUR
(REGULATION & ABOLITION) ACT, 1970**

Sl. No.	Item	2005-06	2006-07	2007-08
1.	No. of Registration Certificates issued to principal employers.	747	752	755
2.	No. of Licences issued to contractors.	7317	9280	9239
3.	No. of Inspections conducted.	5759	5365	6625
4.	No. of Irregularities detected.	60206	77422	103172
5.	No. of prosecutions launched.	2991	2648	3529
6.	No. of convictions.	1017	887	1228
7.	No. of contract labourers covered by licences.	983707	1001947	1261944
8.	No. of Licences revoked/cancelled.	7632	8186	5361
9.	No. of registration certificates revoked.	211	51	14

Annexure-II

Items suggested by the Workers' and Employers' Organisations

S. No	Item	Suggested by
1.	Contractualisation of Labour – Trends and ways to stop	BMS, CITU, AITUC, HMS, UTUC & UTUC (LS)
2.	Impact of creation of Special Economic Zones on Labour and remedies thereof	-do-
3.	Setting up of a permanent Tripartite Committee to monitor implementation of the conclusions of ILC	-do-
4.	Consumer Price Index – 2001, Review and Revision, being defective	-do-
5.	Migrant Labour (Domestic & Abroad) – Problems and remedies	-do-
6.	Criteria for recognition of Central Trade Unions	INTUC
7.	Prohibition of Contract Worker in permanent nature of job	INTUC
8.	Fixation of National Minimum Wage	INTUC
9.	Corporate Social Responsibility	INTUC
10.	Right of entrepreneur, especially in Micro and Small Industry, to adjust his workforce (increase or decrease) as per marketing requirements.	LUB
11.	Separate and simplified Single Industrial Act for Micro and Small Scale Industries	LUB
12.	Social Security for workers as well as Self Employed Entrepreneurs	LUB
13.	Recognising and compensating Micro and Small Scale Entrepreneurs for imparting technical skills/employable skills to new rural based workforce.	LUB
14.	Recognising and subsidizing NGOs like Laghu Udhog Bharati in establishing and conducting Vocational training courses to rural youth.	LUB
15.	Notice of Change	CII
16.	The Contract Labour (Regulation & Abolition) Act, 1970	CII
17.	Prohibition of employment of Contract Labour	CII
18.	Role of the State	CII
19.	Flexicurity – Combining both flexibility and security (On the pattern of European Union)	ASSOCHAM
20.	Role of Social Partners in appropriate skill development for employability	ASSOCHAM
21.	Employment Generation and Strengthening & reviewing legislative framework to facilitate it	CIE
22.	Strengthening ways and means to promote skill development, reviewing institutional framework and creating additional facility	CIE
23.	Formalisation of informal sector activities through appropriate interventions.	CIE
24.	Enabling organized sector to promote Human Resource Development	CIE

**ACTION TAKEN REPORT ON THE CONCLUSIONS OF THE
41st SESSION OF THE INDIAN LABOUR CONFERENCE
HELD ON 27 – 28 APRIL, 2007**

CONTRACT LABOUR (R&A) ACT, 1970

CONCLUSION NO.1

After deliberating on a number of issues relating to the Contract Labour (Regulation & Abolition) Act, 1970, the Group came to the consensus that there was a crying need to prevent exploitation of contract labour. It was felt that the provisions of the Contract Labour Act and Rules made thereunder should be implemented in letter and spirit and the regulatory mechanism further strengthened to ensure that the provisions of the Act are not flouted.

ACTION TAKEN NO.1

The EPFO, ESIC & Office of CLC (C) has been directed to take effective measures to enforce the Acts in letter & spirit.

CONCLUSION NO.2

It was pointed out that there were a number of specific locations where conditions of contract labour were pathetic. It was also pointed out that in some other locations, the contract labour and their interests were being looked after very well. The Group came to the conclusion that the Government should document such cases and, if possible, sensitize representatives of stakeholders to such situations so that further constructive progress could be made.

ACTION TAKEN NO.2

The Employers Organization have been requested to convey specific instances/cases so that such instances could be documented and disseminated.

CONCLUSION NO.3

All the contract workers who are eligible to be covered under the EPF and ESIC Act should be so covered and it may be stipulated that principal employers may deduct appropriate amount of the contractor's bills and pay directly to the authorities concerned to ensure that the contractor does not have any temptation to hold back or delay in deposit of the requisite amount.

ACTION TAKEN NO.3

a) In so far as ESI Act is concerned, all employees, whether employed directly by the principal employer or through an immediate employer

(contractor) on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily the part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere, are covered under the ESI Act. They enjoy all social insurance benefits available under the Scheme from the day of their joining the insurable employment except sickness and maternity benefits entitlement which is subject to certain qualifying conditions. As such, there is no discrimination between permanent, regular or contract workers under the ESI Act.

b) As per the provisions of Section 39 & 40 of the Act read with Regulation 31 of the ESI (General) Regulations, 1950, the employer is required to pay both the employers' and employees' contribution in respect of all coverable workers including contract workers within 21 days after the end of the month to which the contribution relate. In case of delay in payment of contribution, interest and damages as per the provisions of Section 39 and 85B of the Act is levied. In addition, penal action under Section 85 is also initiated. There is also provision for recovery through the recovery machinery of the Corporation, as provided under Section 45-C to 45-I of the Act.

c) With regard to extension of benefits to contract employees, it has been stated that as per the provisions of Regulation 14 of ESI (General) Regulations, employer is required to get all the employees registered with the appropriate office of the Corporation within 10 days. These workers are then issued temporary identity cards during the first three months of their employment and permanent identity cards thereafter, based on which they can avail medical care and cash benefits available under the Act.

Therefore, adequate mechanism already exists under the ESI Act for collection of contribution in respect of contract workers as well as for extending cash and medical benefits to them, as envisaged under the ESI Scheme.

d) In so far as EPF is concerned Section 6 of the EPF & MP Act, 1952 read with para 30 of the EPF Scheme, 1952 inter-alia sets up the arrangement for recovery of payments from employees of a contractor. Under the existing arrangement, the employer has to first make payment of the contribution both for himself, and his contractor employees and then recover the same from the contractor. Sub para 3 of para 30 casts the responsibility on the principal employer to pay both the contribution by himself in respect of the employees directly employed by him and also in respect of employees employed by or through a contractor.

e) A contractor who employs 20 or more persons and who is in an industry that has been notified or is running a factory, which is included in the Schedule Head, falls within the ambit of the Act on its own right.

f) Further, to ensure the extension of the social security benefits to contract workers including those who are working for such establishments which are otherwise not coverable or covered under the Act, a proposal for amendment to EPF & MP Act, 1952 is under the consideration of the Government. The amendment proposal provides for deduction of PF contribution at source out of payments being made to contractors and sub-contractors, which is in consonance with the conclusions of the Conference Committee on Contract Labour (Regulation & Abolition) Act, 1970.

The Employers' Organisations have also been requested to initiate action on this aspect and to deliberate it in their various fora for appropriate implementation of this recommendation.

CONCLUSION NO.4

In order to examine the issue relating to grant of gratuity to contract workers, the Group recommended constitution of a Tripartite Committee.

ACTION TAKEN NO.4

The contract workers are already covered under the related Act and hence there was no need to constitute a Tripartite Committee.

Views of Employees Group

The CL(R&A) Act, 1970 is not being implemented effectively. One of the reasons is because of insufficient man-power/enforcement machinery of the Ministry of Labour & Employment and the State Governments. The manpower should be augmented.

There are many violations of it and the Contract Labour is being exploited.

This important issue of Contractualisation of labour should be discussed extensively in the next ILC, which should be of 3 days instead of 2 days.

In the last decade the turnover, profit, margins of the entrepreneurs has increased manifold. However the labour has not got due return on his investment i.e. on his efforts/devotion though the profitability/margins etc is only due to the hard work of labour class. The labour should also be given a percentage/share of the profits. Although profit/output has gone up but real wages and employment opportunities have come down in unorganised sector. The Employers and the Government is glorising everything in the name of globalisation and is turning all jobs into contractual nature i.e. outsourcing.

The Government should prohibit employment of Contract Labour in permanent/perennial jobs whether in the Public/Private sector. The Contract Labour should be given wages, facilities, amenities at par with the regular / permanent employees.

The labour laws should be properly implemented. For this no separate committee is required. The Government is rather legitimizing violation by implementing the "Exemption from filing return". This in fact is derecognizing the work force, which accounts for 70 % of the population.

Contractualisation of Labour is being done by Employers to reduce labour cost. This is a mechanism to exploit cheap labour and earn more profit. So only MNCs come in India because of availability of cheap labour, which does not have any bargaining power. The Contract Labour is being de-humanised at the cost of economic prosperity.

There are many instances in which mass retrenchment of labour has been done by the management, but the workers have not been compensated. There is no economic justice for workers. This is also a Human Rights violation.

While strengthening the enforcement of the Acts, the penalty for violation should also be enhanced.

The action taken with respect to the discussions arrived at should in a concrete way, cite a definite course of action, targets etc and not simply be vague as it amounts to a mere eyewash.

Views of Employers' Groups

There are many labour laws. These are difficult to comply with since innumerable reports and returns, which have to be filed periodically. The labour laws should be 2 to 3 in number only.

The Employers' Group also appreciate that there should be no exploitation of Contract Labour.

In the ever/fast changing socio-economic environment, in order to remain competitive the need of the hour is outsourcing. An industry cannot be expected to perform all jobs. Hence this necessitates the hiring of specialized skills such as I.T. services from specialized bodies/organizations who are better qualified/equipped to do so. Globalization should be accepted as inevitable. Contract Labour is required due to severe changes/fluctuations in work/jobs/orders/exports. Firms cannot be expected to carry labour cost as a fixed Asset. The Act should, therefore, be modified to facilitate outsourcing of skills & specialized jobs. This should rather be the discretion of the management.

The Labour laws should be flexible & restructured, rationalized & simplified. They shouldn't inhibit economic growth and be counterproductive. The modes applied by China & South East Asia should be followed.

The filing of reports & returns should be in electronic form. The Government should implement the minimum wages & other conditions of work for contract labour rather than abolition of contract labour in core activities. In changing business environment the distinction between core & non-core activities is not possible.

Views of State Governments

The labour laws should be properly implemented. The State Governments are not properly equipped for this. The Central Government should give adequate Budgetary & other assistances for this.

Some of the State Governments like AP are engaging in skill development since it increases the generation of employment.

The labour laws should be simplified. The issue of contractualisation of labourer should also be discussed in the next ILC.

The Contract Labour should be given at least minimum wages. The Scale of pay may be linked with the output and they should also be given a share of profit. Some time period of 5 or 10 years may be fixed after which the Contract Labour can be given increment, etc.

The interests of Contract Labour should be fully safeguarded. In core-sector, the employment of Contract Labour should be abolished. The Act should be made applicable to all establishments irrespective of the number of workers. The exemption from the provisions of the Act should be limited to the barest minimum possible.

The labour laws should be strengthened. The ILC should be of 3 days instead of 2 days. The consensus arrived at the 41st session was appreciated. The Contract Labour should be absorbed consequent to its abolition in any job/establishment else it creates Industrial Unrest.

ITEM NO.1 (b): Issues related to Migrant Workers

(A) Domestic Migrant Workers

1. Accelerated movement of people originating mainly from the rural and backward areas in search of employment has been one of the most important features of the labour market scenario in India during the post-Independence period. The system of employment of inter-state migrant labour is an exploitative system prevalent in many states of the union. Such migrant labour is recruited from various parts of a particular state through contractors or agents for work outside that state in large construction and other projects. This system lends itself to various abuses. Once the worker comes under the clutches of the contractor or agent, he takes him to far-off places on payment of railway fare only. Generally no working hours were fixed for these workers and they were made to work on all the days in a week under extremely harsh conditions. The provisions of the already available labour laws were not observed and wages were not paid under the Minimum Wages Act (1948).

2. As per census 2001, 314.54 million persons moved for various reasons within the country. Out of these, 29.90 million migrated for reasons of employment. In order to safeguard the economic and other interests of the migrant labourers, the Government has already enacted the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Salient features of the Inter-State Migrant Workmen (RECS) Act, 1979 are as under:

- Registration of all principal employers/contractors employing migrant labour.
- Licensing of contractors – no contractor can recruit any migrant labour without obtaining license from the appropriate government.
- Issue of passbook affixed with a passport-sized photograph of the workman indicating the name and the place of the establishment where the workman is employed, the period of employment, rates of wages, etc. to every inter-state migrant workman.
- Payment of minimum wages fixed under the Minimum Wages Act, 1948.
- Payment of equal wages for inter-state migrant workmen performing similar nature of work along with the local labourers.
- Payment of journey allowance including payment of wages during the period of journey.
- Payment of displacement allowance.

- Providing for suitable residential accommodation.
- Providing for medical facilities free of charge.
- Providing for protective clothing.

3. It shall be the duty of every contractor employing inter-state migrant workman that in case of fatal accident or serious bodily injury of such workman to report to the specified authorities of both the States and also the next of kin of the workman. It shall be the duty of principal employer to nominate a representative to be present at the time of disbursement of wages to the migrant workman by the contractor.

Enforcement machinery

4. The responsibility for enforcement of the provisions of the Act in establishments where the Central Government is the appropriate govt. lies with the office of the Chief Labour Commissioner (Central) and the responsibility for enforcement of the provisions of the Act in establishments located under the States sphere lies with the respective State Governments in which they are working and from where they have been recruited. The Central Government has been advising the State Governments from time to time to enforce the Act both in letter and spirit in their jurisdiction. The Hon'ble Labour Minister has requested all the Chief Ministers of the States/Union Territories to ensure implementation of the Act in their States.

Hurdles in implementation of the Act

5. Difficulty is being experienced by Inspectors in obtaining permission of the States from which workers migrate, to enter the premises for the purpose of satisfying themselves whether the provisions of the Act in relation to payment of wages, conditions of service etc. are being implemented. Some of the problems faced in implementation of the Act are listed below:

1. Reluctance of migrant workmen in giving full information about their living and working conditions;
2. Lack of awareness regarding rules and regulations;
3. Inadequacy of enforcement machinery ;
4. Low level of literacy;
5. Fear of employer/his agents and limitation caused by the presence of their families at the work place; and
6. Lack of confidence in the local enforcement machinery, etc.

6. The Supreme Court judgment delivered in July, 1990 in a writ petition involving migrant workers to the effect that "every State/Union Territory in India shall be obliged to permit officers of the originating State of the migrant labour for holding proper enquiries within the limits of the recipient States for enforcement of the Act and no recipient State shall place any embargo or hindrance in such process" is expected to go a long way in removing such hurdles and facilitating proper implementation of the Act.

SOCIAL SECURITY

7. The National Common Minimum Programme (NCMP) of the United Progressive Alliance (UPA) Government has accorded high priority to the matter of ensuring the welfare and well-being of workers, particularly those in the unorganised sector such as agricultural workers, construction workers, beedi workers, handloom workers, leather workers, etc. In pursuance of above commitment made in the National Common Minimum Programme, the Government enacted the Unorganised Workers' Social Security Act, 2008. The Act defines unorganized workers and provides constitution of the Tripartite National Social Security Board representing Central Government, State Governments, representatives of trade unions, employers, eminent persons and constitution of similar Boards at the State level by the respective State Governments.

8. The functions of the National Social Security Board, inter-alia, include: formulation of social security schemes viz life and disability cover, health maternity benefits, old age protection and any other benefit as may be determined by the Government for unorganized workers and recommend to the Central Government suitable schemes for different sections of unorganised workers; monitor such social welfare schemes for workers in the unorganised sector as are administered by the Central Government; review the progress of registration and issue of identity cards to the unorganized sector workers.

9. The functions of the State Social Security Board, inter-alia, include: formulation of social security schemes relating to provident fund, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance, and old age homes and recommend to the State Government suitable schemes for different sections of unorganised sector workers; monitor such social welfare schemes for workers in the unorganised sector as are administered by the Central Government; review the progress of registration and issue of identity cards to the unorganized sector workers.

National Rural Employment Guarantee scheme

10. The Government also started National Rural Employment Guarantee scheme which provide 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work. With this scheme, the migration of workers has

decreased as they are now finding guaranteed jobs of 100 days in their States.

Rashtriya Swasthya Bima Yojana

11. The Government launched the 'Rashtriya Swasthya Bima Yojana' for BPL families in Unorganised Sector on 1st October, 2007. The unorganized sector worker and his family (a unit of five) is covered under the scheme. The total sum insured would be Rs. 30,000/- per family per annum on a family floater basis. The premium would be shared on 75:25 basis by Centre and State Government. In case of States of North East region and Jammu and Kashmir, the premium would be in the ratio of 90:10. The beneficiary would be entitled to cashless transactions through smart card. The RSBY has become operational from 01.04.2008.

12. Till 30th January, 2009, 22 States and Union Territories have initiated the process to implement the scheme. Out of these 22 States/UTs, 14 States namely Rajasthan, Haryana, Punjab, NCT of Delhi, Gujarat, Bihar, Himachal Pradesh, Kerala, Maharashtra, Tamilnadu, Uttar Pradesh, Jharkhand, Uttarakhand and West Bengal have started issuing smart cards and more than 19.17 lakh cards have been issued in these States taking the health insurance cover to more than 95.85 lakh persons. Nagaland is the first State in the North East States to initiate the process to implement the scheme followed by Tripura and Assam. The scheme is likely to commence in the other States of North East shortly. Remaining States except Madhya Pradesh and Andhra Pradesh are also in the process of implementation of the scheme during the current year.

Aam Aadmi Bima Yojana

13. With a view to cover death and disability of rural landless households, the 'Aam Aadmi Bima Yojana' has been launched on 2nd October, 2007 at Shimla. Under the scheme, the head of the family or one earning member in the family will be insured. The Central Government will bear 50% of the premium of Rs. 200/- per year per person and the remaining 50% of the premium will be borne by State Government. This scheme will be administered by Ministry of Finance through Life Insurance Corporation (LIC).

Indira Gandhi National Old Age Pension Scheme

14. Similarly, the National Old Age Pension Scheme renamed Indira Gandhi National Old Age Pension Scheme has been expanded to cover all BPL citizens above the age of 65 years.

(B) International Migration of Workers

15. In the present globalized world, International Migration is one of the effective tools for development. International Migration provides opportunities for the development of both the countries of origin as well as the destination. There are various socio-economic factors which are instrumental for the migration of workers from one geographic region to another, some of these factors are given below:-

- Economic inequality
- Demographic dynamics
- Poverty in the country of origin
- Unemployment

16. International Migration is largely governed by the demand supply factors in the International labour market. However mobility of workers from one region to another has its positive and negative effect on both the countries of origin and destination. In the countries of destination the migration is seen as a cultural domination as well as a system which eats into the indigenous jobs and results in competition and wage reduction for the indigenous people. However one must not forget that International Migration takes place only on conditions where there is a demand for workers in a particular country, which is filled, by the workers from another region.

17. In the globalized world International Migration is now seen as a win-win instrument for both the countries of origin and destination. It's evident that in the western countries there is a large ageing population which has given rise to labour supply gaps preventing economic/infrastructure development. There is large skilled manpower in the countries like India, which could be utilized gainfully in the western countries for filling demand supply gap. However, the migration from the countries of origin to countries of destination is required to be orderly, humane, and legal and should give enough monetary benefit to the emigrants to sustain his livelihood as well as to send remittances to the countries of origin for economic development. This will give rise to a win-win, the following steps are required to be implemented:-

- Building multi lateral partnerships for managing migration.
- Creating Institutional arrangements for managing legal, orderly and humane, migration from countries to origin to countries of destination.
- To allay the fear of culture domination, circular mobility of workers in a managed manner under bilateral partnerships must be encouraged.

- Generation of awareness in the potential migrants about the migration process as well as dangers involved in illegal migration.
- Creating institutional mechanism for the protection of the migrants. This could be done by signing bilateral agreements with the major destination countries.

18. In the Indian context the international migration at the moment is largely tilted towards the Gulf. However in the highly skilled category the migration took place to EU countries, USA, Australia etc. The objectives of Ministry of overseas Indian Affairs is to promote legal migration and to discourage illegal migration from India, to move up the workers in the wage and value chain by imparting skill upgradation training programme, to study labour supply gaps and to assess future International labour market requirement and to prepare Indian workers to compete in the International labour market with upgradation of skills etc. Ministry is also working in the direction of diversifying the migration of workers from India by entering into bilateral agreement with EU and other western countries for managed migration of workers from India to these countries.

Item No.2: Role of Social Partners in appropriate skill development for employability

1. Need for Appropriate Skill Development for employability

1.1. Globalization and technological advancement have increased the importance of skills and knowledge in production and services, with significant effects on employment. New technologies, including Information & Communications Technologies (ICTs), have allowed enterprises to achieve significant gains in productivity, innovation and delivery which are needed to compete in the current business environment. However, the effective use of these technologies depends largely on the skills that workers possess. The situation tends to favour the employment of more educated workers who can learn and utilize effectively and efficiently these technologies, while it reduces the employment prospects of unskilled and low-skilled workers. The ability of countries to take part in and take advantage of globalization depends in large part on workforce skills.

1.2. The country is facing a strange paradox today. On the one hand, there is a large fleet of unemployed youth in the country while on the other hand, there is huge shortage of skilled work force in many sectors of the economy. The higher growth rate of Indian economy has also created an upsurge of demand for skilled labour in the manufacturing sectors like Power, Chemical & Petrochemicals, IT, Textiles, Steel etc. Also in services sector, there is a huge demand for trained manpower where the growth rate is 11.2% for the year 2006-07.

1.3. Skill shortage is a major challenge today. As per survey conducted by National Sample Survey Organization during 2004-05, only 5% of the Indian Labour force in the age group of 20-24 had received vocational training through formal institutes whereas this percentage in industrialized countries is much higher, varying between 60% to 96%. While on the one hand, the level of educational attainment of the existing work force is very low, the educated without employable professional skills on the other hand constitute 61% of the total unemployed. Skill shortage is now regarded as a main obstacle to sustain the high rate of growth of Indian industry and, for the majority of the workforce, low education and skill levels severely limit their chance of gaining decent employment. Thus there is a strong need for skilling the youth of the country and make India skill capital of the world.

1.4. What is crucially important for skills and training to be effective for growth and employment is that skills and training strategies and programmes must be an integral part of economic and employment growth strategies and programmes. Promoting enterprises to be more competitive and seek higher value added output will encourage a greater demand for skills, which in turn will encourage enterprises and workers to invest and participate in skills training. In addition, broad-based access to skills training can contribute to employment generation that is socially inclusive and equitable.

2. ILO convention C142 concerning vocational Guidance and Vocational Training in the Development of Human Resources

2.1. Following are the articles of ILO convention C142 concerning vocational Guidance and Vocational Training in the Development of Human Resources –

Article 4: “Each Member shall gradually extend, adapt and harmonise its vocational training systems to meet the needs of vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility.”

Article 5: “Policies and programmes of vocational guidance and vocational training shall be formulated and implemented in co-operation with employers and workers organizations and, as appropriate and in accordance with national law and practice, with other interested bodies.”

3. Social Partners in Skill Building programmes:

3.1. Central Government & State Governments, Employers and Workers Organizations, Industries Educational Authorities (for supply of trainers) & Vocational training providers (Private managements as well as NGOs) may be considered as Social Partners in Skill Building Programme of a country.

3.2. Social partners have roles in skill training, continual lifelong learning, creating learning organizations and learning society. Social partners can create learning network where there is a learning connecting horizontal and vertical, between individual and individual, individual and organization and organization and organization. This learning network will create a knowledge society which will have an important role in knowledge economy. This connectivity will be in a position to transfer learning into economic gains.

4. Role of Social Partners in Skill Building programmes of DGE&T, Ministry of Labour & Employment:

4.1 Directorate General of Employment & Training (DGE&T) in the Ministry of Labour & Employment is the nodal agency responsible for conducting vocational training programs to meet the skilled manpower requirement of industry. Vocational training is a concurrent subject. The Central Government is responsible for laying down norms, standards, policies, conducting of trade tests, and award of certificates. Other major responsibilities of DGE&T include research in vocational training, development of instructional material and affiliation of Industrial Training Institutes (ITI) whereas State Governments/Union Territories are responsible for actual implementation of schemes and day to day administration of ITIs.

4.2 Government of India lay strong emphasis on the role of social partners by establishing effective public private partnership in skill building. In order to

make effective Public private partnerships, following initiatives have been taken by DGE&T.

4.3 Govt. of India has set up two tripartite advisory bodies, viz., Central Apprenticeship Council (CAC) – and National Council for Vocational Training (NCVT), which advises it on formulation of policy, set norms & procedures on issues relating to Vocational Training. To involve industry at every stage of formulation of policy, norms & procedures both the bodies, have proper representation of Industry & Worker Associations.

4.4. In India at present there are 6714 Vocational Training Institutes with total seating capacity of 9.14 Lakh, out of which 4734 (Seating capacity 5.10 Lakh) have been set up by private sector, indicating active participation of Private sector in imparting vocational training.

4.5. The course curricula are developed by Trade Expert Committees constituted for each trade, which comprise of experts drawn from the relevant Industry & Technical Institutes involved in imparting skill training.

4.6. Institute Managing Committee (IMCs) have been formed for ITIs' in consultation with apex Industry bodies to improve cooperation between Industry and Industrial Training Institutes (ITIs). Under this concept, Industry is associated as partner rather than as advisor. An IMC is formed at the ITI level, which manages activities of the ITI. An IMC comprises members from Industry, State Government, ITI and others. The Chairperson of the Committee is a representative of the industry. The primary objective of IMC is to have the active involvement of industry in the training conducted in ITIs. Responsibilities of IMCs inter-alia include their involvement in all aspects of training viz., from assessing of the training needs to curricula development, training of trainers, testing & Certification. The experience so far is that an actively functioning IMC brings about significant improvement in the functioning of the ITI.

5. Recent initiatives taken by DGE&T for qualitative & quantitative improvement in Vocational training – role of social partners

DGE&T has taken up various new schemes for qualitative & quantitative enhancement of vocational training. Objective of these Schemes is to improve the quality of vocational training in the country and make it demand driven so as to ensure better employability of the graduates. In all these schemes, role of social partners has been clearly indicated for their proper involvement in skill building programmes of the country.

For quality improvement in training, following major schemes have been taken up:-

5.1 Up gradation of 500 ITIs into Centres of Excellence. (Multi skill Courses in Training Institutes)

Union Finance Minister in his Budget Speech 2004-05 and 2005-06, had announced measures for up-gradation of 500 ITIs in the country.

Subsequently, as per the advice of Ministry of Finance, action has been initiated for up-gradation of 100 ITIs from domestic resources. World Bank is assisting with a credit of Rs 1231 core for upgradation of 400 Govt. ITIs under Vocational Training Improvement Project (VTIP).

Scheme on upgradation of ITIs is taken up for upgrading infrastructural facilities and introduction of multi-skill courses catering to the need of a particular cluster of industry around an ITI to produce multi-skilled workforce of world standard.

The salient features of the Multi-Skill Courses are:-

- Introduction of Broad Based Basic Training (BBBT) courses of one year followed by 6 month duration advanced modular courses.
- Specialized modules mainly in Industry (shop floor training).
- Multi-entry and multi-exit provisions.
- Industry wise cluster approach.
- Industry representation in the form of Institute Management Committee (IMC) to ensure their greater and active involvement in all aspects of training.

An effective PPP in the form of IMC has been envisaged in the scheme to ensure greater & active involvement of industry in all aspects of training including identification of sectors, development of curricula etc. Under the above scheme training in specialized modules would mainly be organized by the industry & certification for this module will be done jointly by the State Government & Industry.

Out of the 400 ITIs to be upgraded under VTIP, 100 ITIs were taken up for upgradation during 2006-07 with retroactive financing. Remaining 300 ITIs are to be selected competitively for up-gradation in years 2007-08 and 2008-09.

The State Governments are required to enter into Memorandum of Understanding (MoU) to empower the Institute Management Committee (IMC), enhance powers of the Principals of the ITIs and have commitment for implementation / sustainability of the scheme during the Project period and beyond. A National Steering Committee (NSC), an apex body to oversee the implementation of the project, has been constituted. State Steering Committee (SSC) is constituted by the respective States. The selection and ranking of ITIs is done by the respective SSCs based on the Institutional Development Plan (IDP) submitted by the Principal of the ITI and the respective IMC. 258 ITIs have been identified, so far, on recommendation by respective SSCs and approved by National Steering Committee (NSC).

5.2. Up gradation of 1396 Govt. ITIs in PPP mode:

In the Budget Speech 2007-08, Union Finance Minister announced a Scheme for upgradation of 1396 Government ITIs into Centers of Excellence through Public Private Partnership. In pursuance of this announcement a Scheme "Upgradation of 1396 Government ITIs through Public Private Partnership" has been formulated. The total cost of the scheme at a rate of Rs. 2.5 core / ITI and Rs 175 core for project management, monitoring and evaluation, is Rs. 3665 core.

The loan is repayable by the IMC Society in 30 years with 10 years moratorium and thereafter in annual equal installments over a period of 20 years. Financial and academic autonomy is granted to the IMC to manage the affairs of the ITI. The State Government retains the ownership of the ITI and continues to regulate the admissions and fees except 20% of seats which are to be determined by the IMC. A Memorandum of Agreement is being signed among different stakeholders before release of funds. An interest free loan of Rs. 750.00 Crore was released for 300 ITIs for up gradation during 2007-08. During year 2008-09 Rs. 553 Crore (upto December 2008) has been released for upgradation of 221 ITIs.

Role of the Industry Partner:

The Industry Partner will lead the ITI in the entire process of upgradation under this scheme. The Chairman of the IMC is Industry Partner or his representative. Four more members of the IMC are nominated by the Industry Partner in such a way that the IMC is broad based.

The IMC is preparing an Institute Development Plan (IDP) under the leadership of the Industry Partner. The IDP shall define the long term goals of the institute, the issues and challenges institute is facing and the strategies for dealing with them. It will set targets for institutional improvement, define Key Performance Indicators (KPIs) and detail the financial requirement with year-wise break up to meet the needs. The IDP is being developed in such a way that it leads to upgradation of the ITI as a whole.

Financial contribution is not a prerequisite for the Industry Partner to participate in this scheme but it is a desirable condition. The Industry Partner may contribute machinery and equipment which may be instrumental in furthering the objectives of this Scheme. It shall arrange to provide training to faculty members and on-the-job training to the students of the ITI in the industrial establishments.

Role of the State Government:

The administrative control on the staff of the ITI will remain with the State Government and it will continue to pay their salaries and other emoluments. It will have to ensure provision of funds to meet office, administrative and other recurring expenses. However, it is free to provide

funds for any additional activities recommended by the IMC for upgradation of the ITI.

The State Government required to ensure that the sanctioned strength of the instructors in the ITI is always filled up and in no case shall the vacancies exceed 10% of the sanctioned strength at any point of time. It will be required to ensure that all additional positions required by the ITI in accordance with its IDP are sanctioned and filled up on priority. The State Government, as the owner of the ITI, shall continue to regulate admissions and fees.

5.3. Skill development Initiative (SDI) scheme is for quantitative improvement in training capacity of country.

SDI scheme is a five year project during which one million persons would be trained or their existing skills tested and certified under Modular Employable Skills (MES) framework. Ministry of Labour & Employment has developed MES framework for skill development for early school leavers and existing workers, especially in the un-organised sector in close consultation with industry, micro enterprises, State Governments, experts and academia.

Role of social partners in various activities of the scheme are as under:

Courses and Curricula: Demand driven short term training courses based on Modular Employable Skills (MES) are decided in consultation with Industry, State and Central Government. MES is the 'minimum skills set' which is sufficient for gainful employment. Emphasis in the curricula is also on soft skills. So far, NCVT has approved 340 courses in 32 sectors. Courses are also available for persons having completed 5th standard and attained the age of 14 years.

Training: Central government is facilitating and promoting training while industry, private sector and State Governments are associated with training the persons through Vocational Training Providers. Optimum utilization of existing infrastructure is being made to make training cost effective. Flexible delivery mechanism (part time, weekends, full time, onsite/ offsite) to suit needs of various target groups is envisaged. Till date, 2477 Training Providers have been registered.

Testing & certification of skills acquired informally: Testing of skills of trainees is being done by independent assessing bodies, which are not involved in training delivery, to ensure that it is done impartially and high standards of quality are maintained. Various industry Associations have been appointed as assessing bodies to assess the competencies of the trained persons.

5.4. P.M's Announcement :

Prime Minister in his Independence Day address on 15th August 2007 announced the following:-

Setting up 1500 new ITIs in PPP mode; Setting up 50000 Skill Development Centres in PPP mode in order to train additional 10 million persons every year.

- Ministry has also initiated action for opening 1500 new ITIs in blocks having no ITIs as yet to ensure that skill development is inclusive in terms of gender, social divide (SC/ST/OBC, minorities and others), the location (rural-urban), economic divide, difficult regions like border areas, naxal affected areas etc. Following two different strategies has been proposed:-
 - (i) Opening of ITIs in PPP mode with predefined roles of different stakeholders i.e. private partner, State government and Central Govt. Private Partner should play the leading role.
 - (ii) In the difficult areas where private partnership may not be feasible, leading role may be played by the State Government with financial assistance by Govt. of India. The Private partnership may be advisory in nature for its governance such as setting up Institute Management Committees.
- Planning Commission has already communicated their 'in-principle' approval for setting up of 1500 ITIs and 5000 Skill Development Centers in PPP mode.

5.5. Issues & Challenges:

- (i) **Make training demand responsive in consultation with the industry and trade bodies.**

There is a need for setting up a labour market intelligence system for better matching of demand and supply of marketable skills. This system should forecast the demand of skill requirement in various industrial sectors. It should also be applicable for forecasting of marketable skills in both the organized and unorganized sectors. This system would take into consideration existing and emerging business opportunities in India and abroad.

Industry, Industry Associations, Entrepreneurs & Workers Organisation can work jointly with Govt. for establishing such a system on a continuous basis by indicating future skill demands of industry.

- (ii) Active involvement of Workers organization in identification of training need, defining Competency level and bench marking of skills that will help in providing proper perspective .

(iii) Industry does not see expenditure on Vocational Training as an investment because of which expansion in VT is not at desired level. Industry, therefore, needs to be involved in large scale training of youth in those establishments.

(iv) Industry and entrepreneurs need to be encouraged to take up Vocational Training as commercial ventures and impart world class training in different emerging disciplines.

(v) Need for participation of India in World Skills Competition – Role of Industry & Industry Associations to be enhanced.

(vi) There is a need for training of instructors by industry in new areas of technologies which are not available in Instructor Training Institutes.

(vii) A large number of training institutions need to be set up to meet the training requirement of large number of persons.

(viii) A credible system of assessment needs to be developed.

(ix) Quality of training needs to be benchmarked to international standards to ensure that the youth are not only employable within the country but also outside.

ITEM NO.3: Issues relating to Sales Promotion Employees in India

1. Various representations have been received in Ministry of Labour & Employment from the Associations of Medical and Sales Representatives regarding amendment in Industrial Disputes Act, 1947 for coverage of sales representatives as workman under it for legal protection of the sales promotion employees and given certain suggestions seeking to ensure justice to lakhs of workers including Sales Promotion Employees all over the country. Their main demands are:

- (a) Enforcement of Industrial Disputes (Amendment) Act, 1982 in Section 2(j) defining 'Sales Promotion' as an 'Industry'.
- (b) Extension of Sales Promotion Employees (Conditions of Service) Act, 1976 to scheduled industries other than pharmaceuticals.
- (c) Statutory working rules for the Sales Promotion Employees under SPE Act.
- (d) Amendment of the Industrial Disputes Act, 1947 to include "sales promotion employees" in keeping with ID (West Bengal Amendment) Act, 1981.

(a) Enforcement of Industrial Disputes (Amendment) Act, 1982 in Section 2(j) defining 'Sales Promotion' as an 'Industry':-

- 2. Section 2(C) of the Industrial Disputes (Amendment) Act, 1982 amended definition of 'Industry' under Section 2(j) of the Industrial Disputes Act, 1947 so as to include "sales representatives" in the definition of "industry".
- 3. The Industrial Disputes (Amendment) Act, 1982 excludes certain institutions like hospitals and dispensaries. Educational, scientific, research or training institutes, institutions engaged in charitable, social and philanthropy services, Khadi and Village Industries, agriculture except where such agriculture operation is carried out in integrated manner with any other activity and such other activity is the predominant one and any domestic service from the purview of definition of 'industry' under Section 2(j) of the Industrial Disputes Act, 1947. It was also proposed to exclude Sovereign functions of Government including activities relating to atomic energy, space and defence research.
- 4. In the Statement of Objects and Reasons of the 1982 (Amendment) Bill, a commitment was made that a separate law for the settlement of individual grievances as well as collective disputes in respect of workmen of the institutions excluded from the purview of the Industrial Disputes Act would be brought in. Ministry of Labour & Employment had made two unsuccessful attempts in 1982 and 1988 to bring in

legislation for creation of alternative grievances redressal machinery for the excluded categories of Institutions/Industries. Since alternative Grievance Redressal Machinery could not be finalized, the proposed amendment could not be notified.

(b) Extension of Sales Promotion Employees (Conditions of Service) Act, 1976 to scheduled industries (annexed) other than pharmaceuticals.

5. Federation's demand on extension of Sales Promotion Employees (Conditions of Service) Act, 1946 has been under consideration of the Government and the State Governments/Union Territories and Central Ministries concerned are being consulted. The comments from most of the States/UTs have been received. Replies from some States like Chhatisgarh, Jharkhand, Maharashtra, Manipur, Meghalaya, Sikkim and Uttarakhand are still awaited. Ministries of Food Processing Industries, Information & Broadcasting and Department of Fertilizers are yet to respond.

6. In all the Federation has demanded extension of the Sales Promotion Employees (Conditions of Service) Act, 1946 to 40 industries. The list of these industries is at **Annexe-I**.

(c) Statutory working rules for the Sales Promotion Employees under SPE Act.

7. Central Government has already framed the Sales Promotion Employees (Conditions of Service) Rules, 1976 under the Act. These rules contain provision for number of holidays, compensatory holidays, weekly days of rest, earned leave and other different kinds of leave admissible, issue of appointment letter etc. The Federation stated that the Statutory Working Rules covering following points may be made:

- **Job Responsibility** of the Sales Promotion Employees should be categorically defined as operational part of the Sales Promotion work only.
- **Job Specification** should be commensurate to the operational responsibility of the Sales Promotion Employees.
- **Personal Office:** Each sales promotion employee should be provided with a personal office for doing clerical work and to store material for sales promotion work.
- **Hours of Work, Holiday etc.:** Total weekly outdoor working hours shall not be more than 28 hours in a week and other desk work should not be more than 7 hours in a week including a lunch break of 30 minutes per day. There shall be one and half day weekly off. Weekly off days and holidays shall be considered as on duty.

- **Overtime:** A workman should be paid overtime wages at the rate of double the wages in the event of working after scheduled working hours.
 - **Payment of Wages, Recovery of Wages, Overtime:** For this, the Provisions of Shops and Establishment Act and Rules framed there-under may be made applicable for the sales promotion employees also.
 - **Appointment:** A workman shall be deemed to be confirmed after expiry of the period of probation for six months. The workman, however, shall be given the regular pay benefit during such period of probation.
 - **Service Period:** A sales promotion employee shall be deemed to be in service of the company from the date of joining of probation.
 - **Retirement Age:** A sales promotion employee's retirement age shall be 60 years.
8. On receipt of comments from all concerned, a view will be taken regarding extension of the Act to industries other than pharmaceutical. Accordingly necessary action in consultation with Ministry of Law and Justice to issue a notification under sub- Section 5 of Section 1 and Section 3 of the SPE Act and amendments in rules under Section 12 of the Act would be processed.
- (d) To insert "Sales Promotion" in clause (s) of Section 2 of the Industrial Disputes Act, 1947 in the manner of ID (West Bengal Amendment) Act, 1981.**
9. The Sales Promotion Employees (Conditions of Service) Act, 1976 is initially applicable to establishments engaged in pharmaceutical industry. However, Section 1(5) of the Act empowers the Central Government to extend the provisions of the Act to other establishment, engaged in any industry, by notification.
10. Ministry of Labour & Employment has been receiving requests for extension of provisions of the Act to other industries also. As such, the Ministry of Labour & Employment examined a proposal to extend the benefits of the Act to industries other than pharmaceuticals, in consultation with Central Ministries and State Governments. However, due to lack of unanimity among States the proposal could not be finalized.
11. According to the Supreme Court judgement in the year 1994, medical representatives were not "workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947 for the reason that the work done by sales promotion employees could not be categorized as skilled work. After this, the representatives of employees, and employers'

associations met the then Labour Minister. The demand of employees' representatives' was that Section 2(s) of the Industrial Disputes Act should be amended so as to cover sales employees within the definition of the workmen. Since the notification of Section 2(j) of Industrial Disputes Act has been pending since 1982 and as a large number of sales promotion employees are under the purview of the State Governments, it was felt that the matter may be left to respective State governments to amend section 2(s) of the industrial Disputes Act, 1947 to cover the sales promotion employees within the definition of the Act. The State Government of West Bengal has already implemented this.

12. Statement showing the status in respect of the amendment made in section 2(s) of the Industrial disputes Act, 1947 by various State Governments is at **Annex-II**.
13. Indian Labour Conference may consider the above note and give their recommendations on (a), (b), (c) and (d) listed in para 1 above.

**THE LIST OF INDUSTRIES TO WHICH THE SALES PROMOTION
EMPLOYEES (CONDITIONS OF SERVICE) RULES, 1976 IS DEMANDED
TO BE APPLICABLE**

1. Cosmetics, Soaps Household Cleaners and Disinfectants
2. Rubber products including Tyres
3. Automobiles including Accessories and Spare Parts
4. Readymade Garments
5. Footwears
6. Breweries
7. Electrical Appliances.
8. Agricultural Implements
9. Paints and Varnishes
10. Beedi, Cigarettes and other Tobaccos Products.
11. Soft Drinks Manufacturing Industries.
12. Engineering
13. Textile
14. Petroleum
15. Fertilizer
16. Chemicals and Petro-Chemicals
17. Insecticides, Herbicides and other Agro-Chemicals
18. Biscuits and Confectioneries
19. Food Products and Spices
20. Offices Equipments including Duplicators, Photocopying and Typewriters
21. Leather and Leather Goods
22. Publishing Industries.
23. Tea and Coffee
24. Paper and Paper Boards.
25. Plastics, P.V.C and Such Materials.
26. Cinema.
27. Radios, Transistors, Tape recorders, Televisions, Telephone Equipments including Cellular Phones.
28. Moulded Furniture.
29. Paper, Ink and Other Stationeries
30. Ayurvedic, Unani and Homeopathic Medicines.
31. Electronics, Computers including Accessories and Spares
32. Threads
33. Sanitary Wares
34. Steel Furniture
35. Match Boxes and Similar Industries
36. Batteries and Dry Cells
37. Surgical Equipments, Artificial Prosthesis and Diagnostics
38. Shavings Razors and Blades
39. Camera and Photographic Implements
40. Equipments for Ultrasonography, Endoscopy and Pace Makers.

**STATEMENT SHOWING THE STATUS IN RESPECT OF THE AMENDMENT
MADE IN SECTION 2(S) OF THE INDUSTRIAL DISPUTES ACT, 1947 BY
VARIOUS STATE GOVERNMENTS**

States which have amended Section 2(s) of the Industrial Disputes Act 1947	States to which approval of the Central Government has already been communicated.	States which are considering amendment to Section 2(s) of the Industrial Disputes Act, 1947.	States which are of the view that Central Government may carry out the necessary amendment in the Central Act.	States which are of the view that they do not need such amendment having the negligible number of sales promotion employees
West Bengal Nagaland	Jharkhand Andhra Pradesh Assam Kerala	Gujarat Punjab J&K Uttar Pradesh Tamil Nadu Meghalaya	Lakshadweep Andaman & Nicobar Goa Pondicherry Karnataka Arunachal Pradesh Dadra & Nagar Haveli Rajasthan Haryana Bihar	Sikkim Chandigarh Mizoram Chhatisgarh

ITEM NO.4: Global Financial Crisis – its effects viz., large scale downsizing, layoffs, wage cut and job losses, etc.

Introduction:

1.1. India's 11th Plan marks that the generation of productive and gainful employment with decent working conditions on a sufficient scale to absorb our growing labour force must form a critical element in the strategy for achieving inclusive growth.

1.2. The approach adopted by the present draft employment policy initiated by the Ministry of Labour and Employment, Government of India is to address the employment challenges faced by India on two fronts:

- Enhance growth of employment in the formal sector, and
- Improve working conditions and productivity of the large labour force engaged in the informal economy.

Global Financial Crisis:

2.1. In 2008, the global financial crisis was triggered by the collapse of the housing bubble in the United States of America, although the actual causes go deeper, engulfing international money, credit, equity, financial exchange markets etc. The high commodity and energy prices, the sub-prime crisis, contraction in the real estate market especially in the developed countries and the severe global financial services shock, which has triggered a massive tightening in lending, had a significant impact on most sectors of the economy and on employment. The decline in investment, production and consumption on account of diminishing confidence of both the investors and the consumer, have affected the millions of people losing their jobs. This is evident through an abnormal increase in lay-offs. Ripples of recession leading to reduction in exports to developed countries are being felt by all the developing countries. Credit availability and its cost have become major areas of concern. The combined impact of all these factors would be loss of employment and reduction of income leading to social distress. The global situation deteriorated rapidly after mid September, 2008 following the collapse of Lehman Brothers, one of the top five investment banks in the US, American International Group (AIG) Bank and also the mortgage lenders Freddie Mae and Fannie Mae. There has been a massive choking of credit since then and a global crash in the stock markets.

Global Economic Growth and Employment Trends:

3.1. The International Monetary Fund (IMF) placed the estimated world output growth at 3.75 per cent in the year 2008 and 2.2 percent in the year 2009 in World Economic Outlook (WEO), November 2008, which represented a significant slide from a level of about 5.0 per cent in the year 2007. Further, the IMF in its latest report stated that in advanced

economies, output is estimated to contract in the year 2009, the first such fall in the post-war period. In emerging economies, growth is projected to slow down appreciably but still may reach 5.0 percent in the year 2009.

3.2 In 2008, roughly 3 billion people around the world are employed. As regard three Asian regions comprising South Asia, south-east Asia and the Pacific and East Asia, these account for about 57% share in global employment. The global employment-to-population ratio decreased by 0.2 percent during 2008 in comparison to previous year, which is the result of rising unemployment in 2008 and labour force participation rate in the world remaining constant around 65.1% in recent years. The global number of unemployed in 2008 is estimated to be 190.2 million, indicating an increase of 10.7 million people over 179.5 million persons during 2007. The increase in global unemployment rate also increased from 5.7% observed in 2007 to 6.0% during 2008.

3.3 According to Global Wage Report 2008/09 published by International Labour Office (ILO), the global economic crisis is expected to lead to painful cuts in the wages of millions of workers worldwide in the coming year. It predicts that the slow or negative economic growth, combined with highly volatile food and energy prices, will erode the real wages of the world's 1.5 billion wage-earners, particularly low-wage and poorer households. Between the years 1995 and 2007, for each one per cent decline in GDP per capita, average wages fell even further by 1.55 percentage point, a result that points to the possible effects on wages in the current crisis.

Effect on Growth and Employment Trends in India:

4.1. In an increasingly globalised economic milieu, these external developments have major impact on world economy, including the emerging market economies and developing countries through both direct and indirect economic linkages. Export-dependent emerging economies will be hit the most. For the Indian economy, although the exports are not the mainstay of GDP growth, the export for October, 2008 registered the first negative growth in seven years.

4.2. The deepening of the global crisis and subsequent deleveraging and risk aversion in the global markets affected the Indian equity and the foreign exchange markets. While the Indian economy has a sufficient internal ballast to withstand the impact of global recession because of overall strength of domestic demand and the predominantly domestic nature of financing of investment and exposure of exports to less than 20% of GDP, nevertheless some slowdown is inevitable.

4.3 The global slowdown has its implications on the domestic economy. During the last three years Indian Economy grew at an average annual rate of 8.6 per cent. For the first time, the economy has shown signs of deceleration and is expected to grow at 7.1 per cent in the first three quarters of 2008-09 (April-December, 2008) as compared to growth rate of

9.0% in GDP during 2007-08. The key indicators of construction sector namely cement and steel have registered growth rates of 7.0% and 2.7% respectively during April-December 2008 as against corresponding growth rates of 7.7% and 6.4% respectively in these items during April-December 2007. The service sector, which contributes more than 50% share in the GDP and is the prime growth engine, reported to be slowing down, mainly in the manufacturing, construction, automobile, communication, trade, transport and hotels & restaurants sectors, financing, insurance, real estate and business services. The advance estimates of GDP at factor cost by economic activity recently released by CSO, Ministry of Statistics and Programme Implementation are given below:

STATEMENT 2: Advance Estimates of GDP at Factor Cost by Economic Activity (At 1999-2000 prices)

(Rs. in crore)

Industry	2006-07	2007-08 (QE)	2008-09 (AE)	Percentage change over previous year	
				2007-08	2008-09
1. Agriculture, forestry & fishing	531315	557122	571668	4.9	2.6
2. Mining & quarrying	60038	61999	64891	3.3	4.7
3. Manufacturing	440193	476303	496017	8.2	4.1
4. Electricity, gas & water supply	60544	63730	66465	5.3	4.3
5. Construction	205543	226325	240940	10.1	6.5
6. trade, hotels, transportation and communication	778896	875398	965346	12.4	10.3
7. Financing, insurance, real estate & business services	409472	457584	496903	11.7	8.6
8. Community, social & personal services	385118	411256	449423	6.8	9.3
9. GDP at factor cost	2871120	3129717	3351653	9.0	7.1

4.4. The industrial growth has decelerated sharply during April-November, 2008 encompassing all the constituent sectors. In manufacturing sector, the growth has come down to 4.1 per cent in April-December, 2008 as compared to 8.2 percent in the corresponding period of last year. The slowdown occurred in all the use-based categories, except community, social and personal services wherein it has accelerated mainly on account of increase in the revenue expenditure of central government by 39.2%.

ILO's Observations:

5.1. The economic slowdown is a contraction phase of the business cycle. It is an un-favourable economic phase and is characterized by deceleration of investment, lowering of prices, reduction in job opportunities and bankruptcy of firms etc. The present economic slowdown owes its genesis to the housing bubble in the United States of America and the subsequent meltdown in the credit markets. It is primarily a consumer driven recession.

5.2 The first step in the process was the preparation of a technical background document “Towards an Employment Strategy for India” (draft technical background document available on the ILO website) using the diagnostic framework of the ILO’s Global Employment Agenda and recommendations of the ILO Employment Policy Convention No. 122, ratified by India, which promotes full, productive and freely chosen employment for all men and women. It addresses the major concern of a very high proportion of the labour force in the informal economy. The Report argues that the employment intensity of economic growth can be augmented by promoting sectors of high potential growth that are by their nature more labour-intensive. The long term employment elasticity has shown a secular tendency to decline from 0.53 during 1972-73 to 1983; to 0.40 during 1983 to 1993-94 and to 0.32 during 1993-94 to 2004-05. In the Report it is analysed that if the overall employment elasticity observed to be 0.32 during the current period is taken into consideration, GDP growth of 10.1% is required for achieving employment growth of 3.2% i.e. for absorbing the unemployed and the severely unemployed.

5.3 The policy areas examined in the technical analysis include macro-economic policies, labour market policies, enterprise development policies with focus on micro and small enterprises and skills development with gender as a special focus area considering the large contribution women make to the economy.

Sectors likely to be affected in India:

(i) Exporting Establishments:

6.1 As regards the sectors effected due to economic slowdown, these include mainly the manufacturing sector the exporting units like textiles, leather, engineering, gems and jewellery, handicrafts, food and food processing, minerals and marine products.

6.2. No exhaustive survey has been conducted regarding the impact of global slowdown on Indian export units particularly with regard to “job losses”. However, a sample study conducted by the Department of Commerce for 121 export related companies revealed loss in export orders to the tune of Rs. 1792 crore and loss of jobs about 65,500.

(ii) Other Sectors:

6.3. The other sectors, which are indicated to have been affected due to economic slowdown, may include:

- (i) Construction industry, which may be attributed to abnormally high increase in values of houses,
- (ii) Automobile / Transport sector due to demand crunch,

- (iii) The BPO and IT industry due to spill over effect of global slowdown, and
- (iv) Mining , Metal and Metal Products

Labour Bureau Survey on Job Losses:

7.1. The Ministry of Labour & Employment has got a quick survey conducted by the Labour Bureau to assess the extent of job loss in the industries / sectors affected during the quarter October to December, 2008 by economy slowdown.

7.2. The highlights of the survey are as follows:

(i) Sample Selection:

7.3. As entrusted by Ministry of Labour and Employment, the Labour Bureau conducted a quick survey to assess the impact of economic slowdown on employment for the period October-December, 2008 in India. The sample selection details are as under:

- ❖ The Annual Survey of Industries frame of establishments employing 10 or more workers with power and 20 or more workers without power for Textiles and Textile Garments, Metal and Metal Products, Automobiles and Gems & Jewellery sectors; and whereas Enterprise Survey covering units employing 10 or more workers was used for Construction, Transport and IT / BPO Industries. The frame provided by DGMS was used for Mining Industries. The smaller units, therefore, could not be covered in the survey.
- ❖ A sample of about 3000 units from organised and unorganized sectors, viz. Mining, Textiles, Metals, Gems, Automobile, Construction, Transport and IT / BPO, was decided to be covered.
- ❖ Keeping in view the concentration of establishments, two states have been selected from each of the four regions and two districts from each of the selected State, covering 20 centres in all 11 States/UTs. This list includes 'Hyderabad' specially selected as an additional centre in view of the concentration of IT / BPO sector. The following States / Districts have been covered:
- ❖
 - Northern Region** : Delhi – Delhi and NCR towns
Punjab – Jalandhar & Ludhiana
 - Southern Region** : Tamil Nadu- Chennai & Tirupur
Karnataka – Bangalore & Bellary
 - Eastern Region** : West Bengal – Kolkata & Howrah
Jharkhand – Ranchi & Jamshedpur
 - Western Region** : Gujarat – Ahmedabad & Surat
Maharashtra – Mumbai & Pune

- ❖ A sample of 2581 units pertaining to Mines, Textiles, Metals, Gems and jewellery, Automobile, Transport and IT/BPO could be drawn for conducting the survey. These sectors contributed more than 65% of the GDP in the year 2007-08.
- ❖ From each of the selected state, the sample was drawn in proportion of the units in the frame from these sectors. Final schedules canvassed were limited to 2581 units, as many units did not exist but listed in the old frame. The highest number of schedules canvassed was 1168 for Textiles & Textile Garments industries, followed by 752 schedules in Metals and Metal Products, 242 schedules in IT/BPO, 132 schedules in Automobiles, 104 schedules in Gems & Jewellery, 103 schedules in Transportation, 61 schedules in Construction industries, whereas lowest schedules canvassed was 19 in Mining industries.
- ❖ The scope of the survey could not be extended to Tourism & Financial services, which is also reported to have been affected on account of global recession due to non-availability of sampling frame.
- ❖ It was not possible to present the analysis in respect of construction sector as the response of the management was found to be very poor and a lot of inconsistencies were noticed in the data collected from 61 units.

(ii) Effect on Employment:

7.4. The effect on employment in India is analyzed as below:-

- The total employment in all the sectors covered by the survey went down from 16.2 million during September, 2008 to 15.7 million during December, 2008, thus resulting in job loss of about half a million persons.
- The exporting units are observed to have higher decline in employment, of which the decrease in employment, as experienced in Gems & Jewellery (8.43%), followed by Metals (2.6%), Textiles (1.29%), Automobile (1.26%) and Mining (0.32%).
- The employment has not been adversely affected in the remaining exporting units in sectors i.e. Transport (0.0%) and IT/BPO, wherein it has gone up marginally i.e. 0.33% during October-December, 2008.
- In the domestic sector units, decline in employment was maximum in Gems & Jewellery (11.9%) followed by Automobiles (4.79%), Transport (4.03%), Metals (1.24%) and Mining (0.33%).
- During the course of the survey, data has also been collected to analyse impact on direct and contractual workers. The overall decline

in contract workers was observed to be higher 3.88% in comparison to only 0.63% for direct employees.

- The average monthly earnings have gone up during October, 2008, which may be due to payments of festival bonuses.
- The decline in average monthly earning is reported to be 11.43% and 0.5% in November and December, 2008 respectively. The average earnings have declined @ 3.45% per month during October–December, 2008.
- On the basis of the information on capacity utilization in the manufacturing and mining sector, units collected during the period, there is average monthly decline of 7.05% per month in automobile sector followed by 5.68% in metal sector, 1.03% in Gems & Jewellery; 0.32% in Mining and 0.09% in Textiles. The overall capacity utilization is decreased @ 1.32% per month during the period.
- The estimated growth rate for third quarter 2008-09 i.e. October-December, 2008 is expected to be 6.9% by taking into consideration the employment elasticity for manufacturing sector at 0.34%.

Steps taken:

8.1. The Government has been concerned about the impact of the global economic slowdown on the Indian economy. Several changes in fiscal and monetary policies have recently been announced by the Government of India to enhance liquidity so as to spur growth and overcome economic recession. These mainly comprise additional spending, interest subvention, excise duty cuts etc., which would prevent large scale job losses.

8.2. The steps initiated are as follows:

- An additional plan spend of Rs. 30,000 crore to stimulate investments and demand including Rs. 10,000 crore to be raised by India Infrastructure Finance Company Limited for refinancing long term loans for infrastructure projects in ports, highways and power sector.
- Other re-financial packages for Export Credit Guarantee Corporation, NHB, SIDBI and additional allocation of Rs.1400 crore for technological up gradation fund scheme for textile industry.
- Across the board reduction of 4% in excise duty.
- Interests subvention of 2% for export credit and refund of service tax to exporters up to 10% of FOB value of exports.
- Improving liquidity by reducing repo rate, cash reserve ratio etc. by RBI.

“Rajiv Gandhi Shramik Kalyan Yojana”

9.1. In order to provide a social safety net, the Employees’ State Insurance Corporation has introduced “Rajiv Gandhi Shramik Kalyan Yojana” with effect from 01.04.2005. Under the scheme, employees who lose their employment due to retrenchment, closure of factories/establishments or permanent invalidity due to non-employment injury, after being insured for five or more years, are entitled to get unemployment allowance in cash equal to 50% of their wage up to 6 months during his/her entire service. In addition, he and his family members are also entitled to medical care. In a meeting held on 29.1.2009, the ESIC Board has decided to enhance the entitled benefits from a period of six months to one year.

National Rural Employment Guarantee Act (NREGA), 2005

10.1 NREGA, 2005 provides 100 days of guaranteed wage employment in every financial year to every household, whose adult members volunteer to do unskilled manual work.

10.2. A very significant feature is that if a worker who has applied for work under NREGA and is not provided employment within 15 days from the date on which work is requested, an unemployment allowance shall be payable by the State Government as prescribed in the Act.

10.3 The NREGA scheme will be helpful in providing employment opportunities to people who become unemployed, if they stay in rural areas due to economic slowdown are eligible as per guidelines of the scheme.

The Unorganized Workers Social Security Act, 2008

11.1. Lately, the Unorganized Workers Social Security Act, 2008 has been enacted by the Government to provide social security to workers in the unorganized sector. The Salient features of the Act include formulation of welfare schemes. The three main schemes initiated by the Government of India for implementation include:

- (i) Indira Gandhi Old Age Pension Scheme to cover all BPL citizens above the age of 65 years with effect from 19th November, 2007 with per capita grant of Rs. 200/- per month to be provided by the Government of India under the pension schemes being implemented by the States/UTs.
- (ii) Aam Aadmi Bima Yojna launched on 2nd October, 2007 with a view to providing the death and disability cover to rural landless households between ages 18-59 years. The benefits include Rs.30,000/- in case of natural death and Rs. 75,000/- in case of death due to accident or permanent disability. The scheme also

provides scholarship up to a maximum of two children studying in 9th to 12th standard at the rate of Rs. 300/- per quarter per child.

- (iii) Rashtriya Swasthya Bima Yojna (RSBY) covering BPL family members (a unit of 5) in the unorganized sectors providing health insurance of Rs. 30,000/-. It is proposed to cover all 6 crore BPL families by 2009-10. RSBY has further been extended to construction workers as well. As on 11th February, 2009, about 23.10 lakh families have been covered and more than 115 lakh smart cards have been issued. It is targeted to cover 30 lakh families under RSBY by March 2009. The scheme has been extended to building and other construction workers registered under the welfare Boards constituted under the Building and other Construction Workers' Act. It has also been decided to cover maternity benefit under the Scheme.

Formulation of National Employment Policy and National Skill Development Policy

12.1. The Government is in the process of formulating two important policies, namely, National Employment Policy and National Skill Development Policy, which will help in promoting employment and employability in the country.

Positive Signals:

- As per the assessment, the positive growth in agricultural sector during the year 2008-09 may infuse demand and may lead to economic revival in the next few months.
- The manufacturing sector has indicated revival of economy with about 2% increase in the index of industrial production covering mining, manufacturing and electricity during November 2008 observed after negative growth observed during October 2008.
- The inflation rate has come down to 5.8% and is expected to fall further to around 3% by March 2009.
- The interest rates are likely to fall further in view of the measures taken by the Government to infuse money supply.
- Moreover the domestic demand is very high as the Indian economy has not reached the saturation like developed countries.
