8

STANDING COMMITTEE ON LABOUR

(2019-20)

(SEVENTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

THE INDUSTRIAL RELATIONS CODE, 2019

EIGHTH REPORT

LOK SABHA SECRETARIAT

NEW DELHI

April, 2020/Viasakha, 1942 (Saka)

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Presented to Hon'ble Speaker on 23.04.2020

LOK SABHA SECRETARIAT

NEW DELHI

April, 2020/Vaisakha, 1942 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2019-20)

Shri Bhartruhari Mahtab - Chairperson

MEMBERS
LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Pasunoori Dayakar
7. Shri Feroze Varun Gandhi
8. Shri Satish Kumar Gautam
9. Shri B.N. Bache Gowda
10. Dr. Umesh G. Jadhav
11. Shri Dharmendra Kumar Kashyap
12. Dr. Virendra Kumar
13. Adv. Dean Kuriakose
14. Shri Sanjay Sadashivrao Mandlik
15. Shri K. Navaskani
16. Shri Khalilur Rahaman
17. Shri D. Ravikumar
18. Shri Nayab Singh Saini
19. Shri Ganesh Singh
20. Shri Bhola Singh
21. Shri K. Subbarayan

RAJYA SABHA

*22. *Vacant*
#23. *Vacant*
24. Shri Oscar Fernandes
25. Shri Elamaram Kareem
26. Dr. Raghunath Mohapatra
27. Dr. Banda Prakash
28. Shri Rajaram
29. Ms. Dola Sen
30. Shri M. Shanmugam
31. *Vacant*

SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri D.R. Mohanty - Additional Director

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* Vacancy arose vice Shri Husai Dalwai retired from Rajya Sabha w.e.f 2nd April, 2020.
# Vacancy arose vice Shri Ram Narain Dudi retired from Rajya Sabha w.e.f. 9th April, 2020.

INTRODUCTION

I, the Chairperson, Standing Committee on Labour (2019-20) having been authorized by the Committee do present on their behalf this Eighth Report on 'The Industrial Relations Code, 2019' relating to the Ministry of Labour and Employment.

2. The Industrial Relations Code, 2019 was introduced in Lok Sabha on 28.11.2019 and referred to the Committee on 23.12.2019 for examination and report within three months i.e. by 22.03.2020. The Committee obtained four days extension of time from Hon'ble Speaker to present the Report to the House by 26.03.2020. However, since Parliament was adjourned *sine-die* on 24th March, 2020 because of the unprecedented situation arising out of the COVID-19 Pandemic, the Committee sought and obtained further extension of time upto the first day of the Monsoon Session 2020 to present the Reoprt.

3. In the process of examination of the Code, the Committee invited the views/ suggestions from Trade Unions/ Organizations/ Individuals/ Stakeholders through a Press Communiqué and received around 40 views/suggestions. The Committee took oral evidence of the representatives of the Ministry of Labour and Employment on 9th January and 4th March, 2020, besides obtaining written clarifications from them on some major amendments proposed. The Committee also took oral evidence of the representatives of Central Trade Unions and various other Associations/ Organisations/ Stakeholders viz. Bhartiya Mazdoor Sangh (BMS), Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU), All India United Trade Union Centre (AIUTUC), Trade Union Coordination Centre (TUCC), Self Employed Women's Association (SEWA), Labour Progressive Federation (LPF), National Front of Indian Trade Unions (NFITU), All India Railwaymen's Federation, All India Defence Employees Federation, PRS Legislative Research, Tea Association of India on 27th February, 2020. The Committee further took oral evidence of the representatives of Association of Industrial and Commercial Establishment, Cochin Chamber of Commerce and Industry, Confederation of Industrial and Trade Organisation on 3rd March, 2020 and oral evidence of Shri Dr. K.R. Shyam Sundar, Professor (HRM), Xavier School of Management and representatives of State Governments of Himachal Pradesh and Punjab took place at the sitting held on 4th March, 2020.

4. The Committee considered and adopted the Report digitally as no sitting could be held due to the unprecedented situation arising out of the COVID-19 Pandemic.

5. The Committee wish to express their thanks to the representatives of the Ministry of Labour and Employment for tendering oral evidence and placing before the Committee the detailed written notes and post evidence information as desired by the Committee in connection with the examination of the Code. The Committee also express their thanks to all those who submitted written memoranda in response to the Press advertisement as well as the Trade Unions and other Associations/Organisations/Individuals/Experts for appearing before them and furnishing valuable suggestions on the proposed Amendments.

6. The Committee would like to place on record their appreciation for the commitment, dedication and valuable assistance rendered by the officials of the Lok Sabha Secretariat attached to the Committee.

7. For ease of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi; **BHARTRUHARI MAHTAB**
23rd April, 2020 ***CHAIRPERSON,***
3rd Vaisakha, 1942 (Saka) ***STANDING COMMITTEE ON LABOUR***

REPORT

I. INTRODUCTORY

The Industrial Disputes Act, 1947 provides for mechanism and machinery for settlement of disputes through conciliation, Industrial Tribunals as well as provisions relating to strike, compensation/notice and permission before retrenchment, closure, layoff, etc. The Trade Unions Act, 1926 deals with registration of Trade Unions, their rights, obligations, etc. The Industrial Employment (Standing Orders) Act, 1946 relates to the Model Standing Orders for establishments having 100 and more employees.

1.2 The Industrial Relations Code, 2019 intends to subsume the above three Industrial Acts after simplifying and rationalising the relevant provisions contained therein. The Codification of the above Labour Laws by consolidation of relevant provisions at one place aims at facilitating the implementation and removing the multiplicity of definitions and authorities without compromising the available safeguard. The Code proposes to bring transparency and accountability in the enforcement of labour laws which would lead to better industrial relations and thus higher productivity. The ease of compliance of labour laws would promote setting up of more enterprises, thus catalysing the creation of ample employment opportunities in the Country.

1.3 The salient features of the Industrial Relations Code, 2019 are as follows:

(i) Definition of "Worker" has been revised by including persons in supervisory capacity getting salary up to Rs 15000/- per month or an amount as may be notified by the Central Government from time to time. At present, under the Industrial Disputes Act, 1947, definitions of 'Worker' includes person in supervisory capacity getting salary up to Rs. 10000/- per month *(clause 2(zm) in the Code)*.

(ii) The definition of "industry" has been modified. Industry means any systematic activity carried on by cooperation between employer and his workers (whether such workers are employed by such employer directly or by or through any agency including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature). However, it does not include institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic services; sovereign functions; domestic services; and any other activity as may be notified by the Central Government *(clause 2(m) in the Code.* This new definition is based on the definition of industry passed by the Parliament in 1982 (46 of 1982) but did not come into force. *(clause 2(m) in the Code).* Further, a provision has been made in section 99 that each notification made under clause 2 (m) shall be laid before both the Houses of Parliament for a period of 30 days.

(iii) Definition of 'strike' is being amended to include 'mass casual leave' also within its ambit *(clause 2(zf) in the Code)*.

(iv) Fixed Term Employment has been defined and also included as a category of employment in classification of workers in the Schedule for matters to be provided in Standing Orders. A provision that a fixed term employee will get all statutory benefits like social security, wages, etc. at par with the regular employees who are doing work of same or similar nature has also been inserted. Further, to bring clarity a clause has been added that termination of the service of a worker as a result of completion of tenure of fixed term employment would not be retrenchment. (Clauses 2 (l), 2 (zc) and *First Schedule item 1 in the Code*).

(v) Maximum number of members in the Grievance Redressal Committee has been increased from 6 to 10 in an industrial establishment employing 20 or more workers *(clause 4(4) in the Code)*.

(vi) A new feature of "Recognition of Negotiating Union" has been introduced. A Trade Union will be recognized as sole "Negotiating Union" if it has support of 75% or more of the workers on the muster roll in an establishment. If no such trade union has support of 75% or more of workers on the muster roll of that industrial establishment, then a negotiating council will be constituted for negotiation. Further, an enabling clause has been added to prescribe through Rules matters on which negotiations will take place, manner of verification of membership and facilities which will be provided at establishment level to the Negotiating Union/Council by an establishment (*clause 14 in the Code)*.

(vii) The disputes of the registered trade unions have also been included within the jurisdiction of Industrial Tribunal *(Clause 22 in the Code)*.

(viii) A Trade Union or a federation of Trade Unions may be recognized as the Central or State Trade Unions by the Central or State Governments respectively, as and when required, in such manner, as may be prescribed. Further, manner in which the trade unions would be recognized, the purpose of such recognition and the authority to grant recognition would be prescribed by the appropriate Government. *(clause 27 in the Code)*.

(ix) An enabling provision has been made to provide flexibility in applicability of provisions related to Standing Orders on establishments having 100 or more than 100 workers as notified by the appropriate Government. *(Clause 28(1) in the Code)*.

(x) Two members Industrial Tribunal has been proposed, with second member from administrative side, in place of single member Labour Court/Industrial Tribunal, at present. It is observed that cases remain pending due to vacancies in the Industrial Tribunals arising out of leave/resignation/transfer/death of the single member leading to delay in disposal of cases and having adverse impact on the labour welfare. Presently about 23000 cases are pending in 22 Central Government Industrial Tribunals (CGITs) which include about 5000 cases which were transferred after merger of two Employees Provident Fund Appellate Tribunals with CGITs. A bench of the Tribunal may consist of two members i.e. Judicial and Administrative or of a single Judicial, or a single Administrative Member. A bench consisting of two members i.e. Judicial and Administrative shall adjudicate cases relating to discharge, dismissal, retrenchment, closure, strike, application and interpretation of standing orders. The remaining cases can be decided either by a Judicial Member or an Administrative member of the

Tribunal in the manner as prescribed. This flexibility has been provided to ensure speedy disposal of cases by the tribunal. *(Clause 44 in the Code)*

(xi) In place of multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts under the Industrial Disputes Act 1947, only Industrial Tribunals have been envisaged as the adjudicating body to decide appeals against the decision of the conciliation officer.

(xii) At present there is a system of reference of the industrial disputes to the Labour Court-cum-Tribunal by the appropriate Government under the Industrial Disputes Act, 1947. In the proposed draft Code, the reference by the Government will not be required for the Industrial Tribunal, except for the National Tribunal (C*lause 54 in the Code).*

(xiii) The commencement of conciliation proceedings shall be deemed to have commenced on the date of the first meeting held by the conciliation officer in place of existing provision which provides for commencement of conciliation proceedings from the date of receipt of notice by the conciliation officer *(Clause 60 (1) in the Code).*

(xiv) Requirement of a notice period of 14 days has been incorporated for strikes and lockouts in any establishment. This criterion, at present, is only for public utility services, as per the Industrial Disputes Act 1947 *(Clause 62 in the Code).*

(xv) The threshold of workers for establishments in factory, plantation and mines have been retained at 100. However, flexibility has been provided to reduce or increase the threshold by adding words –"or such number of workers as notified by the Appropriate Government" for the purpose of seeking permission before closure, retrenchment and lay-off. However, in States where the threshold has been enhanced from 100 to 300 by State amendments, those amendments have been protected in the Code. *(Proviso to clause 77(1)).* Such States are Andhra Pradesh, Assam, Haryana, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh.

(xvi) A "Re-skilling Fund" for training of retrenched employees has been proposed from the contribution to be made by an industrial establishment for an amount equal to 15 days' wages or such other days as may be notified by the Central Government, to this fund for every worker retrenched. The retrenched employee would be paid 15 days wages from the fund within 45 days from the date of retrenchment. *(Clause 83 in the Code).*

(xvii) Where the punishment is exclusively fine, such fine shall be imposed by an officer, not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government appointed by the appropriate Government. Such Officer has been provided with the necessary power for holding inquiry and imposing the fine after hearing. This would reduce litigation in the court and ensure speedy redressal of cases. *(Clause 85 in the Code).*

(xviii) The penalties under this Code for different types of violations have been rationalized to be commensurate with the gravity of the violations. *(Clause 86 in the Code).* Provision of compounding of offences has been made where on the application from an accused person, in respect of any offence punishable under this Code, which is not an offence punishable with imprisonment, may be compounded by a Gazetted Officer to be notified by the appropriate Government. The process of composition of offence can be done either before or after the

institution of any prosecution, for a sum of fifty per cent of the maximum fine provided for such offence. However, no offence shall be compounded, if it has been repeated within a period of five years from commission of same offence, which was compounded on first occasion or for such person was convicted for the same offence earlier. Any person, who fails to comply with an order made by the officer competent to compound shall be liable to pay additional penalty equivalent to 20% of the maximum fine for such compounded offence. *(Clause 89 in the Code).*

1.4 The Industrial Relations Code, 2019 was introduced in Lok Sabha on 28th November, 2019 and referred to this Committee on 23rd December, 2019 to complete the examination and present a Report thereon within three months i.e. by 22nd March, 2020. As the Report could not be completed by the stipulated timeline, the Committee sought and obtained four days extension of time i.e. upto 26th March, 2020 to present the Report to the House. However, since Parliament was adjourned *sine-die* on 24th March, 2020 because of the unprecedented situation arising out of the COVID-19 Pandemic, the Committee sought and obtained further extension of time upto the first day of the Monsoon Session 2020 to present the Report. In the process of examination of the Code, the Committee after obtaining Background Note, held an initial briefing meeting with the Ministry of Labour & Employment on 9th January, 2020 to get themselves acquainted with various provisions contained in the Code. Subsequent to that, a press advertisement was issued in the prominent National Dailies inviting views/suggestions of various Stakeholders including the State Governments. In response to that the Committee received around 40 Memoranda containing views/suggestions of Trade Unions/Associations/ Organisations/Individuals/some State Governments. These Memoranda were forwarded to the Ministry seeking their comments which were duly received.

1.5 On 27th February, 2020, the Committee took oral evidence of the representatives of the Bhartiya Mazdoor Sangh (BMS), Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU), All India United Trade Union Centre (AIUTUC), Trade Union Coordination Centre (TUCC), Self Employed Women's Association (SEWA), Labour Progressive Federation (LPF), National Front of Indian Trade Unions (NFITU), All India Railwaymen's Federation, All India Defence Employees Federation, PRS Legislative Research and Tea Association of India.

1.6 On 2nd March, 2020, the Committee took oral evidence of the representatives of the Association of Industrial and Commercial

Establishments, Cochin Chamber of Commerce and Industry and Confederation of Industrial and Trade Organisations.

1.7 On 3rd March, 2020, the Committee took oral evidence of Dr. K.R. Shyam Sundar, Professor (HRM), Xavier School of Management and an eminent research scholar on various Labour Laws and Reforms and related matters. On that day, the Committee also took oral evidence of the representatives of the State Governments of Himachal Pradesh and Punjab.

1.8 On 4th March, 2020 the Committee took the final evidence of the representatives of the Ministry of Labour & Employment. Subsequently, the Committee obtained several clarifications and post-evidence reply from the Ministry.

1.9 Based on the written Memoranda received from various Stakeholders and oral depositions by some of them as well as clarifications received from the Ministry through written reply and oral evidence, the Committee examined the Code Clause by Clause in great detail and have given their analysis and considered opinion in the succeeding Chapters/Paragraphs.

II. AMALGAMATION

2.1 As mentioned earlier, the Industrial Relations Code, 2019 proposed to amalgamate the three extant Industrial Acts by imbibing their essential elements and bringing in some modifications in the existing provisions contained in the said Acts. In that context, the Committee desired to know the specific provisions of the three Acts where improvements were intended. In reply, the Ministry submitted as under:

> "The Industrial Relations Code aims to improve the existing system of industrial relations without disturbing the original essence of the existing statutes. Nonetheless, some of prominent provisions of the existing Acts which have been improved in the Code in line with present socio-economic scenario are as under :
>
> (i) Sec. 44(2) - Industrial Tribunal consisting of 2 members for speedy disposal of the disputes
> (ii) Sec. 70(a) – Retrenchment compensation may be increased in future by notification
> (iii) Sec. 4 – Strengthening of GRC
> (iv) Sec. 22 - The disputes of the registered trade unions have also been included within the jurisdiction of Industrial Tribunal.
> (v) Sec 14 - Recognition of Negotiating Union or Negotiating Council."

2.2 Asked to state the extent to which the proposed modifications would protect the interests of both Employee and Employer, the Ministry deposed as under:

> "Many provisions have been incorporated in the proposed Code to protect the interests of both employees and employers. Some of the provisions which have been introduced in the Code for protecting employees' and employer's interests are :
>
> (i) Sec. 83 - Reskilling Fund
>
> (ii) Sec. 2(l) - Fixed Term Employment with all benefits payable to a regular worker (except notice/retrenchment compensation).
>
> (iii) Sec. 4 - Grievance Redressal Committee - Dispute resolution mechanism in addition to conciliation for individual worker. Further, it will be beneficial for employers to reach amicable solution to a worker's grievance as it will have equal number of members representing the employer and the workers.
>
> (iv) Sec. 62(1) - Provision of prior strike notice in case of both Public Utility Service and Non-Public Utility Service to encourage resolution of disputes through tripartite negotiation. It will save loss of production and harmonize industrial relations.
>
> (v) Sec. 2 (zf) – Concerted Casual Leave on a given day by 50% or more workers to be treated as strike.
>
> (vi) Sec. 89 - Compounding of Offences.
>
> (vii) Sec. 2(zm) – Ceiling of wages in respect of supervisor is to be determined/modified through notification.
>
> (viii) Sec. 77(1) - Threshold of workers for retrenchment, lay off and closure can be decided by the Appropriate Government."

2.3 The Committee queried about the safeguards taken to maintain a balance so as to ensure that the proposed modifications did not tilt in favour of the Employers. In response, the Ministry stated as under:

> "The Code deals with industrial disputes, regulation of trade unions and standing orders in industrial establishments. The existing provisions such as, GRC, retrenchment compensation, etc. have been strengthened and new provisions such as Re-skilling Fund, Recognition of Trade Unions at Central/State Level, Recognition of Negotiation Union/Negotiating Council have also been introduced. Further, employers in both public utility services and non-public utility services have been made liable to give 14 days' prior notice before lockout. Earlier, this was applicable only in case of public utility services."

2.4 The Committee then asked about the provisions of the three Acts which have been left untouched and the rationale therefor. In reply, the Ministry submitted as under:

"Provisions related to Voluntary Arbitration of Disputes, Retrenchment, Layoff and Closure in establishments having less than 100 workers, Conciliation Officer, Payment of Full Wages during pendency of case relating to reinstatement, award and settlement, representation by parties, Registration of Trade Union, Proportion of Office Bearers of Trade Unions, Change in Name and amalgamation of Trade Union, Dissolution of Trade Union, Model Standing Orders, Certification of Standing Order have not been changed as these are functioning well."

2.5 The Industrial Relations Code, 2019 proposes to subsume with it the Industrial Disputes Act, 1947, The Trade Unions Act, 1946 and the Industrial Employment (Standing Orders) Act, 1946 after simplifying and rationalising the provisions contained therein. According to the Ministry, the Code proposes to bring transparency and accountability in the enforcement of Labour Laws which would lead to better industrial relations and thus higher productivity. The Committee find that while some new provisions have been included in the Code on the assertion of strengthening and ease of compliance of the Labour Laws, as has been deliberated upon subsequently in the Report, many provisions of the extant three Industrial Acts have been left untouched on the logic that they are functioning well. The Committee are of the considered opinion that governance of the industrial relations system is simply not about framing good laws but also designing adequate and effective mechanism for their efficient implementation. Therefore, it becomes imperative on the part of the Government to strive for creating a formal and conducive industrial relations system, by strengthening the various provisions in the Code, so as to do away with the ambiguities and uncertainties which

would result in aiding economic progress, employment generation and labour welfare.

2.6 With a view to taking care of the interests of both Employers and Employees and keeping in mind the larger socio-economic interest, the Committee recommend that there should be separate and an exclusive Chapter outlining the rights of both the parties and containing the principles pertaining to the industrial relations based on the ILO Conventions/Recommendations and the Constitution of India.

2.7 A close scrutiny of the Code reveals that the words "as may be specified" occurs at least 100 times under various Sections/Provisions which appear detrimental to appropriate legislations. The Committee are of the considered opinion that so many matters should not be left to Rule making process and the Ministry should therefore revisit the relevant Clauses and bring in modifications wherever warranted so as to assure certainty and uniformity in their implementation.

III. DEFINITIONS

CLAUSE-2

Appropriate Government (Clause 2(b))

3.1 Clause 2(b) defines Appropriate Government as under:

> "appropriate Government means,—
>
> (*i*) in relation to an industrial establishment or undertaking carried on by or under the authority of the Central Government, railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central

Government including establishments of the contractors for the purposes of such establishment, corporation, other authority, public sector undertakings or subsidiary companies, as the case may be, the Central Government;

(*ii*) in relation to any other industrial establishment or undertaking or a branch thereof situated in a State, the State Government;"

3.2 A number of Stakeholders suggested that the definition of 'Appropriate Government' should have more clarity; Metro Railway should be included alongwith Railway and the appropriate Government should be the Central Government for the purpose; for Companies holding more than 50% share, the Appropriate Government should be the Central Government.

3.3 When the Committee desired to be apprised of the Ministry's views on the above suggestions, it was stated that for Delhi Metro, the Appropriate Government was the Central Government whereas for Bengaluru and Chennai Metros the Appropriate Government would be the State Governments concerned as per the rulings of the Karnataka and Tamil Nadu High Courts. As regards Companies holding more than 50% share, the Ministry agreed to the suggestion that the Appropriate Government should be the Central Government.

3.4 The Committee then asked whether the definition of 'Appropriate Government' needed more clarity especially relating to the Central PSUs, Factories, etc. In reply, the Ministry stated as under:

"As per Section 2(b) of the Code "appropriate Government" means,—

(i) in relation to an industrial establishment or undertaking carried on by or under the authority of the Central Government, railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government including establishments of the contractors for the purposes of such establishment, corporation, other authority, public sector undertakings or subsidiary companies, as the case may be, the Central Government;

(ii) in relation to any other industrial establishment or undertaking or a branch thereof situated in a State, the State Government;

In view of the above, it is clearly defined that in case of Central PSUs, the Central Government would be the appropriate Government."

3.5 Asked to specify the Appropriate Government in case of Industrial Establishments operating in more than one State, the Ministry submitted as under:

> "The definition of appropriate government shall be uniformly applicable to industrial establishments which are having its branches in one State or more than one State.
>
> The industrial establishment for which the Central Government is the appropriate government shall remain the appropriate government irrespective of its branches in more than one State and in relation to any other industrial establishment or undertaking or a branch thereof situated in a State, the State Government will be the appropriate government."

3.6 Some Trade Unions suggested that the following provision be added to Clause 2(b)(ii):

> "Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment."

3.7 In response to the above suggestion, the Ministry stated as under:

> "May be accepted in principle, as it is the existing definition of appropriate Government under the ID Act."

3.8 The Committee feel that the definition of 'Appropriate Government' needs more clarity, especially its applicability in cases where an establishment operates in more than one State. In other words, it should be made amply clear in the definition itself that where an employer has establishments in more than one States, there shall be only one Appropriate Government which should be determined on the basis of the situs of employment so as to avoid different applicability of labour laws by different States.

3.9 The Committee also recommend that in order to bring in more clarity, the following provision be added to Clause 2(b)(ii) commensurate with the provisions made in the Industrial Disputes Act, 1947:

"Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment."

3.10 The Committee find that many metro railways in the Country have been established by joint venture with Central and State Governments concerned as partners which has raised questions regarding the 'Appropriate Government' of metro railways. For example, Metro Railways, Kolkata and Delhi Metro come under the Central Government. Further, as per Karnataka and Tamil Nadu High Court Orders Bengaluru Metro and Chennai come under the respective State Governments. As the Metro Railways have been established and operated under the Central Acts, the Committee desire that the words "including metro railways" be added after the word "railways" in the definition Clause of Appropriate Government so as to remove confusion regarding the Appropriate Government in the case of Metro Railways.

3.11 The Committee further recommend that for Companies holding more than 50 percent share, the Appropriate Government should be the Central Government.

3.12 The Committee's attention has been drawn to the fact that for the Captive Mines of the Cement Plant the Appropriate Government is the Central Government since years together whereas the Cement Industry which has branches in more than one States the Appropriate Government is the State Government leading to disparity in the uniform application of labour laws in terms of payment of wages and other provisions. Since the basic purpose of the Code is to bring uniformity in the application of labour laws for the benefit of both employer and employee, the Committee desire that for the Cement Industry and other similarly placed industries, the Appropriate Government should be the Central Government so as to effectively address the extant anomalies.

IV. EMPLOYEE AND WORKER
CLAUSE 2(i) and CLAUSE 2(zm)

4.1 Clause 2(i) defines Employee as under:

> "employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union;

4.2 Clause 2(zm) defines Worker as follows:

> "worker" means any person (except an apprentice as defined under clause (*aa*) of section 2 of the Apprentices Act, 1961) employed in any industry to do any

manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (*f*) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (*d*) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(*i*) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
(*ii*) who is employed in the police service or as an officer or other employee of a prison; or
(*iii*) who is employed mainly in a managerial or administrative capacity; or
(*iv*) who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time:

Provided that for the purposes of Chapter III, "worker"—

(*a*) means all persons employed in trade or industry; and
(*b*) includes the worker as defined in clause (*m*) of section 2 of the Unorganised Workers' Social Security Act, 2008."

4.3 Suggestions were received from many quarters that Employee and Worker should not be differentiated; the word 'Managerial' should be excluded from the definition of Employee as the word 'Manager' finds a place in the definition of Employer also; Apprentice, Building and other Construction Workers (BOCW) and Scheme Workers should be included in the definition of 'worker'; enhancement in the monetary limit of Rs. 15,000/-; etc.

4.4 As regards exclusion of the word 'Managerial' from the definition of Employee, the Ministry did not agree with the suggestion and explained that the word 'Managerial' and 'Manager' have different contexts in employee and employer's definitions and in the later definition it meant Manager of the factory.

4.5 Regarding inclusion of Apprentice, BOCW and Scheme Workers like Anganwadi, ASHA, Mid-day Meal, etc. in the definition of worker the Ministry, not agreeing with the suggestion stated that it has been the same definition as found place in the 'Code on Wages'.

4.6 Referring to the inclusion of Apprentice in the definition of 'Worker', the Committee pointed out that exclusion of those Apprentices as per the definition of the Apprentices Act might be justified, but those trainees engaged as Apprentices who would not be under the purview of the said Act, could be included in the definition of Worker. In response, the Chief Labour Commissioner submitted:

> "You are mentioning it because earlier it was added as workman under the ID Act. I agree with you because there have been some instances when in the name of apprentices, they have been engaged in the jobs of fulltime workers and were paid only the stipends. Not all, but a few of the employers do like this."

4.7 The Committee desired to know the pressing needs to have separate definitions for 'Employee' and 'Worker' and asked whether it would be prudent to have one uniform word everywhere in the Code so as to avoid confusion and ambiguity in their interpretation. In reply, the Ministry stated as under:

> "Presently, the dispute resolution mechanism under ID Act, 1947 is available only for workers. The persons engaged in administrative and managerial capacity and persons beyond a wage ceiling in supervisory capacity are not getting the benefit of dispute resolution mechanism under ID Act, 1947. However, the other rights like forming Trade Union, being office bearers of trade unions, etc. are available to all persons. Therefore, "employee" and "worker" have been defined separately under the Code."

4.8 The Committee then queried whether the exclusion of 'Supervisor', 'Manager', etc. from the definition of worker would deprive a large number of workers/employees from being covered under the Code. In reply, the Ministry submitted as under:

> "The purpose of excluding the persons engaged in the managerial or supervisory category from the definition of worker, is that the above class of employees often work as the representative of the employer and implement his policy. Therefore, including the above category in worker may lead to the confusion."

4.9 As regards the ceiling of Rs. 15,000/- p.m. salary, the Committee were informed that the extant definition of 'worker' includes persons in supervisory capacity getting salary upto Rs. 10,000/- p.m. whereas the IR Code proposes to enhance it to Rs. 15,000/- p.m.

4.10 In the above context, the Committee asked whether the ceiling of Rs. 15,000/- was appropriate and adequate, more so, when the Government of India has itself accepted Rs. 18,000/- p.m. as minimum wage. In response, the Ministry submitted as under:

"The ceiling of wages of Rs. 15000/- pm has only been fixed to demarcate supervisors from the workers, whereas any person who is performing skilled , unskilled, semi-skilled or manual work is covered under the definition of worker."

4.11 The Committee note that the terms 'Employee' and 'Worker' have been differentiated and defined separately on the logic that the dispute resolution mechanism under the Industrial Disputes Act, 1947 is available only for workers and persons engaged in certain administrative and managerial capacities beyond a prescribed wage ceiling are not getting the benefit of the dispute resolution mechanism. The Committee are not at all convinced with the argument for making an artificial differentiation between Employee and Worker. As a matter of fact, every employee is a worker and *vice-versa.* Therefore, the industrial dispute mechanism and other rights like forming of Trade Unions, being office bearers of the Trade Unions, etc. should be made available to each and every employee/worker, notwithstanding the relevant provisions contained in the Industrial Disputes Act which was enacted as early as 1947. In their Report on 'Occupational Safety, Health and Working Conditions Code, 2019' the Committee had pointed out that the unwarranted differentiation between 'employee' and 'worker' had led to much perplexity and befuddlement and thus the Committee had asked the Ministry to use one uniform word everywhere. Since that has apparently not been done as yet, the Committee now recommend that wherever the two words have been referred to in this Code separately, only one term i.e. 'employee' be used invariably. Alternatively, both the terms should co-

exist everywhere *viz.* 'employee/worker' or 'employee and worker' so as to ensure that there is no discrimination in the applicability of labour laws to the employee/worker. This uniformity should be maintained in all the four Codes and the Committee are confident that once it is done, most of the undesirable litigation will cease to exist.

4.12 The Ministry have not agreed to the suggestion of many Stakeholders to include Scheme workers like Anganwadi, Asha, Mid-day Meal, etc. in the definition of worker on the ground that this is as per the existing provision for the formation of a Trade Union. The Committee are not convinced with the premise advanced by the Ministry. With a view to enabling such workers to avail the benefits of various labour laws, the Committee desire that the Scheme workers, gig workers and all the workers engaged in the unorganised/informal sector should be included in the recommended unified definition of 'Employee/Worker'.

4.13 The Committee find that Apprentice is included under the definition of 'workman' in the Industrial Disputes Act. But the Industrial Relations Code does not include it under the definition of 'worker' on the plea that Apprentice would be covered and governed by the Apprentices Act. The Committee agree that exclusion of those Apprentices as per the definition of the Apprentices Act may be justified, but the Government have to take care of those Trainees engaged in full time jobs as Apprentices by a

number of establishments which pay them only stipends. Needless to say, such Apprentices should be included under the definition of worker.

4.14 The Committee are not impressed by the Ministry's assertion that inclusion of 'Supervisor', 'Manager', etc., who often work as the representative of the employer and implement his policy, in the definition of 'worker' may lead to confusion. The Committee reiterate that the actual confusion is solely because of two different definitions of 'worker' and 'employee'. In other words, if a unified definition of 'worker/employee' is put in place all the uncertainties, dissimilarities and mismatches would come to an end. The Committee, therefore, impress upon the Ministry to give a consolidated and merged definition of worker/employee so that supervisors, managers, etc. could find a place therein.

4.15 The Committee note that the enhanced ceiling of Rs. 15,000/- p.m. from the extant provision of Rs. 10,000/- p.m. has been fixed to demarcate supervisors from the workers. The Committee feel that such demarcation is undesirable as a large section of senior/skilled workers could be pushed out of the coverage of the various benefits by just terming them as 'supervisors', 'managers', etc. who actually have not been entrusted with any administrative powers. The Committee, therefore, impress upon the Ministry to revisit the provision so as to ensure that only those persons who have been empowered with the exercise of

administrative responsibilities like granting service benefits to the workers, initiating disciplinary proceedings against them, etc. be kept out of the purview of 'workers' and indiscriminate exclusion by way of just branding some workers as 'supervisors', managers', etc. from the coverage be dispensed with.

4.16 The Committee are surprised to note that a ceiling of Rs. 15,000/- p.m. only has been fixed to exclude certain category of workers from the coverage whereas the Government of India has itself accepted Rs. 18,000/- p.m. as minimum wages for its employees as per the recommendation of the Seventh Pay Commission. The Committee are of the considered opinion that the ceiling proposed is irrational and unscientific as the wages vary widely within the establishments and between the Public Sector and Private Sector. The Committee, therefore, desire that the ceiling be enhanced appropriately in the Code itself so as to ensure uniformity in its application. The Committee further desire that the provision be linked with ESIC where revision is quite frequent which would be beneficial for the workers.

V. EMPLOYER
CLAUSE 2(j)

5.1 Clause 2(j) defines Employer as under:

> "employer means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified

by the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes, —

(*i*) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (*n*) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (*f*) of sub-section (*1*) of section 7 of the said Act, the person so named;
(*ii*) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
(*iii*) contractor; and
(*iv*) legal representative of a deceased employer;"

5.2 Some suggestions were received that since 'Employee' and 'Worker' have been defined separately in the Code, it would be appropriate to add workers after "one or more employees" in the definition of Employer.

5.3 In response to the above suggestion, the Ministry stated that since employee would include worker also, there was no need to agree to the suggestion.

5.4 In evidence, the Committee enquired about the hitch if worker was also added with the employee in the said definition. In response, the Secretary, MoLE submitted as under:

"Worker becomes a sub-set of employees. So, if we add worker also, there will not be any problem. In this definition, 'worker' can be added. It will not make much of a difference."

5.5 The Committee are not convinced with the Ministry's contention that since employee includes worker, there is no need to add 'worker' in the above definition of Employer. The Committee are of the firm view that if employee includes worker, then there is no need to have separate definitions of the two categories. Since two different definitions have been given, it would be appropriate to include worker also alongwith employee not only in the above definition but in all other relevant Clauses

also. At the Cost of being repetitive, the Committee feel that if only one term is used in the Code such anomalies will not surface time and again.

VI. FIXED TERM EMPLOYMENT CLAUSE 2(l)

6.1 Clause 2(l) defines Fixed Term Employment as follows:

> "fixed term employment means the engagement of a worker on the basis of a written contract of employment for a fixed period:
>
> Provided that—
>
> (*a*) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman doing the same work or work of similar nature; and
> (*b*) he shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute;"

6.2 Almost all the Trade Unions suggested that Fixed Term Employment should be deleted altogether as it apparently seemed that there has been no difference between contractual appointment and FTE. Some other suggestions were received that for gratuity payments minimum period of three years be provided; the term employee should be added after worker. Some other Stakeholders like the State Government of Punjab were of the view that the introduction of FTE in the Code should be considered apt as the provision would avoid friction between the worker and the employer because the terms of conditions would be as per the contract and when the contract terms would expire the relationship between the employer and the employee would come to an end.

6.3 In response to the suggestion that FTE should be deleted from the Code, the Ministry submitted as under:

> "Not accepted. The proposed definition creates a balance between the rights of employer and of the employees. During the period of "fixed term employment, a worker is entitled for all benefits which are available to a permanent employee including
> (a) hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman doing the same work or work of similar nature; and

(b) shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute;

Similarly, under 2(zc) relating to fixed term employment - "retrenchment" means the termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -
(iv) termination of service of the worker as a result of completion of tenure of fixed term employment;
Further, there is no requirement for retrenchment compensation and notice period."

6.4 Regarding provision of minimum period of three years for gratuity payment, the Ministry stated that minimum period of one year might be agreed to in the Social Security Code. As regards inclusion of employee alongwith worker in the definition of FTE, the Ministry did not agree with the suggestion explaining that there was no restriction on employee to get into FTE.

6.5 The Committee asked the specific considerations on which 'Fixed Term Employment' has been introduced in the Code. In reply, the Ministry submitted as under:

"FTE has already been notified in the Central Sphere as a type of employment for all sectors in the schedule to the IE(SO) Act vide notification dated 16th March 2018. In the Code the same has been defined and also included as a category of employment in classification of workers in the Schedule for matters to be provided in Standing Orders with a view that a fixed term employee gets all statutory benefits like social security, wages, etc. at par with the regular employees who are doing work of same or similar nature has also been inserted. FTE has been envisaged as a concept to provide flexibility to an employer to engage workers on a fixed term period as per their requirement on the other hand it has also been provided that FTE get all the benefits (except retrenchment compensation) equivalent to a permanent worker."

6.6 The Committee then desired to be apprised of the safeguards that have been built in to protect the interests and rights of the workers/employees from being exploited by the Employer on the plea of FTE. In response, the Ministry stated as under:

"It has been provided in the Fixed Term employment itself that :
(a) the hours of work, wages, allowances and other benefits on FTE shall not be less than that of a permanent workman doing the same work or work of similar nature; and
(b) FTE shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him

even if his period of employment does not extend to the qualifying period of employment required in the statute;"

6.7 Asked to state whether minimum and maximum number of years as well as term/tenure could be prescribed under the definition of FTE, the Ministry deposed as under:

"FTE has been envisaged as a concept to provide flexibility to an employer to engage workers on a fixed term period as per their requirement on the other hand it has also been provided that FTE get all the benefits (except retrenchment compensation) equivalent to a permanent worker. Therefore, prescribing minimum and maximum number of years as well as terms/tenure under the definition of Fixed Term Employment is not desirable as it would defeat the very purpose of introducing FTE."

6.8 The Committee asked in evidence whether workers/employees under FTE would get permanent placement after the contract period was over. In response, the Secretary, MoLE submitted:

"Sir, actually, even the Supreme Court has ordered that where there is a perennial nature of job, it should not be filled up by the contract workers. That provision is already there. So, we should insist that where there is permanent nature of job, the vacancy should be filled up only by a regular employee. We are not replacing it with fixed term employment. We are only intending that the worker should get full benefits. Otherwise, as on today, the contract worker does not get gratuity and other benefits."

6.9 The Committee then enquired about the number of times FTE could be given. In reply, the Joint Secretary, MoLE submitted:

"Sir, we have put no limit. It is open to all sectors".

6.10. Citing the practice followed in China where FTE would not be allowed more than two terms, the Committee asked whether a similar limit could be prescribed in the Code. In response, the Secretary, MoLE explained:

"Sir, we cannot put a limit on that. Once an employee has entered into a particular employment, his skills will get upgraded. So, he may also get better salary in fixed term employment."

6.11 Referring to the Gratuity Act where there is a time limit of five years for gratuity payment to the workers/employees and the demand of the Stakeholders to lower the time limit, the Committee desired to hear the views of the Secretary, MoLE. In response, the Secretary submitted:

"As it is a fixed term employment, it is coming in a big way. We want the workers to get the gratuity also. So, one year will be more appropriate."

6.12 Asked to state specifically whether there was any possibility of discrimination between the fixed term employees and the regular employees, the Joint Secretary, MoLE responded:

> "...The fixed term employment means engagement of a worker on the basis of written contract of employment of a fixed term. Everything, including the gratuity would be given to him, as that of the regular employees. There is no discrimination."

6.13 The Committee then desired to know whether the Wage agreement between the Trade Unions and the management would be applicable to FTE and whether a fixed term employee could go for industrial dispute. In response, the Chief Labour Commissioner apprised:

> "They can raise industrial disputes; there is no doubt about that. At present, fixed term employment was not there in the Standing Order. Even then, they used to raise the disputes. Now, they are as good as workers. They will be covered under the definition of 'worker'. They can very well raise industrial disputes."

6.14 The Committee note that 'Fixed Term Employment' has been notified in the Central Sphere as a type of employment for all sectors in the Schedule to the Industrial Establishment (Standing Orders) Act *vide* Notification dated 16th March, 2018 and therefore it has been incorporated in the Industrial Relations Code. According to the Ministry, FTE intends to create a balance between the rights of the Employer and the Employees i.e. flexibility has been provided to an Employer to engage workers/employees on a fixed term period as per their requirement whereas the workers/employees are entitled for all the benefits (except retrenchment compensation as termination of service as a result of completion of the tenure of FTE would not be considered as Retrenchment) which are available to permanent employees. In this context, the Committee are pleased to note that the workers/employees

engaged under FTE would get, unlike the contract labours, wages, allowances and other benefits including statutory benefits at par with the permanent employees and there would be no discrimination between a fixed term employee and a regular employee. The most appreciable statement of the Ministry is that persons appointed under FTE can very well raise industrial disputes. The Committee concur with the benefits intended to be accorded to the employees under FTE. They, however, desire that the time limit of five years as provided for in the Gratuity Act for payment of gratuity be reduced to one year in favour of the fixed term employees.

6.15 The Committee express serious apprehensions at the flexibility provided to the employers under the FTE to engage workers/employees on a fixed term period as per their requirement. Such flexibility has been envisaged without lucidity and coherence in the definition of Fixed Term Employment which may lead to exploitation of the workers and promote 'hire and fire' policy by the Employers. In other words, FTE, as defined in the Code, implies that it can be used to replace the present and future permanent vacancies into a flexible contract on a regular basis which is highly inappropriate and inapposite. The Committee, therefore, impress upon the Ministry to incorporate protective and pre-emptive provisions in the said Clause explicitly mentioning the conditions under which and the areas where the employers can secure FTE from a designated authority. In short, the Code must specify that FTE shall be strictly based on objective

situation so as to dispel and allay any sort of misgivings and misinterpretation.

6.16 The Committee are not convinced with the Ministry's reluctance in providing for a minimum and maximum tenure for FTE. The Committee desire that provisions should be made for a minimum tenure under FTE so as to guarantee job security. Similarly with a view to avoiding the manipulation of the concept, a maximum tenure, say not than two terms, as has been adopted by some countries like China, be incorporated unequivocally in the Code. In view of the fact that repeated renewals would make it easier for the employers to retrench a worker on the expiry of the contract, it becomes imperative to put a cap on the number of renewals of contracts under FTE so as to make it foolproof and immune to manipulation.

VII. INDUSTRY
CLUASE 2(m)

7.1 Clause 2(m) defines Industry as under:

> "industry means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, —
>
> (*i*) any capital has been invested for the purpose of carrying on such activity; or
>
> (*ii*) such activity is carried on with a motive to make any gain or profit, but does not include—
>
> (*i*) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(*ii*) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
(*iii*) any domestic service; or
(*iv*) any other activity as may be notified by the Central Government;"

7.2 A number of Stakeholders suggested that domestic service and organisations involved in Charitable, Social and Philanthropic services should also be included in the definition of Industry; the provision 'any other activity as may be notified by the Central Government' should be deleted.

7.3 Referring to the exclusion of Charitable and Philanthropic Institutions from the definition of industry, the Principal Secretary to the State Government of Punjab submitted in evidence:

> "The next point is about Section 2(m) in which we are defining `industry'. But from this definition we have excluded `charitable and philanthropic institutions. It should not be excluded. Our experience is that charitable institutions also sometimes exploit the workers. So, the protection of the labour laws should be extended to charitable institutions also, like we have the SGPC."

7.4 The Committee asked whether industrial law could be applicable to such institutions which were not involved in any industrial activity. In response, the Principal Secretary explained:

> "Maybe they are not doing any industrial activity but they are collecting money and have educational institutions and other kind of things."

7.5 The Principal Secretary further stated:

> "Sir, that is true, but this has been made applicable to teachers and others also, even for Government. Government is not an industry, but it has been made applicable for them also."

7.6 Emphasising that both Philanthropic and Charitable institutions should be included under the definition of industry, the Principal Secretary, Government of Punjab summed up:

> "Yes, Sir because if you cannot do charity with your own workers, then how can you do charity to others."

7.7 The Committee asked the Ministry whether NGOs, Philanthropic and Charitable institutions were coming under the purview of Industry as per the Industrial Disputes Act. In response, the Secretary, MoLE submitted in evidence:

"...I would just like to intimate to the Committee Members that till now, under the ID Act, all these institutions like NGOs, philanthropic institutions, educational institutions were coming under the purview of industry. All those employees, who are working in the universities and such institutions, are considered as workmen, workers. Till now, they have been getting the protection of ID Act, 1947."

7.8 The Committee then asked the rationale for exempting them from the purview of Industry in the proposed Code. In response, the Secretary stated:

"But Sir, this is a controversial issue. The Supreme Court is seized of this matter for quite a long time."

7.9 Not convinced, the Committee asked whether it would be appropriate to bring the charitable and philanthropic institutions, which have established big business empires engaging thousands of workers, under the definition of Industry as provided for in the Code. In reply, the Ministry submitted as under:

"The contention is to exclude those activities from the definition of Industry which have been established without any profit motive for the purpose of charity and philanthropy. Therefore, institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service have been excluded from the definition of industry."

7.10 As regards coverage of Educational Institutions under the definition of Industry, the Committee were informed that if an Educational Institution was managed by a Charitable Trust, that would be excluded from the purview of Industry whereas other such Institutions could be included. The Secretary, MoLE submitted in evidence:

"They should not have any profit motive."

7.11 Regarding the specific complications foreseen if 'domestic services; would be brought under the definition of Industry, the Ministry submitted as under:

"As regards domestic services from the enforcement point of view, it would be difficult to enforce industrial dispute mechanism in the individual houses where any commercial activity is not being carried on and a huge enforcement mechanism will have to be created for the implementation of this Code which may not be practically possible. Further, every household would be covered under of ambit of labour laws which will be very difficult to enforce. Therefore, domestic services have not been included as an Industry under the definition in section 2(m)."

7.12 Supplementing the constraints, the Secretary, MoLE submitted in evidence:

"Then, in domestic service, each maid servant will become like an industrial worker because for any industry, a minimum of three things are required. One is employer, second is employee, and third is activity. These three things should be there. If you make the domestic, then you would be covering all the houses. So, it will become very difficult to have compliance. That is why, deliberately, it has been kept outside its purview."

7.13 The Committee then asked the mechanism put in place to bring the domestic workers under the purview of the Code. In response, the Secretary, MoLE apprised that domestic workers would be automatically covered under the Unorganised Sector. The Secretary further clarified that manpower agencies providing domestic workers like electrician, plumbers, security guards, etc. would be covered under the definition of Industry.

7.14 The Code provides that "any other activity as may be notified by the Central Government" could be excluded from the definition of Industry. Asked to state the rationale for making such a provision in the Code, the Secretary, MoLE deposed:

"Sir, it is only in case of any exemption of something of that nature which is required. It is only in case of any extraordinary thing."

7.15 Not convinced, the Committee asked whether such an open ended provision would defeat the very objective of legislative processes through Parliament. In reply, the Ministry submitted as under:

"The reason to reserve the right to declare/notify any activity that does not come under the definition of industry, is to empower the Central Govt. to exclude any activity from the definition of industry in the public or national interest if any emergent situation arises.

Further, a provision has also been made under Section 99 (5) of the Code that "every rule made under this section and notification issued under clause (m) of section 2, (definition of industry) by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or notification, or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Therefore, as may be seen above, the Central Government under Section 2(m)(iv) has been delegated the power to notify with adequate safeguards."

7.16 The Committee note that under the Industrial Disputes Act, 1947 institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service, are covered under the definition of Industry. However, the IR Code proposes to exempt such institutions including educational institutions managed by a Charitable Trust from the purview of Industry. The Committee are not impressed with the contention of the Ministry for excluding the above said institutions from the purview of the definition of Industry as it is a well known fact that some of such institutions including educational entities have established big business empires engaging thousands of workers. Moreover, the words "substantially engaged in any charitable, social or philanthropic service" are ambiguous which can lead to many interpretations. It is equally intriguing to exempt the institutions which have been established without any profit motive as there is no robust mechanism available with the Government to ensure that after establishment some of these institutions do not indulge in commercial activities. The Committee, therefore, urge the Ministry to revisit the Clause and make suitable amendments therein with particular reference to the Educational Institutions managed by Charitable Trusts but indulging in various profit-making business ventures.

7.17 The Committee note that 'domestic service' has been excluded from the definition of Industry on the logic that such service would be automatically covered under the Unorganised Sector and if it is added in the definition of Industry it would be practically impossible to enforce industrial dispute mechanism in the individual houses. The Committee appreciate the impediments foreseen in the implementation of the provisions if domestic service is included in the definition of Industry as it would be a mammoth and gigantic exercise requiring vast enforcement mechanism. The Committee are simultaneously of the considered opinion that it is high time domestic service and domestic workers got the long due benefits of various labour laws. It is, therefore, incumbent upon the Government to chalk out requisite modalities with a sense of urgency so as to bring the domestic service under the purview of industrial enactments.

7.18 The Committee note that 'any other activity as may be notified by the Central Government' is excluded from the purview of the definition of Industry. The Ministry have reasoned that intent is to empower the Central Government to exclude any activity from the definition of industry in public or national interest if any emergent situation arises. But a bare reading of the Clause implies that it is an open ended provision which seemingly appears to defeat the very objective of the democratic legislative process through Parliament. The Committee, therefore, recommend that the specific cases and situations where the Central

Government would be empowered to exclude any activity from the definition of Industry, be clearly spelt out in the Code itself.

VIII. RETRENCHMENT
CLAUSE 2(zc)

8.1 Clause 2(zc) defines Retrenchment as under:

> "retrenchment means the termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—
> (*i*) voluntary retirement of the worker; or
> (*ii*) retirement of the worker on reaching the age of superannuation if the contract of employment between the employer and the worker concerned contains a stipulation in that behalf; or
> (*iii*) termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer and the worker concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
> (*iv*) termination of service of the worker as a result of completion of tenure of fixed term employment;"

8.2 A number of petitioners suggested that continued ill-health should not be considered as Retrenchment as per the extant provisions of the ID Act.

8.3 When the Committee desired to hear the views of the Ministry on the above suggestion, the Ministry submitted as under:

> "Retrenchment on the grounds of continued ill-health has not been treated as retrenchment under the existing provision of the ID Act. Under the proposed code continued ill health has been treated as retrenchment. The Committee may take a view."

8.4 Some other Stakeholders suggested that the words "if the contract of employment between the employer and the worker concerned contains a stipulation in that behalf" as provided for in Clause 2(zc)(ii) were unwarranted and should be deleted because most of the establishments, especially small and medium ones, were not even issuing formal appointment letters to their employees/workers.

8.5 In response to the above suggestion, the Ministry stated that the Committee might take a view on the same.

8.6 The Committee note that though continued ill-health has not been treated as 'Retrenchment' under the existing provisions of the Industrial Disputes Act, the Industrial Relations Code proposes to include it under retrenchment criteria. The Committee desire that the extant provisions in this regard as contained in the Industrial Disputes Act be continued.

8.7 The Committee further recommend that as most of the small and medium establishments/enterprises do not issue formal appointment letters to their employees/workers, the words "if the contract of employment between the employer and worker concerned contains a stipulation in that behalf" as contained in Clause 2(zc)(ii) be deleted.

IX. STRIKE
CLAUSE 2(zf)

9.1 Clause 2(zf) defines strike as follows:

> "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment and includes the concerted casual leave on a given day by fifty per cent or more workers employed in an industry;

9.2 A number of stakeholders, especially the Trade Unions, suggested that at least 50 percent or more workers if participate in a strike should be defined as a strike. They further suggested that "concerted casual leave on a given day by fifty percent or more workers" should be deleted from the definition of strike.

9.3 In response, the Ministry did not agree with the suggestions stating that the existing definition under Section 2(q) of the ID Act has been similar.

9.4 The Committee asked in evidence whether the words "concerted casual leave by fifty percent or more workers" have been mentioned in the ID Act, 1947. In response, the Secretary, MoLE submitted:

"In the ID Act, there is no provision. If more than 50 per cent of the employees are going on mass casual leave, it is treated as a strike."

9.5 In a post-evidence information, the Ministry supplemented as under:

"The intention of the Government is that concerted casual Leave on a given day by 50% or more workers to be treated as strike as it not only hampers production but also deteriorate the employer-employee relations."

9.6 The Committee find that the words 'concerted casual leave on a given day be fifty percent or more workers' have been inserted in the definition of 'strike' on the rationale that it not only hampers production but also deteriorates the employer-employee relations. It is a fact that to opt for mass casual leave by the workers is akin to work stoppage and the results are similar to that of a strike. It is also equally true that strike is a right to protest by the workers to express their disagreement and resentment against some action/policies taken by the Management. The Committee are, therefore, of the considered opinion that the definition be revisited and suitably reworded so as to give a clear impression that the provision does not intend to infringe the rights of the workers as guaranteed under the Constitution of India.

X. UNORGANISED SECTOR
CLAUSE 2(zk)

10.1 Clause 2(zk) defines Unorganised Sector as under:

"unorganised sector" shall have the same meaning as assigned to it in clause (*l*) of section 2 of the Unorganised Workers' Social Security Act, 2008;

10.2 The Committee asked whether the term 'Unorganised Sector' could be suitably incorporated in various relevant definitions like 'Employee', 'Employer', 'Industry', 'Industrial Dispute', etc. and whether a separate chapter spelling out various provisions including grievance redressal mechanism for the workers in

the Unorganised Sector could be incorporated in the Code. In response, the Ministry submitted as under:

> "The provisions of the Code are applicable on an industrial establishment or undertaking on the basis of it being an establishment or undertaking in which any "industry" is carried on. Further, the term "industry" has been well defined under the Code, which is as under :
>
> "industry" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, —
>
> (i) any capital has been invested for the purpose of carrying on such activity; or
>
> (ii) such activity is carried on with a motive to make any gain or profit, but does not include—
>
> (i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
>
> (ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
>
> (iii) any domestic service; or
>
> (iv) any other activity as may be notified by the Central Government
>
> In view of the above, workers employed in all industrial establishments or undertakings in which any "industry" (as per the above definition) is carried on are covered under the Code."

10.3 Though the Ministry have contended that workers employed in all industrial establishments or undertakings in which any industry, as per the definition, is carried on are covered under the Code, the Committee are of the firm view that the unorganised sector deserves a special attention and mention in the Code itself. They, therefore, recommend that an exclusive chapter be incorporated in the Code clearly spelling out the applicability of various provisions including grievance redressal

mechanism as contained in the Code, to the workers in the Unorganised Sector so as to do justice to a large number of such workers.

10.4 In this context, the Committee's attention has been drawn to the fact that the National Commission on Enterprises has recommended a separate deal for the agriculture sector in the Unorganised Sector. Given its own unique features and intricacies *viz.* farms, landless labourers, land-owning farmers, etc., the Committee recommend that in the separate Chapter on Unorganised Sector, a special mention be made about the Agriculture Sector so as to bring it under the purview of the Industrial Relations Code and appropriately address many issues besetting this Sector.

XI. WAGES
CLAUSE 2(zl)

11.1 Clause 2(zl) defines wages as follows:

> "wages means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—
>
> (*i*) basic pay;
> (*ii*) dearness allowance;
> (*iii*) retaining allowance, if any,
>
> but does not include —
>
> (*a*) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
> (*b*) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(*c*) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
(*d*) any conveyance allowance or the value of any travelling concession;
(*e*) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
(*f*) house rent allowance;
(*g*) remuneration payable under any award or settlement between the parties or order of a court or tribunal;
(*h*) any overtime allowance;
(*i*) any commission payable to the employee;
(*j*) any gratuity payable on the termination of employment; or
(*k*) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment:

Provided that, for calculating the wage under this clause, if any payments made by the employer to the employee under sub-clauses (*a*) to (*i*) exceeds one half, or such other per cent. as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such onehalf, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages the emoluments specified in sub-clauses (*d*), (*f*), (*g*) and (*h*) shall be taken for computation of wage.

Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee;"

11.2 Some petitioners suggested that the definition of Wage should also include bonus, conveyance allowance, etc.

11.3 When the Committee desired to have the comments of the Ministry on the above suggestion, the Ministry apprised as under:

"The definition of wages has been kept uniform under all the Labour Codes. The reason behind not to include additional components under the wages is to give relief from the extra burden on employer as well as on the employee in the sense that the provident fund contribution, ESI contribution, payment of retrenchment compensation and gratuity are decided on the basis of monthly wages and increase of additional component will increase the amount of EMI etc.

Further, it has also been provided under the definition of wage that, for calculating the wage under this clause, if any payments made by the employer to the employee under sub-clauses (a) to (i) (which include bonus, conveyance

allowance and other allowances) exceeds one-half, or such other per cent. as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such one half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages."

11.4 The Committee are not convinced with the reasonings, advanced by the Ministry for not including bonus, conveyance allowance and house rent allowance in the definition of 'wages'. According to the Ministry, the definition of wages has been kept uniform under all the Labour Codes. But that does not anyway prevent the Ministry to bring in Amendments. As a matter of fact since the term 'wages' has not been defined in the Occupational Safety, Health and Working Conditions Code, the Committee had recommended that it should be defined so as to properly calculate its various components. The Committee agree with the Ministry's contention that PF and ESI contribution, retrenchment compensation, gratuity payment etc. are decided on the basis of monthly wages. But the Committee find no plausible reason for excluding Bonus, Conveyance and House Rent Allowance from the definition of wages. The Committee, therefore, desire that sub-Clause (d), (f) and (i) be deleted so as to include the above three components in the definition of 'wages', notwithstanding the plea of extra burden on the Employer as well as the Employee.

XII. GRIEVANCE REDRESSAL COMMITTEE
CLAUSE 4

12.1 Clause 4(1) to 4(8) deals with the constitution, composition, proceedings, decisions of the Grievance Redressal Committee (GRC).

12.2 A number of petitions suggested that

(i) "one or more worker" should be added to handle their grievances;

(ii) matters relating to non-employment, terms of employment or condition of service should be excluded;

(iii) appeal against the decision of GRC before the Conciliation Officer would be a waste of time;

(iv) the Clause should be deleted altogether and replaced with Section 9(c) of the ID Act;

(v) the period of filing an application for dispute should be reduced from three years to three months; and

(vi) no individual dispute should be treated as industrial dispute and hence Clause 4(8) should be deleted.

12.3 In response, the Ministry did not agree with the suggestions at (i), (iii) and (iv) as mentioned above. As regards, suggestions as (ii), (v) and (vi) as explained above, the Ministry submitted that the Committee might take a view. With particular reference to individual dispute not to be treated as industrial dispute, the Ministry stated that under the ID Act, individual disputes before the Conciliation Officer were restricted to termination, discharge, dismissal or retrenchment and the remaining disputes were to be espoused by the Trade Unions.

12.4 The Committee note that Clause 4(1) *inter-alia* contain the words "grievances of an individual worker relating to non-employment, terms of employment or condition of service". The Committee feel that since the Grievance Redressal Committee is a joint forum of Employer and the Trade Union and most of the complaints are against the Employer, specifying the subject matter of grievances is undesirable. In view of the fact that at times the Employer may have certain grievances also, the Committee desire that some provisions be made to enable their mutual resolution at the primary level itself.

12.5 The Committee find that Clause 4(5) prescribes a period of three years within which any aggrieved worker can file an application before the Grievance Redressal Committee. As the prescribed time period of three years appears to be too stretched, through it is in favour of the workers, it should be reasonably reduced to maximum six months.

12.6 The Committee note that as per the Industrial Disputes Act, individual disputes before the Conciliation Officer are restricted to termination, discharge, dismissal or retrenchment and the remaining disputes are to be espoused by the Trade Unions. The Committee desire that similar provision be incorporated in the Code so that all individual disputes are not construed as industrial disputes.

12.7 The Committee further recommend that with more women joining the workforce, dispute resolution fora should have equal representation of women to further amicable solutions.

XIII. TRADE UNIONS CLAUSES 5 TO 27

13.1 Clauses 5 to 27 deal with various aspects relating to the Trade Unions. Clause 6(1) to 6(4) read as under:

> "6. (*1*) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Code with respect to registration, apply for registration of the Trade Union under this Code.
> (*2*) No Trade Union of workers shall be registered unless at least ten per cent. of the workers or one hundred workers, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.
> (*3*) Where an application has been made under sub-section (*1*) for registration of a Trade Union, such application shall not be deemed to have become invalid

merely by reason of the fact that, at any time after the date of the application but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.

(*4*) A registered Trade Union of workers shall at all times continue to have not less than ten per cent. of the workers or one hundred workers, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members."

13.2 Some Stakeholders, especially the Trade Unions suggested that (i) the word 'members' in Clause 6(1) should be replaced with the word 'workers'; (ii) in case of large establishments, the condition of minimum 10 percent of workers be raised to 25 percent and the criterion of 100 workers be deleted; (iii) a time limit of 45 days should be prescribed for registration; (iv) workers of the unorganised sector should be added in the Clause; and (v) there is no requirement of minimum 10 percent or 100 workers for the purpose of registration.

13.3 In response, the Ministry did not accept any of the above suggestions reasoning that the provisions under Clause 6(1) to (4) were as per Section 4 of the Trade Unions Act which has been functioning well.

13.4 Not satisfied, the Committee pointed out in evidence that the prescription of a time limit of 45 days for registration has been a long standing demand of the Central Trade Unions and asked the Ministry to explain the difficulties in accepting the demand. In response, the Chief Labour Commissioner submitted in evidence:

"Sir, as per our experience, we used to get such type of cases that a trade union had not been functioning well because it belonged to the Central Government. When I was posted in West Bengal, what I got that one SEWA from Gujarat wanted to get registered in Kolkata.

They applied for the registration and they came to me with a request to kindly have a word with Additional Labour Commissioner who was registrar there to grant the registration. I tried to find out unofficially from the State Government the reason as to why the registration had not been granted in time. They told that they had got the instructions that no trade union should be registered at all. I think this may be the reason why the trade unions are demanding it. "

13.5 The Committee further asked whether it would be desirable to process and finalise the application for registration within a period of 45 days irrespective of the outcome of the scrutiny of the application. Agreeing with the

need for stipulation of a specific time limit for the purpose, the Secretary, MoLE stated:

> "If they are rejecting them (application) they should give a reason for it."

13.6 Asked to clarify the demand of the Trade Unions to retain the provision of seven workers and the justification for prescribing 10 percent or 100 workers whichever is less, the Joint Secretary, MoLE submitted in evidence:

> "Sir, seven members are required for giving application but the registrar will register only those trade unions whose strength is 10 per cent or 100 members whichever is less of the total membership who are in the muster roll. So, nothing has been changed in the existing provision."

13.7 Supplementing his colleague, the Secretary, MoLE apprised:

> "Sir, in the case of trade union, we have not changed anything because we know that it is a very sensitive issue."

13.8 Clause 6(3) stipulates that application for registration of Trade Unions will not be invalid in case not exceeding half of the total number of the persons who made application either cease to be a member of the Trade Union or dissociate in writing from the application.

13.9 Some Stakeholders suggested that the criteria of 50 percent should be deleted or persons who initially signed the application should be permitted to withdraw.

13.10 In response, the Ministry stated that the Committee might take a view.

13.11 As regards provision to be contained in constitution or rules of Trade Union, Clause 7 provides as under:

> "A Trade Union shall not be entitled to registration under this Code, unless the executive thereof is constituted in accordance with the provisions of this Code, and the rules of the Trade Union provide for the following matters, namely: —
>
> (*a*) the name of the Trade Union;
>
> (*b*) the whole of the objects for which the Trade Union has been established;
>
> (*c*) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Code;
>
> (*d*) the maintenance of a list of members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;
>
> (*e*) the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the

establishment, undertaking or industry, or units, branches or offices of an establishment, as the case may be, with which the Trade Union is connected, and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 21 to be office-bearers to form the executive of the Trade Union;

(*f*) the payment of a subscription by members of the Trade Union and donation from such members and others, as may be prescribed;

(*g*) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;

(*h*) the annual general body meeting of the members of the Trade Union, the business to be transacted at such meeting, including the election of office-bearers of the Trade Union;

(*i*) the manner in which the members of the executive and the other office bearers of the Trade Union shall be elected once in a period of every two years and removed, and filling of casual vacancies;

(*j*) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union;

(*k*) the manner in which the rules shall be amended, varied or rescinded; and

(*l*) the manner in which the Trade Union may be dissolved."

13.12 The Trade Unions suggested that the term of the executive/office bearer should be three years instead of two years and Clause 7(f) regarding receipt of donation by the Trade Unions should be deleted.

13.13 In response to the above suggestion regarding increase in the term of office from two years to three years, the Ministry stated that the Committee might take a view whereas the suggestion to delete Clause 7(f) was not agreed to on the ground of transparency.

13.14 In evidence, the Committee asked about the logic for decreasing the number of years from three to two in respect of the office bearers of the Trade Unions. In response, the Joint Secretary, MoLE submitted as under:

> "Sir, the logic was that wherever we have gone for secret ballot, it was kept two years for the Unions. Hence, we thought it as two years. If the Committee feels three years also, then also it does not make much difference."

13.15 Taking into account the concerns expressed by the Trade Unions that the Government should not interfere in the receipt of donations by the Trade Unions, the Committee asked the rationale behind making such a provision. In response, the Secretary, MoLE submitted:

> "Sir, it is always better. If donations are coming, then there should be some rules as to how they spend it, etc."

13.16 The Joint Secretary, MoLE supplemented:

> "Sir, we are only saying to make rules. We are not interfering with the spending pattern. It is only to make rules on how one would receive / utilize it."

13.17 The Secretary, MoLE further stated that it was meant to bring transparency with rules because it would be a fund available from donations. The Secretary, summed up:

> "Sir, it is for transparency. Actually, it is for the Unions only. Otherwise, we are getting a lot of complaints that Union President has taken so much money and run away. So, it is better for all of us."

13.18 The Committee then asked whether the words "donations from such members and others, as may be prescribed" could be deleted from Clause 7(f) as suggested by the Trade Unions. In response, the Ministry stated that it might be accepted in line with provisions contained in Section 6(h) and 6(hh) of the TU Act, 1926.

13.19 Regarding registration of Trade unions and cancellation thereof as mentioned in Clause 9, some Stakeholders suggested that as Section 10(c) was inserted in the Trade Unions Act in 2002 which obliged the Trade Unions to have at least 10 percent membership or 100 workers at all times, registration should be cancelled in the event of the number of falling below as prescribed.

13.20 In response, the Ministry agreed to the suggestion. The Chief Labour Commissioner justified in evidence:

> "Whenever membership is less than ten per cent per 100 whichever is less, suppose, it is brought to the trade union staff, then, it would be liable to be cancelled."

13.21 As regards refusal of registration by the Registrar as provided for in Clause 9(1), the Trade Unions suggested that the provision should be deleted. The Ministry did not agree to the suggestion reasoning that the registration could only be refused by the Registrar when the information submitted was not complete to the satisfaction of the Registrar.

13.22 Regarding Trade Unions to inform the Registrar of any change in particulars given by it in its application for registration, constitution or rules in the prescribed manner as provided for in Clause 11(2), some petitioners suggested that a Trade Union should also be made liable to inform the

Registrar about the reduction in the number of its members to less than 10 percent or 100 workers as the case may be. The Ministry agreed with the suggestion.

13.23 Regarding recognition of Negotiating Union or Negotiating Council, Clause 14(1) to 14(7) stipulates as under:

> (*1*) There shall be negotiating union or negotiating council, as the case may be, in an industrial establishment for negotiating with the employer of the industrial establishment, on such matters as may be prescribed.
>
> (*2*) Where only one Trade Union of workers registered under this Code is functioning in an industrial establishment, then, the employer of such industrial establishment shall recognise such Trade Union as sole negotiating union of the workers.
>
> (*3*) If more than one Trade Union of workers registered under this Code are functioning in an industrial establishment, then, the Trade Union having seventy-five per cent. or more workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade Union shall be recognised by the appropriate Government or any officer authorised by such Government in this behalf, as the sole negotiating union of the workers.
>
> (*4*) If more than one Trade Union of workers registered under this Code are functioning in an industrial establishment, and no such Trade Union has seventy-five per cent. or more of workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade union, then, there shall be constituted by the appropriate Government or any officer authorised by such Government in this behalf, a negotiating council for negotiation on the matters referred to in sub-section (*1*), consisting of the representatives of such Trade Unions which have the support of not less than ten per cent. of the total workers on the muster roll of that industrial establishment so verified and such representation shall be of one representative for each ten per cent. of such total workers and in such calculation, the fraction of such ten per cent. shall not be taken into account.
>
> (*5*) Where any negotiation on the matters referred to in sub-section (*1*) is held between an employer and a negotiating council constituted under sub-section (*4*), consequent upon such negotiation, any agreement is said to be reached, if it is agreed by the majority of the representatives of the Trade Unions in such negotiating council.
>
> (*6*) Any recognition made under sub-section (*2*) or sub-section (*3*) or the negotiating council constituted under sub-section (*4*) shall be valid for three years from the date of recognition or constitution, as the case may be, and a Trade Union so recognised may again be recognised under the provisions of sub-section (*2*) or sub-section (*3*) or sub-section (*4*).

(7) The facilities to be provided by industrial establishment to a negotiating union or negotiating council shall be such as may be prescribed.

13.24 The Trade Unions suggested that the word "appropriate government" as mentioned in Clause 14(3) should be replaced with the word 'employer' and the limit of minimum 75 percent workers as provided for in the same Clause should be reduced.

13.25 In response, the Ministry agreed to substitute the word 'appropriate government' with 'employer' as per the existing practice followed in the Code of Discipline. Regarding reduction in the limit of 75 percent workers, the Ministry stated that the Committee might take a view.

13.26 In evidence, the Secretary, MoLE submitted:

> "We leave it to you. Let the Committee take a view. Sir, 75 per cent is definitely on high side. Actually, we told 50 per cent earlier."

13.27 Asked to differentiate between the terms 'council and union' the Secretary apprised:

> "We can say that. Only a name has been given. Name can be changed. That is not a big thing."

13.28 Coming back to the issue of the limit of the limit of 75 percent workers, the Secretary deposed:

> "If it is 75 per cent it is one union and less than 75 per cent it is the Council. In that council also for every 10 per cent one member. That means whichever trade union is getting 10 per cent, they will get one member."

13.29 Clause 14(4) provides for Negotiating Council consisting of representatives of Trade Unions having not less than 10 percent of the total work force on the muster roll. Some Stakeholders suggested that the condition of 10 percent should be increased to 20 percent, otherwise it would lead to multiplicity of Unions. In response, the Ministry stated the Committee might take a view.

13.30 The Secretary, MoLE submitted in evidence:

> "Sir, the main thing that has come now is about the secret ballot. It is very much required because earlier this recognition of trade unions was not there and now we are bringing this recognition. In future it is going to help a lot in maintaining industrial relations. Recognition is a must. From my experience I can say that when I was in Singareni there were 75 unions. So, it was becoming very difficult for us to negotiate."

13.31 Clause 14(6) stipulates that the recognition of the tenure of the negotiating council will be valid for three years. Suggestions were received from some quarters that it should be raised to five years because the agreement between the management and the Trade Union would be generally for four to five years. The Ministry agreed with the suggestion stating that "or such higher period mutually decided by the Employer and the Trade Union but not more than five years" could be added in the said Clause.

13.32 Clause 20 provides for a person who has attained the age of 14 to become a member of the Trade Union. Clause 21 stipulates that for becoming a member of the executive of the Trade Union, a person should have attained the age of 18 years.

13.33 Some suggestions were received that age in both the Clauses should be 18 years. The Ministry did not agree to the suggestions.

13.34 While deposing before the Committee, the Principal Secretary, Punjab Government submitted:

> "Section 20 says that a person who has attained the age of 14 years can become a member of trade union whereas under the Child and Adolescent Labour Act, the age is 18. So, there is a difference. So, it should be reconciled and should be made 18."

13.35 Asked to state the probable reason for keeping the age at 14, the Principal Secretary further stated:

> "It is because at the age of 14 to 16, children can work in non-hazardous conditions. That is why, maybe, they have kept it like that."

13.36 In the same context, the Secretary, MoLE submitted in another evidence:

> "Sir, he can become a member. Above 14 years, a person can work and if he is 15 years of age and he is working, he can become a member of the union."

13.37 Clause 22(1)(c) deals with disputes relating to one or more workers who are refused admission as members of the Trade Union. Some petitioners suggested that small disputes like refusal of admission as a member of Trade Union should not be adjudicated by the Tribunal to prevent over burdening of cases with the Tribunal.

13.38 In response to the above suggestion, the Ministry submitted as under:

> "At present, such matter is decided by the Civil Courts. The provision will rather speed up the process".

13.39 Clause 27(1) and 27(2) deal with recognition of Trade Unions at the Central and State Level. Many petitioners, especially the Trade Unions pointed out that there has been no clarity on the procedure of recognition of Trade unions at the Central and State Level. Agreeing with the ambiguities, the Ministry stated that clarity would be given in the Rules.

13.40 The Committee note that no time limit has been prescribed for the Registration of a Trade union under Clause 6(1) despite the long standing demand of the Central Trade Unions for prescription of a definite time limit for the purpose. As a decision regarding the registration or otherwise of a Trade Union, after going through the due processes, within a specific time limit would bring in certainty and transparency, the Committee recommend that a time limit of 45 days be prescribed to process and finalise the application irrespective of the outcome of the scrutiny of the application.

13.41 As regards the requirement of minimum ten percent of the workers or one hundred workers, whichever is less, as provided under Clause 6(2) for the purpose of registration of a Trade Union, the Ministry have clarified that minimum seven members are required for giving application but the Registrar will register only those Trade Unions whose strength is ten percent or one hundred workers, whichever is less of the total membership in the muster roll. The Committee find no confusion in the said Clause and thus concur with the provisions contained in the Clause. They, however, desire that instead of the word 'members' as mentioned in Clause (1) the word 'workers' be substituted as it seems more appropriate.

13.42 The Committee find that as per Clause 6(3), application for registration of a Trade Union shall not be invalid in case some of the applicants, but not exceeding half of the total number of persons who made application either cease to be the members of the Trade Union or dissociate in writing from the application. In view of the fact that at times someone may sign the application under force or duress or misjudgment, the Committee desire the Ministry to revisit the Clause and make suitable amendments so as to render the application invalid in case any signatory to the application, irrespective of the percentage of the total number of applicants, dissociates himself or themselves from the application, in writing before the registration.

13.43 The Committee find that Clause 7(i) prescribes two years term of office for the executive members and other office bearers of the Trade Union. The committee feel that the demand of the Trade Unions to increase the term of office to three years is quite reasonable and hence desire the Ministry to make requisite amendment to the said Clause for the purpose.

13.44 The Committee are dissatisfied with the contradictory stance taken by the Ministry on Clause 7(f) regarding donations to the Trade Unions. While on the one hand they have agreed to delete the words "donations from such members and others, as may be prescribed" from the said Clause in line with the provisions contained in Section 6(h) and 6(hh) of

the Trade Unions Act, 1936, on the other hand they have forwarded arguments to monitor the receipt and utilisation of such donations by the Trade Unions. Needless to say, the Ministry have to reconcile their diametrically opposite views and take a cogent and rational decision so as to bring in coherence in the Code.

13.45 A scrutiny of Clause 9(1) implies that even if a Trade Union has complied with all the requirements prescribed for registration of Trade Unions, the Registrar may refuse to grant registration. The Ministry's clarification that the registration can only be refused in case of incomplete information does not hold good due to lack of clarity in the said provision. The Committee, therefore, urge the Ministry to modify the wordings so as to ensure that the registration is mandatory if all the requirements are complied with and the powers vested with the Registrar are in conformity with the principles laid down in the ILO Convention No. 87.

13.46 The committee observe that as per the provisions contained in Clause 11(2) the Trade Unions are to inform the Registrar of any change in the particulars given in the applications for registration, constitution or rules in the prescribed manner. The Committee desire that the Trade Unions should also be made liable to inform the Registrar about the reduction, if any, in the number of their members to less than ten percent or one hundred workers, as the case may be.

13.47 The Committee note that Clause 14(3) *inter-alia* refers to "Trade Union shall be recognised by the appropriate Government or any officer authorised by such Government". The Committee feel that 'Employer' instead of 'Appropriate Government' and 'such Government' is appropriate in the said provision and therefore recommend that the Clause be amended accordingly.

13.48 Clause 14(3) also provides for seventy five percent or more workers on the muster roll of an industrial establishment for the recognition of a Trade Union where there is more than one Trade Union. The Committee are of the considered opinion that the prescription of seventy-five percent workers is on a very higher side and therefore it needs to be suitably reduced to a reasonable extent.

13.49 Clause 14(4) provides for Negotiating Council consisting of representatives of Trade Unions having not less than ten percent of the total work force on the muster roll. The Committee feel that the prescription of not less than ten percent of the total workforce is on a very lower side which may lead to multiplicity of Unions. They, therefore, recommend that the criteria be increased at least to twenty percent of the total work force.

13.50 The Committee further recommend that the workers' support for the Trade Union be verified through Secret Ballot. Also, percentage of support to the Unions should be calculated on the basis of votes polled in

the process of Secret Ballot and certainly not on the basis of the muster roll. The Committee desire that all the Trade Unions getting not less than the prescribed votes polled in the Secret Ballot should be treated as Recognised Unions and be represented in the Negotiating Council on the basis of proportional representation.

13.51 The Committee observe that as per Clause 14(6), the recognition of the tenure of the Negotiating Council will be valid for three years. Since the agreement between the Employer and the Trade Union is generally done for four/five years, the Committee recommend that the validity of the recognition of the tenure of the Negotiating Council be increased to a maximum period of five years by suitably amending the said Clause.

13.52 The Committee note that as per Clause 20 any person who has attained the age of fourteen may be a member of a Registered Trade Union on the rationale that at the age of fourteen a person is legally allowed to work in non-hazardous industries/conditions. The Committee desire that the matter should be clarified in the Clause itself to the extent that persons of fourteen years of age, working in non-hazardous establishments, may be a member of the Trade Unions so as to quell any probable legal complications.

13.53 The Committee note that there are ambiguities in Clause 27(1) and 27(2) which deal with recognition of Trade Unions at the Central and State level. The Ministry have clarified that such ambiguities would be

removed and clarity would be given in the Rules. The Committee are of the firm opinion that instead of leaving ambiguities to be taken care of by the Rules, clarity ought to be made in the law making process itself. In view of the significance of the prescription of clear procedures for the recognition of the Trade Unions at the Central and State level, the Committee impress upon the Ministry to bring in clarity in the said Clauses so as to appropriately recognise and prudently involve the Trade Unions in all industrial activities with responsibilities and liabilities.

XIV STANDING ORDERS CLAUSES 28 TO 39

14.1 Clauses 28 to 39 deal with various aspects of the Standing Orders. Clause 30(1) stipulates preparation of draft Standing Orders by the Employer and also the procedure for certification. Clause 30(4) also deals with procedure for certification of the Standing Orders.

14.2 A number of petitioners suggested (i)Replacement of words “based on model standing orders referred to in section 29 with the wordings “based on matters set out in First schedule”. (ii) A comprehensive set of model standing orders be provided and only establishments which desire to deviate from the rules would require certification. (iii) Fixation of time limit for completing the procedure for certification of Standing Orders..

14.3 As regards suggestion (i) above the Ministry concurred stating that "as far as practicable" might be added. Regarding suggestion (ii) the Ministry submitted that they had no objection and the Committee might take a view. The Ministry further stated that however, a copy might be submitted to the competent authority. As regards suggestion (iii) above, the Ministry agreed stating that a deemed provision besides being submitted electronically might be introduced.

14.4 The Committee asked in evidence whether there was a need to revisit the model Standing Orders in view of the concerns expressed by the Trade Unions that many unwarranted provisions were being made in such Orders by the

Employers concerned without the knowledge of the Trade Unions. In response, the representative of the Ministry submitted in evidence:

> "We are now coming out with a model standing order which will be drafted by the Central Government in consultation with all."

14.5 The Secretary, MoLE elaborated:

> "As on today also it is there. The intention is that some model standing order should be there and that should be accepted and adopted by the concerned employers. They should do it. But they should not change the things as per their wishes. We have kept that in the Code also."

14.6 The Chief Labour Commissioner explained:

> "Sir, suppose an employer proposes that they have already adopted the model standing order which is absolutely in conformity with the model standing order, he should intimate to the certifying officer. At least he should issue a copy of that model standing order to the certifying officer so that he will verify whether it is true or not."

14.7 The Committee asked whether the Certifying Officer could dilute the existing model Standing Order. In response, the Secretary submitted:

> "He cannot dilute it, Sir. He is only certifying that whatever model standing order is there, the same has been adopted..."

14.8 Clause 38(3) deals with subsistence allowance to a suspended worker at the rate of 50 percent upto 90 days and 75 percent thereafter.

14.9 The Trade Unions suggested that after 90 days the subsistence allowance should be increased to full salary whereas some other Stakeholders like CITO suggested that the upper limit of the allowance should be 50 percent and it should not be given at all if the suspended employee is gainfully utilised. CITO further suggested that if enquiry was delayed due to the suspended employee's conduct the allowance after 90 days should be stopped. The Ministry did not accept any of the above suggestions.

14.10 As per the provisions contained is Clause 30(1) preparation of draft Standing Orders based on the Model Standing Orders should cover every matter set out in the First Schedule. As the Employer is bound to prepare the draft Standing Order, the Committee feel that it should not be based on the Model Standing Order, rather it would be highly desirable to

prepare the draft Standing Order as per the First Schedule. The Committee, therefore, recommend that the words "based on the Model Standing Order referred to in Section 29" be substituted with the words "based on the matters set out in the First Schedule" so as to accord flexibility to the Employer.

14.11 The Committee further desire that in Clause 28(1), the word "Workers/Employees" be added after the words "one hundred or more than one hundred".

14.12 The Committee also recommend that a comprehensive set of model Standing Orders be provided in the Rules and a copy thereof be submitted to the Competent Authority. Further, with a view to bringing out doing ease of business, the Committee desire that only those Establishments which desire to deviate from the Rules should get their Standing Orders certified. Having said that, the Committee impress upon the Government to take adequate safeguards in the Code so that the Employers are prevented from changing/altering the Standing Orders as per their wishes which may be detrimental to the interest of workers/employees. Similar protective mechanism is required to dissuade the Certifying Officer from diluting or manipulating the model Standing Order or the deviation, if any, made to it by the Employer.

14.13 The Committee are deeply concerned to note that as per Clause 39, the Appropriate Government may, by notification, exempt conditionally

or unconditionally, any industrial establishment or class of industrial establishments for all or any of the provisions contained in the Chapter on Standing Orders. The Committee are of the firm opinion that such a provision can potentially create uncertainty in the minds of the Stakeholders and may cause large scale variations in the content and implementation of the Standing Orders across the States. The Committee, therefore, desire that the said Clause be deleted altogether or the specific cases/situations where the Appropriate Government can be empowered to exempt the establishments be clearly incorporated in the Code so as to prevent avoidable ambivalence.

XV NOTICE OF CHANGE CLAUSE 40 AND 41

15.1 Clause 40 deals with notice of change by the Employer in the condition of service applicable to any worker in respect of any matter specified in the Third Schedule. Clause 41 stipulates the power of the Appropriate Government to exempt.

15.2 Some Stakeholders suggested that there should be no requirement of notice in the conditions of service in the Third Schedule, if the change in conditions is effected as per the Orders of the Appropriate Government. The Ministry agreed with the suggestion.

15.3 There were some other suggestions that non-requirement of notice for change in shifts in emergent situation made in consultation with GRC should be removed. Further, some petitioners suggested that Clause 41 dealing with 'power of Appropriate Government to exempt' should be deleted. The Ministry did not agree with the suggestions on the ground that the said provisions are as per Section 14 of the Industrial Establishment (Standing Orders) Act.

15.4 The Committee note that as per Clause 40 an Employer can effect changes, through a notice, in the conditions of service applicable to any

worker in respect of any matter specified in the Third Schedule. The Committee are of the opinion that there should be no requirement of notice in the conditions of the service if any change in the conditions is effected as per the Orders of the Appropriate Government or in pursuance of any settlement or award.

XVI VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION CLUASE 42

16.1 Clause 42 deals with the voluntary reference of disputes to arbitration. Clause 42(2) refers to the appointment of another person as 'umpire' Clause 42(8) deals with non-applicability of the Arbitration and Conciliation Act, 1996 to the proposed provision in the Code.

16.2 Some petitioners suggested that the term 'umpire' should be defined and non-applicability of the Arbitration and Conciliation Act, 1996 should be removed. While the Ministry agreed to define 'umpire', they did not accept the second suggestion as the provision has been as per the Section 10A(s) of the Industrial Dispute Act.

16.3 In evidence, explaining the provision in the ID Act *vis-a-vis* the Arbitration and Conciliation Act, 1996, the Chief Labour Commissioner apprised as under:

> "Sir, the voluntary arbitration in the ID Act is absolutely different from commercial arbitration under the Arbitration Act. It is exclusively governed by the ID Act only. What they have proposed is it should also be governed under the Arbitration and Conciliation Act 1996, which has not been agreed to because purpose of this arbitration is different."

16.4 The Committee find that Clause 42 while dealing with voluntary reference of industrial disputes to arbitration has provided for the appointment of another person as umpire in sub-Clause (2). The Committee desire that the term 'umpire' be unambiguously defined in the

Code in view of the significance that his arbitration award shall prevail in case the arbitrators are equally divided in their opinion.

16.5 Since the voluntary arbitration in the Industrial Disputes Act is absolutely different from the commercial arbitration under the Arbitration and Conciliation Act, 1996, the Committee feel that there is no need to delete Clause 42(8) which stipulates non-applicability of the Arbitration and Conciliation Act to the provisions of arbitrations under Clause 42.

XVII MECHANISM FOR RESOLUTION OF INDUSTRIAL DISPUTES CLAUSES 43 TO 61

17.1 Clause 43 to 61 deal with mechanism for resolution of industrial disputes. Clause 44(2) provides for two Member Tribunal. Clause 44(5) stipulates qualification for appointment as Administrative Member of Industrial Tribunal.

17.2 Suggestions were received for (i) inclusion of qualification "a Company Secretary in practice having less than fifteen years of experience". (ii) Not to have 2 Members. (iii) The TU related matters should not be heard by administrative members only. (iv) Only Administrative Member may not have experience to deal with cases.

17.3 The Ministry did not agree with the suggestion (i) above reasoning that no specific qualification or category has been reflected for the purpose. As regards to not to have two members but one, the Ministry expressed their reservation stating that the functioning of Tribunal would come to standstill in case of vacancy and disposal of disputes by both the Members would speed up the process. The Ministry, however, agreed to the suggestion that dispute relating to Trade Unions and important cases to be heard by two member bench.

17.4 The Committee asked in evidence whether it would be prudent to make the number of Members in the Tribunal at an odd figure instead of even so as to settle the case if there was difference of opinion between two Members. In response, the Secretary, MoLE submitted:

"We can make that provision."

17.5 Clause 49(3)(4) and (5) deals with the Judicial Powers of the Conciliation Officer of the Industrial Tribunals. Some petitioners suggested that (i) conciliation officers may not be vested with the powers of a civil court under Code of Civil Procedure, 1908, when trying a suit (Sec. 49(3) & (4) (ii) Replacement of words from Assessor to subject experts (CITO) (iii) The power to appoint Assessor to be vested with Tribunal instead of appropriate government".

17.6 The Ministry did not agree with the suggestion of not vesting the Conciliation Officer with the powers of a Civil Court on the ground that this has been the existing provision under Section 11 of the Industrial Dispute Act. However, the Ministry agreed with the two other suggestions mentioned above.

17.7 Clause 53(1) stipulates conciliation and adjudication process. Suggestions were received from some quarters that the three years limitation period for raising an industrial dispute should be reduced to one year. Not agreeing with the suggestion, the Ministry stated that the Committee might, however, take a view.

17.8 The Committee desired to know the foolproof and transparent procedure proposed for collective dispute resolution mechanism and conciliation and adjudication process and whether Section 2A of the Industrial Disputes Act, 1947 would be retained. In response, the Ministry submitted as under:

> "The definition of industrial dispute under Clause 2(n) of the Code, inter alia, includes any dispute or difference between an individual worker and an employer connected with, or arising out of discharge, dismissal, retrenchment or termination of such worker. Therefore, the provisions of section 2A of the ID Act, 1947 have been retained under the Code".

17.9 The Ministry further apprised as follows:

> "Further, as per Clause 53 of the Code, where any industrial dispute exists or is apprehended or a notice under section 62 (Prohibition of strikes and lock outs) has been given, the conciliation officer shall, hold conciliation proceedings in such manner as may be prescribed. The conciliation officer shall, without delay, investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute (Clause 53 (2)). Further, as per Clause 53 (5), the conciliation officer shall send report to the concerned parties and the appropriate Government within forty five days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. Also, any concerned party may make application in the prescribed form to the Tribunal in

the matters not settled by the conciliation officer within ninety days from the date on which the report is received to the concerned party.

Therefore, procedure for conciliation and adjudication of disputes (both collective and individual) has been provided in the Code".

17.10 Clause 55(3)(a) or (b) deals with form of awards, its communication and commencement. Some petitioners suggested that Appropriate Government can modify award in which it is a party or it is expedient on the grounds of effecting economy or social justice. A similar provision in I.D. Act was struck down by Madras High Court on the issue of separation of powers. In response, the Ministry stated that the Committee might take a view.

17.11 The Committee asked in evidence whether the Government, where it would be a party, could override the decision of the Tribunal. In response, the Joint Secretary, MoLE submitted:

"Yes, Sir. Basically, the words are 'in the social interest or public interest'. So, broad-based words are there."

17.12 Clause 56 stipulates payment of full wages to the worker pending proceedings in the Higher Courts. Some petitioners suggested that (i) payment of last drawn wages pending resolution of dispute in High Court/Supreme Court be restricted a time limit say three years (ii) to pay half wages (iii) to pay half wages to worker and deposit the other half before the court.

17.13 The Ministry did not agree to the above suggestions on the contention that it would be applicable only in cases where the Tribunal would direct reinstatement of the worker.

17.14 Asked to state whether any change had been made in Section 17 B of the Industrial Dispute Act regarding payment of compensation, wages, etc. to the workers after getting awards, the Ministry responded:

"No change has been made from the existing provision in the Section 17B of the Industrial Disputes Act, 1947 (Ref. Clause 56 of the Code)".

17.15 The Committee find that Clause 44(2) provides for a two Member Tribunal for resolution of industrial disputes. They feel that there should be odd number of Members in the Tribunal so as to settle the case if there is difference of opinion between the two members, as prescribed. The

Committee, therefore, recommend that there should be three members in the Tribunal so as to arrive at a just conclusion and settlement of industrial disputes. The Committee further desire that the disputes relating to the Trade Unions and all important cases should be heard by the three Member Tribunal.

17.16 The Committee note that Clause 49(5) provides for the appointment of an assessor or assessors by the Appropriate Government to advise a Tribunal in respect of any proceeding. The Committee feel that the word 'expert' would be more appropriate than 'assessor' under the circumstances and therefore recommend the Ministry to carry out the amendment accordingly.

17.17 The Committee further recommend that in the fitness of things the power to appoint the 'expert' should be vested with the Tribunal and not with the Appropriate Government.

17.18 The Committee note that Clause 53(1) provides for a time limit of three years with which the industrial disputes could be raised. The Committee feel that it is an inordinately long period and therefore desire that the maximum time limit for raising a dispute be reduced to one year so that the purpose of raising such disputes is timely and will served.

17.19 The Committee appreciate that the provision contained in Section 2A of the Industrial Disputes Act for collective dispute resolution mechanism and conciliation and adjudication process have been retained

in the Code. The Committee trust the foolproof and transparent mechanism as provided for under the Industrial Disputes Act for dispute resolution will not be tinkered with in the Industrial Relations Code for the benefit of the Stakeholders concerned.

17.20 The Committee are concerned to note that Clause 55(4) empowers the Appropriate Government or the Central Government as the case may be, to make an order rejecting or modifying an award given by the Tribunal. The Committee find that a similar provision in Section 17A of the Industrial Disputes Act, 1947 has been struck down by a Division Bench of the Andhra Pradesh High Court in 2004 and reaffirmed by a Division Bench of the Madras High Court in 2014 as being unconstitutional. Moreover, there is no Appeal in the Supreme Court. The Committee are surprised that despite this the Government intends to incorporate the same and similar provision in the Code, which in the event of being enforced, will certainly again be struck down by the Court of Law. The Committee, therefore, urge the Ministry to delete the said provision which is unconstitutional and violates the avowed principles of Separation of Powers.

17.21 The Committee take note of the Ministry's assurance that no change has been made in the provisions contained in the Code regarding payment of compensation, wages etc. to workers after getting award *vis-a-vis* the provisions stipulated in Section 17B of the Industrial Disputes

Act, 1947. The Committee, therefore, agree with the provisions proposed in Clause 56 of the Code and desire that the Government should strive to deliver socio-economic justice by adhering to the constitutional principles and assurances.

XVIII. STRIKES AND LOCKOUTS CLUASES 62 TO 64

18.1 Clauses 62 to 64 deal with prohibition of strikes and lockouts, illegal strikes and lockouts and prohibition of financial aid to illegal strikes or lockouts.

18.2 Some stakeholders suggested that the notice period of 14 days for strike should be increased to 21 days. The Trade Unions suggested that prior notice for non-public utility services and requirement of giving notice to prescribed number of persons before strike should be removed. The Ministry did not accept any of the suggestions.

18.3 The Committee asked whether the provisions of strike and lockouts as stipulated in the Code tended to impose restrictions on the workers' right to strike. In response, the Ministry submitted as under:

> "The Ministry is of the view that existing provision may continue as in section 12 (Duties of Conciliation Officers) and 22 (Prohibition of strikes and lock outs) of the Industrial Disputes Act, 1947 subject to the requirement of a notice period of 14 days for strikes and lockouts for all types of establishments. The Committee may take a view."

18.4. The Ministry further stated as under:

> "The provision has been introduced with respect to all industries with the objective to curtail the uncontrolled power of the trade unions to go on unscheduled strike which also affects the production and to preempt flash strike"

18.5 The Committee queried whether the entire process as stipulated in the Code i.e. giving 14 days strike notice, its referral to conciliation process, again giving a notice in case of the failure of the conciliation process etc. was complicated which would prolong the matter. In response, the Secretary, MoLE submitted in evidence:

> "The intention is not to prolong. The intention is to keep them engaged so that we should not lose the track because our industry has to run. If the industry

runs, then only the worker will be there. So, the industry has to run. At the same time, the worker should also be happy."

18.6 The Committee asked whether it should be collective bargaining. In reply, the Secretary, MoLE stated:

"Yes, collective bargaining should be there. That is why, conciliations have been kept and sufficient time is being given."

18.7 The Committee then pointed out that there would be possibilities of the Management not ready and willing to come before the Conciliation Officer. In response, the Chief Labour Commissioner submitted:

"Sir, even then the effort is on. You are right at the conciliation phase the management generally does not agree to the demand for a strike. Even then, after that, I think we refer the dispute to adjudication."

18.8 Referring to the 50 percent concerted casual leave as provided in the Code *vis-a-vis* similar provisions in the Industrial Dispute Act, the Chief Labour Commissioner apprised as under:

"There is only one small change, that is, '50 per cent of concerted refusal', which has been added here. Earlier also, a word was used 'concerted refusal'. It is only the minor addition. It is more specific now."

18.9 The Committee note that as per the provisions contained in the Industrial Disputes Act, 1947 regarding strike, a person employed in a public utility service cannot go on strike unless he gives notice for a strike within six weeks before going on strike or within fourteen days of giving such notice. The Industrial Relations Code intends to expand the applicability of this provision to all the industrial establishments. The Committee find no plausible reason for expanding the ambit of this provision indiscriminately to all the industrial establishments as restrictions should not apply to all strikes and demonstrations which are meant to assure freedom of industrial actions. The Committee, therefore, desire that the requirement of fourteen days notice to go on strike be made applicable only to public utility services like water, electricity,

natural gas, telephone and other essential services as well as matters of the disturbance of public tranquility or breach of public order.

18.10 The Committee are of the considered opinion that the entire process involving giving fourteen days strike notice, its referral to conciliation process, again giving a notice in the event of the failure of the conciliation process etc. is too complicated, cumbersome and time consuming. The Ministry have contended that with a view to having collective bargaining the conciliation process has been kept. They have simultaneously agreed to the fact that the management generally does not agree to the demand for a strike. In view of the desirability to ensure that the collective bargaining mechanism intended and outlined does not result in collective escalation of crisis, the Committee impress upon the Ministry to revisit the provision concerned so as to simplify the process and make it enforceable.

XIX. LAY-OFF RETRENCHMENT AND CLOSURE CLAUSE 65 TO 76

19.1 Clause 65 to 76 deal with various aspects relating to lay-off, retrenchment and closure. Clause 65(2) defines industrial establishment for its applicability to factory, mines and plantation.

19.2 Some suggestions were received that this definition of industrial establishment should be in sync with the definition of 'industrial establishment/undertaking' as provided for in Clause 2(o) of this Code.

19.3 The Ministry did not agree to the suggestion on the contention that the provision is similar to the existing definition of industrial establishment under the Industrial Dispute Act, 1947.

19.4 Clause 69 stipulates that no compensation is to be paid to the worker who has been laid off in certain cases like if he does not present himself for work and strike or slowing down of production.

19.5 Suggestions were received from some quarters that 'if laying off is due to shortage of power or due to natural calamity' should be added in Clause 46(iv). The Ministry did not accept the suggestion on the ground that Section 2(kkk)of Industrial Disputes Act defines 'Lay-off' as failure, refusal or inability of an employer on account of shortage of coal, power, or raw material.

19.6 The Committee asked the Ministry to elaborate for not accepting the suggestion. In reply, the Joint Secretary, MoLE submitted in evidence:

> "Today, if the lay-off is on account of shortage of coal and power, compensation is given. That will change the basic definition of lay-off itself".

19.7 The Joint Secretary further stated:

> "...In Section 2(kkk) of the Industrial Disputes Act, lay-off is defined as failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. It means that today if there is a lay-off on account of a shortage of power and coal, still he has to give all compensation and notice. He is asking to remove this."

19.8 The Secretary, MoLE supplemented:

> "We cannot. The shortage of power is not because of the worker actually. So, the shortage of power is due to some mismanagement."

19.9 The Committee asked whether it would be prudent to make such provisions where the Employer was forced to pay compensation even if the industry was not functioning. In reply, the Chief Labour Commissioner apprised that that might be a temporary phase. He elaborated:

> Sometimes it happens when there is a power failure for a longer time. There is also shortage of coal and raw materials. Sometimes the employer is not able to carry out his business. It may be a temporary phase that he is not able to carry out his business. For those periods, there is a provision that, at least, workers should also be protected for a temporary period. At least, they should get 50 per cent of the wages. That is the purpose here. It is an existing provision. So, we have kept that existing provision.

19.10 Asked to state the provision applicable in case of natural calamity, the Chief Labour Commissioner submitted:

> "It is also there. Suppose there is one mine which is in operation and due to flood, water has come inside the mine and work is stopped and suppose one

> industry is not able to run properly and is closed down because of the failure of power which happened due to powerful winds, etc., so this comes under the natural calamities."

19.11 The Committee then asked the Employer must need some time to restore the industry back to normalcy. In response, the Chief Labour Commissioner submitted:

> "That is only the lean period. That is why, he is getting only the 50 per cent of the wages and for 45 days only."

19.12 Asked to state the fate of the workers after 45 days, the Chief Labour Commissioner stated:

> "If there is an agreement between the employer and the employees, then it can be beyond 45 days also."

19.13 The Committee note that the Code, in line with the Industrial Disputes Act envisages and makes it incumbent upon the employer to pay fifty percent wages to the workers/employees who are laid off due to shortage of power, coal, raw material etc. The Committee agree with the Ministry's contention that since shortage of power, coal etc. does not happen because of the worker, but due to their non-availability, the workers ought to be paid compensation. The Committee have, however, reservations for payment of the prescribed percentage of wages to the workers in the event of closure of an establishment due to natural calamity. The Committee are of the considered opinion that payment of fifty percent wages to the workers for 45 days, which can be extended following an agreement between the employer and the employees, in case of shortage of power, breakdown of machinery may be justified. But in case of natural calamities like earthquake, flood, super cyclone etc. which often result in closure of establishments for a considerably longer period

without the employer's fault, payment of wages to the workers until the reestablishment of the industry may be unjustifiable. The Committee, therefore, desire that clarity to the above extent be brought in the relevant clauses so that employers not responsible for closure or lay off are not disadvantaged in case of such natural calamity of high intent.

19.14 With a view to do equal justice to the employer and the employee and as agreed to by the Ministry, the Committee desire that the following explanation be added to Clause 2(q) dealing with lay-off:

"Explanation - Every worker/employee whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for the day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off

for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for the part of the day."

XX. SPECIAL PROVISIONS RELATING TO LAY-OFF RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS CLAUSE 77 TO 82

20.1 Clause 77 to 82 are applicable to an industrial establishment having 100 or more workers in case of lay-off, retrenchment and closure of company.

20.2 The Trade Unions suggested that the provision should be extended to all sectors and the discretion given to the Appropriate Government to increase or decrease the threshold should be removed.

20.3 The Ministry did not agree with the suggestion stating that the provision provides flexibility to the Appropriate Government keeping in view the ground situation.

20.4 The Committee asked in evidence the impediments foreseen should the threshold of 100 workers be increased to say 300, as has been done by some State Governments. In reply, the Joint Secretary, submitted in evidence:

> "Sir, we have said that the existing threshold of 100 would stay but the appropriate Government can increase the threshold if they want by notification for the purpose of lay off, retrenchment and closure."

20.5 The Secretary, MoLE stated:

> "But already many States have done 300. So, the Committee may take a view."

20.6 The Secretary further stated that the experiment done by the Rajasthan Government has been very good where employment has increased to 9 percent and there has been no retrenchment.

20.7 The Committee asked with the technological upgradation in the Establishments resulting in the requirement of lesser manpower, whether it would be appropriate to increase the threshold. In reply, the Secretary, MoLE submitted:

> "Sir, because of technology, the number of employees might have come down but we require more industries also. Our population was only 27 crore when we got Independence."

20.8 The Committee note that as per Clause 77(1), the special provisions relating to lay-off, retrenchment and closure shall apply to an industrial establishment having not less than one hundred workers or such number of workers as may be notified by the Appropriate Government. In this context, the Committee note that some State Governments like Rajasthan have already increased the threshold to 300 workers, which according to the Ministry has resulted in an increase in employment and decrease in retrenchment. The Committee desire that the threshold be increased accordingly in the Code itself and the words "as may be notified by the Appropriate Government" be removed because reform of labour laws through the Executive route is undesirable and should be avoided to the extent possible and moreover any reform of the Central Law at the State level will have to be done at the State Legislature and then the same in sent for the President's Assent as per the Constitution resulting in duplicacy and overlapping of legislature business.

XXI. WORKERS RE-SKILLING FUND
CLAUSE - 83

21.1 Clause 83 deals with the setting up of contribution to and utilisation of a Fund to be called 'Worker Re-Skilling Fund'. Some suggestions were received that the provision is an additional burden on the establishments by making them liable to pay fifteen days wages to the workers who have been retrenched and who have lost employment on account of the closure of the establishment.

21.2 The Ministry agreed with the view to the extent that it would apply in case of retrenchment only and not in case of closure of the establishment.

21.3 Asked to state the rationale for not providing for compensation in case of closure of an establishment, the Secretary, MoLE submitted in evidence:

"...When a factory is closing down that means they do not have money. Where will they get the money from?

21.4 The Secretary further clarified:

"We are saying re-skilling should be done at the time of retrenchment, but at the time of closure money is not available and it is not financially viable."

21.5 The Committee desired to know the authority who would manage the Re-skilling Fund. In response, the Joint Secretary, MoLE submitted:

"Sir, it will be managed by the appropriate Government, that is, State Government or Central Government".

21.6 The Committee then asked about the responsibility for re-skilling the retrenched worker. In reply, the Joint Secretary, MoLE stated that fund would be deposited directly in the worker's Account.

21.7 The Committee then desired to know the logic for providing for 15 days wages to the Retrenched worker. In reply, the Ministry stated as under:

"Under Clause 83 of the Code, a "Re-skilling Fund" for training of retrenched employees has been proposed from the contribution to be made by an industrial establishment for an amount equal to 15 days' wages or such other days as may be notified by the Central Government, to this fund for every worker retrenched. The retrenched employee would be paid 15 days wages from the fund within 45 days from the date of retrenchment. This amount of 15 days wages is to be paid for re-skilling of the retrenched workers and is in addition to retrenchment compensation as per rules."

21.8 Asked to specifically state whether the wages for 15 days to the retrenched worker could be enhanced to 45 days, the Ministry submitted that flexibility has been provided to the Appropriate Government to take action.

21.9 The Ministry further clarified as under:

"The manner of giving funds to the workers will be prescribed in the rules. 15 days fund in one time contribution given to the retrenched employees and will not affect retrenchment compensation."

21.10 The Committee note that a new and appreciable concept called 'Workers Re-skilling Fund' has been introduced in the Code under the Clause 83 which stipulates that the employer is liable to pay fifteen days wages to the workers who are retrenched or who lose employment on account of the closure of the establishment. This amount of fifteen days

wages is in addition to the retrenchment compensation. The Committee, however, desire that, as also concurred by the Ministry, the fifteen days wage should be made applicable only in case of retrenchment, as its applicability to closure too would be an unwarranted additional burden on the employer and unfair to him. The Committee further desire that the stipulation of fifteen days wage for retrenchment be enhanced to at least thirty days for the benefit of workers/employees.

21.11 The Committee note that as per the provisions, the reskilling fund is intended to be deposited directly in the worker's account. In view of the fact that the re-skilling fund is meant for training purposes of the retrenched worker/employee, the Committee feel that depositing the fund directly in the Account of the worker may defeat the very purpose. They, therefore, desire that transfer of such fund to the skill training Centres recognised by the National Skill Development Corporation (NSDC) be considered and the procedure for skill upgradation/training of the retrenched workers be clearly spelt out in clause 83.

XXII. OFFENCES AND PENALTIES CLAUSE 85 TO 89

22.1 Clauses 85 to 89 deal with various provisions relating to offences and penalties. Clause 86 provides for penalty of Rs. 10 lakh for the first offence and Rs. 20 lakh for the second offence.

22.2 Some suggestions were received that the proposed penalty amount seemed to be on a very higher side and therefore should be reduced. In response, the Ministry submitted as under:

> "The penalties have been revised 10 times. In the 1st instance, the imprisonment up to 6 months has been omitted. Further, compounding has also been introduced in sec. 89."

22.3 Some Trade Unions suggested that under Clause 86(5) penalty should also include imprisonment for the employer. The Ministry did not agree and submitted as under:

> "The provisions for unfair labour practice has been mentioned in the Schedule II of this Code which does not allow to be practiced by either employer or worker. Therefore, penalty has been kept same for both."

22.4 The Trade Unions also suggested that compounding of offences should not be allowed since it would protect the employer from practising unfair labour practices. The Ministry did not accept the suggestion on the contention that compounding would be allowed only where there was no provision for imprisonment.

22.5 The Committee observe that the provisions for unfair labour practices have been mentioned in Schedule II of this Code which are not to be practised by either the employer or the employee/worker for which penalty has been kept same for both and imprisonment up to six months has been omitted. The Committee find merit in the Ministry's contention and agree with the provisions of offences and penalties as mentioned under Clause 85 to Clause 89.

22.6 As regards not allowing compounding of offences as suggested by the Trade Unions, the Ministry have clarified that compounding will be allowed only where there is no provision for imprisonment and offences are punishable with fine by payment of fifty percent of the fine amount. The Committee desire that adequate safeguards be built in to ensure that

compounding of offences with payment of fifty percent of fine amount does not reduce the deterrent value of the penalties prescribed under the Code for commission of unfair labour practices.

New Delhi; **BHARTRUHARI MAHTAB**
23rd April, 2020 ***CHAIRPERSON,***
3rd Vaisakha, 1942 (Saka) ***STANDING COMMITTEE ON LABOUR***

Appendix-I

Note of suggestions/Notes of dissent

Note of suggestions submitted by Shri Ganesh Singh

गणेश सिंह
संसद सदस्य (लोक सभा)
सभापति,
अन्य पिछड़े वर्गों के कल्याण सम्बन्धी समिति
सदस्य,
श्रम संबंधी स्थायी समिति
सदस्य,
विशेषाधिकार समिति
सचिव
भाजपा संसदीय दल (लोक सभा)

सत्यमेव जयते

212, ब्लाक 'बी',
संसदीय सौध एक्सटेंशन बिल्डिंग,
नई दिल्ली-110 001
दूरभाष : 011-23035734, 21410281
फैक्स : 011-21410282

8, गुरुद्वारा रकाबगंज रोड,
नई दिल्ली-110 001
दूरभाष: 011-23323644, 23312604

दिनांक– 21.04.2020

प्रति,

श्री टी0जी0 चन्द्रशेखर
संयुक्त सचिव
श्रम संबंधी समिति (2019–20)
कमरा नं0 336,
संसदीय सोध विस्तार भवन
नई दिल्ली–110001

महोदय

कृपया पताक संख्या 52/1(1)/सी0एल0सी0/2019–20 दिनांक 15.04.2020 का अवलोकन करने का कष्ट करें, जिसमें श्रम संबंधी स्थायी समिति के सभापति द्वारा यथा अनुमोदित औद्योगिक संबंध संहिता 2019 संबंधी प्रारूप प्रतिवेदन पर मेरी सहमति अथवा असहमति बताने का अनुरोध किया गया है इस संबंध में मेरी सहमति, असहमति और सुझाव निम्नवत है :–

1. श्रम संबंधी स्थायी समिति में पैरा क0 7.16 में समिति ने उद्योग की परिभाषा को बढाने का प्रस्ताव किया है जो कि उचित नही है। उद्योग के अंतर्गत वही उद्योग आने चाहिये जिनका व्यावसायिक उपयोग हो। अगर हम सभी रिलीजस और चेरिटेबल ट्रस्टो को इसके अंतर्गत लायेगें तो उसका समाज में व्यापक प्रभाव होगा। चूंकि सरकार के पास इसका कोई सुदृढ तंत्र भी उपलब्ध नहीं है, इसलिए समिति व्यापारिक लाभ के अंतर्गत आने वाले संस्थानों के अलावा किसी भी संस्थान को इसमें आने की सिफारिस न करे।

2. समिति के खंड 17.17 में विशेषज्ञ की नियुक्ति का अधिकार अधिकरण के पास दिया गया है। किसी भी संगठन में नियुक्ति का अधिकार नियुक्ति अधिकारी को होना चाहिए। सभी की नियुक्ति गवर्नर या राष्ट्रपति के द्वारा ही की जाती है अतः विशेषज्ञ की नियुक्ति का अधिकार सरकार के पास रहना चाहिए। अतः इस संबंध में समिति को अपने निर्णय पर पुनर्विचार की आवश्यकता है।

क्रमशः 2

फ्रेंड्स कॉलोनी, निकट आई.टी.आई. सतना (म.प्र.) • दूरभाष: 07672-257999 • फैक्स: 07672-257221

3. समिति के खंड 18.9 में श्रमिक वर्ग को इस बात का अधिकार है कि वे अपनी मांग के संबंध में किसी भी प्रकार का विरोध दर्शा सकते हैं, लेकिन वे बिना कारण के हडताल पर जाते हैं तो उससे देश की औद्योगिक प्रगति में नुकसान होता है। इसलिए हडताल के संबंध में समिति द्वारा जो सुझाव दिये गये है उस पर समिति को पुनर्विचार करना चाहिए।

"सादर"

भवदीय

(गणेश सिंह)

Note of Dissent given by Shri K. Subbarayan, MP (Lok Sabha)

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Date : .....

I, therefore place on record my note of dissent.

"Amalgamation" – a sham

The Statement of objects and reasons says amalgamation of the three laws would "facilitate implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers". This is a sham. A blatant lie of the government takes away all the hard earned rights of the crores of workers. This is ominous, insidious and pernicious for the democracy and the people.

Way forward – This exercise of subsuming three laws to bring in a code should be dropped. Existing provisions should be amended to provide more benefits and security to workers. Trade unions' contribution is paramount in building of a responsible and humane work force. Workers are the wealth producers. Amendments should aim at achieving a real and comprehensive growth of the people and nation.

Definitions of "Worker" and "Employee"

Definitions of worker and employee are ambiguous and confusing. The code uses the term 'worker' under section 2(zm) and the term 'employee' under section 2(i). This is confusing. Ambiguity and confusion will result in misinterpretation and thereby denial of rights.

Way forward

There should be only one definition of the term 'worker' which includes all persons in the world of work upto the level of Director. There should be no exclusion of those employed in a supervisory, managerial or administrative capacity. There should be no demarcation of wages drawn. Apprentices, domestic workers, scheme workers, home-based workers, gig workers, platform workers and all workers in the unorganized/informal sector and those employed in a supervisory, managerial or administrative capacity should be brought within the scope of the definition of 'worker.' Civilian personnel in the armed forces should also be brought within the scope of the definition. The definition of 'employee' should be deleted.

Restriction on the rights of Trade Unions

The Code imposes restrictions on trade unions overtly. Section 7(i) makes it mandatory to hold elections every 2years to elect office bearers. Section 23 of the Code stipulates not more than one-third or five office bearers whichever is less may be outsiders in the case of trade unions in the organized sector. In the case of trade unions in the unorganized sector, a maximum of half of the office bearers may be outsiders.Section 7(f) leaves it to the government to prescribe the subscription to be paid by members of trade unions. It also leaves it open to the government to regulate the donations that trade unions may receive from their members and others.

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Date : .....

Section 93(1) provides that no person can be expelled from a trade union for refusal to take part in a strike that is considered illegal nor he/she be subjected to any fine or penalty or deprivation of any benefit. Section 93(2) enables a worker against whom any such action is taken to approach the civil court for relief and the Code empowers the court to either grant the relief of restoration of membership or a direction to the trade union for payment of compensation or damages to the concerned worker.

Way forward

These are direct attacks on the trade unions. All these provisions should be deleted. Trade unions are legally conferred with right to regulate their administration and activities.

Restrictions on establishment of Trade Unions

Sub-sections (2) and (4) of section 6 impose a minimum membership requirement of ten per cent or one hundred workers whichever is less for the purpose of registration of trade unions.

Way forward

These provisions should be deleted as they restrict the right of workers to form and join trade unions of their own choosing.

Registration of Trade Unions

Section 9(1)of the Code suggests that even if a trade union has complied with all the requirements prescribed under the Code for registration of trade unions, the Registrar may refuse to grant registration to the union.

Way forward

This section should be reworded to state that "if all the requirements are complied with registration of the trade union should be completed immediately". Conferring the registrar with the right to deny registration of trade union is contrary to the provisions of ILO Convention C87.

No time limit for registration of Trade Union

Section 9 of the Code says no time limit for registration of trade union.

Way forward

It has been a long pending demand of the Central Trade Unions to fix a time limit of 45 days for registration. This provision should be deleted to incorporate "registration within 45 days of application".

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Date : .....

Arbitrary power of cancellation of Trade Union Registration

Section 9(5) vests the Registrar with the power to withdraw or cancel the registration of any trade union. Moreover, as per section 9 (5)(ii), the Registrar may cancel the registration of any union if he or she receives information about the contravention by the trade union of the provisions of the Code or the Rules of the Trade Union. There is no requirement for any notice to be first given to the union in respect of such alleged contravention with a view to give an opportunity to the union to rectify the violation which is the case at present.

Cases regarding the cancellation of registration of trade unions may be filed before the Industrial Tribunal as per section 10. However, the Tribunal does not have the power to grant stay of an order of cancellation.

Way forward

Section 9(5) should be deleted. Any violation of rules or contravention by the trade union should be inquired through proper unbiased process of Industrial Tribunal. No individual official shuld be vested with powers to cancel the registration.

Recognition of Trade Union

It is obvious that the objective of the government is to weaken, cripple and debase the trade unions because they speak sense and awaken the masses against the exploitative system. The "Sole negotiating union" for negotiations with 75% or more representation of workers in a trade union, in absence of which a "negotiating council" would be constituted for the purpose. This is a stiff bench mark and is impractical. This provision undermines the concept of collective bargaining and defeats the constitutional right to association. The aim of this provision is to encourage a crowded negotiating council that may possibly be created by the management itself.

Way forward

The MOLE should hold a discussion with the representatives of Central Trade Unions and decide on the recognition of trade unions. Until then the prevailing system should continue. The provision in te IR Code should be deleted.

Strike is virtually banned – Provisions in the code virtually ban strikes.

Provisions of the code dealing with strikes clause 2 (zf) is subverting the democratic right to strike. Redefining strike to include mass casual leave is making a mockery of the concept of strike itself and would make even coincidental leave of absence vulnerable to stiff penalties.

Right to strike comes out of the constitutional guarantee of right to association, right to freedom of speech and right to expression. Moreover ILO conventions "Right to organize Convention C87 and Right

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Date : .....

to organize and collective bargaining convention C98 have been interpreted as inclusive of right to strike.

Although India has not ratified Convention No. 87, by virtue of the ILO Declaration of Fundamental Principles and Rights at Work, 1948 which requires all member states of the ILO to respect, promote and realize the principles contained in the eight fundamental Conventions even if they have not ratified the Conventions, the Government of India is expected to give effect to the principles contained in Convention No. 87 and the principles laid down by the ILO supervisory bodies in respect of the rights guaranteed by the Convention.

The IR Code imposes penalties on "inciting other workers to participate in an illegal strike and financing an illegal strike", The ILO supervisory bodies have deprecated the practice of imposition of such penalties on strikes that are peaceful.

Way Forward: Right to strike should be guaranteed without any ambiguity. Provisions of the ID Act 1947 shoud be preserved. All restrictions on strike should be deleted. Strikes are not disruptive activities. They are a cry for growth and development.

Unorganised Sector

Unorganised sector in India is huge and heterogeneous. 93% of India's workforce is in the unorganized sector. This sector constitutes 60% of GDP. With the increasing informalisation of economy this sector is set to expand. The Code on IR does not engage well with defining this most contributing section. Section 2(zk) defines the term 'unorganised sector' as having the same meaning as that under section 2(l) of the Unorganised Workers Social Security Act. This definition is inadequate particularly considering that the Unorganised Workers Social Security Act itself will be subsumed under the proposed Code on Social Security.

Way forward

The term 'unorganised sector' should be defined in the same manner as that in the Report of the National Commission for Enterprises in the Unorganised Sector.

The definition of the term 'unorganised sector worker' should be incorporated and it should include home-based workers, self employed workers, wage workers employed directly by the employer or indirectly through contractors, owner cum workers, casual workers, domestic workers, part time workers, seasonal workers and piece rated workers in the unorganized sector. Recommendation of NCEUS on an exclusive attention on the agricultural sector workers should be incorporated addressing every unique feature of agriculture and farming sector.

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Date : .....

Definition of wages is skewed

The definition of the term 'wages' under section 2(zl) does not include the components of house rent allowance, conveyance allowance and commission which were included in the definition of 'wages' under the Industrial Disputes Act. The changed definition would have an impact on the quantum of compensation payable to a worker in the event of retrenchment or closure or lay off.

Way forward

The sub clauses d, f and l of clause 2 (zl) should be deleted. The definition of 'wages' should be retained as under the Industrial Disputes Act, 1947.

Retrenchment

The exclusions from the scope of the term 'retrenchment' under section 2(zc) are too wide.

Way forward

Clauses (ii) and (iii) under section 2(zc) which exclude termination of the service of a worker as a result of non-renewal of contract and as a result of completion of tenure of fixed term employment should be deleted.

Grievance Redressal Committee – Scope of redressal distorted

The Code does away with Labour Courts and provides for adjudication of industrial disputes only by Industrial Tribunals (section 44). National Tribunals may adjudicate upon disputes of national importance (section 46). Judicial Members and/or Administrative Members will decide cases before the Tribunals. No specific qualification has been prescribed for appointment as an Administrative Member to an Industrial Tribunal. However, in the case of National Industrial Tribunals, as per section 46(3), only a person holding the post of Secretary to Government of India or equivalent rank and having prior experience of handling labour related matters may be appointed as an Administrative Member.

Industrial Tribunals may hear cases regarding the registration of trade unions, interpretation and application of Standing Orders, discharge/dismissal of workers, retrenchment of workers, closure of an industrial establishment and legality of strike/lockout. The other kinds of cases that may be heard and decided have not been spelt out though the Code uses the term 'remaining cases' meaning other kinds of cases. Moreover, the Code provides that the 'remaining cases' may be heard by either a Judicial Member or an Administrative Member. If it is left only to an inexperienced Administrative Member to decide cases by himself/herself, it will seriously impair the quality of the justice delivery system in labour related cases.

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Date : .....

Section 50(3) ofthe Code gives Industrial Tribunals the power to grant interim relief only in cases of discharge/dismissal/termination of workers.

Way Forward

It is a pity that the existing redressal mechanism is yet to provide legal protection to the workers. The code with such non committal provisions will completely strangulate delivery of justice.

Now as the consequential impact of national lockdown as a strategy to contain the spread of coronavirus many illegal retrenchments, suspensions, lockouts, lay offs are there to be challenged.

In this emerging scenario redressal mechanism should be strengthened. To avoid repetition I endorse the recommendations placed by the Central Trade Unions to be included.

Besides, there should be separate redressal mechanism for the unorganized sector workers including agricultural workers. Women representatives should constitute minimum 33% in all the adjudication machinery.

Lay offs, retrenchment and closure

The code retains the old threshold of 100 workers or more to obtain prior permission for lay offs and retrenchments but allows it to be increased through executive order. Giving such discretionary powers has serious consequences such as, it allows differential labour structures in the states and more importantly law making is taken out of the legislative domain to that of executive. This is most dangerous and bad news in law.

Way forward

The clause providing dilution of threshold limit and the executive route should be completely deleted.

Fixed Term Employment

This provision is an affront on the constitutional right to work. Providing employment and ensuring job security is the obligatory of a welfare state. Permitting fixed term employment would gradually lead to only three categories of workers in industries–fixed term employees, apprentices and contract labour. In the name of flexibility, category of more precarious work force is created. Permanency of job would be totally put to an end. This will leave to nasty consequences of degenerating social values of institutional commitments.

Way forward

All the references and provisions in the name of Fixed Term Employment and Fixed Term Employee should be deleted.

K.SUBBARAYAN M.P.,
(Tirupur Lok Sabha Constituency)

Ph. : 0421 - 2202488, 2237363
Cell : 94422 80290
TIRUPUR OFFICE :
P.K.R. ILLAM, 326, B.S.S.ROAD,
TIRUPUR - 641 601. T.N.

Compounding offences of government officers

Date : .....

Section 89 of the Code that enables Gazetted Officers appointed by the Government to compound offences punishable only with fine by payment of fifty percent of the fine amount will reduce the deterrant value of the penalties.

Way forward

Such compounding should not be permitted

Exemption by appropriate government

Section 96 allows the "appropriate government" to exempt any industrial establishment or class or industrial establishments from any or all the provisions of the Code. This will result in complete nepotism and favouratism to the corporate.

Way forward

Exemption clause should be deleted.

Conclusion

In conclusion, while I reiterate my dissent to the report on the Code on Industrial Relations, I appeal to the Ministry of Labour and Employment to reconsider this codification of labour laws atleast in the backdrop of the challenging scenario in the aftermath of covid 19. ILO has estimate nearly 50 million job losses in the organized sector across the globe as a result of Corona lockdown. In India alone more than 25 crore workers including the unorganized sector may be affected. Worker friendly labour laws and strong enforcement mechanism is the need of the hour.

Thank you

20/04/.

(K Subbarayan., M.P.)

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

सत्यमेव जयते

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

Dissent Note on the Observations/Recommendations in the Report of the Parliamentary Standing Committee on Labour on 'The Industrial Relations Code Bill, 2019'. Submitted by Elamaram Kareem, MP (Rajya Sabha)

1. Para 3.9 on 'Appropriate Government'

In order to bring more clarity, as this para suggests, I would also like to propose the following corrections to strengthen this para.

"ii) in relation to any other industrial dispute, in connection with any other industrial establishment or undertaking or a branch thereof situated in a State including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment;"

Moreover, in connection with the definition "appropriate government" upon which this para dealt with; I suggest the following new clause which is all the more necessary as far as Trade Union is concerned;

"After the Chapter-I, Clause 2(b)(ii), let us recommend adding the following new Clause as 2 (b) (iii):

In this Code, "the appropriate Government" means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government".

2. Para 4.12. on the definition of 'worker'

Though I agree with the spirit of this para which recommends to include all Scheme workers of Central and State Governments under the definition of 'worker' for the purpose of industrial disputes, **but it fails to securitize the proviso to this clause 2(zm)** which deals with definition of the term 'worker' for the purpose of Trade Union (Chapter-III) where all Scheme Workers have been omitted. So, I suggest the following to be included in our recommendations;

Page 7 in the Bill, Chapter I. Clause 2(zm) after sub-clause (iv) (b) (after 10th line) add the following in the proviso provided for purpose of Chapter III dealing with Trade Union.

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises.

"(c) All Scheme Workers- the Workers Working in the Central and State Govt. Schemes like ICDS, Mid-Day Meal, ASHA etc., "

3. Paras 4.14, 4.15 and 4.16 on the definition of "Supervisors / Managers"

All these paras have directly dealt with the definition of 'Supervisor/Manager' and correctly suggested the rationale to define the same, to quote from the report...."The Committee, therefore, impress upon the Ministry to revisit the provision so as to ensure that only those person who have been empowered with the exercise of administrative responsibilities like granting service benefits to the workers, initiating disciplinary proceedings against them, etc be kept out of the purview of 'workers' and indiscriminate exclusion by the way of just branding some workers as 'supervisors/managers' etc from the coverage be dispensed with". So, the definition has nothing to do with pay/wage, leave alone its ceiling, notwithstanding its present forms in the Industrial Dispute Act.

I think this is suffice as far as our present contention is concerned. Against the Committee's own scientific rationale, then para 4.16, in my opinion, has unnecessarily, been indulging to discuss wage ceiling to define 'supervisor/manager' which is more or less contrary to the above mentioned concept. So entertaining wage ceiling, in the present context, has no meaning at all.

Thus, I suggest recommending that the terms "supervisor/manager" shall be defined as follows

> "Supervisor/Manager means a person who is employed in supervisory capacity with one or more workers appointed under him, having the powers to grant any of the service benefits to them and to initiate any of the disciplinary proceedings against them".

4. Paras 6.14 to 6.16 on "Fixed Term Employment" (FTE)

I strongly oppose the very concept of "Fixed Term Employment" and record my dissent to all the relevant recommendations from para 6.14 to 6.16 as its acceptance amounts to legalizing the illegality. If we go through FTE's history in India, we could understand that how did the Labour Ministry mislead the Committee, in turn, misleading the Parliament itself? In 2016 FTE was introduced in the Apparel Manufacturing Units on the pretext of its seasonal nature through amending the Rules to the Industrial Employment (Standing Orders) Act, 1946. Then in 2018 it was extended to all by simply omitting "Apparel Manufacturing Units" and "seasonal nature" despite the protest by all Central Trade Unions. Now the matters governed by the Rules have been brought into the body of the Act. What is urgency except killing the permanent and perennial jobs. I request the Committee to see how the Ministry acting malafide by concealing its real intention of making every job/work in the country perpetually non-permanent.

So, I propose the following:

Chapter-I, Clause 2(l) on "fixed term employment". This clause ought to be deleted both from Chapter I and Schedule I.

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

Reasons: Employment of workers on 'fixed term employment' basis is exploitative as

a) it leads to precarious workers being employed for work of a regular and permanent nature;
b) workers employed on a fixed term basis do not have the right to receive notice or wages in lieu of notice prior to the termination of their services;
c) workers employed on a fixed term basis may be terminated on the completion of their contract even while there is an actual need for their services meaning that they may be terminated from service without any just and reasonable cause;
d) workers employed on a fixed term basis are not entitled to the payment of retrenchment compensation and
e) workers employed on such fixed term employment basis would in practice stand deprived of their right to freedom of association and collective bargaining rights.

All references in the Code to fixed term employment should therefore be deleted.

Accordingly, the relevant recommendations may be redrafted before placing the same in the floor of both Houses of Parliament.

5. Paras 7.16, 7.17 & 7.18 on the definition of "Industry"

Though the above referred paras are sharing the concerns raised by the working class against the blanket exclusions of so called charitable, social and philanthropic institutions along with domestic workers from coverage the definition of 'industry', but they miserably failed to look into or kept silence on the exclusions of defense research organizations, atomic energy and space research institutions like ISRO where already Trade Unions have been functioning since its inception. I am not for these exclusions where mass of work force have been engaged and employed.

So, I am not agreeing to the general advisories, rather our recommendation must be in concrete terms as follows;

"Chapter-I Section 2(m) on "industry". 2(m) (ii) line 30 to 39 be deleted".

Reasons: The Code contains a new definition for the term 'industry' which is wider in scope – section 2(m). The definition should be based on the judgment of the Supreme Court in the Bangalore Water Supply and Sewerage Board *vs* A. Rajappa case (AIR 19768 SC 548). The blanket exclusion of institutions owned by organizations wholly or substantially engaged in any charitable, social or philanthropic service is contrary to the letter and spirit of the judgment. It could result in the exclusion of establishments such as colleges, universities and even corporate hospitals where large number of workforces are engaged and employed whom ought to come under the coverage of the Code. Moreover, already Trade Unions are functioning in the defence

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

सत्यमेव जयते

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

research organizations, atomic energy and space research institutions like ISRO. So, their existing rights would be curtailed, if these lines were allowed in the statue.

Except the sovereign functions of the appropriate government, all activities which attract the judgment of the Supreme Court in the Bangalore Water Supply and Sewerage Board v. A.Rajappa case should not be excluded from the definition of "industry".

6. Para 9.6 on inclusion of 'casual leave' in the definition of 'strike'

As the formulation in the said para is not acceptable to me, I suggest the following;

Chapter-I Section 2(zf) on "strike", Line-21 the following words be deleted;

"....and includes the concerted casual leave on a given day by fifty per cent or more workers employed in an industry"

Reasons: The inclusion of the said words makes the definition of the term 'strike' wider than that defined under section 2(q) of the Industrial Disputes Act, 1947. Secondly, the implication of the wider definition is that it would lead to a greater restriction on the right to strike.

7. Paras 12.4, 12.5 & 12.6 on Grievance Redressal Committee

I am sorry to remind the Committee that the report did not take cognizance of real issues and the sinister move with which the present Clause 4 in Chapter II of Industrial Relations Code being drafted. Earlier there was one Works Committee for the Industrial Establishment having 100 or more workmen "to comment upon matters of their common interest" and one Grievance Redressal Authority for the establishment having 50 or more workers employed to settle individual disputes/matters. Later it was fine tuned as mentioned below through Industrial Dispute (Amendment) Act, 2010.

"CHAPTER IIB: Grievance Redressal Machinery"

Setting up of Grievance Redressal Machinery

9C. (1) Every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.

(3) The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
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Provided that there shall be, as far as practicable one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.

(6) The Grievance Redressal Committee may complete its proceedings within thirty days on receipt of a written application by or on behalf of the aggrieved party.

(7) The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned".

If we compare this Chapter-II-B with the present Clause 4, we can see the contrast- the sinister move to snatch the rights of workers. In the above mentioned Chapter, the sub-sections 5 and 7 of section 9C have deliberately been omitted/ dropped in the present Clause 4. Another one atrocious move is to dilute the extant sections 2A- the rights of individual worker to raise disputes and 9B- the right of worker to be heard through legal notice for any changes in service conditions through this Clause 4. That is why clause 4 seeks to enlarge original jurisdiction of Grievance Committee so as to include individual's non-employment, terms of employment and conditions of services.

So, I strongly feel that it is all the more important and prudent to recommend to delete the entire Clause 4 and to retain the above mentioned 9C of Chapter II-B of Industrial Dispute Act, 1947 which was inserted through 2010 Amendment Act.

8. Paras 13.40 to 14.53 on Trade Unions

I am not agreeing with the recommendations para 13.41 which are concurring in putting unnecessary restrictions on the right to freedom of association. And it fails to analyze the implications of section 6(2) & 6(4) which is stipulating the criteria for registration of Trade Unions to unorganized sector workers. Hence, I suggest adding an Explanation to these sections as following;

"Section 6(2) & 6(4) shall not apply to the Trade Union in the unorganized sector; In the case of Trade Union or association of workers in unorganized sector where there is no employer-employee relationship or such relationship is not clear, the requirement of 10% workers or 100, whichever is less, shall not apply".

Though I am generally concurring with the rest of the recommendations, I would like to propose the following for more clarity on these issues.

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
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"Chapter-III, Section 9 (4) on Deemed Registration in Certain Cases -Lines 27 to 30- be deleted, instead insert the following;

"Section 9(4) (ii). If the Registrar fails to issue certificate of registration or does not communicate any defects in the application for registration within 45 days, the certificate of registration shall automatically deemed to have been issued under this Code".

Section 9 (5) on Registration of Trade Union- Line 41.

Add the following words in the proviso to this section after line41;
"The withdrawal or cancellation of the registration shall be preceded by the sixty day notice in writing as well as an opportunity to show cause against the proposed action be given to the Trade Union".

Section 10. A new sub-section, as sub-section (3) should be added containing the following words;

"Pending the disposal of the appeal, the Tribunal may pass an order of interim stay of the order of the Registrar cancelling the registration of the Trade Union."
Reasons: This would act as a safeguard in the case of any arbitrary exercise of the power to cancel the registration of Trade Unions. The ILO supervisory bodies have pointed out those administrative decisions regarding the dissolution of Trade Unions should not take effect until the confirmation of such decisions by a judicial authority.

9. Para 15.4 on Notice of Change

I am of the opinion that the first sentence in the para 15.4 is correct and the next and last sentence seems to be irrelevant as the proviso (a) to clause 40 and clause 41 address the issues. Hence it may be dropped.

Moreover, we should recommend deleting the point (c) in the proviso to clause 40 which suggest the non-requirement of notice for changes in emergent situation made in consultation with GRC.

10. Paras 17.15 to 17.21 on the Mechanism for Resolution of Industrial Dispute

I am not agreeing to recommend reducing the time limit for raising industrial dispute from three years to one year. Hence para 17.18 may be dropped. Moreover, I suggest to redraft the second sentence in para 17.19 as under mentioned;

"The Committee trusts the foolproof, transparent, independent and more accessible mechanisms including Labour Courts as provided for under the Industrial Dispute Act for dispute resolution should not be tinkered with in the Industrial Relations Code for the benefits of the stakeholders concerned".

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
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Moreover, I would like suggest in concrete terms as follows;

> "Chapter- VII, Sections from 43 to 61. The Chapter should provide for the constitution of Labour Courts for the adjudication of industrial disputes relating to the matters that are specified under the Second Schedule to the Industrial Disputes Act, 1947. All the provisions relating to Labour Courts that are contained in the Industrial Disputes Act, 1947 should be incorporated in the Code".

Reasons: Workers will be denied access to justice if Labour Courts at the district level are abolished and only one or a couple of Industrial Tribunals would function in each state. The present system of adjudication of industrial disputes as provided under the Industrial Disputes Act, 1947 is effective and there is no need for any drastic alteration to the system. The number of courts should, however, be increased and necessary measures should be taken to improve their effectiveness.

11. Para 18.9 on Strikes and Lock-Outs

Though I am agreeing with para 18.9, I would like to add some points to this recommendation as the present clause 62(1) & 62(4) in the Industrial Relations Code intended to deny the workers the right to strike.

While, at present, only workers in industries classified as public utility services under the Industrial Disputes Act are required to give notice to the employer before going on a strike. But now according to the Industrial Relations Code, workers in all industrial establishments are required to give notice of a minimum of 14 days and a maximum of 60 days to the employer before going on a strike. Upon giving such a notice, conciliation proceedings are deemed to have commenced and the strike cannot lawfully continue during the pendency of conciliation proceedings and 7 days thereafter and during the pendency of adjudication or arbitration proceedings and 60 days thereafter.

All these would make it more difficult for workers in any industrial establishment to go on a legal strike thus virtually prohibiting the exercise of the right to strike. As per the principles relating to the freedom of association laid down by the ILO supervisory bodies, the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and should not be such as to place a substantial limitation on the right to strike. The legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike. Furthermore, as per ILO principles, the right to strike may be restricted or prohibited only in the case of (1) essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety and health of the whole or part of the population and (2) public servants exercising authority in the name of the state.

Accordingly, Committee should recommend revisiting this clause in its entirety. I strongly recommend the removal of all the restrictions sought to be imposed on exercise of right to strike in

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

this Code Bill vis-à-vis the present Industrial Disputes Act and related punitive/deterrent provisions so as to guarantee the right to strike in its real sense by dispensing with all unnecessary restrictions.

12. Paras 19.13 & 19.14 on "lay-off"

The recommendation para 19.13 is basically tinkering with definition of "lay-off" which means the failure, refusal or inability of an employer to give employment on account of, *inter alia,* natural calamity or for any other connected reasons. It is very unfortunate that para 19.13, now, recommends that employers should not be held responsible for the payment of compensations in such an eventuality as it is not of theirs' fault. I am not concurring to this proposal and opposing lock, stock and barrel and recording my strong dissent. In fact, the present Corona situations have compelled us to strengthen this legal area which is awfully inadequate in our labour legislations.

It may be more relevant to recall the history of this provision. In British common law during colonial period, an employer could lay off employees without payment of wages. To remedy such a situation, at the time of our Independence, provisions were introduced in the Industrial Disputes Act, for payment of compensation in the event of a lay-off. The legislature in its wisdom introduced a term called "lay off" under the ID Act and mandated payment of compensation in certain circumstances and prohibited lay off in certain circumstances.

Accordingly, Section 2 (kkk) of Industrial Dispute Act has defined the term "Lay off". Then our Parliament taking into account three decades of our experience and reality, in its wisdom, expanded the definitional scope of "lay-off" by an amendment in 1982 to include "natural calamity or for any other connected reasons". As per this definition, if an employer is unable to provide employment to an employee due to a natural calamity or for any other connected reason, then the same would fall within the definition of "Lay off". Section 25C of the ID Act mandates employers laying off workmen to pay a compensation equivalent to 50 per cent of the wages.

Given the present situation where the entire nation is fighting against novel coronavirus' monstrous attacks and when every ordinary citizen has been shouldering the risk to beyond his/her capacity, I am not able to understand the rationale behind these recommendations.

In this background, when I am, once again, recording my dissent to para 19.13, I strongly feel that I ought to suggest to expand the scope of "lay-off" definition so as to include National Disaster, Epidemic and Pandemic-like situations in future and consequently the relevant clause dealing compensations as well- so as to enhance its quantum and period.

13. Para-20.8 on Special Provisions relating to lay-off, retrenchment and closure

At the outset I register my dissent to these recommendations contained in para 20.8 as well as the changed provisions of the Code Bill. It has miserably failed to protect the workers right and

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

सत्यमेव जयते

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

endorsed the indiscriminate "hire and fire" policies of employers. Moreover, it fails to defend the spirit of this provision V-B- to put in place some check and balance.

In addition, I suggest the following proposal on this score;

"In Chapter X. Section 77 (1)- Lines 6&7. I propose to Delete the words ", or such number of workers as may be notified by the appropriate Government" and to delete the Proviso to section 77 (1)- Lines 9 to 12"

Reasons: The proviso has the effect of protecting state-level amendments raising the threshold for the application of Chapter V-B of the Industrial Disputes Act from 100 to 300 workers whereby industrial establishments which employ less than 300 workers need not apply for and secure the approval of the Government before effecting any lay off, retrenchment or closure. This has the effect of reducing the protection available to workers against arbitrary lay-off, retrenchment and closure.

Yours Sincerely,

(Elamaram Kareem)

Office(Delhi): 13-D, Feroze Shah Road, New Delhi- 110001. PH: 011-23782370, MOB: +91-9400307786
Office(Kerala): C.H. Kanaran Smaraka Mandiram, YMCA Road, Kozhikode, Kerala- 673001. PH: 0495-2760700
Email: elamaramkareem2010@gmail.com, elamaram.kareem@sansad.nic.in, elamaramkareemmpoffice@gmail.com

THE INDUSTRIAL RELATIONS CODE, 2019

DISSENTING NOTE

By

SHRI M. SHANMUGAM, MP

Standing National Committee on Labour had submitted this report in June 2002 recommending that the existing set of labour laws should be broadly amalgamated into the following groups namely:

a) Industrial Relations;
b) Wages;
c) Social Security;
d) Safety; and
e) Welfare and Working conditions

In pursuance of the recommendations of the said Committee and deliberations made in the tripartite meeting, comprising of the Government, industry representatives and trade unions, it has been decided to bring the proposed legislation. It is intended to amalgamate, simplify and rationalize the relevant provisions of the following three Central labour enactments relating to industrial relations, namely:

1. The Trade Unions Act, 1926
2. The Standing Order Act, 1946
3. The Industrial Disputes At, 1947

It may be pointed out that the tripartite meeting had not been properly conducted and had not taken into the views of the trade unions. In this Code, they brought some new definitions which are not present in the existing three Acts, and which are favourable to employers and it is apprehended that it would bring so many complications, disputes and litigations. For more than 80 years, Indian working class fought for their freedom as well as their rights, as the struggle started right from

pre-Independence days. Therefore, if the Government intends to do something for the welfare of working class, they should better the provisions of these Acts rather than to the detriment of the working class. The comprehensive definition of the term "workman" has been diluted. The definition for the designation of workers, like permanent, probation, temporary, casual, contract is already existing.

Through this code, they are including Fixed term employment, and by that, attempt is being made to reduce the number of permanent workmen and other categories. It is emphasized that the term "fixed-term employment" should be deleted. It is proposed that the number of employees in the "fixed-term employment" and other categories should not exceed 20 per cent of the total number of employees on the permanent strength.

The best definition for the term "Industry" can be seen in the Supreme Court Judgement in Bangalore Water Supply and Sewage Board Vs. R. Rajappa and Others, wherein it has been categorically specified the term "industry". But unfortunately, that has not been accepted by the Government. It is strongly proposed that majority workers in the unorganized sector should also be included.

Strike is the last resort of the working class to achieve their ends. This Code provides that none of the workers can go for strike, as it provides for conciliation on receiving the strike notice. If the conciliation fails and another strike notice is given, again conciliation will be started. That way, it would take away the right of workers to go on strike, resulting in weakening their bargaining power. At present, only in public utilities and essential services, the provision of conciliation is there, before workers can go for strike.

Registration of Trade Unions: No time limit is fixed for registration of trade unions. But in the discussion with the Ministry, it was agreed that the trade union must be registered within 45 days; otherwise, it would be deemed to have been registered. That provision has been deleted in the present Code which is against the ILO Convention 87.

Recognition of Trade Unions: The requirement of 75% membership for recognition is too high and not conformity with the principles relating to collective bargaining laid down by the ILO. It is stated that secret ballot should be conducted for the recognition of trade unions.

At present, for an industry which employs more than 100 workmen, for giving lay off, lock-out, closure, retrenchment, they have to get permission from the Government. However, only three States have increased the cap from 100 to 300 employees. It is reiterated that the existing provision should be continued in the Code as this would be the minimum limit and it be treated as a model legislation.

As far as section 77 (1) is concerned, retaining 100 workmen, is acceptable. Increasing it to more than 100 workmen, as it is flexible in some of the States is not acceptable.

Appendix-II

STANDING COMMITTEE ON LABOUR
(2019-20)

Minutes of the Eighteenth Sitting of the Committee

The Committee sat on Thursday, the 9th January, 2020 from 1100 hrs. to 1445 hrs. in Committee Room 'D', Parliament House Annexe-, New Delhi.

PRESENT

Shri BhartruhariMahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri John Barla
3. Shri DayakarPasunoori
4. Shri Satish Kumar Gautam
5. Dr. Umesh G. Jadhav
6. Shri K. Navaskani
7. Shri Nayab Singh Saini

RAJYA SABHA

8. Shri Husain Dalwai
9. Shri Elamaram Kareem
10. Shri Rajaram
11. Ms. Dola Sen
12. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4	Ms. Miranda Ingudam	-	Deputy Secretary
5.	Shri Kulvinder Singh	-	Deputy Secretary

Witnesses

Representatives of the Ministry of Labour& Employment

Sl. No.	Name	Designation
1.	Shri HeeralalSamariya	Secretary
2.	Ms. Anuradha Prasad	Additional Secretary
3.	Shri Rajan Verma	Chief Labour Commissioner
4.	Shri Sunil Barthwal	Chief PF Commissioner
5.	Shri Raj Kumar	Director General (ESIC)
6.	Shri R.K. Gupta	Joint Secretary
7.	Ms. KalpnaRajsinghot	Joint Secretary
8.	Ms. Vibha Bhalla	Joint Secretary
9.	Shri Ajay Tewari	Joint Secretary
10.	Shri Devender Singh	Economic Adviser (DGFASLI)
11.	Shri R. Subramanian	DG, DGMS
12.	Dr. R.K. Elangovan	Deputy Director General

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Labour& Employment to the Sitting of the Committee, convened to take their further evidence on 'The Occupational Safety, Health and Working Conditions Code, 2019'followed by briefing on 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019'. Drawing the attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding the evidence tendered before the Committee liable to be published, the Chairperson asked the Secretary, Labour& Employment to clarify the Ministry's stand on the points and issues pertaining to the various provisions of the 'The Occupational Safety, Health and Working Conditions Code, 2019', raised by the Members at the Sitting of the Committee held earlier on 03January, 2020 etc.

3. The Secretary, accordingly, gave an overview of the stance of the Ministry on the issues/points raised by the Members at the Sitting of the Committee held earlier. The Joint Secretary, Ministry of Labour and Employment gave a PowerPoint Presentation *inter-alia* highlighting the specific views and suggestions made on various provisions and the Ministry's acceptance or otherwise of such suggestions.

4. The Members then raised certain specific queries, mainly emanating from the written replies furnished by the Ministry and the stance taken on the points/suggestions pertaining to the provisions that were raised. These *inter-alia* included, issues pertaining to protection of the rights of contract workers engaged/employed with the Government, need expressed for recasting the definition of the term 'controlled industry' to specify the jurisdiction of the Central and State Governments, definition of 'worker' and 'employee' as proposed, agreements relating to audio-visual workers, inclusion of the word 'digital' in the definition of working journalists, hours of work and other standards applicable for working journalists, need expressed for having a separate chapter pertaining to migrant workers in the Code, inclusion of inter-state migrant workers in the definition of 'principle employer', need to define the term 'wages' in the Code, nomenclature of 'inspector cum facilitator' as proposed etc.

5. The representatives of the Ministry responded to the queries raised by the Members. As some points required detailed reply/further elaboration, the Chairperson asked the Secretary, Ministry of Labour& Employment to ensure that written replies to the points raised at the Sitting as well as other pending matters may be furnished at the earliest so as to enable the Committee to prepare and finalise their Report on the 'The Occupational Safety, Health and Working Conditions Code, 2019'.The Secretary assured to comply.

6. Thereafter, the Secretary with the permission of the Chairperson give an overview of 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019'. The Joint Secretary, Ministry of Labour& Employment gave a

Power Point presentation on the salient features of the two Codes which have been referred to the Committee by the Speaker for examination and Report thereon. As highlighted during the presentation the Industrial Relations Code, 2019', that proposes to amalgamate 03 Central Labour Acts *inter-alia* seeks to modify the definition of 'industry', 'strike' etc., introduces a new feature of 'recognition of negotiating union' and proposes to set up 02 Members Industrial Tribunal. 'The Code on Social Security, 2019'that seeks to amalgamate relevant provisions of 09 Central Labour Acts *inter-alia* seeks to extend the coverage of ESIC pan-India to all establishments, extend the applicability of Employees Provident Fund and Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries and establishments employing 20 or more persons, includes new definitions to cater to emerging forms of employment like Aggregator, Gig Worker, Platform Worker etc.

7. The Members then raised certain queries on the provisions of both the Codes. The queries raised in regard to 'The Industrial Relations Code, 2019'*inter-alia* included, issues relating to means for ensuring uniformity in labour standards, protection of interest of labour, regulation for fixed term employment, contract labour, inclusion of 'mass casual leave' under the definition of 'strike', definitions of the terms industry, worker etc. as proposed, provisions pertaining to closure of establishments, retrenchment of labour etc.

8. The queries raised in regard to 'The Code on Social Security, 2019'*inter-alia*included issues pertaining to collection of construction cess amounts, Pradhan Mantri Shram Yogi Man-dhan Yojana, Social Security Board, corpus of social security fund etc.

9. The representatives of the Ministry responded to some of the queries raised by Members. The Chairperson asked the Secretary, Ministry of Labour& Employment to ensure that written replies to the queries raised by Members were furnished at the earliest.

10. The Chairperson thanked the Secretary and other representatives for furnishing valuable information on the 'The Occupational Safety, Health and Working Conditions Code, 2019', 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019' and responding to the queries of the Members.

(The witnesses then withdrew)

[A copy of the verbatim record of proceedings has been kept on record]

The Committee then adjourned.

Appendix-III

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Twenty Third Sitting of the Committee

The Committee sat on Thursday, the 27th February, 2020 from 1100 hrs. to 1550 hrs. in Committee Room No. '2', Parliament House Annexe - Extension Building, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Satish Kumar Gautam
6. Dr. Umesh G. Jadhav
7. Dr. Virendra Kumar
8. Shri K. Navas Kani
9. Shri Nayab Singh Saini
10. Shri Bhola Singh
11. Shri K. Subbarayan

RAJYA SABHA

12. Shri Husain Dalwai
13. Shri Elamaram Kareem
14. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

NON-OFFICIAL WITNESSES

Representatives of Bhartiya Mazoor Sangh

Shri Virjesh Upadhyay	All India General Secretary

Representatives of Indian National Trade Union Congress (INTUC)

Shri Rishipal Singh	Oranising Secretary

Representative of All India Trade Union Congress (AITUC)

1.	Shri Vidya Sagar Giri	National Secretary
2.	Shri Sukumar Damle	National Secretary

Representatives of Hind Mazdoor Sabha (HMS)

1.	Shri Harbhajan Singh Sidhu	General Secretary
2.	Shri C.A. Rajasridhar	President

Representatives of Centre of Indian Trade Unions (CITU)

Shri R. Karumalaiyan	National Working Member

Representatives of All India United Trade Union Centre (AIUTUC)

1.	Shri Satyawan	Vice President
2.	Shri Ramesh Kumar Parasher	Member, All India Secretariat

Representatives of Trade Union Coordination Centre (TUCC)

1.	Sh. Rakesh Mishra	Member, National Secretary
2.	Shri Shambhu Nath Jaiswal	President, Delhi State Committee

Representatives of Self Employed Women's Association (SEWA)

1.	Ms. Shabnam Banu Shekh	Executive Committee Member
2.	Ms. Shalini Trivedi	Legal in-charge for legislations

Representatives of Labour Progressive Federation (LPF)

1.	Shri V. Sabburaman	National President

2.	Shri L. Rashid Khan	National Vice President

Representatives of National Front of Indian Trade Unions (NFITU)

1.	Dr. Deepak Jaiswal	National President
2.	Shri Sunil Kumar	State President, New Delhi

Representatives of All India Railwaymen's Federation

1.	Shri S.K. Tyagi	Assistant General Secretary
2.	Shri L.N. Pathak	Zonal Secretary

Representatives of All India Defence Employees Federation

1.	Shri S.N. Pathak	President
2.	Shri C. Srikumar	General Secretary

Representatives of PRS Legislative Research

1.	Dr. M.R. Madhavan	President
2.	Ms. Roshni Sinha	Senior Analyst

Representatives of Tea Association of India

1.	Shri Ajay Jalan	Vice President
2.	Shri P.K. Bhattacharjee	Secretary General

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the ten Trade Unions to the sitting of the Committee, convened to hear their views on 'The Industrial Relations Code, 2019'. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on the Code.

3. The representatives of the Trade Unions accordingly submitted their views one by one covering various aspects and Clauses/Sections of

the Code. The representatives also responded to the queries of the Members.

4. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

The witnesses then withdrew.

The Committee then adjourned for Lunch.

5. The Committee reassembled after lunch break. The representatives of All India Railwaymen's Federation, All India Defence Employees Federation, PRS Legislative Research and Tea Association of India were then called in and the Chairperson welcomed them to the Sitting of the Committee. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on the Code.

6. The representatives of the Associations/Organisations accordingly submitted their views one by one covering various aspects and Clauses/Sections of the Code. The representatives also responded to the queries of the Members.

7. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

Appendix-IV

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Twenty Fourth Sitting of the Committee

The Committee sat on Monday, the 2nd March, 2020 from 1500 hrs. to 1550 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri B.N. Bache Gowda
6. Dr. Umesh G. Jadhav
7. Shri Dharmendra Kumar Kashyap
8. Dr. Virendra Kumar
9. Shri Sanjay Sadashivrao Mandlik
10. Shri Khalilur Rahaman
11. Shri Ganesh Singh

RAJYA SABHA

12. Shri Husain Dalwai
13. Shri Ram Narain Dudi
14. Shri Elamaram Kareem
15. Dr. Banda Prakash
16. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri D.R. Mohanty	-	Additional Director
3.	Shri Kulvinder Singh	-	Deputy Secretary

NON-OFFICIAL WITNESSES

Representatives of Association of Industrial and Commercial Establishment

1.	Shri Puneet Gupta	Law Officer
2.	Shri Nitish Chopra	Assistant Law Officer

Representatives of Cochin Chamber of Commerce and Industry

1.	Shri V. Venugopal	President
2.	Shri Eapen Kalapurakal	Secretary

Representatives of Confederation of Industrial and Trade Organisation

1.	Adv. C.V. Mukundan	President
2.	Shri Hareendran K.	Secretary

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of various Associations/ Organisations to the sitting of the Committee, convened to hear their views on 'The Industrial Relations Code, 2019'. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on the Code.

3. The representatives of the Associations/Organisations accordingly submitted their views one by one covering various aspects and Clauses/ Sections of the Code. The representatives also responded to the queries of the Members.

4. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their valuable comments/suggestions on the Code.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

Appendix-V

STANDING COMMITTEE ON LABOUR

(2019-20)

Minutes of the Twenty Fifth Sitting of the Committee

The Committee sat on Monday, the 3rd March, 2020 from 1500 hrs. to 1630 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Dr. Virendra Kumar
7. Adv. Dean Kuriakose
8. Shri Khalilur Rahaman
9. Shri Nayab Singh Saini
10. Shri Bhola Singh
11. Shri K. Subbarayan

RAJYA SABHA

12. Shri Husain Dalwai
13. Shri Oscar Fernandes
14. Shri Elamaram Kareem
15. Dr. Banda Prakash
16. Shri M. Shanmugan

SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri D.R. Mohanty - Additional Director
3. Shri Kulvinder Singh - Deputy Secretary

NON-OFFICIAL WITNESS

Dr. K.R. Shyam Sundar, Professor (HRM)Xavier School of Management, Jamshedpur

OFFICIAL WITNESSES

Representative of State Governments of Himachal Pradesh

Shri S.S. Guleria, IAS, Labour Commissioner

Representatives of State Governments of Punjab

1. Shri Vijay Kumar Janjua, IAS, Principal Secretary to Govt. of Punjab, Department of Labour.
2. Shri Parveen Kumar Thind, IAS, Labour Commissioner.
3. Shri Sunil Kumar Bhoriwal, Assistant Labour Commissioner
4. Shri J.P. Singh, Assistant Labour Commissioner, Patiala.

2. At the outset, the Chairperson welcomed the Members of the Committee and Dr. K.R. Shyam Sundar, Professor HRM, Xavier School of Management, Jamshedpur to the Sitting of the Committee, convened to hear the views of the non-official witness on 'The Industrial Relations Code, 2019'. Impressing upon the witness to keep the proceedings of the Committee confidential, the Chairperson asked the witness to present his views on various aspects of the 'The Industrial Relations Code, 2019'. Accordingly, Dr. K.R. Shyam Sundar gave a Power point presentation elucidating his views/suggestions on some very important provisions contained in the Code. He also attended to various queries raised by the Members. The Chairperson thanked Dr. K.R. Shyam Sundar for appearing before the Committee and giving his valuable suggestions.

The Witness then withdrew.

3. Thereafter, the representatives of State Governments of Himachal Pradesh and Punjab were called in and Chairperson welcomed them to the Sitting of the Committee. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/ suggestions on the Code.

4. The representatives of the State Governments accordingly submitted their views one by one covering various aspects and Clauses/ Sections of the Code. The representatives also responded to the queries of the Members.

5. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/ suggestions on the Code.

(The witnesses then withdrew)

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

Appendix-VI

STANDING COMMITTEE ON LABOUR

(2019-20)

Minutes of the Twenty Sixth Sitting of the Committee

The Committee sat on Tuesday, the 4th March, 2020 from 1500 hrs. to 1645 hrs. in Committee Room No. '139', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Feroze Varun Gandhi
7. Shri Dharmendra Kumar Kashyap
8. Dr. Virendra Kumar
9. Shri Khalilur Rahaman
10. Shri Nayab Singh Saini
11. Shri Bhola Singh

RAJYA SABHA

12. Shri Oscar Fernandes
14. Shri Elamaram Kareem
15. Dr. Banda Prakash
16. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

Witnesses

Representatives of the Ministry of Labour & Employment

1.	**Shri Heeralal Samariya**	**Secretary**
2.	**Ms. Anuradha Prasad**	**Additional Secretary**
3.	**Shri Rajan Verma**	**Chief Labour Commissioner (C)**
4.	**Shri Sunil Barthwal**	**Central PF Commissioner**
5.	**Shri R.K. Gupta**	**Joint Secretary**
6.	**Shri Ajay Tiwari**	**Joint Secretary**
7.	**Ms. Kalpna Rajsinghot**	**Joint Secretary**
8.	**Shri Arshad Ali Khan**	**Deputy Director General**
9.	**Shri D.K. Sahu**	**Director General (Mines)**
10.	**Shri M.K. Sharma**	**Insurance Commissioner**
11.	**Shri Jagmohan**	**Addl. Central PF Commissioner**
12.	**Shri Pankaj Raman**	**Addl. Central PF Commissioner**
13.	**Shri Amit Vashist**	**Regional PF Commissioner**
14.	**Shri Abhijeet Kumar**	**Regional Labour Commissioner**

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Labour & Employment to the Sitting of the Committee, convened to take their further evidence on 'The Industrial Relations Code, 2019'. Drawing the attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding the confidentiality of the evidence tendered before the Committee, the Chairperson asked the Secretary, Ministry of Labour & Employment to clarify the Ministry's stand on the points and issues raised by various Stakeholders and Members of the Committee pertaining to several provisions contained in the 'The Industrial Relations Code, 2019'.

3. The Secretary, accordingly, gave an overview of the stance of the Ministry on the issues/points raised by various Stakeholders and the Members of the Committee on the briefing held 9.1.2020. Thereafter, the Joint Secretary, Ministry of Labour & Employment gave a PowerPoint Presentation *inter-alia* highlighting the specific views and suggestions made on various provisions and the Ministry's acceptance or otherwise of such suggestions.

4. The Members then raised certain specific queries, mainly emanating from the written replies furnished by the Ministry which *inter-alia* included, issues pertaining to Fixed Term Employment, Industrial Disputes Act, 1947, Definition of Employee and Worker, domestic workers, Grievance Redressal Committee, Trade Unions, Negotiating union or Council, Labour Courts, Conciliation Officers/industrial Tribunal, Strikes and lock outs, Layoffs, Retrenchment, Compensation to workers in case of closing down of the establishment etc.

5. The representatives of the Ministry responded to the queries raised by the Members. As some points required detailed reply/further elaboration, the Chairperson asked the Secretary, Ministry of Labour & Employment to written replies to the points raised at the earliest so as to enable the Committee to prepare and finalise the Report. The Secretary assured to comply.

6. The Chairperson thanked the Secretary and other representatives of the Ministry for furnishing valuable information on 'The Industrial Relations Code, 2019' and responding to the queries of the Members.

(The witnesses then withdrew)

[A copy of the verbatim record of proceedings has been kept on record]

The Committee then adjourned.

Appendix-VII

STANDING COMMITTEE ON LABOUR
(2019-20)

Minutes of the digital consideration and adoption of the Draft Report on 'The Industrial Relations Code, 2019'.

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Due to the unprecedented situation arising out of the COVID-19 pandemic, a Sitting of the Committee could not be convened to consider and adopt the Draft Report on 'The Industrial Relations Code, 2019'. The Draft Report was, therefore, considered and adopted by the Committee through digital mode i.e. circulation of the Draft Report to the Members of the Committee by uploading it on the Members' portal as well as their official e-mail address.

2. The Draft Report after its approval of the Chairperson was circulated to the Members, through e-mail as mentioned above, on 15th April, 2020 seeking their concurrence or otherwise by 22nd April, 2020. By the stipulated timeline, consent/concurrence to the Draft Report was received in writing from the following 14 Members:

i. Shri Subhash Chandra Baheria
ii. Shri John Barla
iii. Shri Raju Bista
iv. Shri Pallab Lochan Das
v. Shri Pasunoori Dayakar
vi. Shri Feroze Varun Gandhi
vii. Shri Satish Kumar Gautam
viii. Shri B.N. Bache Gowda
ix. Dr. Umesh G. Jadhav
x. Shri Dharmendra Kumar Kashyap
xi. Dr. Virendra Kumar
xii. Shri Nayab Singh Saini
xiii. Shri Bhola Singh
xiv. Dr. Banda Prakash

3. Dr. Raghunath Mohapatra gave his consent verbally.

4. Shri Ganesh Singh, concurring with the Draft Report, gave some suggestions which are appended to the Report.

5. The following three Members gave their respective Notes of Dissent which are also appended to the Report:

i. Shri K. Subbarayan
ii. Shri Elamaram Kareem
iii. Shri M. Shanmugam

6. The Committee authorised the Chairperson to finalise the Report in light of the factual verifications, if any, received from the Ministry and present the Report to the Hon'ble Speaker under Director 71(A) and Rule 280, since the House was not in Session.