ASIAN DECENT WORK DECADE 2006 2015

International Labour Organization

ILO Asia-Pacific Working Paper Series

The Current State of Industrial Relations in Tamil Nadu

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December 2010

Subregional Office for South Asia, New Delhi

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First published 2009

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ISBN: 978-92-2-124530-8 (print)
ISBN: 978-92-2-124531-5 (web pdf)

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our website: www.ilo.org/publns or www.ilo.org/india

Printed in India

PREFACE

The year 2009 marked the 70th anniversary of the ILO Convention on the Right to Organize and Collective Bargaining, 1947 (No. 98), a fundamental convention widely ratified in South Asia. To commemorate the event, and to better understand the role that collective bargaining has been playing as a mechanism to regulate relations between workers and employers, the ILO Decent Work Team in New Delhi launched a series of studies on the current status and evolution of industrial relations in Bangladesh, Pakistan, Sri Lanka and three States in India – Maharashtra, Tamil Nadu and West Bengal.

The studies, the first of this nature produced in the subregion in the last decade, aim at providing an insight into workers' and employers' organizations in the subregion, collective bargaining trends and coverage, dispute settlement and existing mechanisms to solve them, as well as recent tripartism and social dialogue practices. The studies also seek to assess the degree to which industrial relations have now been decentralized and examine the extent to which collective bargaining is providing an effective framework for governing collective labour-management relations at various levels. The studies pay particular attention to collective bargaining as a wage-fixing mechanism, and assess its relevance as part of the whole system of wage-fixing.

Access to data and statistics has been a challenge in all countries. Ministries of Labour do not systematically register agreements, compile data nor analyze data on collective bargaining. With few exceptions, trends identified in the papers are based on the experience and perceptions of practitioners, the social partners and the officials from the labour administration. All studies were presented and discussed at tripartite meetings in the respective countries and States, as well as in a tripartite subregional workshop that took place in Ahungalla, Sri Lanka, in October 2009. The meeting sought to understand the links between globalization, industrial relations and collective bargaining. It covered South Asia and China, and reached tripartite consensus on a set of proposals for a more conducive environment for sound collective bargaining in both the private and public sectors. The recommendations form part of the ILO's agenda to promote collective bargaining in future years.

The ILO would like to thank Shyam Sundar for producing an excellent paper on Tamil Nadu. We hope the study will be used as a tool for policy makers, social partners and other relevant stakeholders to assess existing law and practice and orient future action in the industrial relations field in the State.

The research project was coordinated by Marleen Rueda, Senior Specialist on Social Dialogue and Labour Administration in the ILO. A number of industrial relations specialists have contributed to review the papers in the series: Susan Hayter, Gotabaya Dasanayaka, Prof. Venkata Ratnam, Chang-Hee Lee, John Ritchotte, Limpho Mandoro and Minawa Ebisui.

Tine Staermose
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CHAPTER 1

Introduction

The Industrial Relations System (IRS) is a 'sub system' of the social system on the same plane as the economic system which is another sub system of it (Dunlop, 1956). There are interfaces and interactions between the sub systems and the institutional framework of each of the sub systems is determined by the interface between the historical, institutional and other systemic forces that govern them.

Following Independence, the "colonial model" influenced the building of the institutional framework of IRS and the labour market (Shyam Sundar, 1996). India preferred the State-led, planned, import-substituting industrialization model in order to usher in speedy economic progress. Export pessimism, discouragement of foreign capital (even though domestic savings and capital formation were low) and import substitution policies limited international trade and capital flows and offered protection to domestic industries. In this model, 'industrial peace' in the IRS was pivotal. Hence, State interventionist model of rule- making in IRS and labour market was preferred to the "voluntarist" or collective bargaining model of governance. State intervention and political management of union movement were two strategies to ensure order, stability and industrial discipline in the system. This system of governance depended on labour laws and their institutions (such as labour administration and judiciary), tripartism, industrial democracy and codes of discipline and conduct. This was part of the overall strategy of State intervention in the economic system.

The institutions of the state viz. executive, legislature, judiciary, and labour administration determined the substantive and procedural "rules" of the IRS that elsewhere were made through bipartite processes. However, State intervention did not mean suppression of labour rights. The federal-democratic-pluralistic model of polity adopted in India assured the fundamental right to form unions and freedom of industrial actions subject to legal regulation. Although India has ratified only five of the eight core conventions of the ILO, the Constitutional guarantees and the liberal-pluralist legal framework uphold the principles contained in these core conventions and India's record in respecting the principles of freedom of association is certainly better than that in other countries in Asia (Venkata Ratnam, 2006).

With economic system witnessing growth failures, State intervention and the import substitution (export pessimism) models came under criticism (Kohli, 1989). Importantly, the Bangalore public sector strike and the Bombay textile workers' strike in the early 1980s set in motion significant changes in the IRS. Scholars, employers and even some trade unions criticized political unionism and state regulation of IRS models (Shyam Sundar, 2005 b). The mid-1980s witnessed the beginnings of reform in the economic system initiated by the government and passive but important happenings in the IRS. The balance of payment crisis in the late 1980s and the need to take a loan from the International Monetary Fund in mid-1991 also pushed the government to implement the reform process more vigorously. The new economic policy announced in 1991 marked a decisive shift in economic policy from regulation to liberalization, privatization and globalization (LPG). The shift to market determination, larger role for private enterprise, reduction in space for public sector, and opening up of the economy were some of the radical changes introduced in the production system. The product market reform measures increased the bargaining power of capital vis-à-vis labour. Capital became more mobile and least regulated. Greater ease of mobility gave greater bargaining power to capital (Bardhan, 2001, p. 470). Competition reduced the rents, which prevailed under the protectionist regime. It brought in

discipline among employers and unions and limited the "rents" to be shared between labour and capital. The dominant objective of the government shifted from the "logic of industrial peace" to the "logic of competitiveness of firm and the economy".

Given the interface between product market and labour market, pro-reformers demanded liberalization of IRS and labour market. This created a divide amongst academics and policy makers. Two schools of thought ruled the debate, viz. the "flexibility schools" and the "institutionalists". The "flexibility school" argued for flexible labour market and IRS as necessary for enhancing competitiveness of firms and the country in order to respond to changes in the product market. It called for deregulation of the labour market and the IRS (in short, labour reforms). The "institutionalists" argued that regulation of labour market and IRS was necessary, even inevitable as the process of globalization created both "winners" and "losers". Labour market deregulation could have adverse consequences like cut in employment, dilution of quality of employment (like creation of non-standard forms of employment), labour market inequality and decline in real wages, weakening of collective institutions such as trade unions, collective bargaining and strikes. The "instituionalists" advocated a strong and comprehensive system of labour standards complemented by sound labour market governance and social dialogue to manage globalization (Shyam Sundar, 2010a, 2008a, c, 2005a).

Indian government currently faces policy dilemma as employers demand deregulation while trade unions oppose it. The international financial institutions and foreign investors have joined the domestic organizations of employers to exert pressure on the government to introduce labour reforms. Labour reform measures expected by business and pro-reform economists in India mainly include freedom for the employers to lay off and retrench workers and close down establishments without prior government permission, freedom to change conditions of work at workplace, greater freedom to employ contract labour and outsourcing of work and privatization of public sector establishments (Shyam Sundar, 2005 a). Attempts have been made by the ruling political parties and their coalitions at the Centre to introduce some labour reform measures but in vain (Shyam Sundar, 2010 a; Shyam Sundar and Venkata Ratnam, 2007). It is important to remember that labour market deregulation has implications on industrial relations system and institutions in it. The workers in the organized sector whom these affect are small in number (as compared to the unorganized sector workers) but are well organized and can inflict tremendous costs on the government and society through their industrial and political actions. Predictably, attempts at labour reform measures have met with protests, strikes and opposition; the trade unions and even opposition political parties cutting across political and ideological divisions have put up an united stand against these reform measures (Shyam Sundar, 2008 d, 2009 a).

The State has sought to find a middle path through these conflicting policy choices. It is certain however, that any change will depend upon "political economy" considerations. Product market and capital market reforms go unnoticed but by a few concerned: they are "elitist politics". However, labour reforms affect a vast number and have social and political implications. They belong to "mass politics" (Varshney, 1999). The labour policies of the government have wider implications and hence larger social response. The reforms proposed by the central government from time to time have met with stiff resistance from trade unions and opposition political parties. The major concern of the political parties in power is the loss of political support of the working class and its impact on their electoral politics. Indeed, the electoral debacle of the National Democratic Alliance (NDA) government and some pro-reform governments at the state level like the Telegu Desam led coalition in Andhra Pradesh confirmed the fears of political backlash the

labour reform measures or even proposals could entail. The central government too has shied away from making any concrete change in the formal framework concerning employment security and has not initiated full scale privatization.

The onus of introducing labour reforms has been cleverly shifted to the state governments. There are several reasons to use "federal politics" on the issue of labour reforms, which will be discussed in the next chapter. Various state governments have sought to introduce changes in the labour regulatory system to attract investment into their regions. The labour reform at the state level is seen to be an important determinant of industrial development and reduction in poverty (Besley and Burgess, 2004). It is a case of "sub-national" governance of labour market and IRS. It is in this context that a study of recent developments in the labour market and the IRS at the regional level becomes important. In this process, states are either labelled "progressive" (i.e. pro-reform and developed states) or "laggards" (i.e. static or even declining industrial growth).

Tamil Nadu is considered "progressive" and "investment friendly" (Shyam Sundar, 2008 d, 2010 b). As one of the early states to be industrialised, it has a well developed labour market and strong industrial relations institutions characterized by a long history of union movement and collective bargaining, and a strong labour administration. Its share in the union members and strikes is significant enough to rank it among the top five states in India (Shyam Sundar, 1999 a).

Table 1.1 Tamil Nadu at a glance

Particulars		Percentage of Tamil Nadu in All-India
Area (Sq. Km)	130 058	*
Population (in 000s) (2001)	62 406	6.07
Rate of Urbanization (percentage) (2001)	44.04	27.82
% Female Population (2001)	49.68	48.26
Number of Main Workers (in 000s) (2001)	23 758	7.59
Marginal Workers (in 000s) (2001)	4 120	4.62
Density of Population (2001)	480	**
Rate of literacy Percentage (2001)	73.47	**
Number of Working Factories (2005)	36 867	28.39
Average Daily Number of Workers (000s) (2007)	1 427	16.88

Note: * Area of India is 3287240 sq. km.; it includes the area under unlawful occupation of Pakistan and China (see CSO 2003: Table 1.1, n).

** The values for India are 324 and 64.83 per cent respectively for item numbers 6 and 7.

Source: S no.1-7 http://www.tn.gov.in/misc/tnataglance.htm, accessed 29 July 2008; the proportions are worked out based on data from CSO (2003);

Literacy rate from http://www.tn.gov.in/schooleducation/statistics/table7and8.htm, accessed 29 July 2008.

S. No. 8, 9 Office of the Chief Inspector of Factories, Chennai.

Tamil Nadu is among the top ten states in terms of rate of urbanization. High literacy rates and the availability of highly skilled people have been stated to be some of the reasons for industrialists choosing the state for investment (Shyam Sundar, 2008d). Its industrial development compared to other important states can be seen from the following table.

Table 1.2 Comparison of industrial development in Tamil Nadu vis-à-vis some important states, 2004-05

State	No. of factories	No. of workers	Net value added (*in millions*)
Maharashtra	18 912	814 599	513 092
Gujarat	13 603	606 847	360 156
Tamil Nadu	21 053	1 046 788	215 674
Karnataka	7 596	431 196	205 318
Jharkhand	1 607	117 466	167 780

Source: http://mospi.nic.in/asi_table3_2004_05.htm, accessed 29 July 2008.

While Maharashtra ranks number one in net value added, Tamil Nadu ranks high in the number of factories and the number of workers employed.

Irrespective of the political party in power at the Centre the government of Tamil Nadu has been taking initiatives to boost industrial growth with labour reforms as an important component (CII 2004a, b). The reform proposals and measures, discussed in detail in Chapter III, cover some sectors and several labour laws. The state government has been considering amending the restrictive provisions in the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970 (known as the Contract Labour Act) to afford labour flexibility to employers in all sectors. Apart from this, the government's reform proposals and measures in recent years include liberalization of labour inspection system especially with regard to units in small scale sector other than those engaged in hazardous and dangerous operations, providing concessions to establishments in the Information Technology (IT) sector such as flexibility in hours of work, holidays and self-certification with regard to selected labour laws. In fact there is a host of reform proposals that the establishments in the Special Economic Zones (SEZs) can take advantage of including exemption from or relaxation of some restrictive provisions in the Industrial Disputes Act (like Section 9-A, Chapter V-B) and non-applicability of the Contract Labour Act.

The institutional framework that governs the IRS is a product of complex interplay of institutions in it like laws and government policies, trade unions, strikes, social dialogue (collective bargaining and tripartite talks, etc.). While the government tries to respond to the challenges posed by globalization by way of changes in labour laws and policies, the labour market actors seek to find solutions through industrial actions and social dialogue. For example, labour flexibility strategies have created a peculiar employment structure in which the share of non-regular workers has been rising at the expense of regular workers. The contract workers have sought to defy the labour market and institutional constraints by their organizational actions and define the "rules" of their employment relationship. By these processes, the "actors" in the IRS seek to define and re-define the institutional framework of it.

This paper seeks to study the ways and means by which the institutions in the IRS have shaped and responded to the challenges posed by globalization and its economic imperatives. In this sense, it studies the current state of industrial relations in Tamil Nadu. The report covers the post-reform period, 1995-2006. The data for the terminal year of the period will vary in the case of some variables depending on their availability. The state labour departments, unlike other departments, which produce statistics relating to state income, consumer prices etc., are not prompt in compiling labour statistics. The Labour Bureau, which compiles the statistics on several variables on industrial relations, reports non-submission or late submission of annual returns under various

labour laws. The validity and reliability of labour statistics too is not strong (Shyam Sundar, 1994, 1999b).

The next chapter briefly discusses the existing labour laws and regulations in the state and the proposals and policy measures of the government to change them. Chapter III deals with the institutional mechanisms of wage determination and charts the trends in wages in the organized factory sector in the state in the post-reform period. Quantitative and qualitative features of trade unions, industrial conflict indicators, and collective bargaining are analyzed in Chapter IV. Tripartite deliberations form an important form of social dialogue and social consultation. Chapter V describes the institutional features of the tripartite forums existing in the state.

CHAPTER 2

Economy and Labour Market in Tamil Nadu

Structure of the Economy

The structure of the state economy is usually gauged by two indicators, state income and workforce. Economists conventionally use the state income data in real terms that is based on prices in a given (normal) year.

Table 2.1 Percentage distribution of Gross State Domestic Product (GSDP) at constant prices by broad sectors, 1996-97 to 2004-05

Period	Primary Sector	Secondary Sector	Service Sector	Total
1996-1997 to 1998-99	19.32	34.08	46.60	100.00
1999-2000 to 2001-02	17.55	33.24	49.21	100.00
2002-2003 to 2004-05	13.06	31.93	55.01	100.00

Source: Computed from data in CMIE (2006: p.7)

From the above table we see that the share of the primary sector (agriculture, forestry, fishing, mining and quarrying) declined from 19 per cent to just 13 per cent. The share of the secondary sector (manufacturing sector, electricity, gas and water supply and construction) too declined but marginally from 34 per cent to nearly 32 per cent. The share of the service sector increased from about 47 per cent to 55 per cent in the same period.

Table 2.2 Percentage distribution of Real Gross State Domestic Product (GSDP) at 1999-2000 prices by sectors and important sub-sectors, 2001-02 to 2003- 04 and 2005-06

Sectors	2001-02 to 2003-04
Primary sector	14.68
Secondary Sector	**28.51**
(a) Registered manufacturing sector	12.30
(b) Unregistered manufacturing sector	7.02
(c) Total manufacturing sector	19.32
Tertiary sector	**56.81**
(a) Trade, hotels & restaurants	16.20
(b) Transport & communications	10.34
(c) Banking & insurance	15.34
(d) Community, social and personal services	14.92
Real GSDP	**100.00**

Source: htpp://www.tngov.in/dear/tab06/a09.pdf[29 July 2008].

While the tertiary sector is the major contributor to the generation of state income in Tamil Nadu as well as in India, the manufacturing sector accounts for nearly one-fifth of the state real income with registered manufacturing sector's share nearly twice that of its unregistered component. In the tertiary sector, trade and banking sectors are the two important constituents.

Labour Market in Tamil Nadu

The work participation rate (ratio of number of workers to total population) in 2001 was 44.56 per cent, which constituted an increase of 1.25 per cent over that estimated for

1991. The male work participation rate (58.06 per cent) was higher than that for females (31.32) in 2001. (http://gisd.tn.nic.in/census-paper3/Chapters/Chapter2.htm, accessed 28 July 2008).

Data on employment estimated by the NSSO, in its 61st round relating to 2004-05 has been used to study the sectoral distributions (Table 2.3).

Table 2.3 Distribution of workers by economic activities, 2004-05

Sectors	Tamil Nadu		India
	No. of workers (in thousand)	%	%
Agriculture etc.	12 668	41.19	56.50
Mining & Quarrying	100	0.33	0.56
Primary Sector	-	41.52	57.06
Manufacturing	6 488	21.10	12.20
Electricity, Gas and Water	83	0.26	0.26
Construction	1 933	6.29	5.68
Secondary Sector	-	27.65	18.14
Trade, Hotels, Restaurant etc.	4 049	13.17	10.83
Transport, Storage & Communication	1 525	4.96	4.06
Other Services	3 907	12.70	9.91
Tertiary Sector	-	30.83	24.80
Total	30 753	100.00	100.00

Source: Ramaswamy (2007b)

Like in the rest of the country, the majority of the workforce in Tamil Nadu is engaged in agriculture. By 2004-05 estimates, the manufacturing sector engages 21 per cent of the total workers while transport, storage and communications are the main employers in the services sector. It is interesting to note that the share of the manufacturing sector in Tamil Nadu is slightly higher than that for the secondary sector as a whole for all-India. It indicates the extent of industrialization in the state. The employment and factories data further endorses this fact.

It is well known that labour market in India is 'dualistic' (Ramaswamy, 2007 a), divided into organized and unorganized sectors. The organized sector usually includes all the establishments covered by the Employment Market Information by the Directorate General of Employment and Training (DGET). Employment information is collected statutorily in all the establishments in public sector and the establishments employing more than 24 workers in private sector and voluntarily from non-agricultural establishments employing ten to 24 workers in the private sector (http://www.dget.nic.in, accessed 28 July 2008). The estimate of the employment in the unorganized sector is derived from deducting the organized sector employment from the estimated total employment (based on census or NSSO data).

Table 2.4 Employment in organized and unorganized sectors for selected states in India 1993-94 and 2004-05 (in thousands)

States	1993-1994			2004-05		
	Total Employment	Organized Sector	Share of Organized Sector in Total (%)	Total Employment	Organized Sector	Share of Organized Sector in Total (%)
Andhra Pradesh	36 036.3	1 877.7	5.21	40 109.62	2 042.8	5.09
Bihar	31 213.49	1 701.3	5.45	39 063.77	1 569.2	4.02
Gujarat	19 179.24	1 701.7	8.87	24 907.14	1 693.5	6.80
Karnataka	22 121.96	1 530.5	6.92	26 977.67	1 862.1	6.90
Maharashtra	37 854.55	3 766.2	9.95	47 605.74	3 540.9	7.44
Tamil Nadu	28 139.21	2 381.5	8.46	30 715.13	2 278.7	7.42
Uttar Pradesh	54 058.08	2 656.8	4.91	69 559.09	2 349.2	3.38
West Bengal	26 540.35	2 332.1	8.79	32 164.56	2 038.8	6.33
All India	**348 697.8**	**24 306.4**	**6.97**	**425 712.8**	**23 276.6**	**5.47**

Source: Ramaswamy (2007a)

What stands out is that the share of the organized sector employment declined in all the states considered here (though marginally in Karnataka) as well as the national level. The data also bears out the view that organized sector employs only a small share of total number of workers in India– its share ranged from about 5 per cent to about 10 per cent in 1993-94 and from around 3 to 7 per cent in 2004-05 in the states, while at the national level it was from 5.5 to 7 per cent in the same period. Although the share of the organized sector in total employment was low and even declined in Tamil Nadu, it (as well as Maharashtra) had more employees in the organized sector than other states considered here, especially in 2004-05.

Table 2.5 Employment in organized and unorganized sector in manufacturing 1999-2000 and 2004-05

States	1999-2000			2004-05		
	Total Employment in Manufacturing Sector	Formal Sector Employment	Share of Employment in formal Sector in Total (%)	Total Employment in Manufacturing Sector	Formal Sector Employment	Share of Employment in Formal Sector in Total (%)
Andhra Pradesh	3 016 049	910 356	30.18	4 394 914	864 112	19.66
Bihar	2 581 110	271 834	10.53	2 799 276	201 933	7.21
Gujarat	2 652 779	822 884	31.02	4 260 745	729 310	25.76
Karnataka	2 427 132	491 789	20.26	2 848 470	507 410	17.81
Maharashtra	4 514 767	1 217 260	26.96	5 933 084	1 114 070	18.78
Tamil Nadu	5 395 494	1 103 970	20.46	6 488 435	1 162 594	17.92
Uttar Pradesh	6 403 801	606 055	9.46	8 523 443	611 164	7.17
West Bengal	5 299 075	588 968	11.11	5 617 190	515 267	9.17
All India	**41 144 148**	**7 689 576**	**18.69**	**52 608 218**	**7 361 295**	**13.99**

Note: The data released under the *Annual Survey of Industries* (ASI) by the Central Statistical Organization (CSO) is used here as employment in formal sector.

Source: Ramaswamy (2007 a).

The Factories Act, 1948 covers factories working on power employing more than nine workers and more than 19 workers in those not utilizing power. This forms the basis of the Annual Survey of Industries data taken to represent the formal manufacturing sector. To arrive at the numbers in the informal manufacturing sector, 'residual' method is applied by deducting the ASI employment figures from the total employment number in manufacturing as estimated by the NSSO (in the respective rounds). The informal segment of the manufacturing sector has a significant share in all the states (considered here) and at the national level ranging from 82 to 93 per cent in 2004-05. In the case of Tamil Nadu, the informal segment in manufacturing sector accounted for about 80 per cent in 1999-2000 and 82 per cent in 2004-05. The formal segment's share in the manufacturing sector was highest in Gujarat, accounting for 25 per cent in 2004-05.

Employment in the Organized Sector in Tamil Nadu

A look at the trends in employment in the organized sector reveals that the sector has been losing rather than generating employment in the recent years. The trend in employment level in private and public sectors are given in Table 2.6.

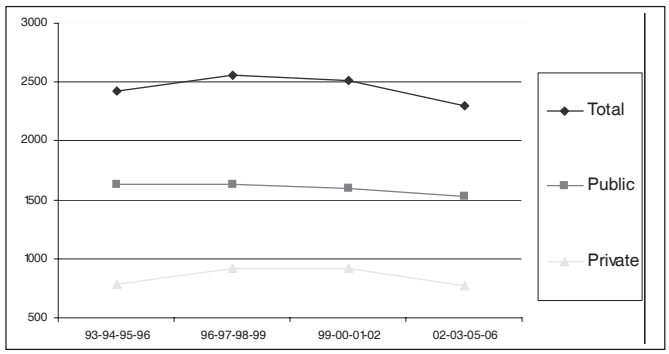
Table 2.6 Average employment levels and growth rates of them by sectors, 1993-94 to 2005-06

Year	Total Employment	Public Sector	Private Sector
1993-94 to 1995-96	2 419.033	1 633.3	785.7333
1996-97 to 1998-99	2 553.967	1 634.6	922.2667
1999-00 to 2001-02	2 515.533	1 598.6	916. 9333
2002-03 to 2005-06	2 298.225	1 531.025	767.2
Simple Growth Rates (%)			
96-97/98-99 over 93-94/95-96	5.58	0.08	17.38
99-00/01-02 over 96-97/98-99	-1.50	-2.20	-0.58
2002-03/2005-06 over 1999-00/2001-02	-8.64	-4.23	-16.33
2002-03/2005-06 over 1993-94/1995-96	-4.99	-6.26	-2.36
2002-03/2005-06 over 1996-97 to 1998-99	-10.01	-6.34	-16.81

Source: *Tamil Nadu: An Economic Appraisal*, Evaluation and Applied Research Department, Government of Tamil Nadu (various issues); for the period 2001-02 to 2005-06, http://www.tn.gov.in/dear/tab06/a98.pdf[2 August 2008].

The downward trends in employment (Fig. 2.1) also show that private sector has fared poorly compared to the public sector. The organized sector in general has not been generating jobs in the recent years; in fact, they have been losing jobs (see figure 2.1). The public sector has not fared as poorly as its counterpart, the private sector in the recent years.

Fig. 2.1 Trends in Employment in the Organized Sector, 1993-94 to 2005-06



Source: *Tamil Nadu: An Economic Appraisal*, *Ibid.*

The organized sector generated jobs from 1993-94 to 2005-06. During this period, employment in private sector grew much faster (18 per cent) than that in the public sector (less than 1 per cent). The succeeding periods witnessed negative growth in employment that worsened with passing years. The overall employment declined by 9 per cent in the last two sub-periods with loss in the private sector much higher than that in the public sector. The decline is more significant if the employment levels from 2002-03 to 2005-06 are compared with those from 1996-97 to 1998-99. Although these findings seem to contradict data (generated by the Office of the Chief Inspector of Factories, Chennai) reflecting the rising trend in factory employment, it should be remembered that manufacturing sector accounted for only 20 per cent in the total organized sector employment during 2001-2005 while public sector is a minor player in this sector (see Table 2.7). Hence, the trends in the employment in other sectors are bound to influence the employment patterns in the total organized sector.

Table 2.7 Distribution of employment in the organized sector, 2005-06
(in thousands)

Industry	Public Sector	Private Sector	Total	% Share
Agriculture, Hunting, Fishing, etc.	30.5	49.0	79.5	3.56
Mining & Quarrying	22.9	3.7	26.6	1.19
Manufacturing Sector	86.9	395.5	482.4	21.63
Construction	46.0	3.5	49.5	2.22
Electricity, Gas, Water & Sanitary Services	61.2	0.9	62.1	2.78
Wholesale & Retail Trade & Restaurants	36.6	48.2	84.8	3.80
Transport, Storage & Communications	294.5	7.1	301.6	13.52
Finance, Insurance, and Real Estate	139.9	21.7	161.6	7.25
Community, Social & Personal Services	782.2	200.0	982.2	44.05
Total	**1500.7**	**729.7**	**2230.4**	**100.00**

Source: As in Fig.2.1

Employment in Factories

Employment data (1995-2007) given in Table 2.8 reveals that while the number of factories grew by 80 per cent, there was an increase in employment by 37 per cent during the same period.

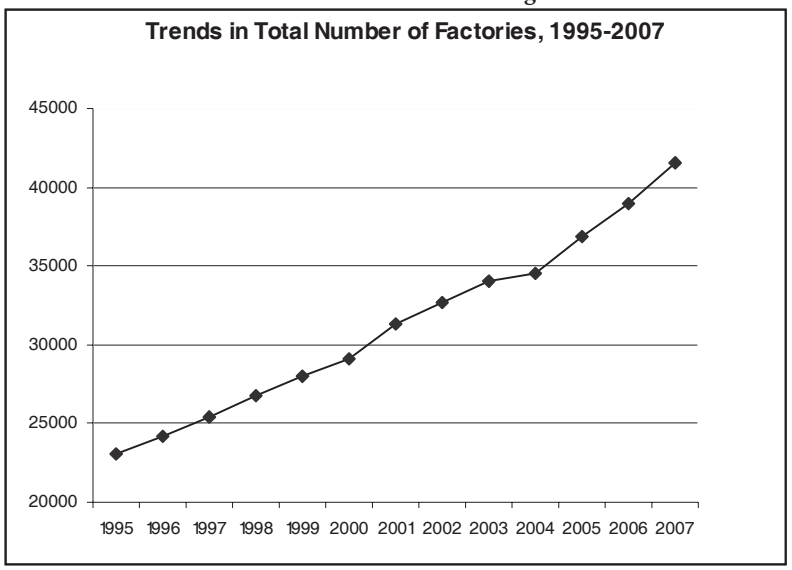
Table 2.8 Details of Registered Factories under the Factories Act, 1948

Year	Total Number of Factories	Total Number of Workers
1995	23 053	1 038 535
1996	24 169	1 067 852
1997	25 443	1 103 763
1998	26 767	1 137 418
1999	27 991	1 162 411
2000	29 080	1 186 448
2001	31 343	1 223 060
2002	32 723	1 237 653
2003	34 071	1 256 120
2004	34 520	1 270 599
2005	36 867	1 320 613
2006	38 976	1 369 376
2007	41 591	1 426 991

Source: Office of the Chief Inspector of Factories, Chennai.

The table above indicates the impressive growth in the number of factories, from around 23000 in 1995 to more than 41 000 in 2007. This amounts to an increase of 80 per cent over the 13 year period since the mid-1990s.

Fig.2.2 Trends in total number of factories 1996-2007.



Source: Office of the Chief Inspector of Factories, Chennai.

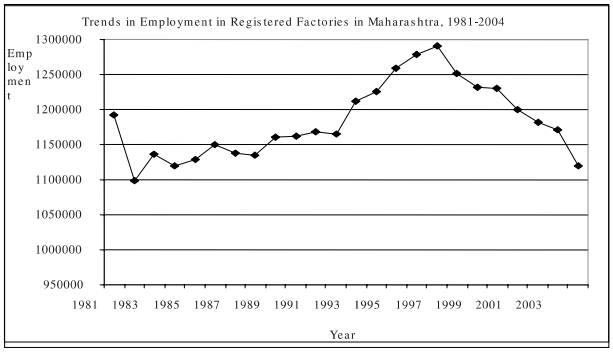
The pro-investment policies such as provision of free or subsidized land, availability of literate, educated and skilled manpower, relatively low levels of industrial unrest were cited by the investors for preferring Tamil Nadu to states such as Maharashtra (Shyam Sundar,2008 d).

Fig. 2.3 Trends in no. of workers in factories 1995-2007.

Source: As in Table 2.2

Trends in employment in the factory sector in Maharashtra, witnessed a downward slide from mid-1990s.

Fig.2.3 Trends in employment in registered factories in Maharashtra 1981-2004



The annual average growth rates in the number of factories and the number of workers will reveal the pace of growth which influenced the rising trend in the case of Tamil Nadu.

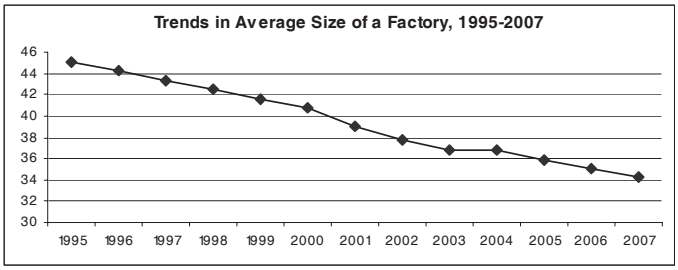
Table 2.9 Annual average growth rates of the number of factories and number of workers employed, 1996-2007

Period	Number of Factories	Number of Workers Employed
1996-08	5.10	3.08
1999-01	5.41	2.45
2002-04	3.28	1.28
2005-07	6.41	3.95

Source: Office of the Chief Inspector of Factories, Chennai.

Table 2.9 shows that the number of factories increased faster than rate of increase in employment. While the average growth of employment sagged during 1996-2004 and picked up remarkably in the last three years, the average growth rate of factories was higher and rising, except during 2002-04. This leads us to the enquiry in the size of the factories in Tamil Nadu in recent years.

Fig. 2.4 Trends in average size of a factory, 1995-2007



Source: Office of the Chief Inspector of Factories, Chennai.

Figure 2.4 reveals that the average size of the factory in Tamil Nadu (i.e. number of workers employed per factory) showed a clear downward trend – a result of faster rate of formation of factories and slower rate of growth of employment therein.

Statistics on the extent of employment of contract labour in selected states have been presented in Table 2.10. It is to be noted that the official statistics on contract labour is a gross underestimate. Nevertheless, it shows that the share of contract labour in total workers has gradually increased.

Table 2.10 Proportion of contract labour in Tamil Nadu, 2000-01 to 2004-05

Year	Proportion of contract labour
2000-01	7.82
2001-02	9.10
2002-03	9.49
2003-04	11.33
2004-05	13.30

Source: *Annual Survey of Industries* (ASI) (various issues), Central Statistical Organisation, New Delhi.

The comparative picture of use of contract labour in selected states is given in Table 2.11.

Table 2.11 Proportion of contract labour in selected states, 1995 and 2002

State	1995	2002
Andhra Pradesh	49.2	62.1
Gujarat	23.5	31.3
Karnataka	8.1	9.3
Maharashtra	12.8	16.3
Tamil Nadu	4.4	7.21
Uttar Pradesh	13.5	25.9
West Bengal	5.3	7.6

Source: Pages and Roy (2006: Table 9, p.375).

Incidence of contract labour has grown in all the states that are considered here but the growth has been moderate or small in all states except Andhra Pradesh, Gujarat and Uttar Pradesh. The use of contract labour seems to be limited in Tamil Nadu, West Bengal, and Karnataka, while it is very high in Andhra Pradesh.

There seems to be the worrying trend in the rise of employment in the unorganized sector in the state. We also see that although parts of the organized sector have showed decline in employment, manufacturing sector has performed well against the odds - both the number of registered factories and the employment therein witnessed a surge in the last ten to 13 years. However, decline in employment in the organized sector in general and the rising employment in the unorganized sector do not bode well for the health of the labour market.

CHAPTER 3

Labour Law and Labour Reforms

It must be stated at the outset that this chapter intends to discuss labour laws that deal with inspections and industrial relations issues alone. Unlike Maharashtra, Gujarat and West Bengal, there are no state laws on industrial relations in Tamil Nadu. The state has however, made some significant amendments in the central laws on subjects mentioned above and has taken measures relating to labour administration including inspections.

Nature of Labour Jurisdiction in India

The Constitution of India determines the distribution of legislative and administrative matters between the state governments and the Central Government in three lists – the Union List, State List and Concurrent List (Table 3.1). The subject of "Labour" figures only in the Union and the Concurrent Lists. Both the Central and the state governments are competent to frame laws relating to Labour except in some cases where central government alone can intervene.

Table 3.1 Distribution of items in the Constitution of India

Union list	Concurrent list
Entry No.55: Regulation of labour and safety in mines and oil fields	Entry No.22: Trade unions, industrial and labour disputes
Entry No. 61: Industrial disputes concerning Union (Central) employees	Entry No.23: Social security and insurance, employment and unemployment
Entry No.65: Union agencies and institutions for vocational training	Entry No.24: Welfare of labour including conditions of work, provident funds, employees' invalidity and old age pension and maternity benefit

Source: GoI (2007).

The laws passed by the Central government on these issues cover the states unless specified otherwise. The states are empowered under the Central Acts to frame rules in order to implement the provisions of the Acts and suit their individual circumstances. They are also allowed to amend the provisions of the Central Acts by notification or amending Acts. More importantly, the state governments can pass their own laws. The constitutional principle resolving the conflict between the state and the central law on the same subject is that the former remains void to the extent of repugnancy to the latter (Article 254 of the Constitution of India). Further, Presidential assent is needed in case of laws undertaken by the state on matters in the Concurrent List. The present chapter provides a brief overview of the labour laws that govern the labour market and industrial relations system in Tamil Nadu.

Labour Laws in Tamil Nadu: A Brief Introduction

The Factories Act, 1948 (a central law) and the Tamil Nadu Shops and Establishments Act, 1947 (a state law) (Shops Act, in short) are two generic labour laws that seek to define and regulate working conditions in factories, shops and establishments in the organized sector. They are generic in the sense that the provisions of several labour laws apply to factories and establishments covered by these two laws, especially the Factories Act. Apart from these two, there are central labour laws that regulate various aspects of wages (payment of wages, minimum wages, bonus, etc.), industrial relations (trade unions, industrial disputes, employers' actions such

as lay-offs, retrenchment of workers and closure of firms besides standing orders etc.), and social security (provident fund, employees state insurance, gratuity etc.).

Tamil Nadu Shops and Establishments Act, 1947

The Preamble of the Act states that it seeks to "provide for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments ..." (Vaidyanathan and Srividhya, 2005). It covers the city of Madras (now called Chennai), the municipalities constituted under the Madras District Municipalities Act, 1920 and all areas within the jurisdiction of *panchayats*, under the Madras Village *Panchayats* Act, 1950. The government may by notification extend the Act to "any other area". The term "establishment" covers "a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment" and other establishments notified by the state government [Section 2 (6) of the Act]. Apart from the introductory chapter, the Act is spread over nine chapters. Chapters II and III deal with aspects like opening and closing hours, daily and weekly hours of work, holidays and so on in shops and establishments other than shops, respectively. Chapter IV concerns with the employment of children and young persons. According to the Act, a "child" means a person who has not completed 14 years of age [Section 2 (1)] and "young persons" mean persons in the age group 14 and 17 [Section 2 (20)]. Chapter V provides detailed directives regarding various aspects of health and safety such as cleanliness, ventilation, lighting, and precautions against fire. Chapters VI and VII deal with issues concerning wages such as payment during holidays and leave like sick leave, fixation of wage period, wages for overtime work, deductions and fines and so on. Section 41 (in Chapter VII) deals with dismissal of employees. The employers can dismiss an employee who has worked "continuously" for a period of six months only after serving her one month's notice or wages in lieu of it. However, these are not necessary if a "reasonable cause" exists for dismissal or if the employee is charged with "misconduct" that is supported by "satisfactory evidence" recorded upon enquiry. Employees can "appeal" to the authority notified by the government against the dismissals without notice. The decision of the authority concerned shall be binding on both the employer and the employee. Chapters VIII and IX relate to issues of workplace governance such as appointment, powers, duties of inspectors and penalties for acts of employers and employees. The final section deals with "miscellaneous issues" such as maintenance of registers and records and the rules regarding display of notices by the employers.

The Factories Act, 1948

The Factories Act applies to factories employing ten or more workers using power and to those not using power supply but employ 20 or more workers. Section 85 of the Act empowers the state government to apply the provisions of the Act to any place carrying out manufacturing process with or without the aid of power even if it employs at least ten workers. The state government exercises this power from time to time and extends the coverage of the Act. The occupier or manager of a factory coming under the purview of the Act has to get her factory registered and obtain license for the same from the Chief Inspector. Chapter II of the Act deals with health aspects, viz. cleanliness, disposal of wastes and effluents, suitable lighting, sufficient latrines, urinals, spittoons etc. Chapter IV describes the safety measures to be adopted to avoid occurrence of accidents and ensure safety of workers. All factories employing more than 1000 workers or engaged in manufacturing processes involving high risk should employ safety officers. It is important to take note that significant additions were made to the Act in 1987 (such as

Section 7-A, Chapter IV-A, 111-A) with regard to health and safety of workers. Trade unions complain that India has not ratified conventions relating to occupational safety and health (Mahadevan,2004), viz. Convention No.155, Occupational Safety and Health Convention, 1981 and Convention No.161, Occupational Health Services Convention, 1985 – it may be relevant here to note that extent of ratification of these two conventions is not high: 52 countries have ratified the Convention No.155 and 27 the Convention No.161 (http:www.ilo.org/ilolex/English/newratframeE.htm, accessed 27 August 2008). Section 7-A defines general duties of the factory owners in ensuring health, safety and welfare of workers. The general duties include among others, provision of safe and risk-free plant and system of work, provision of information, instruction and training and supervision to ensure health and safety of workers. This section is reported to have been copied from the British laws (MKI 1988). Chapter IV-A consists of provisions relating to hazardous processes. It requires the owner to disclose information regarding dangers involved in the process and the measures to overcome such hazards. Section 41-G requires the constitution of a Safety Committee consisting of equal number of representatives of workers and management to promote cooperation between the two in maintaining proper safety and health at workplace. Section 111-A defines the rights of workers on this crucial aspect of health and safety, whereas the old Section 111 defines the obligations of workers. Workers can get information on aspects relating to their safety and health, get training on health and safety, and approach the inspector directly or through their union on issues such as inadequate provision for protection of their safety and health in the factory.

All factories should provide washing facilities, first-aid appliances etc.; factories with more than 250 workers should have canteens, those with more than 150 workers shelters, rest and lunch rooms, and those having more than 30 women workers crèches. The factories employing more than 500 workers should employ welfare officers. Chapter VI regulates the working hours of adults. A worker can be employed for a maximum of nine hours a day and a maximum of 48 hours in a week and should be given a interval rest of at least half an hour after 5 ½ hours of work. If she works more than the legal time, overtime pay of double the normal rate of wages has to be paid. There must be a weekly holiday. A woman worker cannot be employed between 10 p.m. and 6 a.m. This clause has become a bone of contention. This has been challenged on the ground of gender discrimination. Rule 102-A (inserted by a Government Notification on 21 February 2005, allows women employed in fish cutting and fish canning factories to work night shifts subject to certain conditions. The workers completing 240 days of work in a factory should be granted leave with wages in the subsequent year calculated at the rate of one day for every 20 days worked in the previous calendar year (for adults) and one day for every 15 days for child workers.

The Minimum Wages Act, 1948

The Minimum Wages Act, 1948 requires the appropriate government, Central or state, to fix or revise the minimum rate of wages and the normal working hours relating to workers in employment specified in the Schedule appended to it and added to the Schedule from time to time by the state government. It covers all types of workers, skilled or unskilled, manual or clerical, directly employed or outworkers. The Trade Unions Act 1926 seeks to confer a legal and corporate status on the registered unions. Following an amendment in 2001, only trade unions with at least 10 per cent of the workers in an establishment/industry or 100 workers, whichever is less, subject to a minimum of seven will be allowed to register under the Act. The Registrar of trade unions

has powers to register and de-register unions (depending on whether they fulfil the conditions of the Act or violate its provisions). The Industrial Employment (Standing Orders) Act 1946 applies to industrial establishments employing 100 or more workers. The industrial establishments covered under the Act are required to frame standing orders which define the conditions of employment "with sufficient precision" and the rights and duties of workers and employers. The two objectives of the Act are to establish uniform conditions of employment and disseminate these to workers.

The Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 does not apply to persons employed mainly in managerial or administrative capacity and those employed in supervisory capacity and draw wages exceeding Rs.1600 per month and exercise functions mainly of a managerial nature. The Act primarily seeks to create institutions (and rules of conduct) to prevent and settle industrial disputes and work stoppages, define the rules governing conduct of work stoppages, and regulate the powers of certain establishments to change conditions of work, to lay off and retrench workers and to close them down. It has created six institutions (a) works committee (in the establishments employing 100 or more workers), (b) conciliation officer or board, (c) court of inquiry, (d) collective bargaining (e) voluntary arbitration, and (f) labour courts and industrial tribunals (at national and state levels) to prevent and settle industrial disputes and work stoppages. We summarize here the main aspects of this law. The government can intervene in the industrial disputes or work stoppages, either apprehended or actually occurred. It can refer industrial disputes or work stoppages for compulsory adjudication – it is compulsory in two senses, viz. the parties to the dispute have to accept state intervention and participate in the legal process initiated by labour judiciary bodies like the labour court or industrial tribunal; the award of the labour judiciary body is binding on the parties. The state seeks to intervene in employment matters and restrict the freedom of the employers in several ways. Section 9-A of the Act requires the employers to serve notice of change to the affected workers relating to matters specified in the Fourth Schedule (wages, contribution to provident fund, allowances, hours of work, leave and holidays, rationalization or improvement of plant or technique resulting in retrenchment of workers, change in number of persons employed and so on) appended to the Act to the affected workers. The labour judiciary can reverse the dismissal or suspension decision of the employers and reinstate the workers if they are not lawful. Employers are required to maintain the service conditions during the process of conciliation or legal process. Chapters V-A and V-B of the Act are somewhat controversial. The main aspects of these two chapters are summarized here. The two chapters deal with issues relating to lay-off, retrenchment and closure (hereafter referred to as employers' actions). Chapter V-A relates to establishments employing 50 to 99 workers and is less restrictive than the subsequent chapter, which applies to those employing 100 or more workers (revised with effect from 1984 from the original threshold of 300 or more). Chapter V-A along with the definitions of lay-off and retrenchment were inserted in 1953; regulation began much earlier than popularly realized. A worker who has been in continuous service (*i.e.* has worked for 240 days in a year) is eligible for compensation for lay-off and retrenchment. The lay-off compensation is half of the total of basic wages and dearness allowance. The workers proposed to be retrenched should be given (a) one month's notice or wage in lieu of it, (b) notice to the government and (c) compensation equivalent to 15 days' of average pay for every completed year of service. Similar compensation should be paid to workers affected by transfer of undertaking (introduced with effect from 1956).

An employer intending to close down the undertaking should give 60 days' notice to the government (inserted in 1972). The affected workers should be compensated in the event of closure at the rates specified for retrenchment. The principle of 'last in first out (LIFO)' should be followed while retrenching the workers. Retrenched workers should be first considered for re-employment if they offer themselves for employment.

The employers covered by Chapter V-B should take **prior permission** from the government to effect all the three employers' actions (see Table 3.2). The employer should serve notice to the government (and the workers affected) and if she does not hear from the government within 60 days from the date of application the government's permission is deemed to have been granted on the expiry of the said time. Period for notice to the government for lay-off and retrenchment has not been specified; it is 90 days for closure. The notice for lay-off and retrenchment is required to be given to affected workers and in the case of closure, it is to the 'representatives' of workers.

Table 3.2 Details Relating to Important Provisions in Chapter V-B[a] of the I.D. Act[b], 1947

S Nos.	Details	Lay-off	Retrenchment[c]	Closure[c]
1	Notice to	Workers	Workers	Workers' representatives
2	Notice Period	No	3 months	90 days
3	Notice to Government	Yes	Yes	Yes
4	Notice Period	No	No	90 days
5	Period for Consideration after which permission is deemed to be granted	60 days	60 days	60 days
6	Review of Government order[d] and reference for adjudication	Yes	Yes	Yes
7	Compensation (for every completed year of service)	*	15 days' average pay	15 days' average pay

Note: (a) This Chapter applies to industrial establishments employing 100 or more workers.

(b) Prior permission from the Government is required to effect the three actions of the employers.

(c) The powers exercised under Section 25(N) and (O) shall also be exercised by the Commissioner of Labour (by Government Notification dated 17 August 1994).

(d) The order of the Government granting or refusing permission on the three actions of the employer unless reviewed by it or by the labour judiciary shall remain in force for one year and is binding on all parties.

* Compensation for lay-off is not provided for in Chapter V-B.

The Contract Labour (Regulation and Abolition) Act, 1970

The two objectives of Contract Labour (Regulation and Abolition) Act, 1970 are to (a) provide for conditions for abolition of contract employment in some situations and (b) regulate the conditions of work of contract labourers. Social security laws like the Employees' State Insurance Act, the Maternity Act and the Employees' Provident fund Act also apply to contract labour. It applies to establishments employing 20 or more contract workers and to contractors employing 20 or more workers. The appropriate Government can extend the application of the Act to establishments or contractors employing less than 20 contract workers or workers. It is not applicable to establishments performing intermittent work, i.e. work performed for less than 120 days and seasonal work performed for less than 60 days. The Act also seeks to promote the health

and welfare of contract labour (Chapter V). Canteen has to be established where the contract work is scheduled to continue for some time and more than one hundred contract labourers are employed. Rest rooms with sufficient ventilation and lighting will have to be provided if contract labourers are required to stay at night at the workplace. The contractor should provide drinking water and a sufficient number of toilets, washing facilities and first-aid facilities. The contractor should pay wages to her workers in time. The liability in all these matters ultimately falls on the principal employer. However, the SNCL (2002:p.365) observes that "At many of the centres we visited, we were told during evidence, that there were cases of contractors making deductions from the wages of contract workers as their contribution towards social security, and then absconding ...".

The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act in 1981

On many occasions workers have been kept temporary in order to deny them various statutory and non-statutory benefits and conditions of work which are to be paid to permanent workers. The State Labour Advisory Board recommended to the government to enact a law to curb these unfair labour practices and to confer permanent status to workers with a continuous service of 480 days in a period of twenty four calendar months. Accordingly, the government passed an important law, viz. The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act in 1981 and it came into force from January 1, 1982. It applies to factories, plantations, motor transport undertakings, beedi industrial premises, shops and commercial establishments, catering establishments and other establishments which the government may notify from time to time. It does not apply to (a) establishments until the expiry of two years of existence, (b) industrial establishments employing less than 20 workers on any day preceding twelve months, (c) persons employed in police and prison service and persons being employed in a supervisory capacity and drawing wages exceeding Rs. 3,500 per month and exercises functions of a managerial nature and (d) workers employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work, whether structural, mechanical or electrical.

Reform Measures

It may be helpful to note the changes in the economic environment in order to understand the changes proposed or actually introduced in labour and industrial policies of the state governments in India including Tamil Nadu. Since 1948, the industrial economy was subject to a number of controls such as industrial licensing policy, location policy, monopoly restrictive policies etc. The public sector assumed a dominant even commanding role in shaping the industrial and economic development of the country. On the external trade front, the government adopted an "import substitution" policy to achieve "self reliance" in economic sphere; "export pessimism" also contributed to these policies. It was a "command economy" wherein economic planning and regulation played important roles not only to spearhead industrial development but also to protect domestic industries from external competition. The regional governments enjoyed little autonomy and were expected to operate in the macro economic framework designed by the Central government. The inefficiencies arising out of the highly regulated and closed industrial economy and the failure of the public sector led to a call for economic reforms. The process of economic reforms was gradually initiated from mid-1980s. But significant economic reform process began with the announcement of the New Economic Policy in June 1991 and since then a number of

reform policies relating to product market, viz. trade, licensing, location, pricing, and foreign investment have been initiated.

The pro-reform economists and institutions like the World Bank and the International Monetary Fund (IMF) argue that reforms relating to the labour market and the industrial relations system (popularly known as "labour reforms") are complementary to reforms in the product market and hence necessary to reap the maximum pay off arising out of the economic reforms. The major labour reform measures expected by business and pro-reform economists include freedom to lay off and retrench workers and close down establishments without government permission, freedom to change conditions of work, removal of abolition of contract labour system provision in the law, no restrictions on employment of contract labour in at least peripheral activities, privatization of public sector establishments etc.,(Shyam Sundar, 2005a). Time and again ruling political parties and their coalitions at the Centre made several attempts to introduce some of the labour reforms but in vain (Shyam Sundar, 2010a; Shyam Sundar and Venkata Ratnam 2007). These attempts did not succeed. It is important to understand that labour reforms unlike economic reforms such as trade reforms or capital market reforms are "populist" in nature, are socially visible and involve social and political costs. Trade and capital market reforms are "elitist" in character and are socially invisible. Hence, they were easy to implement. Labour reforms belong to 'mass politics' as opposed to say reform in capital markets. Labour reforms "have potentially negative or highly uncertain consequences in mass politics" (Varshney, 1999, p.249). The reforms would affect workers in the organized sector who are small in number but are well organized and can inflict tremendous costs on the government and society. Predictably, the labour reform measures met with protests, strikes and opposition; the trade unions and even opposition political parties cutting across political and ideological divisions put up a united stand against these reform measures (Shyam Sundar, 2009). The electoral defeat of the NDA government and some pro-reform governments (such as in Andhra Pradesh, Orissa) has been interpreted as vote against their economic policies and might well have prompted political parties to be careful in their experiments in future.

One of the solutions to this dreadful deadlock has been to shift the reform initiative to the state governments. There are reasons to use federal politics on the issue of labour reforms. Labour is in the Concurrent List of the Constitution whereby even state governments can legislate on certain matters. Further, the state governments are important agencies of enforcement of the central as well as the state laws. The state governments are in competition for 'capital' and it makes sense to offer incentives to attract capital; flexibilities in the labour sphere are some of them. The labour reforms at the State level unlike at the Central level would 'localize' workers' protests. Also, the unions may not often know what is happening in other States. There is then the 'policy learning' angle to this (Jenkins, 2004). Reforms in one state are cited as an example by employers in another state to put pressure on the government of the latter to execute similar reforms in it. For example, the employers' organizations asked their respective State governments to follow the course taken by Karnataka after it had enacted the Industrial Facilitation Bill which considerably eased the transaction costs of business in the State (see CII 2004, a, b). The 'policy learning' could also be at the national level. The Government of Maharashtra announced its intentions in 2001 (and later) of amending Chapter V – B of the ID Act to make it applicable to establishments employing more than 299 workers. The employers' organizations caught on to this policy announcement and demanded that the Central government implement the so-called "Maharashtra Model" (Shyam Sundar, 2005a).

Studies on developed countries (19 Western and Eastern European nations) has shown that other things being equal, foreign capital is likely to go a region, if the receiving region offers a more flexible labour market relative to the source country (Javorcik, Spatareanu, 2005). The same logic can be applied to domestic investments also; firms would exit a state and go to another state if the latter offers a more flexible labour market relative to its original base. States in India enjoy some liberty in shaping labour laws and regulations. It is then natural that they compete with one another in announcing various employer-friendly labour reform measures. The State governments have seized on the positive initiatives arising out of the incentives in the form of flexibilities on labour front. State governments seek to introduce changes in the labour regulatory system (such as relaxing labour inspection system, amending labour laws, simplifying procedures in relation to maintenance of informational system etc) to attract capital. They may also make amendments to the central labour laws. Tamil Nadu too has sought to introduce several labour reform measures which are reviewed next.

The Industrial Policy introduced in 2003 by Tamil Nadu states that "there is a need to review existing labour laws like those pertaining lay-off, retrenchment, engagement of contract labour and flexibility of timings of work" (GoT 2003). However, it assured that it would bear in mind the recommendations made by the Second National Commission on Labour (SNCL) and introduce reforms with a human face and with the concurrence of Government of India. The aim of the reforms was to ensure a harmonious and competitive working environment where productivity was rewarded and flexibility available. The shift in the government policy was visible: from undue stress on industrial harmony during the planning period (Shyam Sundar, 1999a) to stress on competitiveness, productivity and flexibility in the current economic environment (Shyam Sundar, 2005b).

Inspection and Self-Certification

The Chief Inspector of Factories (CIF), Chennai recently made some proposals regarding inspection of factories covered by the Factories Act and these were examined and accepted by the Government as well as the Planning, Development and Special Initiatives Department. The policy decisions on factory inspections are as follows:

- The small scale industrial (SSI) units not engaged in dangerous operation and hazardous processes will be inspected on a random basis once in *five* years and those SSI units engaged in the aforementioned activities will be inspected *once in every six months*.
- All match and fireworks units will be inspected once in every three months. Apart from these regular inspections, there will be *check inspections* of major accident hazard (MAH) factories and *squad inspections* under the Child Labour (Prohibition and Regulation) Act, 1986 to eliminate child labour – five inspections every month by officers concerned (*vide* Labour and Employment Department (R1) Department, G.O. (D) No.599, dated 7 September 2006). It is interesting to note that the relaxations of inspection of factories have been extended to the small scale industries. This was recommended by a few committees on the subject (ASCI, 2001; Hussain Committee, 1997; Prasad, 2008).
- Employers in Tamil Nadu were interested in the self-certification process introduced in the state (Interview with Sharad Patil in 2006, Shyam Sundar, 2008d) . The state government has *rejected* its introduction in the state primarily on the ground that this will have serious implications for occupational health and safety aspects in the factories (Discussion with Venkatraman and the Administrative Officer, Office of the CIF, Chennai).

The IT Sector

The software companies are exempted from the provisions of Chapters II and III of the Tamil Nadu Shops and Establishments Act by a government notification issued on 24 December 2004 [*vide* G.O. (Ms.) No. 316, Labour and Employment (C)] (see Vaidyanathan and Srividhya, 2007). The provisions in Chapter II apply to shops, the sections in it deal with opening and closing hours, daily and weekly hours of work, spreadover of periods of work, closing of shops and grant of holidays. The provisions in Chapter III applies to establishments other than shops and the sections in it deal with opening and closing hours (section 13), eight hours of daily work and 48 hours of work in a week (section 14), weekly holiday (section 16). They are also exempted from Rule 6A of the National and Festival Holidays Rules 1959 which requires them to serve notices to the respective inspectors to work on a national or a festival holiday. The IT companies are further allowed to "self-certify" that they maintain registers and forms as required under several laws like the Tamil Nadu Shops and Establishments Act (and the Rules formed therein), the Payment of Wages Act, the Minimum Wages Act, the Workmen Compensation Act, the Contract Labour Act, the Employees' State Insurance Act, the Employment Exchanges Compulsory Notification of Vacancies Act, the Payment of Gratuity Act, and the Equal Remuneration Act. Further, after the first filing which is in manual form, they are permitted to file returns electronically (GoT, 2002). It may be noted that the government has also introduced the facility of combined annual returns under the Minimum Wages Act, Payment of Bonus Act, and the Payment of the Gratuity Act (CII, 2004a) for all the factories and other establishments covered under the respective laws.

Industrial Disputes Act

Chapter V-B of the Industrial Disputes Act requires that industrial establishments employing more than 99 workers seek permission for effecting their closure (and also retrenchment and lay off of workers). In 1985, the state government vested the powers under Section 25-O (which deals with prior permission for closure) with the Commissioner of Labour except the powers of review and the powers to refer the matter to a Tribunal for adjudication (*vide* G.O.Ms.No.235, dated 2 February, 1985). However, in 2001, the state government revoked the earlier order (vide G.O. (Ms) No.110, 27 July 2001).

Labour Laws and Special Economic Zones

In several states like Maharashtra and Gujarat significant reforms have been initiated to provide flexibility to establishments in the Special Economic Zones (SEZs) in their states (Shyam Sundar, 2008d; 2010a) The government in October 2004 exempted all units in SEZ from the provisions of Chapters II and III of the Shops Act [G.O. (D) No. 1289, Labour and Employment (C), 5 October 2004] (Vaidyanathan and Srividhya, 2007). The Labour Department has made a Draft Tamil Nadu SEZ Act for consideration and discussion (Office of the Commissioner of Labour, Chennai) which contains reform measures in several areas including those relating to labour. The proposals relevant to labour are listed below.

- The Development Commissioner of the Zone will be vested with the powers enjoyed by the Commissioner of Labour under the ID Act, i.e. to resolve industrial disputes and adopt dispute resolution mechanisms.
- The units in the Zone shall submit a combined Annual Statement of Compliance (ASoC) (as specified by the Regulations to be formulated) in place of all registers/

forms/returns under various labour laws and the units shall certify compliance with the provisions of the applicable labour laws. The units should be in a position to generate such information as asked by the Development Commissioner within 15 days' notice. In case of default or non-compliance, penalties (as specified in the Regulations) will be imposed on the defaulters. The Development Commissioner has the power to accept and scrutinize the ASoC and carry out such inspections as are prescribed by the Regulations.

- More importantly, Chapter V-B of the ID Act will be applicable to only those units in the Zone employing more than 299 workers as opposed to more than 99 workers outside the Zone.
- Section 9-A of the ID Act will *not* be applicable to the units in the Zone. The retrenchment compensation has been raised from 15 days as provided in the ID Act to 45 days per year of service.
- The Contract Labour Act will *not* be applicable to the establishments in the Zone. It may be noted that the CII in a Reform Note on the Southern Regions in 2004 has observed that engaging of contract labour has been allowed "in practice" in core areas for temporary periods (CII, 2004). Lastly, the government has, as other state governments (Shyam Sundar, 2010a, 2009b, 2008d) declared the industries and establishments in the Zone to be "public utility services" under the ID Act. This makes strikes virtually impossible (discussed further in Chapter on industrial disputes for legal details relating to strikes in public utilities). The policy stand of the present central government on the applicability of labour laws is given in Box 3.1.

Box 3.1

Central Government's Policy on Labour Laws in SEZs

The central government's views on proposals to relax provisions in some of the labour laws in SEZs by some state governments such as Andhra Pradesh, Madhya Pradesh and Maharashtra are: (a) there should be no relaxation of provisions relating to safety and health of workers; (b) the provisions of the central acts need not be relaxed by state governments; (c) provisions of the bills of the state government should not contravene the central bills under consideration; and (d) the principles contained in the National Common Minimum Programme (NCMP) such as no to hire and fire and labour reforms by consensus should be scrupulously observed by the state governments (*Economic Survey*, 2004-05, p.165). The central government declared that in case of units inside the Zone, "the powers under the Industrial Disputes Act and other related labour Acts would be delegated to the Development Commissioner and that the units will be declared as a Public Utility Service under the Industrial Disputes Act" (Debroy, 2007). Further, in replying to a question on labour laws violation and retrenchment of workers in Maruti Udyog Ltd. the Labour and Employment Minister K Chandrasekhar declared in Parliament that labour laws would not be relaxed in case of units inside the SEZs (*Indian Labour Journal*, Oct. 2005, p.961).

Miscellaneous Reform Measures

Section 41 of the Shops Act requires the employers covered by the Act to provide their employees with at least one month's notice or wages in lieu of it and forbids them to dismiss without a reasonable cause; however, the notice is not required if the employee is dismissed on grounds of misconduct proved by an enquiry. The government has introduced a significant amendment on 3 June 2008 (sections 41-A and 45-A) whereby if any appellate authority orders reinstatement of the employee and the employer concerned prefers proceedings in the higher

courts, the employer shall pay full wages drawn by the employee and any maintenance allowance provided for under any rule provided the employee is not employed elsewhere during the period of pendency of the proceedings. If the employer fails to comply with this provision, she shall be imprisoned and or fined (section 45-A).

Labour Administration in Tamil Nadu

The Department of Labour and Employment (DLE) was formed in 1972, after trifurcation from the Industries, Labour and Housing Department in the Secretariat (http://www.tn.gov.in/rti/proactive/labour/handbook_labour_employment.pdf, accessed 2 August 2008). The Department of Labour and Employment (DLE) deals with matters relating to industrial relations, health and safety of workers, labour welfare, employment exchanges and technical training. The Labour Minister heads the DLE and the administrative aspects are looked after by the Secretary, who is assisted by two Deputy Secretaries and a Special Secretary and they in turn are assisted by a number of Under Secretaries (Fig.A.1 in Appendix I). The Labour and Employment Department (Fig.A.2 in Appendix I) has four divisions: Commissioner of Labour (CoL), Commissioner of Employment and Training, Chief Inspectorate of Factories (CIFs), and Tamil Nadu Labour Welfare (Ibid.). The Office of the Commissioner of Labour deals with industrial relations and labour welfare. The Office of the Chief Inspector of Factories is concerned with technical aspects relating to health and safety. The Office of the Commissioner of Employment and Training operates two wings, the Employment Wing dealing with Employment Exchanges and the Training Wing with matters relating to technical training through Industrial Training Institutes and others. There are a host of institutions promoting labour welfare such as the State Labour Welfare Board (providing welfare to workers in the organized sector), the Tamil Nadu Construction Workers Welfare Board and the Tamil Nadu Manual Workers Social Security and Welfare Board (extending welfare benefits to workers in the unorganized sector).

The Office of the Commissioner of Labour

The Labour Department is part of the Labour and Employment Department in the Secretariat with the Commissioner of Labour as the Head (Fig. A.3 in Appendix I). The Department aims to create a conducive environment for ensuring industrial peace and respect for labour rights, especially those of the child workers and of the consumers to facilitate industrial growth (http://www.tn.gov.in/rti/proactive/labour/handbook-labour.pdf, accessed 2 August 2008). The Department performs several functions which are described in Table 3.3.

Table 3.3 Functions of Labour Department

S No.	Function	Description
1.	Conciliation	Resolving industrial disputes
2.	Enforcement	Ensuring protection to workers relating to working conditions, health, safety & welfare in establishments other than factories
3.	Quasi Judicial	Deciding claims for relating to payment (non-payment, less or delayed payment of wages), non-payment of minimum wages and equal wages, deciding claims under the Workmen's Compensation Act, Payment of Wages Act & Minimum Wages Act.
4.	Consumer Protection	Ensuring correct weight and delivery of consumer goods, checking of excess pricing and stamping of weights & measures.
5.	Trade Union Organization	Registration of trade unions under the Trade Unions Act.
6.	Social Security to Organized and Un-organized Workers	Tamil Nadu Labour Welfare Board, Tamil Nadu Construction Workers Welfare Board, Tamil Nadu Manual Workers Social Security and Welfare Board to provide various social security measures to the unorganized sector workers.

Source: http://www.tn.gov.in/rti/proactive/labour/handbook-labour.pdf, [2 August 2008]

The Commissioner of Labour is assisted by a team of subordinate officers, both at the head office and in zonal offices. The Commissioner of Labour is associated with various statutory and non-statutory bodies both at the state and central government levels. At the head office, the Commissioner of Labour is assisted by Additional Commissioner (Child Labour Monitoring Cell), Joint Commissioner of Labour (JCL, Administration), Joint Commissioner of Labour (Conciliation), Special Deputy Commissioner of Labour (SDCL), Deputy Commissioner of Labour (Inspection), Deputy Commissioner of Labour (Minimum Wages), three Assistant Commissioners of Labour (ACL), Administrative Officer (General, Weights and Measures), Public Relations Officer, and an Administrative Officer (Minimum Wages).

There are three Zonal Joint Commissioners of Labour at Chennai, Madurai and Coimbatore dealing with administration and enforcement of labour legislations in their respective jurisdictions. Regional Deputy Commissioner of Labour in nine regions, viz. Chennai (two divisions), Trichy, Madurai, Tirunelveli, Coimbatore, Salem, Dindigul and Coonoor assist the Zonal Joint Commissioners of Labour. The Joint Commissioners of Labour and the Regional Deputy Commissioners of Labour are notified as conciliation officers in their respective jurisdictions. The Regional Deputy Commissioners of Labour exercise control over Assistant Commissioners of Labour, Labour Officers, Inspectors of Labour, Inspector of Plantations and Deputy and Assistant Inspectors of Labour.

The Department is responsible for enforcing 29 labour laws (Table A.1 in Appendix I). The officers mentioned in the paras above perform multiple tasks. For instance, the Joint Commissioner of Labour (Conciliation) is a conciliation officer under the Industrial Disputes Act with state-wide jurisdiction, an inspector under the Payment of Bonus Act and also a Member-Secretary of the Equal Remuneration Advisory Committee (statutory) besides being the Chairman of the State Evaluation and Implementation Committee. The Deputy Commissioner of Labour (Minimum Wages) has been specially entrusted with the task of administration of the Minimum Wages Act and s/he is appointed as the Secretary of the Minimum Wages State Advisory Board; in addition, he acts as a conciliation officer, an inspector under the Minimum Wages Act, Chief Inspector of Motor Transport under the Motor Transport Workers Act, an Authority to hear appeal cases under Section 41 of the Tamil Nadu Shops and Establishments Act. The Regional Deputy Commissioners of Labour apart from exercising control over subordinate officers, discharge the following duties: conciliation officer under the ID Act, conciliation officer under the Cine Workers Act 1947, Commissioners for Workmen's Compensation Act, 1923 in their respective jurisdictions, additional registrars under the Trade Union Act, 1926 in their regions, authorities under Section 15 (2) of the Payment of Wages Act, 1936, authorities under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947, Appellate authorities under Section (6) of the Equal Remuneration Act, 1976, Appellate authorities to hear appeal against the orders of the Registration/Licensing Officers under the Contract Labour (Regulation and Abolition) Act, 1970, Authorities under Section 20 (1) of the Minimum Wages Act etc. The Assistant Commissioners of Labour also perform multiple functions such as the controlling authority, authorities to hear claims, registration officers, conciliation officers, and inspectors under two or three acts. The drawback is that the list of duties is much too long for an officer to handle.

The Office of the Chief Inspectorate of Factories

The office is presided over by the Chief Inspector of Factories. He is aided by a number of categories of officers such as Additional Chief Inspector of Factories (one), Joint Chief of Inspector of Factories (four), Deputy Chief Inspector of Factories (29), Inspector of Factories (51) and the Assistant Inspector of Factories (45). They are complemented by a Civil Surgeon, eight Assistant Civil Surgeons and an Accounts Officer. There are 24 divisions in the state for administering the Act. The organizational structure of the Office is given in Appendix I (Fig A.3). The office of the Chief Inspector of Factories performs broadly two functions, namely, (a) enforcing the Factory Act, 1948 and 13 other labour laws in the state (the 'regulatory function'), and (b) ensuring safety and health through training and development function (http://www.tn.gov.in/rti/proactive/labour/.handbook_CIF.pdf, accessed 2 August 2008).

Coverage of Labour Laws

Applicability of the Main Labour Laws

The Factories Act, 1948 and the Shops and Establishment Act, 1947 serve as the basis for coverage of the other labour laws, viz. in Tamil Nadu. The former is a central legislation and the latter a state law. Table 3.4 presents the applicability of the two Acts.

Table 3.4 Important laws and their application in Tamil Nadu

S. No.	Name of the Act	Coverage
1.	Factories Act	Applies to factories where manufacturing process is carried on (i) with the aid of power, employing ten or more workers or (ii) without the aid of power, employing 20 or more workers.
2.	Tamil Nadu Shops and Establishments Act	It covers all shops, commercial establishments, restaurants, eating-houses, residential hotels, theatre or any place of public amusement or entertainment and those which are under purview of the Act by the government in the whole of the state covering all municipalities.

As we have noted earlier that the Factories Act excludes factories employing workers below ten (operating with power) and below 20 (without power). The government can extend the provisions of the Act to any establishment employing less than the size criteria mentioned above. But the extent will not be significant enough to widen the coverage of the Act. The Office of the Inspectorate of Factories in Tamil Nadu has extended the Factories Act to a little over 3,000 factories (which accounts for nearly 15 per cent of factories totally covered in 2004) and these factories employ a lowly 27, 145 workers (they account for just 2.3 per cent of the total employment). The 3,172 small sized factories employ just around the same amount of workers employed by four factories employing more than 5,000 workers!

Table 3.5 Distribution of factories and employment therein by size of employment 2004

Class Intervals of Employment	Number of Factories	Number of Workers
Less than 10	3 172 (14.81)	27 145 (2.28)
10 – 19	6 210 (28.99)	97 422 (8.18)
20 - 49	6 423 (29.99)	210 149 (17.64)
50 – 99	3 464 (16.17)	255 943 (21.49)
100 –499	1 886 (8.81)	351 591 (29.52)
500 –999	198 (0.92)	135 888 (11.41)
1000 - 4999	61 (0.28)	87 313 (7.33)
5000 and over	4 (0.03)	25 768 (2.15)
Total	**21 418 (100.00)**	**1 191 219 (100.00)**

Note: Figures in brackets indicate percentages

Source: Office of the Chief Inspector of Factories, Chennai.

The Shops Act covers all the municipalities and areas within the jurisdiction of the panchayats (local bodies). The extent of coverage of the Act can be seen in the data on establishments registered under the Act and the employees therein. It may be noted that not all shops and commercial establishments will have employees. During 1993-95, there were on an average 295,028 establishments and 339,000 employees; the number of establishments increased to 303,606 during 1998-2000, while that of employees declined marginally to 334,333 (data from various issues of the *Indian Labour Statistics*, Labour Bureau). The Economic Census 2005 enumerated 4.45 million enterprises in the state (both rural and urban) and 9.87 million employees in them (http://mospi.nic.in/economic_census_press_note_pdf, accessed 10 August 2008). However, more than 90 per cent of the establishments enumerated by the Census and more than 95 per cent of the persons counted as employees are not covered by the Shops Act.

The extent of coverage of the law can be gauged through the number of regular and non-regular workers. Regular workers are usually permanent workers who enjoy rights and employment security. The non-regular workers such as contract workers do not enjoy employment security, though they are legally covered under the social security laws. It is known that employment of contract labour has increased in Tamil Nadu in the last five years, though the extent of rise in this form of employment in states such as Andhra Pradesh is much higher. It is also well known that official statistics on contract labour is at best an underestimate as some field studies and discussions with trade unions show a much higher incidence of contract labour. In fact, the rise in its incidence has sparked off some major industrial conflicts in the last few years (Shyam Sundar, 2010b).

We can see the coverage of labour laws by looking at the composition of employment of workers identified in various NSSO rounds (Table 3.6).

Table 3.6 Distribution of workers by status of employment in India (in per cent)

NSS Survey	Rural Male			Rural Female		
Period	Self-employed	Regular	Casual	Self-employed	Regular	Casual
July'93-June '94	57.9	8.3	33.8	58.5	2.8	38.7
July '99-June'00	55.0	8.8	36.2	57.3	3.1	39.6
July '04-June '05	58.1	9.0	32.9	63.7	3.7	32.6
	Urban Male			Urban Female		
July'93-June '94	41.7	42.0	16.3	45.8	28.4	25.8
July '99-June'00	41.5	41.7	16.8	45.3	33.3	21.4
July '04-June '05	44.8	40.6	14.6	47.7	35.6	16.7

Source: Kundu and Sarangi (2007)

Table 3.6 takes regular and casual categories as constituting wage employment, i.e. indication that a employer-employee relationship prevails. In the case of self-employment, the employer-employee relationship does not exist. Table 3.6 reveals that wage employment showed decline in most cases primarily because of fall in casual employment – in fact, the fall in casual jobs outweighed the rise in regular jobs in case of urban female. Second, self-employment rose in case of all categories, especially among rural women and to a lesser extent among urban men. More than half of rural workers and around 45 per cent of urban workers in India do not work for a direct employer. Thus, the elaborate legal framework of labour market and industrial relations system actually has little relevance for half of the workers in India. This is true even if we concern only with urban areas where non-agricultural activities abound. If we exclude casual workers from the ambit of labour laws, the 'protection-excluded segment' widens further. This should be a great source of concern for policy makers as to evolve protective and rights-oriented policies for the self-employed (Chandrasekhar and Ghosh, 2007).

The social security laws usually apply to factories (as defined in the Factories Act) and others - such as hotels, restaurants, shops, cinema and newspaper establishments (in case of ESI Act); mines, oil fields, plantations, ports, railways companies, shops etc. (for payment under the Gratuity Act). The government is empowered under the various acts to extend the law by its notification; but the coverage expansion has been slow and inadequate. Some laws like ESI Act, Provident Fund Act do not enjoy higher coverage.

The Minimum Wages Act, 1948 is the most important law that serves and protects the interests of workers especially in the unorganized sector. The law requires the government, central or state, to fix the minimum rate of wages payable to workers in jobs specified in Part I or Part II of the Schedule appended to it and to workers in the employments added to the Schedule from time to time by notification by the state government. It covers all types of workers, skilled or unskilled, manual or clerical, directly employed or outworkers. In 1993, the law covered employment in agriculture and forestry and 66 scheduled employments in Part I. By 2002, according to the Labour Bureau, the state government extended the coverage of the Act to 90 scheduled employments. Nevertheless, the coverage of the Act in terms of scheduled employments needs to be seen in relations to other states as well (Table 3.7).

Table 3.7 Scheduled employments under Minimum Wages Act in selected states in 2002

State	No. of scheduled employments
Andhra Pradesh	84
Bihar	74
Gujarat	50
Karnataka	71
Kerala	73
Tamil Nadu	90
West Bengal	54

Note: Scheduled employment means "an employment specified in the schedule appended to the Minimum Wages Act, or any process or branch of work forming part of such employment)" (Indian Labour Year Book for 2005 and 2006, p.56). Data for Maharashtra not available as it did not submit the returns under the Act.

Source: *Indian Labour Statistics 2005*, Labour Bureau (Table 4.5, p.76)

The Tamil Nadu government seems to have added a good number of scheduled establishments than other states considered here. We look at the actual coverage of the law by considering the number of establishments and the estimated number of workers covered during 1997-2005 (Table 3.8).

Table 3.8 Number of establishments and workers (estimated) covered under the Minimum Wages Act in Tamil Nadu, 1997-2005

Year	No. of Establishments	No. of Workers (estimated)
1997	95 484	860 765
1998	99 425	856 175
1999	85 408	814 049
2000	92 568	822 630
2001	92 979	812 478
2002	95 508	853 017
2003	97 935	869 073
2004	-	-
2005	100 225	853 652

Source: Annual Returns under the Minimum Wages Act for various years, Office of the Commissioner of Labour, Chennai.

The number of establishments increased from around 95,000 in 1997 to a little over a 100,000 in 2005. The number of workers covered was around 800,000 (0.8 million) only, the number fluctuating over the years. It may be pertinent to note that an average 68 per cent of the establishments submitted returns ('compliance rate') during 1997-2005. It should be noted that the number of establishments covered was quite meagre compared to that estimated by the Economic Census. Table 3.9 provides details of industries covered under the Minimum Wages Act in Tamil Nadu.

Table 3.9 Details of industries covered under the Minimum Wages Act in Tamil Nadu for 2005

S. No.	Industry or Employment	Number of Establishments Covered under the Act	Total Number of Workers
1.	Tobacco manufactory	1 998	242 883
2.	Public Motor Transport	1 856	106 811
3.	Hotel & Restaurants	10 935	83 228
4.	Shops & Commercial Establishments	81 373	328 385
5.	Timber Industry	43	129
6.	Cinema	1 123	17 119
7.	Hospital and Nursing Homes	708	5 719
8.	Local Authority	23	237
9.	Laundering and Washing Clothes	81	311
	(including woollen)		
10.	Plantations	2 105	88 830
11.	Total	100 225	853 652

Source: Annual Return under the Minimum Wages Act for 2005, Office of the Commissioner of Labour, Chennai.

We see that shops and commercial establishments, tobacco manufacturing industries and public motor transport are the top three employments or industries covered under the Minimum Wages Act. Plantations from the agricultural sector are also covered.

Some significant laws on industrial relations and provisions in them limit the coverage to establishments above a certain size (Table 3.10) or to certain categories of employed persons.

Table 3.10 Size criteria and Industrial Relations Laws: Some Examples

Provision	Applicability to industrial establishments with
Industrial Disputes Act, 1947	
Constitution of works committees (S.3)	100+ workers
Grievance settlement authority (S.9-C)	50+ workers
Chapter V-A	50-99 workers
Chapter V-B	100+ workers
Industrial Employment (Standing Orders) Act, 1946	100+ workers
Contract Labour (Regulation and Prohibition) Act, 1970	20+ workers for principal employers and 20+ contract workers for contractors

It is instructive to look at the size distribution of factories to have an idea of the extent of inclusion or exclusion (Table 3.11).

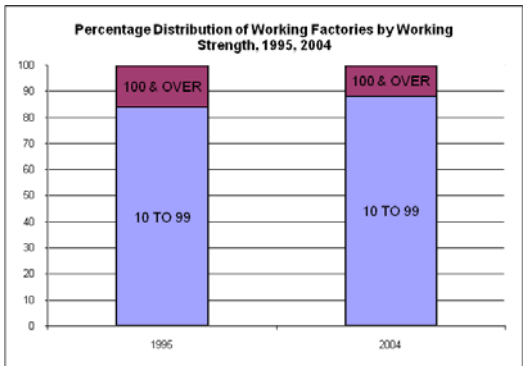
Table 3.11 Percentage distribution of working factories and employment therein for 1995 and 2003

	1995	2004	1995	2004
Number of employees	Percentage of Factories	Percentage of Workers	Percentage of Workers	Percentage of Workers
10 to 19	35.58	34.03	7.65	8.37
20 – 49	34.05	35.21	16.58	18.05
50 -99	14.25	18.98	13.64	21.99
Less than 100	83.88	88.22	37.87	48.41
100 - 499	14.40	10.34	34.27	30.21
500-999	1.20	1.09	12.71	11.67
1000 - 4999	0.49	0.33	12.24	7.50
5000 and over	0.03	0.02	2.91	2.21
Total	100	100	100	100

Source: Office of the Chief Inspector of Factories, Chennai

There has been rise in the number of factories but mainly of those employing 50 to 99 workers. While the category's share in the number of factories increased from 14 per cent to 19 per cent, it increased more in the number of the workers employed, from 14 per cent to 22 per cent. As much as 84 to 89 per cent of working factories employ less than 100 workers. This means that over the years more and more factories have been excluded from the coverage of employment security clauses in the ID Act, which is the mainstay in the lives of workers (see the figure below).

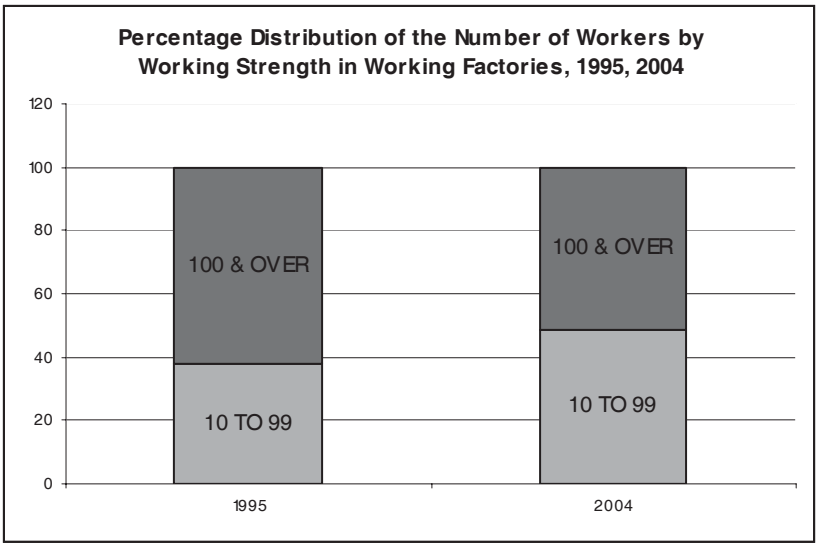
Fig. 3.1



Source: As in Table 3.11

The small factories, i.e. those employing less than 100 workers though are large in number, employ fewer workers – their share in total employment was about 38 per cent in 1995 and it increased to 48 per cent in 2004 (Fig.3.1).

Fig. 3.2



Source: As in Table 3.11

Similarly, those employed in factories with up to 100 workers have been excluded (Fig. 2.2) from the employment security protective clause in the case of Tamil Nadu. The declining average size of the factory seen in the earlier chapter (supported by the data on size-wise distribution of factories and employment in this chapter) means that more factories and more workers now will not be covered by the employment security provisions. These seen along with facts like increase in the incidence of contract labour in the state as elsewhere contribute to the dilution of the institution of labour laws.

CHAPTER 4

Wages

Legal and Institutional Mechanisms on Wages

The wage determination system that has evolved over the years involves the law (the Minimum Wages Act), the institution of collective bargaining, adjudicatory and arbitration institutions, pay commissions, wage boards and the prevalent customs and tradition. The wages are settled either unilaterally (i.e., by the employer or the state), or through bilateral (collective bargaining) or tripartite (wage boards) methods. The legal framework of the system and its complementary process of adjudication have played an important role in fixing the wages for quite some time now. These have become dominant mainly due to the weaknesses in the bipartite system. The wage board system was well used till the 1960s after which it has primarily been used for determining wages for working journalists.

Though collective bargaining was not well developed in the past, it has assumed importance in some of the well developed industries and regions like cotton textiles in Coimbatore, Mumbai and Ahmedabad and in the jute industry in Kolkata. The wages and service conditions of employees in the government have always been determined by pay commissions and special commissions such the Dearness Allowance (D.A.) Commissions (e.g. Gajendra Gadkar Commission in 1966) (Sharma,1982). The wages and conditions of employment in the industrial segment of the public sector have been determined through bargaining and administrative guidelines (from the Bureau of Public Enterprises, BPE). The legal framework relating to wages is governed by four labour laws, namely the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976.

Payment of Wages Act, 1936

The Act aims at ensuring prompt, timely and full payment of wages to certain sections of workers in the industry. It applies to factories and persons employed by railway administration directly or through sub-contractor. The government has since extended it to several other sectors. The applicability of the Act in terms of wages payable to workers has been raised from time to time taking into account price inflation; the wage ceiling has been raised from Rs. 1,600 to Rs.6,500 from 11 August 2005. Under the Act, the employer is responsible for payment of wages to persons employed by her and to persons employed by a person designated by for that purpose. The employer cannot make deductions other than those permitted (such as fines, deductions for housing accommodation etc.) by or under the Act. Legal remedies are provided in the law against illegal deductions.

Minimum Wages Act, 1948

The Act requires the appropriate government, central or state, to fix the minimum rate of wages payable to workers in employments specified in Part I or Part II of the Schedule appended to it and those in the employments added to the Schedule from time to time through notification by the state government. It covers all types of workers, skilled or unskilled, manual or clerical, directly employed or outworkers. The government is not required to fix minimum wages for those employments covering less than 1000 workers. The Act states that minimum rates of wages fixed may be for time work or piece work. Further, the

appropriate government may either appoint a committee to advise it on the subject or publish proposals by notification and invite reactions from the persons affected by such proposals. These are to be considered to fix or revise the minimum rates of wages of each scheduled employment. The Act and the judicial decisions make it clear that all employers *must* pay wages not less than the minimum rate of wages fixed by the government. The minimum wage will consist of a basic rate of wages, cost of living allowance and cash value of concessions, all three in some combination. The law has stipulated legal remedies for workers against violations such as non-payment or under-payment of minimum wages.

Payment of Bonus Act, 1965

This Act was passed following recommendation by the Bonus Commission. The term 'bonus' is not defined by the Act nor was by the Commission. The Commission observed that it was difficult to define 'bonus' in rigid terms. Opinions differ on whether bonus represents 'deferred wage' or a 'share in profits'. The Commission saw it as bridging the gap between the actual wage and need-based wage. The amendment to the Act during Internal Emergency (1975-77) changed the Preamble of the Act to link bonus to profits and productivity. The Act applies to every factory and establishments employing 20 or more persons. It also applies to those units in public sector which sell goods or services, competes with public sector and earns income. It covers employees who earn wages or salaries not more than Rs.10,000 per month (revised by an Ordinance on October 27, 2007, from the long standing provision of Rs. 3,500). The minimum bonus of 8.33 per cent has to be paid by all establishments to all persons covered by the Act whether or not the employer has any allocable surplus in the accounting year. The allocable surplus means 60 per cent of available surplus (i.e. gross profits minus depreciation, development allowance, direct taxes etc.). When the allocable surplus exceeds the minimum amount bonus in an accounting year, the employer shall pay bonus higher than the minimum bonus subject to a maximum of 20 per cent.

Equal Remuneration Act, 1976

Article 39 of the Constitution directs the state to ensure that there is equal pay for both men and women for equal work. India ratified the Equal Remuneration Convention, 1951 on 25 September 1958. The Equal Remuneration Act was enacted to give effect to this directive principle. It requires every employer covered by it to pay equal remuneration to men and women workers for same or similar work. More importantly, it forbids the employer from making any kind of discrimination between men and women in case of recruitment or any condition of service such as promotions, training or transfers unless lawful prohibitions exist regarding these.

Wages in the Organized Factory Sector in Tamil Nadu

Data from Annual Survey of Industries (ASI) of Central Statistical Organization (CSO) for Tamil Nadu for the period 1991-92 to 2004-05 has been used in the discussion here. The ASI covers the factories registered under the Factories Act, 1948, with the exception of electricity. They, thus, cover the organized segment of the manufacturing sector. The industrial classification system adopted till 1997-98 was National Industrial Classification (NIC) 1987 and later NIC 1998. For comparative purposes we have used data relating to manufacturing (excluding repairs) which in terms of NIC 1987 means covering industry groups classified as 20-39. Mathur and Mishra (2008) have carried out a detailed analysis of inter-temporal and inter-state analyses of the trends in real wages and real productivity using the ASI data.

Table 4.1 Comparison of growth rates of average real wages of workers and emoluments of non-wage workers during 1993-2003 in selected states

State	Growth Rate of Average Real Wages	Rank Rate of Average Real Emoluments	Growth	Rank
Bihar	2.36	2	5.89	4
Gujarat	0.75	3	3.91	7
Karnataka	-0.11	4	7.01	2
Kerala	-0.88	7	7.32	1
Maharashtra	-1.25	8	4.09	5
Orissa	4.13	1	3.95	6
Tamil Nadu	-0.19	5	6.60	3
West Bengal	-0.60	6	2.86	8
Total ASI	-0.27	-	4.88	-

Note: The authors mentioned in the source have provided data for 17 states, but we have done it only for selected states among them. See the source for information for other states.

Source: Mathur and Mishra (2008: Table 4a, p.68)

As seen in Table 4.1 five out of eight states have registered negative growth rates of average real wages, the decline being marginal in the case of Karnataka and Tamil Nadu and larger for Maharashtra. More interestingly, real wages increased impressively in Bihar and Orissa. On the other hand, the salaries of white collar employees have seen impressive increase during the post-liberalization period.

Figure 4.1 based on ASI data shows tremendous fluctuations in the annual rate of growth of average real wages from1992-93 to 2004-05. The marked instability of the trends in the series is indicated by the high coefficient of variation (1176.36).

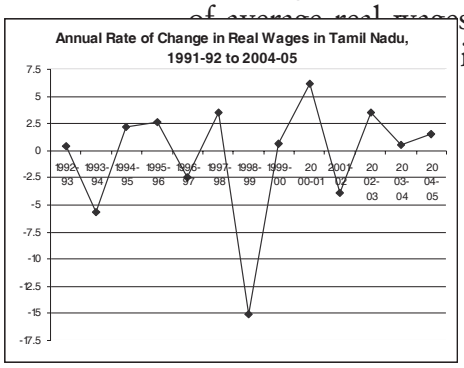


Fig. 4.1

Source: Computed from the data for the manufacturing sector (except repairs) in the *Annual Survey of Industries* (various years)

During this period, the annual growth rates were negative on four occasions with the dip being sharpest in 1998-99 (Fig. 4.2). The behaviour of average real wages at the all-India level was similar (Chandrasekhar and Ghosh, 2007).

Fig. 4.2

Source: As above.

Figure 4.2 also shows that the share of wages in gross value addition in the manufacturing sector (excluding repairs) has shown a declining tendency from 1991-92 to 2004-05. Decline was sharper nationally (Chandrasekhar and Ghosh 2007) and specifically in the case of Maharashtra (Shyam Sundar, 2008a, d).

Studies have found disparities between the real wages of workers and real emoluments of white-collar employees (Mathur and Mishra, 2007, 2008; Shyam Sundar, 2008d). While the average real wages of the workers in Tamil Nadu registered a marginal negative growth rate during 1993-2003, the real emoluments of non-wage employees increased by 6.60 per cent during the same period (Table 4.1). The ratio of emoluments to wages increased from 1.79 in 1993-94 to nearly 3 per cent in 1998-99 and 3.29 per cent in 2004-05. Mathur and Mishra (2008:pp.66-7) note "a relentless rise in the disparity between returns to higher echelons of management vis-à-vis workers, essentially in the newly expanding domain of the private sector" in the post-liberalization period.

The rate of growth (4.80 per cent) of real productivity (i.e. net value added per worker) has been higher than the rate of growth of real wages (-0.27) from1993 to2003 (Mathur and Mishra, 2008). Besides, the rate of growth of real wages declined over the years while that of real productivity increased (p.74). In the case of Tamil Nadu, the real productivity increased by 1.45 per cent during 1993-2003 and by 4.07 per cent in the longer period, i.e. 1973-2003. It may be noted that real productivity grew at a slower pace in Tamil Nadu during 1993-2003 than in most other states considered by Mathur and Mishra (Andhra Pradesh, Karnataka, Gujarat, Haryana, Uttar Pradesh etc.).

Minimum Wages Act

As mentioned earlier state governments are empowered to add scheduled employments under the Minimum Wages Act as and when the need is felt. Table 4.2 presents the number of scheduled employments added by the Tamil Nadu government during 1995-2008 (till August).

Table 4.2 No. of Scheduled Employments added in Tamil Nadu from 1995- Aug 2008

Year	Number of Scheduled Employments Added	Year	Number of Scheduled Employments Added
1995	-	2002	-
1996	1	2003	-
1997	5	2004	-
1998	10	2005	-
1999	3	2006	6
2000	2	2007	1
2001	2	2008 (August)	1

Source: Office of the Commissioner of Labour, Chennai.

The National Commission on Rural Labour (NCRL) recommended the concept of the National Floor Level Minimum Wage (NFLMW) in order to attain a uniform wage structure and to reduce the disparity in the minimum wage across the states in India. The Government of India keeping in mind this recommendation has been fixing and revising (due to price rise) the NFLMW from time to time. On the recommendations of the Working Group and the Central Advisory Board, the central government has revised the NFLMW at Rs.66 per day with effect from 1 February 2004 (Indian Labour Year book for 2005 and 2006, p.56). We present below a comparative picture of the range of minimum wages fixed by various states in India during 2002 (Table 4.3).

Table 4.3 Minimum Wages for selected states in India for 2002

State	Range of Minimum Wages per day (Rs.)		The Gap between Minimum the Minimum
	Minimum	Maximum	
Andhra Pradesh	*45.00*	96.23	51.23
Gujarat	*50.00*	101.80	51.80
Haryana	82.31	83.31	1.00
Karnataka	*22.20*	91.50	69.30
Kerala	*30.00*	319.00	289.00
Punjab	82.85	86.45	3.60
Rajasthan	*60.00*	70.69	10.69
Tamil Nadu	*43.93*	118.96	75.03
West Bengal	*39.73*	136.08	96.35
Coefficient of Variation (%)	*41.63*	62.09	-

Note: The highlighted values fall short of the NFLMW.

The minimum level of minimum wages set in several states including Tamil Nadu fall short of the NFLMW of Rs. 66 per day (Table 4.3). The level of inconsistency is higher in the case of maximum level of wages than in the case of the minimum levels as indicated by the coefficient of variation. The gap between the minimum and maximum values was huge in the year 2002 in most states except Haryana, Punjab and Rajasthan. This could be due to differences in the type of employment or processes for which the minimum wages are fixed. Also, in some scheduled employments the minimum wages might have been revised while for others it might not be.

The extent of non-compliance with the provisions of the Minimum Wages Act does not seem to be high except in some years in Tamil Nadu is seen in Table 4.4.

Table 4.4 Inspections and non-compliance under the Minimum Wages Act for selected years

Year	Number of the Establishments Covered by the Act	Number of Establishments Inspected under the Act	Number of Establishments which Complied with the Provisions of the Act	Non-complying Establishments
1997	95 484	95 484	85 727	9 757 (10.22%)
1998	99 425	99 425	84 100	15 325 (15.41%)
1999	85 408	85 408	81 405	4 003 (4.69%)
2000	92 569	92 568	80 495	12 073 (13.04%)
2001	86 732	86 732	82 516	4 216 (4.86%)
2002	95 508	95 481	91 429**	4 079** (4.27%)
2003	97 935	97 624	94 127	3 497 (3.58%)
2004	-	-	-	-
2005	100 225	100 262	87 953	12 309 (12.28%)

Note: Figures in percentages of non-compliance establishments in total number of establishments inspected.

** - the total of cols. (4) and (5) does not tally with the total in col.(3), as it should.

Source: Annual Returns under the Minimum Wages Act, Office of the Commissioner of Labour, Chennai.

Four facts stand out clearly with regard to worker compensation. One, real wages of even the organized sector workers has witnessed a negative growth rate during the post-liberalization period. This took place even though the real labour productivity of workers in the organized sector increased during the same period. Two, the share of wages in value addition has also shown a general declining trend in Tamil Nadu, though not as sharp as elsewhere. Three, there has been a disproportionate rise in emoluments of non-workers compared to wages for workers. Finally, as elsewhere minimum wages in Tamil Nadu has not risen to the level of the national level floor minimum wage of Rs.66. The decline in the jobs and the erosion of real wages and strong indications of inequities in compensation suggest bad times for workers even in the organized sector.

CHAPTER 5

Trade Unions, Collective Bargaining and Industrial Conflict

The Institutional and the Economic Context

The Structure of IRS at the National Level

Article 19 of the Constitution of India assures the right to form associations, including trade unions. Trade unions operate as a pressure group competing with others to further the interests of their constituents. Trade unions and employers in India are, subject to socially agreed legal restrictions, free to use strikes and lockouts to protect and advance their respective interests. However, "economic planning" has impacted the institutions of industrial relations system in several ways. As industrial peace (resulting in uninterrupted production) was considered essential for the success of economic plans, achievement and maintenance of "industrial peace" became the dominant objective of the IRS (Kennedy 1966; Sherlock 1990).

Historically, State intervention has been the dominant feature of the institutional framework, and collective bargaining relegated to a secondary status, though expected to play a more significant role as the economy developed and the IRS matured (Ramaswamy, 1984). The State intervened in the labour market and the IRS determining through a number of labour acts, most of the substantive and procedural rules that were usually determined through a bipartite process in the West (Deshpande, 1992). Through compulsory conciliation and adjudication, the State not only purported to settle industrial disputes but also supplemented the legislative rule-making process. It also supervised the implementation of acts and awards by the social partners in industry.

In response to the changes in the economic environment, the all-pervasive role of the State too has changed. Although it has taken place primarily in the product market, the role of State in the labour market and the IRS is changing slowly but surely (Shyam Sundar, 2005b). Labour militancy began to wither away in the 1990s (Shyam Sundar, 2003b). In the present situation, the need for social pacts is no longer felt as labour seems to have become the weaker party and the State is under pressure from capital; tri-partism though revived has lost its glorious image. Promoting competitive efficiency seems to have become the abiding concern of the State.

Socialist image, political intervention in labour movement, state intervention in strikes, constant and close scrutiny of administration of labour laws and preserving the power of state administrative agencies (labour bureaucracy) do not seem to be part of the agenda of the State. In fact, it has been distancing itself from IRS. The alliance between the political parties and its union affiliates is under strain in the wake of conflicts between the two on the question of introduction of reforms. It is increasingly felt that the state that had brought about labour discipline by active intervention in the past now seeks to do so by leaving workers to the market. As for judiciary, it is being felt that some of the judgements delivered in the 1990s (such as Supreme Court judgements in SAIL case, BALCO case, Tamil Nadu State Government employees strike case, Kerala High Court's judgement on *bandhs*) clearly questioned even diluted some of the hard won labour rights. Liberalization and globalization have affected the federal politics in the country

State intervention had provided an "implicit social contract" which helped the institutionalization of privileges, obligations and rights. Job creation and protection, union

protection, high wages and other benefits etc. were some benefits that the state offered to workers and unions. Unions in turn promised industrial discipline, industrial peace and wage moderation, which appealed to the employers (Johri, 1967,p.129). Trade unions and other collective institutions had a significant social and political existence during the state-led industrialization regime. However, "political unionism" i.e., the association between political parties and trade unions, political factors determining strikes and industrial agitations which dominated the trade union scenario for a long time resulted in the fragmentation of the union movement. Trade union organizations were formed or split along the lines of developments in the political parties. Formation Politics seemed to be the governing factor behind formation and split of trade unions. The regional political parties like the DMK, AIADMK (in Tamil Nadu) and Shiv Sena (in Maharashtra) formed their own labour wings for political, ideological and union organizational reasons (Ramaswamy, 1988, 1984) . Enterprise unions arose due to the failure of political unionism (Bhattacherjee, 1987; Ramawsamy, 1988). Charismatic leaders such as Datta Samant in Bombay, Kuchelar in Chennai and unaffiliated unions distrusted the established processes of conflict resolution such as conciliation, judicial intervention. They preferred the market (collective bargaining and direct action) to political action. The centralized and politically controlled labour regime was challenged by the rise of these non-political unions and union leaders. Table A.4 in Appendix I lists the various kinds of trade unions.

Informal workers are important not only for their large numbers but also for their role in the globalizing economy. Their sheer diversity in terms of activities and status (SNCL 2002) presents formidable challenges to traditional unionism (Shyam Sundar, 2003 a). There are several agencies that seek to organize these workers such as the mainstream trade unions, union-cum-cooperative institutions like the Self Employed Women's Association (SEWA), and some new informal sector unions like the National Alliance of Street Vendors in India, workers' cooperatives, self help groups such as the Delhi-based Building and Woodworkers International(Bhowmik, 2008; Ahn, 2007).

If the union movement has been fragmented and divided, the employers' organizations were no better. Employers' organizations concentrated more on economic issues such as fiscal and trade issues while labour issues assumed only secondary importance. Hence, national and regional Chambers of Commerce such as the Federation of Indian Chambers of Commerce (FICCI) and the Bengal Chamber of Commerce came into being. There are three major employers' associations that deal with industrial relations and labour market issues — the All India Organization of Employers (AIOE) founded by the FICCI in New Delhi, the Employers' Federation of India (EFI) founded by the Associated Chamber of Commerce (ASSOCHAM) in Bombay and the Standing Conference of Public Enterprises (SCOPE) which represents the central public sector undertakings. The All India Manufacturers' Organization (AIMO) represents the interests of the small and medium scale enterprises in the private sector. The Confederation of Indian Industries (CII) is another employer organization, though not recognized by the government for representation in the national and international forums of representation and consultation. However, employers' organizations are divided by ideology (role of the State, foreign capital, etc.), by national or regional interests they represent, by size (large, medium, and small), by sectors or industries – these differences manifest more significantly at the district level (Shyam Sundar, 1999a, Venkata Ratnam, 1996;pp.6-7).

Economic and Policy Contexts

Liberalization of controls governing the industries, opening up of the economy to foreign goods, capital etc. and disinvestment of shares in many public enterprises and privatization of a few of them and freeze on public sector employment have intensified competition in the market and has had implications for trade unions, collective bargaining and industrial conflict. The competition for capital has increased bargaining power of capital vis-à-vis *both* State and trade unions (Shyam Sundar, 2003a). In a protected economy, trade unions and employers can collude and share the "rents" arising out of protectionism even at the expense of the consumers and other constituents. Competition in the product market reduces the "rents" to be shared between the agencies of capital and labour. Relocation or the mere threat of it, by firms (capital) unsettles the state and the trade unions. In the liberalized economic environment, the state governments compete for capital and offer a number of incentives to attract capital. Labour flexibility is one of them. The government has therefore sought to liberalize the labour market and the IRS. Labour flexibility strategies create adverse consequences like rise in the share of non-standard workers thus affecting the "quality" of employment, reduction in real wages etc. The government's reform policies such as fiscal discipline, privatization result in reduction in public sector employment, removal of financial support for loss making public enterprises (shift from "soft" to hard" budget framework), new guidelines for collective bargaining like decentralization of collective bargaining, productivity based wage rise, reduction in regular workers' strength and resorting to numerical labour flexibility etc..

The explicit labour reform policies may not read impressively owing to the stout protests of the unions and labour-sympathetic political parties (Shyam Sundar and Venkata Ratnam, 2007). Nevertheless, these objectives are fulfilled through what is come to be known as "back door reforms". The strategy keeps the formal framework intact but allows employers tacitly or otherwise to undertake measures resulting in flexibility that they have been demanding (see Ibid.). The informal sector thus seems to be assuming increasing significance in terms of employment and trade.

Trade Unions

The provisions in the Trade Union Act enacted in 1926 are summarized as follows: A trade union satisfying the membership eligibility criteria will be registered only when its executive is constituted according to the provisions of the Act and the rules made by the union contain the items prescribed by the Act (under Section 6). The Registrar of trade unions has powers to cancel registrations of unions (section 10) if (a) the union itself applies for cancellation, (b) registrar is convinced that registration was obtained by fraud or mistake, (c) registered union ceases to exist (d) it ceases to have required members and (e) it contravenes any of the provisions of the Trade Unions Act. Registration is voluntary but it confers certain rights, privileges and obligations on the registered unions. The most important feature of the Act is that it provides immunity from civil and criminal liability to union leaders and the members for *bona fide* union activities. The Act gives in detail (a) the contents of the rules to be made by the unions, (b) items on which the general fund of the union should be spent, (c) rules relating to constitution of a separate political fund etc.. At least half of the office-bearers of the union in the unorganized sector (provision introduced in 2001) and two-thirds in other cases should be insiders (Shyam Sundar 2008b, d).

Quantitative Analysis of Trade Unions

In the post-reform period, one is likely to witness a slowdown in growth of unions and a general decline in its "offensive activities". Union strategies are more likely to change; new techniques will evolve to resist the erosion of rights and privileges (Shyam Sundar, 2006).

Table 5.1 Statistics on trade unions in Tamil Nadu, 1999-2005

Year	Number of Registered Trade Unions	Number of Trade Unions Submitting Returns	Compliance Rate (%)*	Male Members*	Female Members*	Total Members*
1999	6 632	2 692	40.59	1 174 017	119 379	1 293 396
2000	7 268	3 026	41.63	1 183 547	209 861	1 393 408
2001***	5 943	2 330	39.02	600 022	92 480	692 502
2002	9 757	3 268	33.49	1 452 644	354 036	1 806 679
2003	9 437	3 175	33.64	1 682 926	350 945	2 033 870
2004	-	-	-	-	-	-
2005	8 870	3 305	37.29	1 349 228	309 739	1 658 967
1999-2005	41 964	15 466	36.86	-	-	-

- Data not available

* Compliance Rate – the proportion of registered unions submitting returns

** Members relate to unions submitting returns

*** In view of the unusual figure for this year, we checked the data reported for the state in the Indian Labour Year Book (for 2005 and 2006, Table 4.02 (a), p.105) and the same figures are reported in the latter.

Source: Office of the Commissioner of Labour, Chennai.

Table 5.1 shows statistics relating to trade unions in Tamil Nadu. It reveals that the number of registered trade unions has fluctuated over the years, which is unusual. The dip in the number of registered unions in 2001 needs further investigation. On the other hand, the number of registered trade unions in Maharashtra has shown a continuous rise (Shyam Sundar, 2008d). The proportion of registered trade unions in Tamil Nadu submitting annual returns has been between 33 to 41 per cent. Poor compliance rate by trade unions or official agencies in the state renders union membership data unusable in estimating union density. Secondly, it may not be advisable to assume that the complying unions will be the same for the years. There is significant difference in union membership for 2002 and 2003 (by nearly 228,000 extra members), even though the compliance rate increased only marginally. The female members account for around one-sixth (16.41 per cent) of the total membership during the period, 1999-2005. We may assume that that membership submitting unions are 'active' unions and thus need to be taken seriously (Johri, 1967). Using the NSSO estimate of employment data for 2005 it is seen that union density is less than 6 per cent (5.4 per cent). On the other hand, union density is 75 per cent if one looks at only at employment in the organized sector.

National data on unions can also be used to get an idea of the union movement in India in the post reform period (see Table A.3 in Appendix I). However, the data at the national level should be considered at best as an "estimate" since many state labour departments and trade union organizations do not submit usable data and in time and Labour Bureau repeats the figures of registered unions etc. of the earlier years. But *levels* may not be important as *changes* in them (growth rates) are. The y-o-y change in registered unions shows considerable fluctuations. The growth rate ranged from a negative growth (*i.e.* the level of registered unions declined between

two years) in 2004 to an increase of nearly 9 per cent in 2003 – we see that successive years witnessed such erratic movements.

The average size of the trade unions has been less than 1,000 which is remarkably less by international standards although the organizational restructuring moves in the developed countries have bloated the unions' average size significantly. Size has implications for not only the strength of the trade union but also the nature and trajectory of union movement. The easy eligibility legal conditions (seven members' threshold till 2001 amendment), the dominance of 'political unionism' model,, influential role of outside leaders in unions, the rise of alternatives to political and outsider dominated unionism model, and competitive organizing strategies in the organized sector are some of the reasons that have resulted in the fragmentation of trade unions and a hopelessly divided union movement.

Table 5.2 Distribution of trade unions submitting returns and membership therein by size of trade unions for 2005

Class intervals of membership	No. of trade unions	%	Union membership	%
Less than 50	791	23.93	31 381	1.90
50 – 99	591	17.88	42 433	2.56
100 – 299	1 087	32.89	173 060	10.43
300 – 499	200	6.05	74 398	4.48
500 – 999	194	5.87	119 259	7.19
1000 – 4999	358	10.83	571 728	34.46
5000 - 9999	84	2.55	646 708	38.98
10000 – 19999	0	-	0	0
20000 and over	0	-	0	0
Total	**3 305**	**100.00**	**1 658 967**	**100.00**

Source: Annual Returns under the Trade Unions Act, 1926, Office of the Commissioner of Labour, Chennai.

The size of trade unions in Tamil Nadu can be seen in Table 5.2. Nearly three-fourths of the trade unions (submitting returns) consist of unions with a membership of 299. However, their share in the total membership is a meagre 15 per cent. Big unions (i.e. those with membership over 5,000) are fewer (about 14 per cent of the total unions) but their share in the total membership is 73.44 per cent. Presently no unions in Tamil Nadu have a membership of over 10,000. The average size of trade unions (submitting returns) was 529 for the period 1999-2005.

The government carries out verification of membership major central trade union organizations (CTUOs) from time to time. Table 5.3 presents the results of the 2002 verification exercise for Tamil Nadu.

Table 5.3 Distribution of the verified membership of CTUOs in Tamil Nadu as on 31 December 2002

S. No.	Name of the CTUO	Tamil Nadu Membership	India %	Membership	%
1.	BMS	92 639	10.33	6 215 797	27.38
2.	INTUC	217 574	24.27	3 892 011	17.15
3.	CITU	254 347	28.37	2 677 979	11.80
4.	AITUC	172 517	19.24	3 342 213	14.72
5.	HMS	145 647	16.25	3 222 532	14.20
6.	UTUC (LS)	3 006	0.34	1 368 535	6.03
7.	UTUC	0	0	606 935	2.67
8.	AICCTU	10 730	1.20	639 962	2.82
9.	TUCC	0	0	732 760	3.23
10.	Total	896 460	100.00	22 698 724	100.00

Note: The figures are provisional.

Source: Maniben Kara Institute (MKI), Mumbai.

It can be seen from the table that the left leaning (AITUC, CITU and UTUC (LS)) and socialist (HMS) trade unions have a major presence in Tamil Nadu accounting for nearly two-thirds of the total verified membership.

Table 5.4 Share of Union Membership of CTUOs in Tamil Nadu, 2002

S. No.	Particulars	2002
1.	Total union membership of unions submitting returns	1 806 678
2.	Verified membership of CTUOs in the state	896 460
3.	% share of CTUOs in total membership	49.62

Source: As in Tables 4.1 and 4.3

We see from Table 5.4 that the CTUOs account for about half of the membership of unions submitting returns in 2002. It is easily seen that their share will decline further if the total estimated membership figures were available.

We look at the verified membership of Labour Progressive Federation (LPF) which is affiliated to Dravida Munnetra Kazhagham (DMK) for selected industries in Table 5.5. The LPF has a large following in cotton textile industry, in electricity undertakings and bus transport undertakings in Tamil Nadu. It in fact pioneered the trend in the formation of regional trade unions and fights the CTUOs, especially the Communist trade unions and the INTUC in Tamil Nadu. The Anna Thozhir Sangha Peravai (ATP), a labour wing of the Anna Dravida Munnetra Kazhagham (ADMK, as it was known then) is another regional trade union federation in Tamil Nadu. As Ramaswamy (1988) observes the ATP has kept a low profile in the labour movement in Tamil Nadu and hence its following is not significantly high.

Table 5.5 Verified membership of the LPF in selected industries in 2002

Industry	Membership
Textile	235 659
Engineering (Ors)	4 835
Defence Services	2 363
Electricity & Power	14 616
Roadways	21 325
Mining of Minerals	7 784
Sugar	1 394
Building & Construction	3 054
Tobacco (Beedi)	1 486
Postal & Telegraph	1 426
Total (in Tamil Nadu)	611 108

Note: It includes all the industries, some of which are not mentioned in the table.

Self Employed Women's Association (SEWA) is another trade union whose membership was verified in 2002 also has around the same membership count (688 140).

Source: Verified membership figures obtained from MKI.

It is interesting to note that LPF, a regional union federation ranks second in terms of its share (28.63 per cent) in the total verified membership for textile industry in 2002; BMS ranks first (with 31.93 per cent share) and the INTUC ranks third (with 14.59 per cent share).

It is well known that union coverage of workers in the IT sector as well as those in the special economic zones, shopping malls etc., is poor. However, workers in these sectors are in need of union protection as much those in the traditional industries. Unions are not able to penetrate these sectors for various reasons (Shyam Sundar, 2009b). Trade unions have begun to show interest in these sectors. As A.K. Padmanabhan, National Secretary, CITU observed, "Employment numbers are coming down in the traditional industries such as textiles, engineering and heavy industry. We have to look at other areas to expand." The conditions obtaining in these industries seem to be amenable to union formation. Padmanabhan observes, "Eight-hour work day is not observed Hire and fire policy is rampant. For many workers, even an appointment order is not available. Often, only an identity card is issued. There is a feeling of insecurity and humiliation among lower level workers. And sexual harassment also exists."(Vageesh, 2003).

The Union Network International (UNI) has taken initiatives for organizing workers in call centres in India through the Union for Information Technology & Enabled Services Professionals (UNITES). The UNITES is affiliated to the INTUC and is reported to have unionized 10 per cent of the employees in the IT-BPO (Business Process Outsourcing) in India. The CITU has been looking for opportunities for organizing the workers in these centres. However, the employers in the industry have not endorsed the union initiatives. Employers argue that employees in the industry do not require union protection as (a) labour market is dynamic, (b) working conditions are good, (c) HR policies are progressive and incentive structures exist, (d) there exists in some firms a code of conduct, and (e) there are forums for continuous feedback and grievance mechanisms.

Collective Bargaining

Legal Framework

India has not ratified ILO Conventions Nos. 87 and 98 (Table A.2 in Appendix I for ratified conventions). However, non-ratification of these two core Conventions has not meant that workers in general do not enjoy these rights. The Constitution of India, the laws legislated and the judicial decisions have ensured a just framework for trade unions to operate and conduct their organizational activities. However, four important limitations on the exercise of collective bargaining have been noted. First, some constituents of the labour market, for instance, government employees in some sections of public sector, have limited rights and opportunities to organize and bargain collectively – (Venkata Ratnam, 2001, 2006, p.193). Similarly, police personnel, contract workers, informal sector workers and agricultural labourers also have limited rights. Second, the central labour laws do not provide for the determination of collective bargaining agent, though informal guidelines (such as Code of Discipline, Code of Conduct) exist. Some states such as Maharashtra, Orissa and West Bengal have laws on some of these aspects such as determination of bargaining agent.

Box 5.1 Conditions for Union Recognition

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration.
2. The membership of the union should cover at least 15 per cent of the workers who have paid their subscription at least for three months during the period of six months immediately preceding the verification in the establishment concerned.
3. In the case of industry, the union should cover at least 25 per cent of the workers in the industry.
4. The recognition is valid for a period of two years.
5. Trade unions observing the provisions of Code of Discipline will alone be eligible recognition (Venkata Ratnam, 2006, p.116).

However, third, the laws governing the legality of strikes are so tough so as to render legal strikes well nigh impossible (Ramaswamy, 1984). Four, under the ID Act, collective agreements are placed on a pedestal lower than the settlement reached *via* conciliation. It may be noted here the settlement reached in the process of conciliation popularly known as "12 (3) settlement" is on a higher footing as compared to the settlement reached between the two parties, popularly known as "18 (1) settlement" for the following reason. The 18 (1) settlement is binding only on the signatories of the agreement, i.e. the union(s) which raised the dispute and the management. In Maharashtra, where there are legal arrangements to recognized trade unions, the amendment to the ID Act in 1972 states that agreement other than on employment matter (i.e. dismissal, discharge, removal, retrenchment, termination of service or suspension of workers) shall be reached only between the recognized union and the employer. Moreover, this agreement shall be binding on the parties as described below in (c) and (d). Whereas, the 12 (3) settlement is binding on (a) all parties to the industrial dispute, (b) all other parties summoned to appear in the proceedings as parties to the dispute, (c) the present employer, his/her heirs, successors and so on, (d) workers employed in the past, present and in future.

The collective bargaining exercise mostly involves two types of exercises. The bargaining over the issue of bonus is mostly an annual exercise unless agreements covering a longer period exist. The regular bargaining exercise is conducted periodically just around the time of expiry of the existing agreement. There may be delays in initiating negotiations after the expiry of the

existing agreement. The negotiations are often prolonged and by the time the agreement is signed, a good part of the period of coverage might have elapsed.

Historically, collective bargaining took place at the industry level in the case of two industries, namely cotton textiles and plantations. We first look at the collective bargaining experience in textile industry.

Textile Industry

Four institutions contributed to the consolidation and success of collective bargaining at the industry level, viz. the existence of industry-wide employers' association, the formation of cooperative body of trade unions, the existence of Wage Board and the practice of referral of wage and bonus issues to the Special Industrial Tribunal (a compulsory adjudicatory body formed under the provisions of the ID Act) by the Government.

The Southern India Mill Owners' Association (SIMA) (formed before the Second World War) has the employers of the large, medium sized and some small textile mills of Tamil Nadu and other Southern states as its members. The South India Small Spinners Association (Sisspa) is an association of small mills. Both SIMA and Sisspa participate in industry level bipartite or tripartite talks (Business Line, 2001c). The institution of Wage Board for the industry (a voluntary tripartite body) played an important role in wage determination till the 1960s. On a few occasions, the state government constituted a wage board for the industry (Patil, 1986).

In order to overcome the problems arising out of multiplicity of trade unions, the trade unions in this industry formed a cooperative institution in the 1960s, called the Joint Action Council/Committee (JAC). From 1956 to the early 1990s, industry level agreements took place. However, in 1993, the agreement was not signed at the industry level but between a group of mills and the unions and this was followed by other mills (Business Line, 2001a). This was a clear case of "pattern bargaining", i.e. a settlement by powerful players in an industry that is "followed" by other establishments in the industry. However, in 2001 wage revision dispute, the SIMA asserted that "it does not have a mandate from its members for collective bargaining," (Ibid.).

Box 5.1 Joint Action Council/Committee (JAC)

Three unions, viz. the INTUC, AITUC and HMS came together to negotiate with SIMA in 1956 and this proved successful; the experiment was gradually institutionalized over the years. All the major unions joined the Council. However, the participation of unions depended on several factors such as their numerical strength, issues negotiated and political considerations etc.. On most occasions, the unions managed to elect a chairman or a convenor of the JAC. Though the JAC has been consolidated over the years, differences exist among the constituent unions. The JAC has been constituted at the mill level also. However, there are some important differences in the JAC at the two levels. For example, many or almost all trade unions participate at the industry level JAC (irrespective of their numerical following) while at the unit level unions relevant to the issues (for instance, promotion, workload) or the sections/departments involved (Patil, 1986). Again, at the mill level, the JAC is often formed after the issues for negotiations are ventilated by some union or the other. This cooperative union model came to be replicated in other regions and industries (Subramanian 1997). Bargaining between the JAC and the SIMA was termed by as "coalition bargaining"; coalition because it was a temporary alliance of a number of trade unions formed the specific purpose of finalizing a collective agreement on a periodical basis (Patil, 1986).

Industry level agreements dealt with substantive issues such as wages, bonus, workload and technological arrangements. Collective bargaining exercises did not, however, fit into a

neat pattern. Though wages, bonus and workload issues were dealt with at the industry level, more often they were negotiated at the mill level as well. Bonus agreements at the industry level institutionalized bonus payments in a manner unique to the industry – the bonus payment formula was in fact known as the "SIMA formula" for a number of years. The industry level agreement often provided guidelines which were used for determination of wages and workload at the mill level. The more prosperous mills resorted to modernization in the 1960s. Modernization involved higher workload and greater skills and these necessitated terms and conditions different from those agreed at the industry level. In addition, worker compensation increased proportionately. Such mill level negotiations continued over the years. Mill level agreements on "productivity" were prominent in the last twenty years or so (Business Line, 2001 a).

The post liberalization period saw decentralization of collective bargaining and enterprise level bargaining became predominant. This was due to two reasons, institutional and economic. There was a decline in the influence of SIMA over its member mills and an increasing tendency on the part of the member mills to break away from industry level bargaining. There was a growing dissatisfaction among member mills with SIMA's handling of negotiations over substantive issues and its stand on bonus.

Though trade unions in Tamil Nadu preferred industry level collective bargaining to enterprise level bargaining, SIMA made it clear in 2001 that it did not have the mandate from its members to negotiate wage revision on their behalf. One important reason for this was the wide variations in the financial indicators of the member mills and their paying capacity. Some unfruitful efforts were made to group the mills according to their financial strength and negotiate settlements for each group (Business Line, 2001c). In 1972, the SIMA responded to the unions' demand for higher bonus. The Payment of Bonus Act provides for a minimum of 8.33 per cent of bonus (irrespective of whether the forms make profits or not in the accounting year) and an upper limit of 20 per cent. SIMA got around the ceiling on bonus by making a certain percentage of the salary as *ex-gratia* payment. Industry level agreements were periodically made till about 2000 by SIMA and JAC on the issue of bonus though mill level agreements were not uncommon even in the heydays of industry level bargaining (Patil, 1986).

This practice continued even when the member mills did not approve of the excess payments negotiated by SIMA. Factors such as enhanced competition, differences in paying capacity of mills, mill level considerations (reduction in production, trimming of workforce etc.) and continuing demand for high level of bonus by trade unions (16 to 35 per cent in 2000) weakened the possibilities of industry wide settlement on bonus. However, it was not a sudden death for industry level negotiations. Even when formal industry wide settlements were not possible, "informal arrangement of a group of SIMA member-mills holding parleys with the unions in the shadow of the association" was carried out (Business Line 2000). Since 2000, even these informal parleys were not possible. The negotiations shifted to the mill level although the unions continued to prefer industry wide agreement to a mill level agreement.

The economic factors such as rise in prices of raw material and energy, competition from imports, decline in cash flows and the consequent inability to repay bank loans or non-operation of a plant for some years due to economic difficulties were some of the factors that behind prompting the mills to take independent decisions on economic and workload matters. This has been especially true for Coimbatore and neighbouring regions where decentralization of collective bargaining has taken place. For example, Gnambigai Mills in Coimbatore and the workers therein

arrived at 18 (1) settlement even though the industrial dispute covering the industry was before the Special Industrial Tribunal. The parties decided to submit their agreement to the Tribunal requesting for a consent award. Since the agreement was contextualized in difficult economic conditions, the parties agreed for a five year agreement.

Plantations Industry

The plantations industry too traditionally depended on industry-wide agreements. The Planters' Association of Tamil Nadu (PAT) has been acting on behalf of its member estates and arriving at industry-wide settlements. For instance, in 1996, a settlement was reached under section 18 (1) of the ID Act over incentive wages to tea-pluckers; though it was agreed for a period of three years, the incentive scheme continued to be implemented beyond 1998. On behalf of its members, PAT issued the notices of termination of the 1996 agreement with effect from 1 January 2002. The government referred the matter to the adjudicatory body, the Special Industrial Tribunal. The planters in various regions began to reach 'local' settlements with the trade unions concerned. The immediate provocation was the filing of writ petitions by 'some' unions in the Madras High Court which resulted in the judgement dated 21 Mar 2002 and was contested by PAT and other employers by a writ petition in the High Court.

Since the workers had not been receiving wages, the managements of the Tea and Tea-cum-Coffee Plantations belonging to the Annamalai Planters' Association (in Coimbatore, Theni and Tirunelveli districts) reached an agreement with their workers in their estates on 6 April 2002. In September 2005, they reached another agreement owing to the delay in the final judgement.. The three district associations, namely, the Nilgiri Planters' Association (NPA), Nilgiri-Wyanad Planters' Association (NWPA) and the Annamalai Planters' Association (APA) began to hold discussions with their respective district-level trade unions.

Again, institutional and economic factors contributed to the decentralization of collective bargaining in the plantation industry as well. The differences among the trade unions operating in the plantation industry in different regions have led them to negotiate terms and conditions at the district level. The employers in the plantation industry have been complaining of high labour costs and social security costs such as housing, education and health care for workers affecting the competitiveness in the era of globalization (Business Standard, 2009 c). Removal of quantitative restrictions and the impact of cheaper imports from Asia and Africa too are causing dissatisfaction amongst planters. Nilgiris-Wyanad Planters' Association and their workers observed that after several round of talks at the industry-level, it was found that "it would be difficult to conclude a common settlement at the industry-wide level acceptable to all the Unions." Further, the impact of the financial crisis arising out of recession and cheap imports was felt differently in different regions. Hence, the three regional bodies preferred 'local settlements' to industry-wide and state-wide settlements.

Collective Bargaining in New Sectors and Industries

Unionisation in establishments such as IT, shopping malls has been difficult for several reasons. Owing to the specific institutional feature, collective bargaining institution is yet to develop in these industries. Individual bargaining between the employer of the establishment and the individual employee is the dominant form of determination of terms and conditions of employment. However, there have been some efforts to form "associations" and in some cases "unions" of employees in the IT sector. As a result, there are rare instances of collective

negotiations in this sector. In June 2006, Excell signed a collective agreement with the union affiliated to the UNITES (Union for Information Technology & Enabled Services Professionals). It is reported that the company decided to negotiate terms collectively as a measure to counter attrition in the company (Telegraph, 2006). UNITES was registered under the Trade Unions Act in September 2006 with the support of the Union Network International (UNI). The agreement provides for negotiation of annual salary increments and observance of statutory provisions regarding employee safety, training issues, working hours, etc.

Collective Bargaining and Contract Labour

Labour market in India is "dualistic" and employment growth has taken place mainly due to the rise in informal forms of employment. Informal employment categories include casual, temporary, part-time, contract workers etc. These workers lack employment and income security among others and these pose challenges to the collective institutions like trade unions, collective bargaining and strikes. Notwithstanding the challenges, trade unions and other organizations are organizing contract workers, strike work and reach collective agreements. In Tamil Nadu and elsewhere these workers are acquiring a ``voice''. The chapter illustrates some of the interesting instances and collective agreements in the case of contract workers in Tamil Nadu.

The trade unions had been relying on the Contract Labour (Regulation and Abolition) Act for regularization of contract labour, an issue that dominated the unions' agenda. The Supreme Court in a judgement involving Air India in 1997 (popularly known as the Air India Judgement) pronounced that contract workers' services should be regularized upon abolition of contract labour in an organization by the government. However, in a later case in 2001 (popularly known as the SAIL case), the Supreme Court reversed this decision by pronouncing that the law does not provide for "automatic absorption" of contract workers upon abolition. The trade unions and others protested against this decision and sought legal solutions through suitable amendments in the Contract Labour (Regulation and Abolition) Act to provide for automatic absorption of contract workers upon abolition. Nevertheless, judgement remains as the law.

In the wake of these, the trade unions have resorted to other strategies like social dialogue. The New Trade Union Initiative (a federation of independent trade unions in the organized sector and unions in the unorganized sector formed in 2001) has argued that trade unions have largely concentrated on abolition of contract labour and generally ignored *regulation* of conditions of work of contract labour. The current dominant strategy of trade unions consists in organizing the contract workers, holding talks and negotiations with the principal employer and the contractors and strike work if necessary to press their demands. The main concerns of the contract workers have been to (a) regularize their services and become permanent employees in the organization of the principal employer and (b) secure better terms and conditions of employment via collective bargaining.

(a) Regularization of Employment

The contract workers are often employed for a number of years and these workers seek regularization of their services and wish to be absorbed as permanent employees in the organizations of the principal employer. Described following are two instances where the contract workers' unions have been successful in negotiating with the principal employer and reaching agreements which provide for progressive regularization of contract workers.

Tamil Nadu Electricity Board (TNEB), Tamil Nadu

The Tamil Nadu Electricity Board is a public utility service provided by the Government of Tamil Nadu. A public sector unit, it employs around 21,600 contract workers in the circles other than thermal, hydro and gas turbine projects. The agreement reached on 28 April 1999 provided for absorption of contract labourers engaged in thermal, hydro and gas turbine projects with effect from 1 May 1999. The contract workers engaged in distribution, and other circles filed for absorption under section 3 of the Industrial Establishment (Permanent Status to Workmen) Act, 1981 and the labour inspectors invariably granted absorption. The Board challenged these orders in the Chennai High Court and eventually obtained stay orders. Meanwhile, the Board negotiated with the unions representing contract workers. The Board agreed to consider the absorption demand of the contract workers in a phased manner. The settlement covers 21, 600 contract workers. It may be noted that 2,500 contract workers have already been absorbed since 1997-98. The Minister for Electricity announced on the floor of the Legislative Assembly that 6,000 contract workers will be absorbed in the initial exercise. In the second exercise, the rest of the contract workers eligible for absorption will be identified.

Neyveli Lignite Corporation, Tamil Nadu

The Neyveli Lignite Corporation is a central public sector organisation and is engaged in open coal mining. The Corporation employs around 18,790 regular workers and 13,800 contract workers, of which 13,000 are employed by private contractors and the rest by the NLC Industrial Cooperative Service Society. The Cooperative Society works under the administrative control of the Industries Department of the Government of Tamil Nadu and is the official supplier of contract labour to the Corporation. In 1994, the Cooperative Society's employment was frozen at 5,000. Owing to the intervention in the matter by the Labour Progressive Federation affiliated to the Dravida Munnetra Kazhagham (which was then the ruling political party in the state) , a 12 (3) settlement under the ID Act was reached and it provided for a scheme of regularization of these workers in a phased manner; by 2008, all but 800 workers were regularized.

The contract workers are organized by several unions like AITUC, CITU, Labour Liberation Front (LLF), and the United Trade Union Congress (UTUC-LS). The regular workers are organized by LPF, which is a recognized union. These unions submitted the following demands to the management of the Corporation on 13 March 2008:

- Regularization of contract labour;
- Payment of 8.33 per cent bonus for all contract workers;
- Equal pay for equal work
- Hospital facilities etc.

They also served a strike notice on these issues, proposing to strike work from 2 June 2008, if the demands were not satisfactorily met. The LPF, the recognized union of the regular workers supported these demands. Negotiations failed and workers went on strike. Conciliation proceedings under the ID Act were initiated as the Corporation was a "public utility service". Given the importance of coal, the central government showed both concern and interest in the conflict. Since the DMK was the ruling party at the state level and was part of the ruling coalition at the Centre, ministerial intervention took place. A Memorandum of Understanding (MoU) was reached

between the management of the Corporation and the contract workers' unions and the recognized union on the basis of the suggestions of the central government Minister. The important terms of the settlement are as follows:

- The Corporation will provide more works to the Cooperative Society in a phased manner;
- The contract workers will be made members of the Cooperative Society and the total number of workers deployed for annual maintenance contracts in the units of the NLC by the Cooperative Society will not exceed 5,000;
- The management agreed to hike the salary of the contract workers by Rs. 750/- per month
- The workers will be regularized expeditiously from amongst the members of the Cooperative Society on seniority basis;
- In addition, the Corporation's hospital the management will provide in-patient medical facilities to contract workers and their dependents free of cost similar to the services available to the regular workers.

The LPF as a recognized trade union agreed to these clauses of the MoU and as a result, the strike was withdrawn on 16 August 2008.

In June 2009, the contract workers' union, Jeeva Oppanda Thozhilalar Sangam (i.e. Jeeva Contract Workers' Union) served a notice to the NLC management announcing indefinite strike from 15 June 2009 as the management did not implement the two clauses of the settlement, viz. regularization of 5,000 workers and provision of medical facilities. Several short strikes preceded this indefinite strike call on these issues but in vain. The demands of the union included the following: (a) the management immediately implement the MOU signed on 16 June 2008 in the presence of the Chief Labour Commissioner (CLC), New Delhi; (b) it should recognize the NLC Jeeva Oppanda Thozhilalar Sangam based on the letter (dated 13 June 2008) given by the Coal Minister without delay; (c) it should increase fair wage and bonus for the contract workers on par with the permanent empolyees etc. (Thiagarajan, 2009a). The strike was called off due to the intervention of the CLC. However, the issues were not resolved. Owing to the partial non-implementation of the 2008 settlement, the unrest among the contract workers intensified. Meanwhile a bonus dispute was brewing among the regular workers and when they went on strike on, the contract workers participated in it (Thiagarajan, 2009 b).

(b) Regular Wage and Bonus Negotiations

It is to be noted that where contract workers are organized, the wage negotiations usually follow a pattern similar to that of regular workers. The trade union or unions present a charter of demands to the principal employer or contractor/ contractors association (as the case maybe) before the negotiations take place. Following are instances of collective agreement which seeks to define the terms and conditions of employment in a manner that is similar to the collective agreement reached in case of regular workers.

Neyveli Lignite Corporation

The NLC workers (regular and on contract) numbering 27,000 went on a strike for 24 hours on the issue of bonus in October 2009. An agreement was reached with the intervention of the Tamil Nadu Health Minister M.R.K. Pannerselvam and Coimbatore District Collector. The

permanent workers were to be paid a bonus of Rs. 51,000 (against their demand of Rs.61,000) and an attendance bonus of Rs.8,160. The contract workers were to be paid 8.33 per cent bonus and Rs. 500 as incentive payment (http://www.newkerala.com/nkfullnews-1-127657.html, accessed 13 October 2009).

Tamil Nadu Paper Limited (TNPL)

Tamil Nadu Paper Limited has several trade unions, viz. TNPL Contract Thozilalar Munnetra Sangam (TNPL Contract Workers Progressive Union), TNPL Oppantha Thozhilalar Anna Thozhilalar Sangam (TNPL Agreement Anna Workers Union, Pugalur TNPL Contract Labour Union, , TNPL Contract Thozhilalar Sangam (TNPL Contract Workers Union), TNPL Contract Desiya Thozhilalar Sangam (TNPL Contract National Workers Union), Dr. Ambedkar Contract Thozhilalar Sangam (Dr. Ambedkar Contract Workers Union), TNPL Bharatiya Contract Mazdoor Sangam (TNPL Indian Contract Workers Union). These unions submitted a charter of demands relating to revision of wages, dearness allowance and other benefits. Negotiations took place between the TNPL Contractors' Association and the group of Contract workers' unions mentioned above and a 18 (1) settlement was signed in September 2002. The tenure of the agreement was five years, from 1 September 2005 to 31 August 2010. The earlier agreement was in operation for five years from 2000 to 2005. The salient features of the agreement are as follows:

- A 20 per cent hike in basic wages drawn as on 31 August 2005
- The dearness allowance has two components, fixed dearness allowance (FDA) and the variable dearness allowance (VDA). The FDA in this settlement was fixed as per the formula: the FDA drawn as on 31 August 2005 plus the VDA related to the consumer price index at a given point and the amount treated as the FDA for the current settlement. The VDA linked to the consumer price index will be revised every quarter starting from January and the VDA will be payable at the rate of Rs. 1.60 per point above 2,590 points of the consumer price index.
- House rent allowance will be paid at the rate of Rs. 7 per day and will not be added to the wages for calculating provident fund, bonus, over time and so on.
- The contract workers will also get an annual increment of Rs. 300 for every year of service and payable from 1 September 2005 (the earlier annual increment was Rs. 240)
- The agreement promises safety shoes and rain coat, group life insurance, family planning incentive (Rs.1,500 for operation expenditure and seven days of leave post-operation), funeral expenses, night shift allowance (Rs. 3 per night shift), health allowance of Rs. 2 per day of attendance and so on. The retirement age of contract workers will be 58.

It may be noted here that the earlier agreement for 1995-2000 contained the same clauses as mentioned above.

Trade Union Recognition and Collective Bargaining Stalemate: A Case Study

There have been instances where the domestic or foreign employers have refused to recognize a trade union and negotiate with it the terms and conditions of employment. There are two principal reasons for this stalemate, viz. factors such as the economic environment and its impact on collective institutions and the legal set up. In the post-liberalization period has seen a weakening of the bargaining power of the trade unions. The existing labour laws in most states in India including Tamil Nadu provide for registration but not for recognition of trade unions and do not

impose on the employers the obligation to bargain in good faith with the trade unions. Further, no consensus exists on the method of determination of a bargaining agent. Membership verification method (including check off) and secret ballot are the two methods that can be used for this purpose. But unions are divided on the choice of a method: INTUC prefers membership verification method while many others, especially the Left-based trade unions prefer secret ballot. The Code of Conduct which is a voluntary exercise provides for use of membership verification method. The industrial relations laws in Maharashtra such as the Bombay Industrial Relations Act, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act also rely on it (Shyam Sundar, 2008 d). All these issues surfaced in a conflict in Madras Rubber Factory (MRF) in Tamil Nadu.

The MRF factory manufactures tyres and employs more than 5,000 workers in its factory in Arokonam in Tamil Nadu. There has been in place a "company union" (MRF Arokonam Workers' Welfare Union, AWWU) and membership dues were deducted from the wages of all the regular workers using the check off method. In 2003, the workers succeeded in forming an independent trade union, viz. the MRF United Workers' Union (MRFUWU) and got it registered. This union claimed that a majority of the workers in the unit joined it. In February 2004, the MRFUWU sought recognition from the management and asked the management to deduct membership dues using the check off system from the wages of its members. However, the company refused to recognize it and continued its membership fees deductions in favour of the AWWU. Over the months, the management is said to have used unfair labour practices such as unjust dismissals, suspensions, initiation of disciplinary proceedings, lodging false criminal complaints etc. against the office bearers and members of MRFUWU. The MRFUWU demanded a secret ballot to determine its representative status. But the government responded to this by saying there were not legal provisions in the state to initiate such a process. The union lodged a complaint with the ILO's Committee on Freedom of Association (CFA) (Case No. 2512, India). The CFA took the view that only a representative and independent organization of workers should participate in collective bargaining with employers, supported the union's demand for secret ballot method and recommended a government enquire into the allegations of unfair labour practices.

Meanwhile, the members of the MRFUWU went on strike from 9 May 2009 against the act of the management signing an agreement with the AWWU. According to the workers, they were getting less than half the salary the workers at Tiruvottiyur plant (main plant) with the same work experience. Workers in Arokkonam plant had agitated against the continuation of wage discrimination in 2008 also (Varadarajan, 2009). The company issued a statement saying that it concluded "a long-term settlement only with the trade union (i.e. the MRF AWWU) recognized by us (the company) ever since the workmen formed a trade union to represent them." In response to the strike, which it termed as "illegal", it declared a lockout (Business Standard, 2009 b).

The MRFUWU filed a writ petition in the Madras High Court seeking the implementation of the recommendation of the CFA. The state government took the view that in the absence of a central or a state law it could not implement the CFA's suggestion regarding the secret ballot; however, it could follow the non-statutory procedure laid down under the Code of Discipline with the help of the State Evaluation and Implementation Committee.

The management took the view that it was its discretion to recognize a union. The High Court which strongly endorsed the CFA's observations on the issues of independent unionism and collective bargaining emphasized the right of the workers to have a truly independent and representative union and pointed out that these flow from the laws of the land. Nevertheless, it

preferred membership verification to secret ballot method on the ground that the latter reflected the support for a union at the time of elections while the former was for long term. Accordingly, it ordered for determination of the representative status of the unions in MRF in accordance with the verification procedure provided for under the Code of Discipline. It also ruled that the MRFUWU could raise an industrial dispute on the legality of the settlement reached between the management and the AWWU. The strike was called on September 14, 2009 (Business Standard, 2009b; Economic Times 2009b; Gopalakrishnan, 2009).

Trade Unions, Collective Bargaining and Multinational Corporations

Interesting developments with regard to collective bargaining in multinational companies have taken place in Tamil Nadu of which two have been mentioned here. This instance is related to a South Korean multinational company Hyundai Motor India Limited (HMIL) which established an automobile plant in Sriperumbudur in Tamil Nadu in 1997. It employs around 6,000 employees, but less than 1,700 are reported to be regular workers. In June 2007, the workers in HMIL formed a trade union, HMI Employees' Union (HMIEU) much against the wishes of the management of the company. The company management refused to recognize it and maintained that it would negotiate only with the seven-member workers' committee which had been functioning for several years. It transferred later suspended two office bearers of the union. The issue was taken to the Labour Court.

It was alleged that since 2007, union members had been dismissed, suspended or transferred. In March 2009, the union served a strike notice on the management and went on an indefinite strike from April 21, 2009. The unions demanded reinstatement of 65 workers who had been dismissed, 34 of those who had been suspended and revoking the transfer of nine employees. The unions also demanded recognition by the management and accept negotiating with them rather than the workers' committee. The strike was led by General Secretary of CITU, A. Soundarajan, who was also the honorary president of the union. The management reportedly boycotted the initial conciliation meetings. From 4 May 2009, 1,000 workers went on a fast in addition to being on strike.

On the advice of the Commissioner of Labour, however, the management agreed to: (a) allow workers arrested during the strike to return to work, (b) not to sign a settlement with the workers' committee before 20 May, 2009 in view of the General Elections in the country, (c) reply to each point in the Charter of Demands of the union, and (d) not to victimize workers who participated in the strike. The union called this as "a very big opening in the formation of a trade union in multinational companies, all of which are intolerant of trade union activities in their units". Although the fast and strike were withdrawn, the agitations did not abate. The workers went on a sit-in-strike in July 2009 following the decision of the management to sign a settlement with a "workers' committee" and it was called off on 28 July following government intervention. Among other things the it was agreed that : (a) the management would reinstate, on a case by case basis, 21 out of the 81 employees sacked during an earlier strike, (b) the Labour commissioner would enquire into the cases of the remaining workers and (c) the employees transferred outside Chennai will be recalled and employed in the company's showrooms. However, the management refused to recognize the HMI Employees' Union. The company instead decided to have settlements with individual workers. Both the management and the workers' union seemed to be happy with these outcomes (Business Standard,2009a). It is to be noted that the extent of wage increases did not bother the parties as much as issues of union recognition and dismissal of workers. The MNCs prefer plant level workers' committee to a formal trade union. This position is not acceptable

to trade unions who argue that workers' committee cannot be an alternative or a substitute to trade unions.

Another case relates to workers in Nokia, the Finnish mobile phone company which operates a plant in Sriperumbudur. The workers here came together under the banner of LPF in July 2009. The Nokia management reportedly agreed to hold talks on wage revision with Nokia India Employees' Progressive Union. This was the first multinational company where DMK union organized workers. A similar exercise was carried out at Saint Gobain, another MNC. The company employs around 8,000 workers. The workers in the company had been demanding a raise in salaries. The agitation resulted in a flash strike on 13 Aug. 2009. However, the strike was called off within a day following assurance by the management to discuss the rise in wages with the workers. The Labour Department asked the parties to settle the issue before August 24, failing which it would intervene in the dispute (Arbiter, 2009). Talks continued and eventually a settlement was reached in a tripartite meet in October 2009. As the workers were keen to have a short term agreement, the agreement covered the period from 1 April 2009 to 31 March 2010 and negotiations were to be held in January 2010 to work out a long term agreement. The intermediate agreement fetched workers with work experience of 16 months to 24 months a rise of Rs. 1,500 to Rs. 1,750 and Rs. 2,000 to Rs. 2,250 for workers with experience of two to three years and Rs. 3,000 to Rs. 3,300 for those with more experience (Economic Times, 2009c). In January 2010, more than 50 employees were suspended on grounds of "serious misconduct" and the union went on a four day strike although it was called when Labour Minister and the officials of the Labour Department intervened (http://in,news.yahoo.com/20/20100122/1416/tnl-nokia-union-calls-off-4-day-strike.html, accessed 23 January 2010).

State and Collective Bargaining: Interplay and Intervention

Three mechanisms through which the State intervenes are the tribunal system, interim relief, and minimum wage setting process. These mechanisms are also affected by the process of collective bargaining.

Considering the importance of textile industry in Tamil Nadu, the government has often referred the industrial disputes over wages, and other conditions of work and bonus issues to the Special Industrial Tribunal for the industry constituted under the ID Act. The Tribunal passed awards for the industry. This process consolidated and concretized industry level consultations. The two parties (employers' association, namely the SIMA and the JAC and others) may conduct negotiations simultaneously even as they complied with the proceedings initiated by the Tribunal. The agreement(s) arrived at is then submitted to the Tribunal with a request to convert it into "consent award(s)" (Patil, 1986). This was the norm until decentralization of bargaining changed the pattern of consent awards. Employers and unions now negotiated agreements at the mill level and approached the Tribunal independently for grant of "consent awards". In 2005, the Special Industrial Tribunal had already passed 230 individual wage agreements as "consent awards" (Gurumurthy, 2005). According to the Labour Department, many such awards were passed by it over the years.

The government of Tamil Nadu amended the ID Act in 1982 to empowering the state to announce among others *interim relief* in industrial disputes (referred to a Labour Court or an Industrial Tribunal and pending settlement) in the interest of securing and maintaining industrial peace. An important feature of determination of service conditions in the textile industry is the

interplay of compulsory adjudication and collective bargaining. The Tamil Nadu Act No. 36 of 1982 inserted Section 10(B) in the ID Act (with effect from 15 August 1982 and the main provisions of the Section reads as following:

· In the case of industrial disputes referred to a Labour court or an Industrial Tribunal by the government under Section 19(1) of the ID Act, the government may in the interests of "securing the public safety or convenience or the maintenance of public order or supplies and services essential in the life of the community or for maintaining employment or industrial peace in the establishment" pass a general or a special order to require

(a) employers to observe the terms and conditions (including money payments to workers) of employment as determined by the government and

(b) public utility services to continue production on terms and conditions determined by the government. It further empowers the government to take measures on any "incidental or supplementary matters which appear to them to be necessary or expedient for the purpose of the order".

We see that the government enjoys tremendous amount of discretionary power to intervene in the industrial disputes and dictate terms and conditions of service to the employers (and to the workers and their unions), though as an interim measure. The trade unions in the state often cite this provision and demand government intervention in an industrial dispute. With such a provision, often the unions resort to strikes to attract attention of the government. For instance, in August 2001, JAC went on strike for two days demanding wage revision in the textile industry in Tamil Nadu. It also ended strike in two days in the hope that the government would invoke Section 10(B) of the ID Act and announce the payment of interim relief to the workers pending final settlement of the issue (Business Line, 2001b).

The state also has powers to set minimum wages in the scheduled employments that it appends to the Minimum Wages Act in the region from time to time. Following a wage dispute in the plantation industry, Government of Tamil Nadu issued a notification in September 2008 (Revathy, 2008) revising the minimum wages for the plantation sector to Rs. 101.52, in an effort to bridge the minimum wage gap between Tamil Nadu and its neighbouring state, Kerala – it is reported that the government of Kerala forced the employers in plantation industry to agree to a "negotiated settlement" of payment of Rs.115 a day to workers in tea and coffee plantations (Subramani, 2008). Employers were obviously peeved by this. They pointed out that this minimum wage unlike in the past was higher than that negotiated between the two parties (ranging from Rs.80 to 90 per day). They observe that state intervention in this form would "signal the end of collective bargaining" (D.P. Maheswari, President, United Planters Association of Southern India (UPSAI), Revathy, 2008). It would of course hike the labour cost – they estimate that the extra wage burden caused by the hike in the minimum wages would add Rs. 7-8 a kilogram to the cost of production. This, according to them, would affect the plantation industry's competitiveness, especially that of the small growers (*Ibid*).

Earlier in 2005, the state government had issued a order proposing to include employment in textile mills to the schedule of employments appended to the Minimum Wages Act. This was

done because the mills had been retrenching regular workers and filling in the vacancies created with new hands and paying them wages much lower than that determined through collective bargaining. Further, in mills where unions did not exist, the workers were being paid very low amount of wages (Gurumurthy, 2005).

The move was objected by the employers on the ground that inclusion of organized industries under the Minimum Wages Act was not admissible as the Act is mainly applicable to industries or employments which were not organized and the workers therein needed legislative intervention to prevent their exploitation. Further, the wages in the textile industry had been determined by awards by the labour adjudicatory bodies like the Industrial Tribunal and thus the workers were well protected. The government's argument was that there was disparity between the wages of protected workers and those of the unorganised in the industry and hence minimum wage determination by the government was necessary.

The two striking features of industrial relations in public sector are the presence of multiple unions and agitation strategy in the form of restrictive actions, strikes, litigations etc. For example, in the government transport sector, prior to 1998, six trade unions were involved in negotiations. In 1998, as a result of litigation, four trade unions were elected for negotiation and an agreement was signed on 13 February 1999. In 2002, all the trade unions filed writ petitions in the Court requesting it to give directions as to the unions with which the government should hold negotiate. The Court directed the government to hold talks with all the trade unions. The managements of all the corporations of the government formed a negotiation team to hold talks on wages with 21 trade unions and federations and in August 2005 arrived at a five year agreement (with effect from 1 September 2003 to 31 August 2008)– note the prolonged nature of negotiations owing to litigation and the complicated nature of negotiations in a multi-union set up characterized by political divisions. The recent round of negotiations started prematurely in October 2007 and resulted in a 12 (3) settlement in February 2008 due to intervention by the Minister for Transport. This settlement, signed by 27 trade unions, is valid for three years.

12 (3) Settlements

The 12 (3) settlements are settlements reached in the process of conciliation by a government conciliation officer or a conciliation board. The 12 (3) settlements stand superior to the collective agreements in terms of coverage and applicability. Owing to this, there exists in the state a popular practice of converting bipartite agreements into tripartite settlements. There are several routes adopted in this process. The parties (employer and the unions) reach an agreement between them and raise an industrial dispute to attract conciliation process and convert the agreement into a conciliated settlement, i.e. 12 (3) settlement. The direct negotiation process continues even as the conciliation process is on and the resultant bi-partite agreement is sought to be registered as a conciliated settlement. Alternatively, the political leaders, often the ruling party leaders bring about an agreement with their intervention and they seek to convert them into conciliated settlements. The managements prefer the conciliated settlements because of (a) prevalent inter-union rivalry, (b) to prevent minority and new and dissident unions to raise industrial dispute on the issues covered, and (c) to ensure long run stability in industrial relations. The trade unions too opt for it for protection from rival unions and long run stability. The government encourages it for reasons of industrial peace. Besides, it also looks good on the intervention record of the government agencies.

Industrial Disputes

Legal Framework governing Industrial Disputes, Strikes and Lockouts in Tamil Nadu

The principal objective of the labour policy for long has been achievement of industrial peace; indeed, the legal framework of the IRS has been primarily designed to achieve this objective. Policy makers have state intervention to collective bargaining. As a result, the role of third party intervention *via* labour laws, conciliation, adjudicatory bodies and labour judiciary, etc. have assumed greater importance. Among others, the ID Act deals with industrial disputes and industrial actions arising out of them. The formal conciliation machinery according to the ID Act can intervene in not only actual but also apprehended industrial disputes (and in cases of strikes and lockouts where notice for the same has been given) in public utility services; in others, it is the discretion of the machinery to do so. Conciliation is compulsory in the case of disputes in public utilities and optional in others; but as the National Commission on Labour observes, the optional provisions in the course of time "appear to be acquiring compulsory status in non-public utilities also". If the conciliation succeeds, it results in the 12 (3) settlement. Otherwise, the conciliation officer submits a 'failure report' to the government. It is important to note that the 12 (3) settlements have a wider applicability, i.e. to all the parties to the industrial dispute, all parties summoned to appear in the proceedings as parties to the dispute, the present employer, her heirs, successors etc., workers presently and subsequently employed. Whereas the collective agreement [18 (1) agreement] is binding only on the parties to the agreement.

The institution of compulsory adjudication (known as compulsory arbitration in the West) is of prime importance. Apart from disputes in public utilities, government is duty-bound to refer for adjudication it enjoys wide and sweeping discretionary power to refer or not the disputes in others (Kothari and Kothari, 1987; Ram, 1990). The adjudication is compulsory on two matters: one, the parties in a dispute have to accept adjudication; two, the award of the adjudicatory body is binding on the parties in dispute. The Government of Tamil Nadu has added another sub-section in November 1988 empowering the affected workers to approach *directly* the labour court in the event of failure of conciliation. This is a significant amendment because it cuts the red tape of bureaucracy and politics surrounding the referral process under the Act (Shyam Sundar, 1999 a; Lakshmanan, 1983). Another important addition is a sub-section to Section 10, viz. 10(B), of the ID Act empowering the government to issue an interim order (general or specific) specifying the terms and conditions of work pending settlement of the dispute by the adjudicatory process in the public interest and ensuring continuity of services and industrial peace (Malik, 2005,p.463). The state through compulsory adjudication not only purports to resolve disputes but also in the process supply 'rules' to the IRS. As the Supreme Court observes, "It can create new contracts and rights and obligations between the parties which it considers essential for keeping industrial peace" (Barot, 1994, p.159).

Making distinction between 'individual dispute' and 'industrial dispute' section 2 (k) of the ID Act defines industrial dispute as "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen ...". The individual dispute, i.e. dispute or difference related an individual was not considered as 'industrial dispute' till 1965. Section 2-A (inserted in 1965) accorded the status of 'industrial dispute' to disputes between individual worker and employer connected with separation of that worker (by discharge, dismissal, retrenchment or any form of termination), even though other workers or union are not party to that dispute. The 1965 amendment of the Act deemed dismissal, discharge, retrenchment or other form of termination of services of individual workers as 'industrial disputes' within the

meaning of the Act though "no other workman nor any union of workman is a party to the dispute".

Awards and judgements by labour judiciary and the Supreme Court have in general upheld the Constitutional right of forming of associations including trade unions and has recognized the legitimacy of strikes by employees except in some cases of government employees. However, the right to strike is not a fundamental right in India (Goel, 1989,p.271; Shyam Sundar, 2004b). Indeed, the Supreme Court judgement in 2003 ruled out the legal, constitutional, moral right to strike by public employees in India causing much uproar. Though the rules governing central and state government employees prohibit or restrict their right to form trade unions and prohibit industrial actions and other forms of protests, they enjoy employment security, social security and fair working conditions. There is a Joint Consultative Machinery and Compulsory Arbitration Scheme for Central Government employees in place. A Board of Arbitration has been set up under the Scheme in 1968 and it consists of "a Chairman and two other members from the staff side and the official side". The Board of Arbitration has so far given 257 awards out of 259 references made to it (Indian Labour Year Book, 2005 &2006, p.145).

The ID Act makes a distinction between strikes in public utility units and in others. Strikes in the former are not allowed (a) without a notice of six weeks before striking; (b) within 14 days of giving such a notice, (c) before the expiry of the date of the strike, and (d) during the pendency of conciliation proceedings and seven days after their conclusion. Strikes in all the establishments are prohibited during the pendency of conciliation, arbitration or adjudication proceedings and during the period of operation of the award in respect of matters covered by it. Strikes occurring in violation of these provisions are "illegal" and the violators are punishable under the Act. The same rules are applicable to lockouts. Rule 22 of the Tamil Nadu Government Servants Conduct Rules, 1973, stipulates that "no Government servant shall engage himself in strikes or in incitements thereto or in similar activities" (Ajmal Khan *et al,* 2005).

The Labour Bureau uses the term 'industrial disputes' to include strikes and lockouts: "'Strikes' and 'Lockouts' are two manifestations of the industrial disputes" (Indian Labour Year Book 2004, p.114). According to the Labour Bureau, strikes signify "temporary stoppage of work by a group or all employees of an establishment to express a grievance or to enforce a demand, while 'Lockout' represents temporary withholding of work from all or a group of employees by the employers for matters relating to employment or non-employment or the terms or conditions of employment". For collection of statistics on industrial disputes, only those that "involve ten or more workers, whether directly or indirectly" are included. Political and sympathetic strikes are not included as "they are not in any way connected with any specific grievance or demand of the workers and they are beyond the competence of their employers for redressal" (Ibid.). However, statistics on them are published separately, though their validity (i.e. coverage) and reliability (i.e. consistency in measurement instruments and practices) are doubtful.

At the state level, the term 'industrial disputes' is used to include all disputes whether they result in work stoppage or not. We use work stoppages to include strikes and lockouts in lieu of the Labour Bureau's term 'industrial disputes' as it would be confusing. There are three basic measures of work stoppage statistics, namely, the count (known as 'frequency'), workers involved (WI) and work days lost (WSL) – (Indian Labour Statistics, 2005; Labour Bureau. 2006).

Table 5.6 presents statistics regarding 'industrial disputes', i.e. the disputes raised by the parties or apprehended by the conciliation officers and seized of and those that came to knowledge of the state labour department.

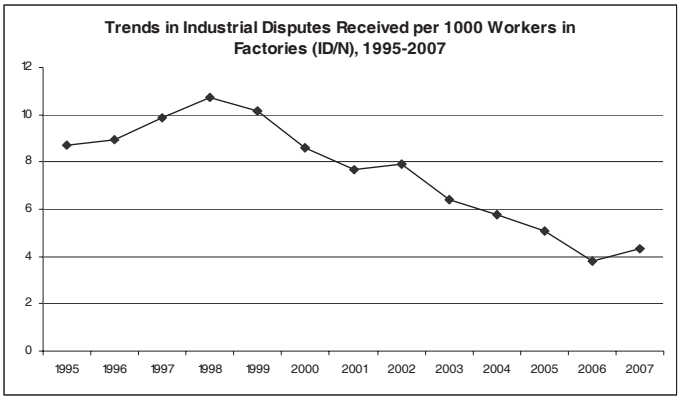
Table 5.6 Statistics on Industrial Disputes, 1995-2007

Year	No. of IDs Pending (Beg. of the-Year)	No. of IDs (Recd. during the Year)	Total	No. of Disputes Disposed of			Total	Disputes Pending at the end of the Year
				12 (3)	No. of 12 (4)	Otherwise		
1995	2 010	9 026	11 036	2 056	3 158	3 574	8 788	2248
1996	2 248	9 526	11 774	2 254	3 736	3 736	9 726	2048
1997 2858	2 048	10 914	12 962	2 062	4246	4246	3 796	10 104
1998	2 858	12 182	15 040	3 079	5 174	3 616	11 869	3171
1999	3 171	11 816	14 987	3 513	4 954	3 397	11 864	3123
2000	3 123	10 200	13 323	2 218	4 451	3 348	10017	3306
2001	3 306	9 375	12 681	1 791	4 701	3 798	10 290	2391
2002	2 391	9 772	12 163	1 795	4 528	2 871	9194	2969
2003	2 969	8 044	11 013	1 628	4 508	2 898	9 034	1979
2004	1 979	7 336	9 315	1 888	3 493	2 162	7 543	1772
2005	1 772	6 664	8 436	1 338	3 081	2 166	6 585	1851
2006	1 851	5 189	7 040	1 352	2 149	2 012	5 513	1527
2007	1 527	6 163	7 690	1 136	2 776	1 532	5 444	2246

Source: Office of the Commissioner of Labour, Chennai.

It is also a fact that growth in the workforce could itself lead to rise in the disputes.

Fig. 5.1

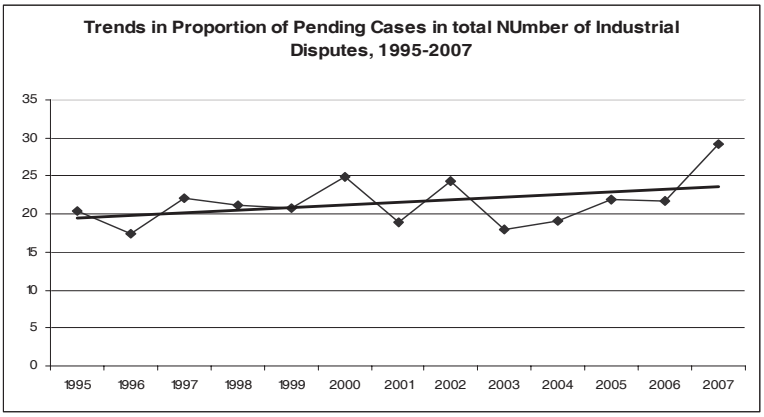


Sources: Office of Labour Commissioner
Office of the Chief Inspector of Factories, Chennai

A lion's share of the disputes is raised in the manufacturing sector. Figure 5.1 reveals that after an initial spurt, the number of cases brought for conciliation declined especially from 1998 onwards. This could have happened because (1) number of disputes have declined over the years or, (2) the parties have not preferred to take the disputes to the state machinery. We look at the number of pending cases at the end of the year to assess the working of the conciliation machinery. There are two relevant points that should be kept in mind. One, the attitude of the parties to the dispute and the issues involved in the disputes (wages, bonus or personnel etc.); two, the number of labour officers' in proportion to the growing numbers in the workforce – we have seen earlier that the officers perform multiple duties, conciliation being one among them.

The proportion of pending cases (at the end of the year) in the total industrial disputes (pending at the beginning of the year plus those received during the year) shows fluctuations; however, during the last five or six years it shows a rising trend and hence the linear regression line has begun to show a mild ascent as can be seen in Figure 5.2.

Fig.5.2 Trends in proportion of pending cases in total number of industrial disputes, 1995-2007



Source: Same as Table 5.1

Statistics on industrial disputes resolved by the conciliation machinery is presented in Table 5.7. These are categorised in three groups: (a) 12 (3) settlement cases, (b) otherwise disposed of, and (c) failure reports (i.e. 12 (4) cases).

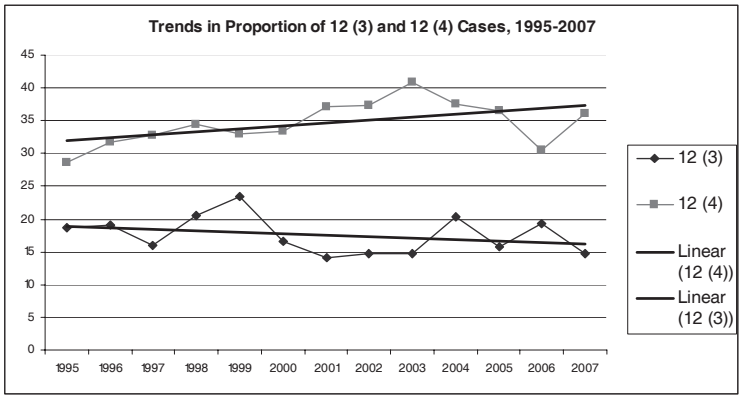
Table 5.7 Percentage of distribution of total Industrial Disputes resolved through conciliatory machinery, 1995-2007

Period	12 (3)	Otherwise	12 (4)	Pending	Total	(2) + (3)
95-97	17.81	31.05	31.14	20.00	100.00	48.86
98-00	20.32	23.90	33.63	22.15	100.00	44.22
01-03	14.54	26.68	38.31	20.47	100.00	41.22
04-07	17.59	24.24	35.40	22.77	100.00	41.83

The informal methods of disposing of industrial disputes such as advice from officers, advocates, voluntary withdrawal by the parties themselves etc. (under "otherwise" category) seem to be more in practice than either arriving at a conciliated settlement or sending a failure report, though the share of cases disposed by this method has shown a declining trend, from nearly 32 per cent in 1995-97 to just about 25 per cent in the last sub-period, 2004-07. The failure report cases account for around one-third of the disputes dealt with the labour department and has shown a general rising trend save in 2006-07 (Figure 5.3).

The 12 (3) settlements deserve some more discussion owing to the existence of some important institutional arrangement in Tamil Nadu. We have seen earlier that the 12 (3) settlements, i.e. the conciliated settlements have wider application and coverage than the bi-partite agreements covered under the 18 (1) of the ID Act.

Fig. 5.3



Source: Same as in Table 5.6

The 12 (3) settlements are legally on a higher footing than the 18 (1) agreements. In view of this legal peculiarity, in several cases, the parties arrive at an agreement when the conciliation process is on and submit the agreement to the conciliation officer requesting her to declare it a 12 (3) settlement in view of its superior status. Sometimes, this could result in 'push-over 12 (3) settlements' because unions involved belong to the ruling party or its allies (Shyam Sundar, 1999a). In the 1970s, 12 (3) settlements that involved 'minority unions' became controversial and figured in Assembly proceedings. . Sometimes, although the practice is less in recent times, the state labour department obliges 12 (3) settlement as it boosts their conciliation effectiveness record!

Strikes and Lockouts

Table 5.8 Loss of workdays due to strikes (work stoppage) in some states, 2003-2005

States	WDL due to Work stoppages			Average 2003-05	Employment in the Organized Sector, as on 31 March 2005 (in 000s)	WDL Per 1000 Employees	Rank
	2003	2004	2005				
Andhra Pradesh	7 128 653	957 169	1 011 506	3 032 443	2 042.8	1 484.45	2
Gujarat	147 450	163 439	187 368	166 085.7	1 693.6	98.07	8
Karnataka	139 557	216 673	457 965	271 398.3	1 862.1	145.75	7
Kerala	567 952	468 731	3 619 378	1 552 020	1 139.8	1 361.66	3
Maharashtra	546 657	1 346 513	1 432 693	1 108 621	3 540.9	313.09	6
Rajasthan	1 308 166	1 332 548	1 927 448	1 522 721	1 180.5	1 289.89	4
Tamil Nadu	939 375	637 982	660 954	746 103.7	2 278.7	327.43	5
West Bengal	18 411 666	17 564 722	19 216 222	18 397 537	2 038.8	9 023.71	1
All-India	30 255 911	22 687 777	28 513 534	26 796 929	15 777.2	1 698.46	-

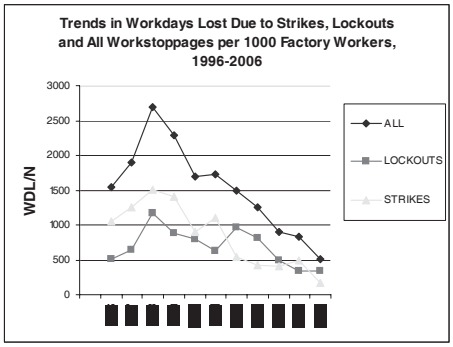
Note: We have used the employment in the organized sector for one year as a representative of the three-year period under the reasonable assumption that employment fluctuations are not bound to be greater, and even if they are they will be randomly distributed. The employment as a deflator is to take care of the differences in relative sizes of the labour market.

Source: WDL for work stoppages from the publications of the Labour Bureau; employment data from http://dget.gov.in/publications/qer/QuarterlyMar2005.pdf. [23 July 2008].

Together the eight states that have been presented in Table 5.8 accounted for around 95 per cent of the total workdays lost in India from 2003 to 2005 and contributed to about 60 per cent of the organized sector employment. Low numbers strikes and lockouts does necessarily not indicate industrial peace as conflict might manifest in other forms such as go-slow, absences, quits etc. (Shyam Sundar,1999a; Hyman 1989).

A look at the trends in work stoppage in Tamil Nadu from 1995 to 2006(Fig. 5.4) reveals that workdays lost due to all work stoppages after an initial rise in the first three years declined in the remaining years. Compared to lockouts decline in the number of strikes has been relatively smoother.

Fig.5.4



Source: For strikes and lockouts, the Office of the Commissioner of Labour, Chennai for workdays lost (unless otherwise stated, the source for strikes and lockouts data is from this office) and for employment, the Office of the Factories, Chennai.

Incidence of lockouts is one of the features of the industrial relations system in India; lockouts in the developed countries are rare. Table 5.9 shows the proportion of lockouts in total work stoppages.

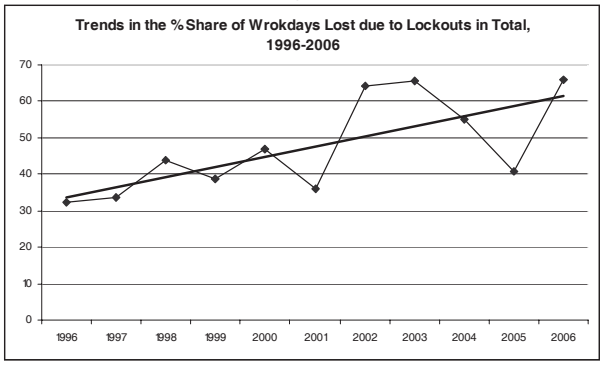
Table 5.9 Share of Lockouts in total work stoppage
1995-2006 (%)

Period	Count	WI	WDL
1995-97	15.76	17.37	27.04
1998-2000	23.54	21.27	42.87
2001-03	44.05	31.87	53.80
2004-06	28.37	20.53	52.43
Memo: 1986-4	-	-	24.48

Source: Same as in Table 5.4

We find that the share of lockouts in total work stoppages in Tamil Nadu in the case of all the three measures increased till 2001-03 after which it declined, though marginally in the case of the workdays lost, but somewhat considerably in the case of the other two measures. We depict the yearly trend with respect to workdays lost in figure 5.5.

Fig.5.5

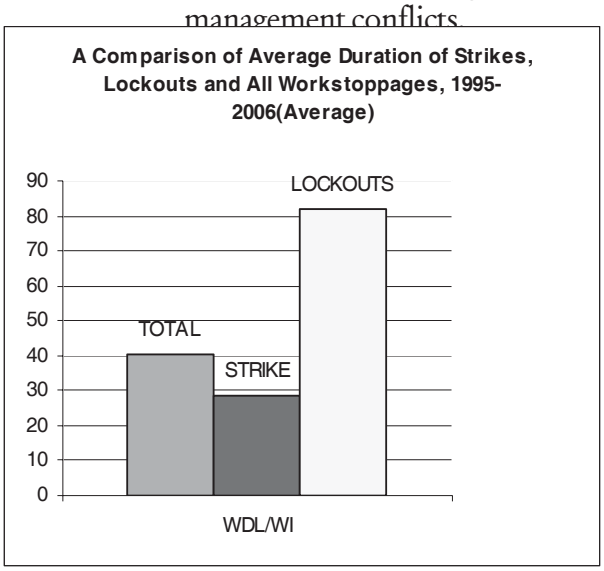


Source: Same as in Table 5.4

Incidence of lockouts has shown an increase in Tamil Nadu in the last ten years or so. Researchers in the industrial relations label this phenomenon as 'rise in employer's militancy'. Favourable economic environment on the one hand, the weakening of the labour institutions and the state policy and flexible labour market features on the other hand are said to have caused this; in fact, this indicates a shift in the balance of power in the labour market and the IRS (Shyam Sundar, 2004a, Datt, 2003, Sengupta, 1993;).

The secondary measures calculated for strikes and lockouts are workdays lost per strike/ lockout (WDL/WI, also called as 'average duration'), work days lost per strike/lockout (WDL/ STR or LOC, also called as 'average magnitude' and workers involved per strike/ lockout (WI/STR or LOC, also called as 'average size'). Figure 5.6 reveals that lockouts have lasted much longer than strikes indicating lockouts may have reasons beyond labour-management conflicts.

Fig.5.6

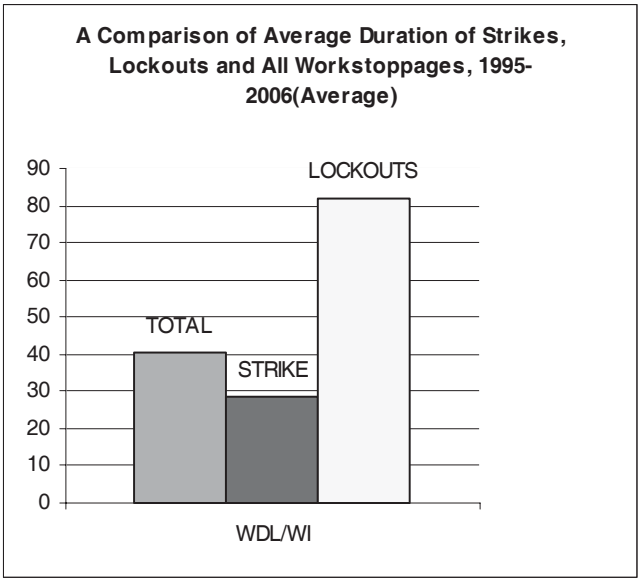


Source: As in Table 5.4

They are used both as 'weakening the union power' and as 'flexibility instrument' (Shrouti and Nankumar, 1994, Shyam Sundar, 2004a).

The average magnitude of lockouts, given their long duration, is much larger than that of strikes (Fig. 5.7). The average volume of work lost due to lockouts is almost double that lost due to strikes.

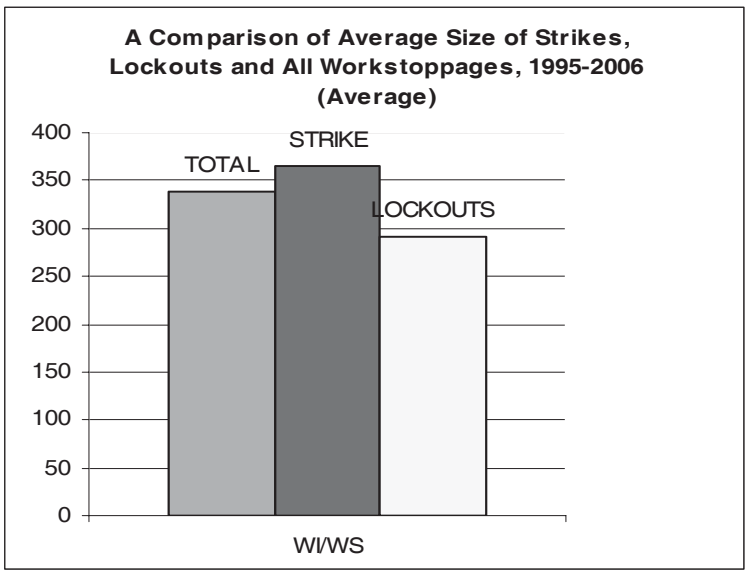
Fig.5.7



Source: As in Table 5.4

The average size of the strikes is slightly larger than lockouts (Fig. 5.8) because strikes could involve more workers and sometimes more firms and industries. However, the differences in size are not as marked as difference in duration and volume of workdays lost.

Fig.5.8



Source: As in Table 5.4

Strikes are less frequent, cause less loss of workdays , last less longer but involve more workers than lockouts are in Tamil Nadu.

Table 5.10 Comparative picture of distribution of strikes and lockouts & industrial disputes by issues, 2002-06

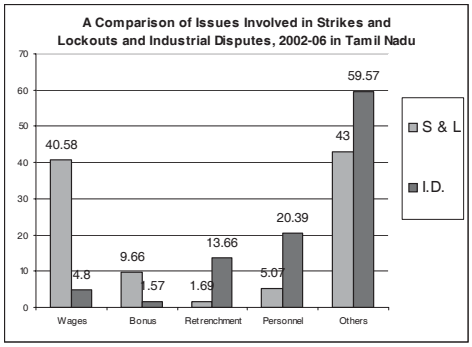
Issues	Strikes and Lockouts (%)	Industrial Disputes (%)
Wages etc.	168 (40.58)	1 778 (4.80)
Bonus	40 (9.66)	582 (1.57)
Retrenchment	7 (1.69)	5 056 (13.66)
Personnel	21 (5.07)	7 549 (20.39)
Others	178 (43.00)	22 051 (59.57)
Total	414 (100.00)	37 016 (100.00)

Note: The figures are total of the sum of the count of strikes and lockouts and industrial disputes during 2002-06 and figures in brackets are percentages.

Source: Taken from various issues of Performance Budget, Government of Tamil Nadu.

An analysis of the issues involved in strikes and industrial disputes in Tamil Nadu during 2002-06 (Table 5.10) and (Figure 5.9) reveals that workers adopted collective routes like work stoppages, whether initiated by workers/unions or the employers for fighting on monetary issues like wages and bonus. These issues concern all workers. Retrenchment and personnel issues like promotion, transfer, reinstatement of suspended or dismissed workers, allocation of tasks etc. usually concern a worker or a group of workers but trade unions take up these causes and fight them at a collective level via work stoppages.

Fig.5.9

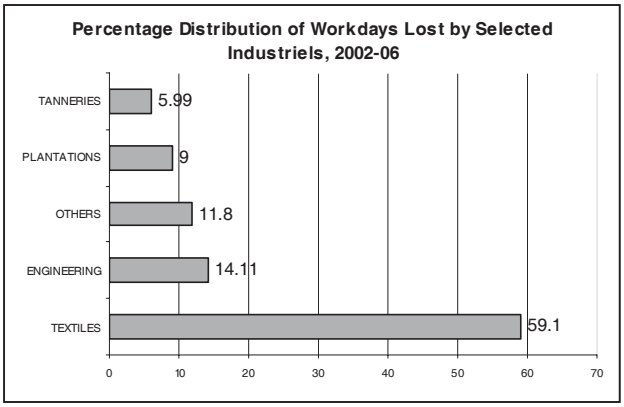


Source: As in Table 5.5

The assignation of the status of industrial disputes to individual disputes like retrenchment, dismissal in 1965 by an amendment of the ID Act gave opportunities to individual workers to raise industrial disputes over these issues. Nearly 14 per cent of the industrial disputes take up the issue of retrenchment. Comparatively just about 2 per cent of strikes and lockouts were caused by retrenchment. Similar gulf exists between the two types of protests in the case of 'personnel' category also.

Figure 5.10 shows the distribution of the number of strikes and lockouts in selected industries in Tamil Nadu during 2002-06.

Fig. 5.10



Source: As in Table 5.5

Textile industry has been a pioneer in the trade union movement in Tamil Nadu; but as elsewhere, they are undergoing serious market and economic difficulties and being dubbed as 'sunset industry'. These have not deterred the workers in it from striking; indeed, these strikes may be in protest against the managerial strategies taken in response to the economic difficulties. This industry accounts for a large share of the workdays lost in Tamil Nadu (nearly 60 per cent). The gulf between textile industry and engineering which ranks second in loss of workdays is large. Plantation is another traditional industry which is still at the centre of collective actions.

Table 5.11 Statistics relating to methods of disposal (or settlement) of work stoppages. Percentage of Disposal of Work stoppages in Tamil Nadu, 2002-06

Methods of Disposal	% Share
12 (3) Settlement	9.77
Advice	39.30
18 (1) Settlement	11.63
Direct Negotiation	22.56
Closure	0.47
12 (4) Report	16.28
Total	100.00

Source: *Performance Budget* (various issues), Labour and Employment Department, Government of Tamil Nadu.

It may be noted here that since 2002 the labour department has been following the categories of disposal as mentioned in Table 5.11. Earlier classification included direct negotiation, voluntary resumption of work, mediation by officers of the labour department and the government, closure, adjudication and others. This was more or less the format followed by the Labour Bureau in its statistical publications on strikes and lockouts. From Table 5.11 it is seen that about half of the work stoppages that were disposed of during 2002-06 were due to government intervention either in the form of 12 (3) settlement or advice to get back to work. A little more than one-third of work stoppages were resolved through bi-partite methods; 34 per cent of those settled by this method resulted in explicit 18 (1) settlements. A few work stoppages resulted in closure of the establishments. The conciliation machinery sent failure report, i.e. report under section 12 (4) of the ID Act in about 17 per cent of cases that were taken up for disposal.

Tamil Nadu Government Employees' Right to Strike

Conduct rules framed by the Government of Tamil Nadu in 1973 prohibits strikes and other forms of agitations by the government employees. Notwithstanding this directive, there have been strikes on a few occasions either alone or in support of the central government employees on issues of dearness allowance, leave encashment (February 2002), pay scale parity with central government pay scales (31 days strike in 1988) etc. In what is seen as a landmark event, in July 2003, nearly 1.2 million government employees and teachers went on a 11-day strike.

This was the result of a March 2003 state government order curtailing pension benefits of its employees. The government employees and the teachers under the banner of the Joint Action Committees of Tamil Nadu Teachers' and Employees' Organizations and the Confederation of Teachers' Associations and Government Employees' Organizations presented a 16-point charter of demand to the government but negotiations failed. These federations called for an indefinite strike from 2 July 2003. The government took the pre-emptive step of arresting the union leaders on 30 June and 1 July which provoked a spontaneous strike on 1 July. In an attempt to break the strike, the government invited replacement employees at a consolidated salary of Rs. 4000 per month and received good response. The unions approached the Madras High Court hoping for legal relief. The High Court initially ordered release of jailed leaders but its subsequent judgments hurt the strikers' interest as it asked the strikers to report for work and directed them to take their grievances to the State Administrative Tribunal.

The employees took the case to the Supreme Court hoping for a favourable verdict. In the meanwhile, the government amended by an Ordinance on 4 July 2003, the Tamil Nadu Essential Services Maintenance Act (TESMA) 2002. The Ordinance prohibited the strikes of government employees, required them to report for work instantly and empowered the government to impose any penalty including *dismissal from service* or a break in it. Invoking the Act and the Ordinance, the government dismissed the services of nearly 400,000 employees. The Supreme Court's verdict was that the *public employees have no fundamental, statutory, moral and equitable right to strike in the country*. However, it ordered reinstatement of all but 6,081 striking employees on compassionate grounds (Sri Raman 2003; Shyam Sundar, 2004b). This verdict was severely criticized by unions, noted advocates, even former judges (Gupte, 2003, Krishna Iyer, 2003, Dhawan, 2006). The All India State Government Employees' Federation (AISGEF) (affiliated to Trade Unions International of Public and Allied Employees) lodged complaints with the ILO through their international body, the World Federation of Trade Unions (http://www.tradeunionindia.org/tui_programs.htm). The Committee on Freedom of Association of the ILO has requested "the Government to take the necessary measures to amend the Tamil Nadu Government Servants Conduct Rules and the Tamil Nadu Essential Services Maintenance Act so as to ensure that public servants, with the only possible exception of those exercising authority in the name of the State, and teachers may exercise the right to strike". Indeed, this is the principle conceived by the ILO Committees on the right of public employees to strike (Gernigon *et al,* 1998, Shyam Sundar, 2004 b). The International Trade Union Confederation also noted this violation of union rights in its publications and statements (ITUC, 2007). The trade union organizations in India have been demanding that the government ratify the two of the core ILO Conventions, i.e. C.87 and C.98 (Shyam Sundar, 2009a) which would provide the necessary framework and guidelines to make amendments in the law that deals with strikes and lockouts to ensure the right to strike in vain.

India's Position on Non-Ratification of ILO Instruments:C.87 and C.98

The ILO has sought to analyze the reasons for non ratification of seven core Conventions (C. 182 was not yet adopted, hence the count was only seven) since May 1995 through a circular letter sent by the Director-General to member countries. Four major reasons came to the fore upon analysis. These were (a) non-conformity of national legislation and practice with the provisions of the core Conventions, (b) political situation, level of economic development (as reflected in large informal economy, institutional weaknesses, poverty, insufficiency of material resources, etc.), (c) rigidity of certain ILO instruments, and (d) the cumbersome ratification procedures. India has cited (b), (c) & (d) as obstacles to ratification of some of the core Conventions among many countries. Post-1995 ratification campaign by the ILO included technical assistance in the form of legal assistance, ILO Standards promotion, information training and technical cooperation. These were extended to India which ratified Convention No. 105 relating to forced labour (Ibid.) in 2000 (Table A.2 in Appendix I).India regards ILO standards as not as "legally binding norm" but providing "guidelines and useful framework" for designing national laws and regulations and administrative system for the protection of the interests of labour. . Ratification of a Convention imposes legal obligations and hence India has adopted a "careful" approach to ratification. India ratifies a Convention *only when* it is satisfied it has in place laws and practices conforming to the provisions of the relevant Convention. The revised approach is to progressively implement the standards and ratify these when it is "practicable". More importantly, India had participated positively by voting in favour of the adoption of a Convention even if it was not in a position to ratify it instantly.India has not ratified four of the eight core Conventions, Nos. 87, 98, 138 and 182. Conventions 87 and 98 apply to all persons "without distinction whatsoever" save army and police personnel. These provisions of the Convention would cover other government employees and this poses a challenge to the government. The government is averse to unionization of government employees in a highly politicized trade union system prevalent in the country. Nevertheless, the government and experts defend that non-ratification of the core Conventions does *not* present problems because of the guarantees contained in the Constitution.

The common law offers little or no protection to workers and their industrial actions (strikes or picketing). The Constitution of India provides for the fundamental right of freedom of association but conditions of work and life such as just and human conditions of work, equal pay for equal work etc. (Dhawan,2006,p.39) are part of the Directive Principles. The trade unions argue that the realization of a 'core right' like freedom of association requires certain 'concomitant rights' like freedom of industrial action etc. The right to collectively bargain and strike are essential activities of trade unions to further their legitimate organizational objectives. But the Supreme Court as early as in 1962 took the view that "... even a liberal interpretation of sub-cl.(c) of cl.(1) of Art.19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike ..." (judgement of the Supreme Court quoted in Dhawan, 2006, p.42).

A common form of protest, the *Bandh* is often called by political organizations and is normally aimed at bringing all work to a halt. Thus, during a *bandh*, functioning of public transport, business houses and even educational institutions are affected. Many a times the government invokes the Essential Services Maintenance Ordinance (Act) (ESMO or ESMA) which empowers it to deem an activity as 'essential' and ban strikes in them (Shyam Sundar 2004b, 2005).

CHAPTER 6

Tripartism

Legal as well as non-formal forums are used in the case of tripartite settlements. The legal forums include the Boards created under Industrial Disputes Act, Minimum Wages Act, the Contract Labour Act, and other such labour laws while the Indian Labour Conference (ILC), Advisory Boards at the state level are the non-formal forum. The two main features of two tripartite and consultative institutions in the state, the Contract Labour Act Board (CLAB) which is a legal body and , the State Labour Advisory Board (SLAB) which is a non-formal entity are discussed in the following paragraphs.

The Contract Labour Advisory Board (CLAB)

In what is seen as a controversial clause of the Contract Labour Act, Section 10 (1), empowers the state government to prohibit, after *consultation* with the Board, employment of contract labour in any process, operation or other work in any establishment. The law prescribes four criteria to be considered while deciding on prohibition: (a) the process or work is *incidental* or *necessary* for the industry, (b) it is of *perennial* nature, (c) if it is done ordinarily by *regular* workers, and (d) it is sufficient to employ *considerable* number of full-time workers.

Two important judgements by the Supreme Court on the abolition of contract labour have had far reaching effects on the functioning of the CLAB. The apex court in the case of Air India vs. United Labour Unions and Others held that consequent on abolition of contract labour the contract workers would automatically be absorbed as regular workers of the principal employer (popularly known as the "automatic absorption judgement"). Significantly, without automatic absorption, contract workers would be "rendered *persona non grata*", the Court argued. The remedy was worse than the disease! The Air India judgement was referred to a Constitutional Bench where it included contract labour in other public sector units like Steel Authority of India Limited (SAIL). The SAIL judgement rejected the Air India judgement and pronounced that the scheme of the CLRA did *not* provide for automatic absorption. The Court argued that abolition of contract labour did not result in unemployment of contract labour as was often assumed; the contract labour may be relocated.

Section 4 of the Act provides for the constitution of a State Advisory Contract Labour Board, which is tripartite in nature. Constituted every *three* years, the Board advises the state government on matters arising out of the administration of the Act and performs other functions assigned to it under the Act. The Board may also constitute sub-committees, if necessary. The Board shall consist of the members (listed in Table 6.1) as per Rule 3 of the Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1975.

Table 6.1 Constituents of the Advisory Board

S. No.	Constituents	Nature of Appointment
1.	Secretary to Government, Labour and Employment Department	Chairman of the Board
2.	The Commissioner of Labour Official Member	
3.	One person from the government (an official)	Appointed by the government
4.	Two persons representing industry in the public sector	-do-
5.	Two persons representing industry in the private sector	-do-
6.	Two persons representing the contractors to whom	-do-
	the Act applies	
7.	Six members representing trade unions connected	-do-
	with the establishments and contractors to whom the Act applies	
8.	Assistant Commissioner of Labour (Contract Labour), Chennai	Secretary

Source: Office of the Commissioner of Labour, Chennai

The present Board was constituted in 2003 and has been in office with effect from 18 February 2004.

Table 6.2 Meetings of Contract Labour Advisory Board (CLAB), 1999-2007

Year	Number of Meetings	Year	Number of Meetings
1995	1	2002	1
1996	-	2003	-
1997	2	2004	1
1998	1	2005	-
1999	1	2006	4
2000	-	2007	-

Source: Office of the Commissioner of Labour, Chennai

The present Board was constituted in 2003 and has been in office with effect from 18 February 2004.

Table 6.2 Meetings of Contract Labour Advisory Board (CLAB), 1999-2007

Year	Number of Meetings	Year	Number of Meetings
1995	1	2002	1
1996	-	2003	-
1997	2	2004	1
1998	1	2005	-
1999	1	2006	4
2000	-	2007	-
2001	-		

Source: Office of the Commissioner of Labour, Chennai

Table 6.2 presents the number of meetings that have taken place in Tamil Nadu during the period 1995-2007. The meetings are not only very few, they seem to be in utter contrast to the frequency of meetings of the Board in Maharashtra, where it has met 57 times during 1996-2004. However, the frequency of meetings could vary between the states depending on the extent of use of contract labour and the nature of issues arising out of the implementation of the Act.

The State Labour Advisory Board

The State Labour Advisory Board (SLAB) is an important tripartite body at the state level. Chaired by the Minister of Labour, the Board was formed to "give advice on all policy matters relating to Labour and important problems affecting Labour and also to give advice regarding changes in various Labour Laws and new Legislations on Labour" . The Board consists of six representatives each from the government, employers, and trade unions and four members of the Legislative Assembly of which one should be a women's representative. The tenure of the Board is three years.

Table 6.3 Meetings of State Labour Advisory Board (SLAB), 1997-2007

Year	Number of Meetings	Year	Number of Meetings
1997	3	2004	-
1998	1	2005	-
1999	-	2006	-
2000	2	2007	1
2001	-		
2002	-		
2003	-		

Source: Office of the Commissioner of Labour, Chennai

The meetings of the Board, though infrequent as Table 6.3 seems to suggest, could well have been timely to discuss important policy issues and may have provided a valuable platform for the stakeholders to hold discussions. Such details are, however, not available.

Other Tripartite Bodies

The Minimum Wages Act requires the formation of the Advisory Committee as does the Equal Remuneration Act. Other tripartite bodies in Tamil Nadu are: Plantation Labour Advisory Committee, State Evaluation and Implementation Committee (non-statutory), Plantation Labour Housing Advisory Board, State Advisory Committee on Cine Workers Welfare Fund, State Advisory Committee for Beedi Workers, and State Advisory Committee on Limestone and Dolomite Labour Welfare Fund. There is a State Level High Power Tripartite Safety Committee to monitor, implement and ensure occupational health and safety (OSH) issues in the factories. This was formed in response to the recommendations made by the Task Force Expert Committee headed by Dr. N. Santhappa. This Task Force was constituted in Tamil Nadu in 1985 after the Bhopal gas tragedy which raised concern on issues relating to ensuring OSH especially in hazardous chemical industries (http://dgfasli.nic.in/publication/reports/chennai/chapter8.htm, accessed 28 July 2008).

Conclusion

State regulation characterized management of product market as well as the Industrial Relations System in post-independent India — the logic of industrial peace determining the institutional framework of the IRS. This "state regulation model" concerning both the product market in the industrial sector and the IRS was severely criticized and its failures repeatedly pointed out by academics and employers. However, since the mid-1980s, the process of economic liberalization has led to significant changes in the economic system both on domestic and external fronts. There has been considerable pressure on the government to effect labour reforms as it was argued that reform of the labour market and the IRS was a necessary complement to reforms in the product market.

State governments now have a greater leeway to structure their industrial economy. This has led to severe competition between the states in India for capital. In order to promote industrial development of their respective regions, the state governments have often sought to change the governance of the labour market and the IRS. This has had wider implications on welfare and security of workers and has often invited protests from trade unions. Employers in the state persist with their agenda for more labour reforms while the trade unions oppose them and ask for more regulation and protection.

While the service sector share in Tamil Nadu's income has increased during the study period, the share of the secondary sector is higher in the state than in the states like Maharashtra. Again, unlike in others employment in the manufacturing sector has risen. This indicates the pace of industrialization and the attractiveness of the state for capital. Not surprisingly, the Tamil Nadu government has initiated or proposed to initiate a number of labour reform measures as incentives to the investors. The state government has been advisedly cautious concerning the reform proposals relating to flexibility in hiring and firing of workers and closure of establishments without prior government permission and rejected self-certification in labour inspection. It has sought to extend these reform measures in the emerging sectors like the IT sector, SEZs, which enjoy economic legitimacy (in the sense that they generate employment and contribute to exports and state income) and where unionism is weak. However, some relaxations have been offered in labour inspections with regard to non-hazardous units especially in small scale industries. These have serious implications for labour market governance in them. The competition for capital often leads to "race to the bottom", which should be a note of caution. We have in place some consultative forums, viz. the Indian Labour Conference (a tripartite body consisting of representatives of trade unions, employers and the government and the ministries concerned), the Labour Ministers' Conference (organized by the central government to discuss labour policy issues so as to bring an alignment between the policies of the states) and other complementary bodies like the meetings of the Chief Inspectors of Factories in the states and so on. These could be effectively used to discuss such issues and arrive at policy conclusions. Social dialogue is an effective institution to promote policy coherence and consensus which needs to be more fruitfully utilized in India including in Tamil Nadu.

The ILO norms and standards are clear that labour inspection system cannot be diluted and India has ratified the ILO Convention Labour Inspection Convention, 1947 (No.81). For example, the ILO lays considerable stress on the right of labour inspectors to have free and unannounced entry of labour inspectors (that visits at any time (reasonable or unreasonable) and frequent inspection visits (as often and as thoroughly as possible). The labour reform measures that many State governments and the legal provisions on them are not in sync with these fundamental and non-negotiable principles. For sure, the ILO is not against rationalization of the inspection system to promote ease and comfort levels for employers and efficiency of labour inspections. For example, it is not averse to integrated labour inspection system or coordination between different inspections (Shyam Sundar, 2010a). Absence of "voice" mechanisms (one of the pillars of decent work strategy of the ILO) in the emerging sectors leave the workers in them vulnerable; any further dilution of labour administration and standards in them is likely to affect the interests of the workers.

While the real labour productivity has increased in the organized manufacturing sector, the real wages witnessed a decline which indicates a fall in the share of wages in the total value added in the sector during the study period. The widening gap between the wages of workers and the

emoluments of employees (supervisory and managerial cadre) and the faster and positive rise in the emoluments of the latter shows a skewed distribution of income in the organized manufacturing sector. These indicate poor industrial relations outcomes. These are validated or explained by the decline in unionism and strike activity and a rise in lockout incidence. Trade unions are fighting battles for union recognition not only in the domestic sector but also in the MNCs. The absence of union recognition aiding laws is glaring.

There have been definite decentralizing tendencies in collective bargaining in the private sector, especially in textile and plantation industries. Trade unions prefer industry level bargaining to lower levels of bargaining. Public sector is the preferred site for organizing for trade unions and hence multiplicity of unions exists in it. This and the political rivalries spoil the industrial relations in public sector. Politically motivated union strategies, strikes and litigations prolong negotiation period. It is doubtful whether all these serve the cause of the workers in public sector. All these portray a grim picture for the workers, though there are encouraging signs regarding worker organization and collective bargaining.

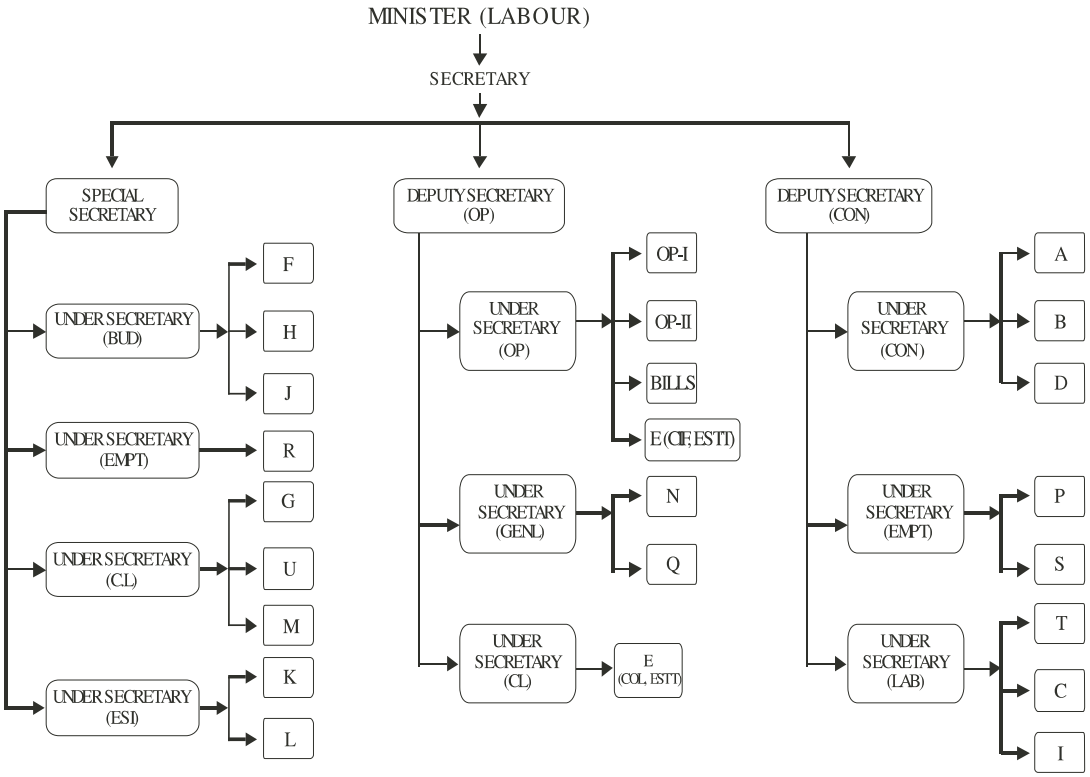
The state intervention machinery might have taken a backseat as far as the intervention in industrial disputes is concerned but it is active in settlement of actual work stoppages, viz. strikes and lockouts which is evident from the popularity of 12 (3) settlements as against the 18 (1) agreements. The state also sought to raise the floor level wages even in the organized industries like cotton textiles and plantation by raising the minimum wages. This may be justified by the negative growth rate of real wages experienced in the post-reform period.

The contract workers in the public sector (NLC, TNPL) have been able to organize themselves and resort to industrial actions to bring the management to the negotiating table and reach a settlement. The MRF workers despite odds (employer opposition, existence of a company union, absence of a union recognition law) battled it out both in the market place via strikes and in the corridors of law to oust the company union and achieve "recognition" for a representative union. The workers in Hyundai though could win recognition from the management for the "representative union" defeated the efforts of the management to lend legitimacy to the "workers' committee" by refusing to accept the agreement reached with it. Trade unions allege and even accuse MNCs in India of resisting unions. However, the smooth insertion of a LPF union in Nokia and initiation of collective bargaining between it and the management shows that there are exceptions.

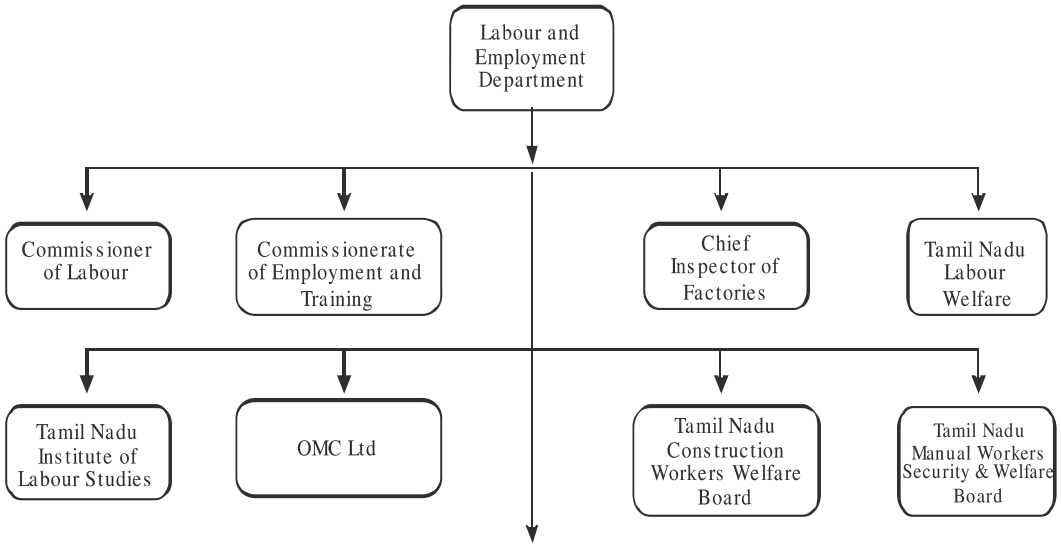
APPENDIX I

Organization of the Labour Administration in Tamil Nadu

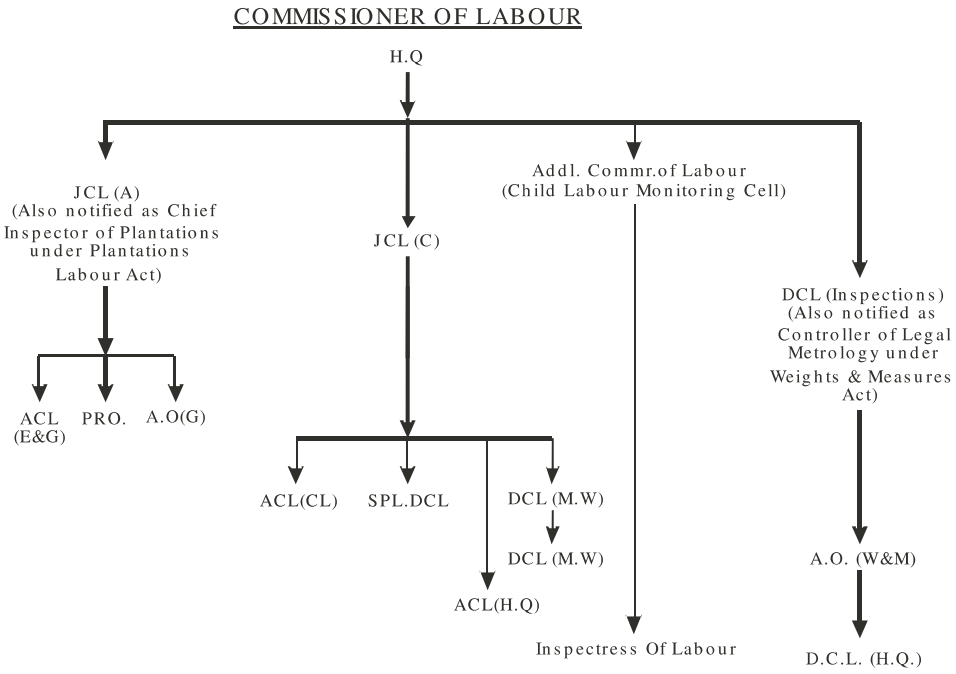
Fg. A. 1 Structure of the Labour and Employment Department at the Secreatariat in Tamil Nadu



Fg. A. 2 Administraative Units of the Labour and Employment Department in Tamil Nadu



Fg. A. 3 Organisational Setup of Headquarters Office



Fg. A. 4 Organisational Chart: Office of the Chief Inspector of Factories in Tamil Nadu.

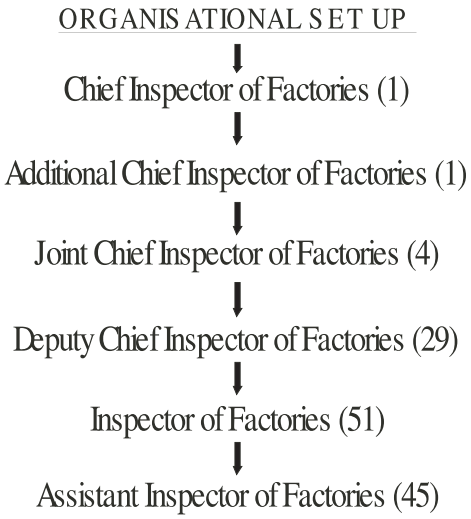


Table A.1 Labour Laws Enforced by the Labour Department in Tamil Nadu

1.	The Workmen's Compensation Act, 1923
2.	The Trade Unions Act, 1926
3.	The Payment of Wages Act, 1936 and Rules 1937
4.	The Child Labour (Prohibition and Regulation) Act, 1986
5.	The Industrial Employment (Standing Orders) Act, 1946 and Rules, 1947
6.	The Tamil Nadu Shops and Establishments Act, 1947 and Rules, 1948
7.	The Industrial Disputes Act, 1947
8.	The Minimum Wages Act, 1948 and Rules 1950
9.	The Plantations Labour Act, 1951s
11.	The Tamil Nadu Catering Establishments Act, 1958 and Rules
12.	The Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958
13.	The Maternity Benefit Act, 1961 and Rules 1967
14.	The Motor Transport Workers Act, 1961 and Rules 1965
15.	The Payment of Bonus Act, 1965 and Rules 1975
16.	The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and Rules 1968
17.	The Contract Labour (Regulation and Abolition) Act, 1970 and Rules 1975
18.	The Payment of Gratuity Act, 1965 and Rules 1975
19.	Tamil Nadu Labour Welfare Fund Act, 1976 and Rules
20.	The Equal Remuneration Act, 1976 and Rules
21.	The Sales Promotion Employees (Conditions of Service) Act, 1976
22.	The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1982
23.	Tamil Nadu Manual Workers (Regulations of Employment and Conditions of Work) Act, 1982
24.	Tamil Nadu Payment of Subsistence Allowance Act, 1981
25.	Cine Workers and Cinema Theatre Workers (Regulations of Employment)Act, 1981 and Rules 1982
26.	Standards of Weights and Measures (Enforcement) Act, 1976 and Standards of Weights and Measures (Packaged Commodities) Rules 1977
27.	Standards of Weights and Measures (Enforcement) Act, 1985 and the Tamil Nadu Standards of Weights and Measures (Enforcement) Rules, 1989
28.	Inter/State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
29.	The Tamil Nadu Handloom Workers (Conditions of Employment & Miscellaneous Provisions) Act, 1981.

Source: http://www.tn.gov.in/rti/proactive/labour/handbook-labour.pdf, accessed 3 August 2008.

Table A.2 List of ILO Conventions and Protocols to Conventions Ratified by India (as on 18 May 2010)

Serial Number	Convention	Ratification Date	Status
1.	C1 Hours of Work (Industry) Convention, 1919	14/7/1921	Ratified
2.	C2 Unemployment Convention, 1919 (a)	14/7/1921	Denounced on 16/4/1938
3.	C4 Night Work (Women) Convention, 1919	14/7/1921	Ratified
4.	C5 Minimum Age (Industry) Convention, 1919	9/9/1955	Ratified
5.	C6 Night Work of Young Persons (Industry) Convention, 1919	14/7/1921	Ratified
6.	C11 Right of Association (Agriculture) , Convention1921	11/5/1923	Ratified
7.	C14 Weekly Rest (Industry) Convention, 1921	11/5/1923	Ratified
8.	C15 Minimum Age (Trimmers and Stokers)		
	Convention, 1921	20/11/1922	Ratified
9.	C16 Medical Examination of Young Persons (Sea) Convention, 1921	21/11/1922	Ratified
10.	C18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30/9/1927	Ratified
11.	C19 Equality of Treatment (Accident - Compensation) Convention, 1925	30/9/1927	Ratified
12.	C21 Inspection of Emigrants Convention, 1926	14/1/1928	Ratified
13.	C22 Seamen's Articles of Agreement Convention, 1926	31/10/1932	Ratified
14.	C26 Minimum Wage-Fixing Machinery Convention, 1928	10/1/1955	Ratified
15.	C27 Marking of Weight (Package Transported by Vessels) Convention, 1929	7/9/1931	Ratified
16.	*C29 Forced Labour Convention, 1930*	*30/11/1954*	*Ratified*
17,	C32 Protection against Accidents (Dockers) Convention (Revised), 1932	10/2/1947	Ratified
18.	C41 Night Work (Women) Convention (Revised), 1934 (b)	22/11/1935	Denounced on 27/2/1950
19.	C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13/1/1964	Ratified
20.	C45 Underground Work (Women) Convention, 1935	25/3/1938	Ratified
21.	C80 Final Articles Revision Convention, 1946	17/11/1947	Ratified
22.	C81 Labour Inspection Convention, 1947 (c)	7/4/1949	Ratified
23.	C88 Employment Service Convention, 1948	24/6/1959	Ratified
24.	C89 Night Work (Women) Convention (Revised) 1948 (and its Protocol)	27/2/1950	Ratified

Serial Number	Convention	Ratification Date	Status
25.	C90 Night Work of Young Persons (Industry) Convention (Revised), 1948	27/2/1950	Ratified
26.	*C100 Equal Remuneration Convention, 1951*	*25/9/1958*	*Ratified*
27.	*C105 Abolition of Forced Labour Convention, 1957*	*18/5/2000*	*Ratified*
28.	C107 Indigenous and Tribal Population Convention, 1957	29/91958	Ratified
29.	C108 Seafarers' Identity Documents Convention, 1958	17/1/2005	Ratified
30.	*C111 Discrimination (Employment and Occupation) Convention, 1958*	*3/6/1960*	*Ratified*
31.	C115 Radiation Protection Convention, 1961	17/11/1975	Ratified
32.	C116 Final Articles Revision Convention, 1961	21/6/1962	Ratified
33.	C118 Equality of Treatment (Social Security) Convention, 1962 (d)	19/8/1964	Ratified
34.	C122 Employment Policy Convention, 1964	17/11/1998	Ratified
35.	C123 Minimum Age (Underground Work) Convention, 1955 (e)	20/3/1975	Ratified
36.	C136 Benzene Convention, 1971	11/6/1991	Ratified
37.	C141 Rural Workers' Organisations Convention, 1975	18/8/1977	Ratified
38.	C142 Human Resources Development Convention, 1975	25/3/2009	Ratified
39.	C144 Tripartite Consultation (International-Labour Standards) Convention, 1976	27/2/1978	Ratified
40.	C147 Merchant Shipping (Minimum Standards) Convention, 1976	26/9/1996	Ratified
41.	C160 Labour Statistics Convention, 1985 (f)	1/4/1992	Ratified
42.	C174 Prevention of Major Industrial Accidents Convention, 1993	6/6/2008	Ratified
43.	P89 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948	21/11/2003	Ratified

Notes:

(a) The Convention requires internal furnishing of statistics concerning unemployment every three months which was considered not practicable.

(b) Convention denounced as a result of ratification of Convention No.89

(c) Excluding Part II.

(d) Branches (c) and (g) and Branches (a) to (c) and (i).

(e) Minimum age initially specified was 16 years and it was later raised to 18 years in 1989.

(f) Article 8 of Part – II (http://labour.nic.in/ilas/convention.htm, accessed 15 May 2009).

Source: http://www.ilo.org/ilolex/english/newcountryframeE.htm, accessed 18 May 2010.

Table A.3 Statistics Relating to Trade Unions in India, 1991-2004

Year	Number of Registered Trade Unions	Number of Trade Unions submitting Returns	Member ship of (3) (000s)	Employment in Organized Sector (000s)	Average Size	Year-on-Year Change of (2)(%)	D.U. 1 (%)	D.U. 2
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
1991	53535	8418	6100	26733	725	4.01	22.82	
1992	55680	9165	5746	27056	627	0.19	21.24	
1993	55784	6806	3134	27177	460	1.95	11.53	4.08(1.59)
1994	56872	6277	4094	27355	652	1.90	14.96	
1995	57952	8162	6538	27525	801	1.79	23.75	
1996	58988	7242	5601	27941	773	2.83	20.05	
1997	60660	8872	7409	28245	835	2.20	26.23	
1998	61992	7403	7249	28166	979	4.56	25.74	
1999	64817	8152	6407	28113	786	1.91	22.79	3.67(2.08)
2000	66056	7253	5420	27960	747	0.86	19.38	
2001	66624	6531	5873	27789	900	2.88	21.13	
2002	68544	7812	6973	27206	893	2.88	25.63	
2003	74649	7258	6277	27000	865	8.91	23.25	
2004	74403	5242	3397	26443	648	-0.33	12.85	2.77(1.44)
Average	62611	7471	5730	27481	764	2.59	20.81	

Note: (1) Trade unions include unless specified otherwise in this and subsequent tables and figures workers' and employers' organizations.

(2) Average size is membership per union (submitting returns)

(3) D.U. – degree of unionization; DU 1 – Union membership (reported) as a percentage of employment in the organized sector; DU 2 – Union membership as a percentage of non-agricultural employment as measured on CDS by the NSSO; figures in parentheses are Union membership as a percentage of total employment as measured on CDS by the NSSO (1993-94 – 313.93 million; 1999-2000 – 338.19 million; 2004-05 – 384.91 million)

(4) Women union membership constituted on an average 17.55 per cent during 1991-2004; the share ranged from 9.69 per cent in 1991 to 26.83 per cent in 2001.

Source: Indian Labour Year Book (various issues), Ibid.

Table A.4 Structure of Unions in India

Nature of Union Organization	Comments	Level
CTUOs	Mostly political, affiliated to	National
	central political parties	
Regional TUOs	Political or non-political	Regional
	affiliated to regional political parties	
Industry/Sector organizations/federations	Mostly in public sector like banks,	National/regional
	insurance, railways, aviation, electricity, affiliated to political parties, or independent, e.g. All India Stock Exchange Employees Federation).	
Caste ethnic or gender based organizations	Organizations by scheduled caste and tribes, tribals, and women employees	Enterprise/regional/industry
Craft organizations	Railways, textiles, coal, aviation	Industry/national/regional
White-collar organizations	Clerical/managerial/professional	Enterprise/sectoral/national
Enterprise Unions	Mostly Non-affiliated	Enterprise
Firm level federations of	Non-affiliated	National
enterprise unions		
Unity organizations	Political or non-political	National/regional/enterprise
Informal sector organizations	political), NGOs	

APPENDIX II

Information resources

People interviewed:

Mr. Ravichandran, Special Deputy Commissioner of Labour, Office of the Commissioner of Labour, Chennai.

Mr. Parangusam, Conciliation Department, Office of the Commissioner of Labour, Chennai.

Mr.Venkata Raman, Superintendent, Office of the Chief Inspector of Factories, Chennai.

Mr. M. Shanmugam, General Secretary, Labour Progressive Federation, Chennai. Participants in the Tripartite Meet on the Report held in Chennai on October 3 2009.

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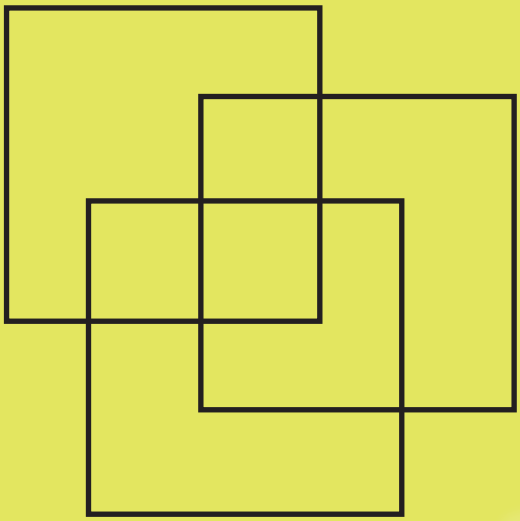

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ISBN:
978-92-2-124530-8 (print)
978-92-2-124531-5 (web pdf)