



National Tripartite Seminar:
**Enhancing Labour Administration's
Performance and Strengthening
Tripartite Social Dialogue**

Claridges Hotel, New Delhi- 13 October 2015

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INTRODUCTION

India's Decent India Decent Work Country Programme (DWCP) for 2013-17 identifies 'enhancing labour administration, tripartism and social dialogue at National and State levels' as a priority area.

In India there are numerous tripartite advisory bodies in place on specific issues at both the Central and State levels, which are constituted by different legal Acts. While in some states, these social dialogue institutions are more effective in addressing outcomes, in many other states these bodies are not functioning properly. There is a need to reinforce their functioning and roles to enable them to achieve their policy objectives (e.g., extend social protection coverage to informal workers and businesses) and to strengthen follow-up mechanisms on collective recommendations and resolutions. The present social dialogue scenario is affected by the persistence of informal employment, particularly as a result of the increasing use of contract labour, which further challenges the tripartite partners in extending the coverage of labour laws and regulations to these workers, and to promote decent work in terms of social protection, income security, and payment of minimum wages.

The main challenge of the labour administration system in India is the large informal economy. Workers in informal and non-regular forms of employment are not covered by labour legislation. The current Government has embarked on a major labour law reform agenda with the objective of addressing informality and bringing unorganized workers and businesses in the purview of labour law. There is an increasing trend of labour disputes being settled through adjudication rather than through conciliation and mediation.

In the framework of the DWCP Priority 4 on labour administration, tripartism and social dialogue, a national study on the performance of labour administration in India as well as four state-levels studies on labour administration and tripartite social dialogue (i.e., Karnataka, Kerala, Maharashtra and Tamil Nadu) have been conducted. The findings of these studies were presented in the 'National Tripartite Seminar on Enhancing Labour Administration's Performance and Strengthening Tripartite Social Dialogue' which took place on Tuesday, 13 October 2015 at Hotel Claridges. While this seminar presented Indian case studies, it also encompassed comparative sessions in which international best practices were shared.

The main objective of the seminar was to discuss 'the way forward'. It was an opportunity for participants to brainstorm on a strategic work plan aimed at addressing the challenges identified by the studies in effort to strengthen labour administration as well as tripartite social dialogue. A robust labour administration system, effective social dialogue and harmonious industrial relations are core pillars for promoting more effective and inclusive economic and social policies.

SUMMARY OF THE SEMINAR

1. Opening Remarks

- a) The program began with a welcome address from the *Officer in Charge, ILO DWT/CO-New Delhi, Mr. Markus Ruck*. Mr. Ruck informed the participants that during the course of the seminar, findings of a national study on the performance of labour administration in India, conducted by the V.V. Giri National Labour Institute (VVGNLI) would be presented. This study is a part of a global research project being undertaken by the ILO. Given that India has many innovative practices in this area, this study is a valuable contribution to the global product. He mentioned that in addition, findings from research on the functioning of tripartite social dialogue in the four states of Karnataka, Kerala, Maharashtra and Tamil Nadu would also be discussed. These studies have been carried out within the framework of India's Decent Work Country Program (DWCP) 2013-2017, which is aligned with India's five year plans and key policies of the Government. The DWCP, which is the main vehicle for providing ILO support to the country, prioritizes activities after a rigorous tripartite consultation process. Mr. Ruck highlighted that the main objective of the seminar is to discuss the way forward, and to have the participants brainstorm on the strategic work plan for addressing the challenges brought out in the studies for the ultimate aim of enhancing labour administration and social dialogue.
- b) *Mr. Ludek Rychly, Senior Specialist for Labour Administration and Social Dialogue, ILO- Geneva*, briefly introduced the ILO's global research project on labour administration. He started out by congratulating India for having made progress in the arena of Labour Administration and thanking the Government for joining the global study. According to Mr. Rychly, the quality of labour administration in any country is crucial for the success of labour policies. While there is an acknowledgement of this fact within the ILO, there remain several knowledge gaps about the different developments in this area across the world. The global project aims to track these developments in emerging and developed economies so as to arrive at certain best practices and lessons learnt. He noted that the project is not an academic one but is being undertaken with the help of practitioners. The ultimate goal is to help train administrators which could be the first step for concrete interventions in labour administration.
- c) *Mr. Manish Gupta, Joint Secretary, Ministry of Labour and Employment (MoLE)*, gave the inaugural address. Mr. Gupta underscored the importance of efficient labour administration and inclusive social dialogue for realizing the objectives of various labour regulations and labour welfare measures. He pointed out that in India, it would be fitting to consider the main topics for the seminar within the context of the overall labour reforms that have been initiated by the Government. Broadly, these reforms are of two kinds: legislation and regulatory reforms, and labour governance reforms. These reforms are being undertaken with the objective of reducing uncertainty, complexity and archaic rules so as to benefit businesses; creating a robust and comprehensive floor of rights that is extended to unprotected workers; and modernizing dispute resolution and inspection systems to aid the government. The most significant step that has thus far been taken by the government is the simplification and rationalization of 44 labour legislations into 5 labour codes (i.e., wages, industrial relations, social security, safety and working conditions, small factories). Since the process of codification is difficult and time consuming, amendments in legislations that are considered urgent are being addressed. The government has also introduced a series of technology enabled reforms to make labour administration more efficient and transparent. Mr. Gupta, however, noted that technology would only be able to play a wider role in labour administration if the capacity of the administrative bodies to use the technology is expanded on a continuous basis. Furthermore, he stated that it is crucial to ensure that the inequality in terms of access is addressed and that the dualism between larger industries and small entrepreneurs is not widened with the introduction of technology.

Given the significant proportion of workers within the informal economy, Mr. Gupta applauded some of the state governments' initiatives for extending labour administration to the informal sector. He added that it is crucial to assess and evaluate the performance of these measures on a continuous basis so as to help alter them as well as to provide insights to other states.

Moving onto the importance of social dialogue, Mr. Gupta stated that compliance doesn't flow from legislation, and that the facilitation of dialogue between the employers and employees should be a key task undertaken by the labour administration. Reiterating the significance of social dialogue, he referred to it as the best way for ensuring that economic policies for progress are formulated while taking into the concerns of the workers. He also claimed that it is essential to ensure that the social dialogue process does not exclude informal workers, women, unemployed, and voluntary organizations, and should be more inclusive. He closed by stating that it would be useful to conduct empirical state level studies to better understand the enabling factors and positive outcomes of social dialogue and to develop usable indicators for progress.

- d) *Ms. Angelika Muller, Social Dialogue Technical Specialist, ILO-Geneva*, reserved her comments on social dialogue for a later part of the afternoon and expressed her gratitude to the participants for their presence.

The inaugural address was followed by a round of introduction of the participants. The participants included representatives from 12 states, 7 employers' organizations, 9 trade unions, and colleagues from the VVGnLI and the ILO.

2. Technical Sessions

Session 1: Performance of Labour Administration in India

Chairperson: Mr. A.K Nayak, Chief Labour Commissioner (MoLE)

Mr. Nayak introduced the session by noting that the one aspect common to all labour legislation is that there are three principal stakeholders in each Act. Tripartite consultations are key for ensuring that the three stakeholders are on the same page. He claimed that it is crucial for all three to acknowledge each other's roles and responsibilities and to cooperate. He also stated that it is imperative to stop thinking of employees as beneficiaries, given their importance in the economic production process.

Presentation 1: Enhancing Labour Administration's Performance in India

Dr. Kingshuk Sarkar, Senior Fellow, VVGnLI

Dr. Kingshuk Sarkar presented the findings of the aforementioned national level study on labour administration in India which has been conducted by the VVGnLI as part of the ILO's global project. He started out by establishing the socio-economic context within which the labour administration is operating in India and proceeded to list some of the initiatives undertaken by the central government as well as by the governments of West Bengal and Karnataka to improve their labour administration. He then

discussed briefly the strengths and weaknesses of the administrative and legislative reforms that have been undertaken and highlighted some of the gaps in labour administration.

In the final segment of the presentation, Dr. Sarkar made certain recommendations based on his findings for enhancing the performance of labour administration. His first set of recommendations focused on the need to reach out to those currently excluded from the reach of labour administration, such as informal sector workers, self-employed persons, and those working outside the traditional work space comprised by a factory/establishment. He emphasized the need for rationalized and simplified laws. He spoke about how laws do have built-in flexibility and require better implementation. He also stressed the need for a thorough consultation process with all stakeholders before any amendments are made. His recommendations included an emphasis on the introduction of technology but along with the caveat that such steps are likely to fail if not accompanied by equivalent corresponding infrastructure and training of human resources. Establishment of a stand-alone, block level Labour Welfare Facilitation Centre was suggested. A need for inter-state consultations and experience sharing platforms was also expressed.

Panel Discussion

Mr. C.K. Sajinarayan, President, Bharatiya Mazdoor Sangh (BMS)

Mr. Sajinarayan commenced by recalling that the current government is in the middle of a reform process based around the central principle of withdrawal of the State as far as possible. Such a view extends to the labour administration sector where an abolition of the labour inspectorate, and workplaces free from labour laws and trade unions are being sought. In this context, the question that is begged is, what is the role of labour administration in India?

Mr. Sajinarayan noted that that ideally, bipartism should underpin industrial relations and only when that fails should tripartism be resorted to. However, in India, the status of industrial relations is rather primitive. In India, 93.7% of the workforce (around 430 million people) is employed in the informal sector, and therefore, falls outside the purview of the labour administration. Mr. Sajinarayan gave the example of a Naxalite area in Jharkhand, where there is no government outreach. Many such areas exist and it is important for the labour administration, trade unions, and judiciary to reach them before they fall into the hands of insurgents and other illegitimate actors. According to him, extending benefits of the labour administration to the informal sector should not be seen as an act of charity but instead be viewed as an act for empowering the labour for transforming the Indian society. As for the formal sector, where the labour administration is able to penetrate, there continue to exist certain concerns. Firstly, the direction in which the labour law reforms are headed is in contravention of ILO Convention No. 81 (Labour Inspection Convention). Secondly, the new reforms are likely to curtail trade union activity. For instance, one-day's strike is expected to lead to a loss of wages for 8 days. Thirdly, government's power to exempt is being shifted to bureaucrats. All these are reflective of the State's desire to withdraw which in Mr. Sajinarayan's view is problematic.

After outlining the context, Mr. Sajinarayan proceeded to elaborate on the role of the ILO. He stated that labour law reforms in India are being promoted under the guise of bringing in global labour standards. However, the standards in developed regions like Europe are much higher and multinational companies are willing to follow stringent labour laws outside but not in India. Similarly, the idea that stringent labour laws act as a hindrance to the ease of doing business was borrowed from a World Bank report. Subsequently, the World Bank dropped this as a concern, but India has retained it. The ILO must help trade unions address these issues. He also brought attention to the fact that there is very little awareness about the ILO's Conventions and they are rarely mentioned in any court judgments. It is imperative that the judiciary and officials are educated about these and that they are not violated in the new amendments.

Mr. R.S. Maker, Director General, EFI

Mr. Maker made two broad points. Firstly, he drew attention to the fact that India has still not ratified ILO Convention No. 177 (Home Work Convention), which relates to the informal sector. In fact, the 2nd National Commission of Labour report too had recommended its ratification but this hasn't been done yet. Unfortunately, the report lost much of its meaning with a change in government. Secondly, he claimed that there is a real need in India for a social security scheme for everyone. He pointed out that large sums of money collected from the 1% cess on construction workers and from the Employees' Provident Fund scheme are available for implementing a national level social security scheme covering health, education and retirement.

Mr. Maker also took the opportunity to share some examples of good work being done by the corporate sector to empower the workers in the informal sector. He iterated that it is crucial that micro, small and medium-sized enterprises (MSMEs) too similarly step in to support the informal sector.

Dr. S.K. Sasikumar, Senior Fellow, VVGNLI

Dr. Sasikumar walked the participants through the important global developments of the recent past wherein a crisis was followed by recovery, which in turn was preceded by a slowdown and significant fear. Currently, expectations for economic growth are not very optimistic. In this context, the relevance of quality jobs in ensuring a high growth trajectory cannot be overemphasized. If labour incomes are low, aggregate demand cannot be expected to grow and as a result, private investments too will continue to be less. Research has shown that the erosion of the power of labour institutions can be a cause for fall in labour incomes. In light of this, labour administration can be a powerful tool for increasing quality jobs, and in turn labour incomes as well as for improving labour regulation.

Dr. Sasikumar then brought to the fore a few issues where much is left to be desired. He spoke about the need to expand outreach of the labour administration to the informal sector, and to improve its operational efficiency. He also cautioned that the use of new technology would be a welcoming step, but is likely to fail if not linked to the existing performance of the labour administration. New technology should not make the labour administration staff redundant but instead the staff should be equipped and trained for utilizing the technology efficiently. He also claimed that labour administration has enormous potential to provide information on debated issues. For instance, it is often contended that labour laws in India, such as Chapter V-B of the Industrial Disputes Act, 1947, are extremely pro-worker leading to serious rigidities and adverse consequences for the functioning of labour markets. However, there exists no data on how many permissions under the abovementioned section were sought in a year and how many of these were in fact declined. Data gathered by the labour administration could be utilized for empirically analyzing such arguments. Finally, Dr. Sasikumar said that it is problematic that labour law reforms are being taken up with the intention of increasing investments. According to him, the argument for reform should be labour centric and not investment centric.

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After the panel discussion, participants were given a few minutes to share some of their comments and to ask any questions that they may have. During this time, a gentleman from the audience remarked that labour is often confused with employee. This is the reason why there is seen to be a dichotomy between 'labour-centric' and 'investment centric.' In the absence of investment, and consequently any industries, there would be no labour. Therefore, such a distinction is superficial. He added that Dr. Sarkar's presentation touched upon how cost cutting often leads to a reduction in wages. While cutting costs at the expense of labour must

not be the practice, it must not be forgotten that apart from the government, employers, and employees, there is a fourth stakeholder who is the consumer. When the consumer is also brought into the equation, it becomes clear that low costs are not necessarily undesirable. He made a final point that nearly half of the workers are self-employed and MSMEs create nearly one million jobs every month. The entrepreneur often invests his whole life's savings, but is guaranteed no protection against losses unlike the worker who is still eligible for certain benefits. This is an issue that must be factored in.

A representative from the *Akshil Bharatiya Rojgar Evam Kaushal Vikas Sangathan* enquired about the Government's National Career Service Portal which was launched in June, 2015. He related his dissatisfactory experience with the portal and demanded to know how many persons have benefited from this portal so far and whether it is operating effectively.

A VVG NLI faculty member pointed out that there is massive invisibility of women workers in national accounting statistics. An Institute for Human Development (IHD) study listed over 250 employments which are home-based, such as *zardozi* work on garments, in which a number of women are involved. There is no employer-employee relationship in these jobs and women workers are consequently unable to access even basic social security. She also spoke about the administrative machinery as a whole and commented that there are several shortcomings which add to the vulnerability of women workers, including the lack of women inspectors and bad infrastructural facilities. These problems must be addressed in order to enhance the performance of the labour administration.

Mr. Nayak closed the session with a few remarks. On the issue of inspections, he said that these should be need based and not periodic so as to cause minimum intrusion and to be more transparent. He also recommended looking into ways for conducting inspections online without physically visiting the establishments so as to improve efficiency. In agreement with Mr. Sajinayakan, he said that bipartite mechanisms are crucial and must be strengthened whereas the role of the government should be confined to laying down the policy framework. Finally, he said that Mr. Maker's suggestion to introduce social security for everybody has value and if done, it would automatically solve a large proportion of the labour administration's problems.

Session 2: A comparative overview of reforms and innovations in labour administration

Presenter: Mr. Ludek Rychly, ILO Geneva

Presentation 2: Reforms and Innovations in National Labour Administration Systems:

Preliminary Findings

Mr. Ludek Rychly, ILO Geneva

Mr. Rychly picked up from where he had left off earlier and shared with the participants some of the preliminary findings of the ILO's ongoing research on labour administration systems in different parts of the world. He started by laying down the conceptual framework for the research. He provided the ILO's definition of national labour administration systems, of labour policy and made reference to ILO Convention No. 150 (Labour Administration Convention) and Convention No. 81 (Labour Inspection Convention) which clarify any issues related to the same. He then touched upon the main objective for the research which is to help strengthen national labour administration systems enhance compliance with labour laws. Mr. Rychly specified that his area of focus has been innovative practices intended to enhance the performance of labour administration. An attempt has been made to study innovations across countries in

seven key thematic areas which are: reform process, coordination, partnerships, planning and use of data, use of new technologies, performance management, and extension to informal economy. He noted the significance of extending to the informal economy since the two main challenges with labour administration are the issue of management and the problem of outreach.

Mr. Rychly then briefly spoke about the methods and sources that have been used for the research project. It is noteworthy that the focus of these studies is emerging economies and developed countries as the intention is to discover practices used by the ‘good performers’ which might be worth imitating elsewhere. He shared certain preliminary findings from different countries like the US, South Africa, Brazil and France in the seven key thematic areas. His presentation was resplendent with examples from different countries with regards to each of the key themes.

A gentleman from the audience asked Mr. Rychly to expound on the consensus-building processes in different countries. In response, Mr. Rychly stated that industrial relations vary immensely across countries and cross country comparisons are difficult. In Austria, when a shift towards a market economy began in 1999, a very informal tripartite body was created out of practical considerations. Liberalization was expected to lead to high inflation and in anticipation of the problems that might have occurred, the government promoted the creation of this tripartite body. Inflation rates, in fact, ended up being even higher than anticipated. However, the informal system managed to cushion the problem to a large extent and the system was found to be effective and was thus retained. In France and Italy, tripartite institutions are more structured and are based on the constitution. However, their role is more consultative. They don’t engage in negotiations but prepare recommendations for the government. In Germany, there is no official tripartite body, but there is a deeply entrenched tradition of social dialogue. According to Mr. Rychly, regardless of the system, the most important thing is to build trust in good times so the systems can withstand the test of trying times.

Session 3: Tripartite Social Dialogue Mechanisms and Processes in India

Moderator: Ms. Angelika Muller, Social Dialogue Technical Specialist, ILO- Geneva

Presentation 3: Tripartite Social Dialogue: India in the Global Perspective

Ms. Angelika Muller – ILO Geneva

Ms. Muller emphasized that tripartite social dialogue, as enshrined in ILO Convention No. 144 (Tripartite Consultation) is ILO’s key value and a cross-cutting issue and commended India for having ratified it. She noted that in 75% of the countries where such tripartite consultations are a practice, national institutions for this purpose exist. While there are exceptions like Germany where there is a strong tradition of social dialogue despite the absence of a tripartite body, this is not usually the case. The representation of women in national social dialogue bodies continues to be low, and in India only 10% of the participants at the Indian Labour Conference were women which is a challenge to be addressed. She closed by listing certain challenges and perspectives for tripartite social dialogue in India and stated that it is imperative to strengthen the institutional framework for social dialogue in India, to increase political will and trust among social partners, have an active and well-resourced labour administration and to have strong, capable and pro-active social partners at all levels.

Presentation 4: Mapping and Assessment of Social Dialogue and Labour Administration Frameworks at State Level- Karnataka

Dr. Supriya Roy Chowdhury, Institute for Social and Economic Change

Dr. Chowdhury presented the findings of her study on the functioning of social dialogue and labour administration mechanisms in the state of Karnataka. She contextualized the study by pointing out the increasing importance of the unorganized sector, which to add to its own complexity is extremely heterogeneous, and by making note of a transition from a regulation to a welfare approach on part of the State. These widespread changes pose huge challenges to the labour administration. Dr. Chowdhury's presentation threw light on the various initiatives of the Karnataka government to institutionalize tripartite social dialogue as well as to extend access to the unorganized sector. She also referred to certain initiatives that have been undertaken by employers' associations. Admirable as these are, they continue to be plagued by several shortcomings which she discussed in detail. She concluded by stating that there is an urgent need to reorient the institutional framework for tripartite mechanism to the new context marked by a widespread unorganized sector and to the new welfare functions. She also underlined the need to involve actors from the private sector, NGOs and civil society to play an expanded role in social welfare.

Presentation 5: Mapping and Assessment of Social Dialogue and Labour Administration Frameworks at State Level- Kerala

Dr. A.V. Jose, former ILO Official

Dr. Jose reminded the participants that India's independence was a watershed moment in the history of social dialogue. In the pre-independence times bipartite structures were the norm but the years that immediately followed India's independence witnessed a transition to tripartite relations. This was the result of a wide array of legislation passed by the Government enabling organized labour to demand certain substantial rights. According to Dr. Jose, deriding these rights by arguing that they hinder employment creation and investment is akin to denouncing the traditions which led to the institutionalization of civil liberties in India. He pointed out that in the post-independence times, labour industries went through a period of turbulence and the state stepped in to create some unique institutions for safeguarding the interests of the people. Three such institutions, which are particularly relevant in Kerala are the Industrial Relations Committees, Minimum Wages Advisory Boards and Welfare Fund Boards. He briefly discussed these and stated that Kerala was able to make significant progress with the help of these institutions and increased public spending. Today, industries are undergoing profound changes – many employers are being phased out, commodity production is on a downward slide and employers are often unable to keep up with demand to pay higher wages. In this context, it is most important to revive the existing institutions and to create viable structures where constant tripartite dialogue can thrive.

Presentation 6: Mapping and Assessment of Social Dialogue and Labour Administration Frameworks at State Level- Maharashtra

Dr. Suchita Krishnaprasad, Professor, Elphinstone College

Dr. Krishnaprasad commenced with highlighting some of the achievements in the field of tripartism and labour administration in Maharashtra. She provided a list of tripartite boards operating in the state out of which four were studied in more detail for the purposes of her study – the Minimum Wages Advisory Board, Contract Labour Advisory Board, Mathadi Advisory Board and the Private Security Guards Advisory Board. After briefly describing the methodology of her research she proceeded to share some of the findings with the participants. It was found that despite the differences, the agenda in all these boards is decided by all three partners, and usually decisions are consensus based. She took some time to talk about the functioning of labour administration at the ground level too, since Maharashtra has innovated with a unique Personnel

Management Advisory Service (PMAS) Scheme as a method for resolving disputes. Remarkably, the success rate of PMAS has been found to be higher than that of conciliation. Having said that, it is worth noting that there has been a decline in all indicators of dispute management which is perhaps reflective of an increase in contract labour. Dr. Krishnaprasad then listed a few challenges ahead for tripartism as revealed by her data and followed that up with certain recommendations to overcome them. Broadly these recommendations included, ensuring genuine representation, holding regular meetings, making adequate infrastructure and resources available to labour administration, streamlining systems for regular updating of data and reviving the State Level Advisory Board (SLAB).

Presentation 7: Mapping and Assessment of Social Dialogue and Labour Administration Frameworks at State Level- Tamil Nadu

Mr. Balasubramanian, Director, Tamil Nadu Institute of Labour (TILS)

Mr. Balasubramanian introduced his presentation by talking about the unorganized workers' welfare boards which have been constituted under the Tamil Nadu Manual Workers' (Regulation of Employment and Conditions of Work) Act, 1982. He then went on to list some of the social dialogue boards, statutory tripartite bodies, and non-statutory boards and committees. Following this, he fleshed out the framework of labour administration in Tamil Nadu. The findings of the research were that in Tamil Nadu frequency of meetings is irregular, political intervention is high, vacancies are often not filled, there is little coordination between central and state authorities, inadequate training is provided to the officers in the department, trade unions are not involved in the registration and renewal of unorganized workers in the welfare boards and penalty is extremely low for major contraventions. Despite these shortcomings, certain best practices have also emerged in the state which he made note of. He finally proceeded to making a few recommendations for correcting the current situation.

Panel Discussion

Before handing the floor to the panelists representing the three social partners, Ms. Angelika Muller made an observation that Indian states have numerous welfare boards and asked the participants to think about whether the establishment of a tripartite body of general competence at both the state and national level would be worthwhile.

Mr. Buwa, Deputy Labour Commissioner, Government of Maharashtra

Mr. Buwa referred to the World Bank's Doing Business Report which resulted in the Department of Industrial Policy and Promotion (DIPP) giving certain directions to all states for undertaking reforms. Consequently, a governance and statutory reforms process was started in Maharashtra. Mr. Buwa alluded to some reforms and new initiatives that have since been introduced, which he believes are a step in the positive direction. One example he provided is that of a web portal scheme for online inspections which is under development. This would go a long way in increasing transparency, responsibility and accountability of inspecting staff and systemize the whole process. At a later point, perhaps third party inspectors could also be introduced. He also spoke about how many laws have been simplified and liberalized, and how recordkeeping has been digitized. Maharashtra, in his view is keeping pace with the Central Government and following the timeline provided by the DIPP.

With regards to social dialogue, Mr. Buwa put forth his opinion that it is important to involve all stakeholders in the decision-making process. He mentioned that when this view was brought up in a Legislative Assembly discussion, it was received well by the Chief Minister and there was agreement on the need to devise a

strategy to proceed keeping this in mind, which will soon be done. The Minister's response to demands for revival of the State Labour Advisory Board to decide policy issues has also been positive.

Finally, on the issue of labour administration, he drew a list of initiatives of the Maharashtra government, including the establishment of a web portal committee, a committee dealing with amendments to labour laws, a department dealing with unorganized labour, as well as the passage of the Maharashtra Guarantee of Public Services Act, 2015 under which 8 services have already been recognized by the labour department for which delivery is guaranteed within 7-15 days, and more such services will be identified in the near future.

Mr. H. Mahadevan, Working President, All India Trade Union Congress (AITUC)

Mr. Mahadevan began by emphasizing that the main principle of policy should not be 'survival of the fittest' but 'welfare of the weakest.' In light of this, labour reform should further protection to labour and be viewed as being separate from labour law reforms. One of the arguments often given in favor of the ongoing labour law reforms is that there are many restrictive provisions, such as those contained in Chapter V-B of the Industrial Dispute Act, 1947, which hinder investment. However, there is sufficient evidence to disprove this hypothesis.

Mr. Mahadevan moved on to talking about three issues which he believes are the biggest barriers to extending protection to workers. The first one of these is a minimum wage anarchy. Different minimum wages are provided for in different states and the present government's suggestions for legalizing a floor level for minimum wage are not in line with the recommendations made at the 15th ILC and subsequent court judgments.¹ The second big issue is atypical forms of employment. There are many different types of workers, such as permanent workers, contract workers, casual workers, and trainees among other kinds and exploitation in such a scenario is easier. Finally, registration of trade unions in certain states is still quite difficult and it is reprehensible that ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organize Convention) and Convention No. 98 (Right to Organize and Collective Bargaining Convention) have still not been ratified by India. In addition to these three issues, he referred to certain other problems. Among these is the new emphasis on lean models of production and capital intensive industry structures. There are also no unemployment benefits given out in India. In addition, there is often some talk within the government of certain successful state models which are showcased as examples for replication. This is problematic as it tends to make a mockery of federalism and does not take into account different states' ground realities. He also made specific mention of the millions of scheme workers such as the *anganwadi* workers, and ASHAs who as per a new Supreme Court judgment are not seen as workers and therefore, not allowed to form a union and receive a minimum wage.

Mr. Mahadevan concluded with making some recommendations. He shared with the participants that several years ago, a tripartite consultation had led to the culmination of an Indian Labour Code which could be used as a starting point for further discussion.

Mr. K. Manickam, Secretary General, Employers' Federation of Southern India (EFSI)

Mr. Manickam put forth that social dialogue is a practice that is well entrenched in India. It has worked rather satisfactorily though there is potential for improvement in this area. In agreement with a previous speaker, he stated that bipartisan discussions are key for arriving at solutions. A problem that cannot be solved within the work place can hardly be solved by outsiders. With regards to labour reforms, he argued that reforms for the management are significantly needed. He also stressed on the importance of MSMEs

¹ (Unichoy vs State of Kerala in 1961 and Reptakos Brett Vs Workmen case in 1991)

and referred to them as the backbone of the Indian economy. He urged the government to support MSMEs. While he commended the mechanisms that have been adopted in various states to reach out the unorganized sector, and lauded the welfare boards that have been set up for the same, he insisted that there is a need to make these more accountable.

Session 4: Open Forum: The Way Forward

Chairperson: Mr. P. P. Mitra, Principal Labour and Employment Advisor, MoLE

Moderators: Mr. Ludek Rychly and Ms. Angelika Muller, ILO Geneva

During the final session, the floor was opened up to the participants to share their comments, observations, to put forth any queries that they may have and to discuss the way forward.

Representatives from the state governments took this opportunity to draw attention to some of the innovations and initiatives in the arena of labour administration and social dialogue that have been implemented in their states.

Dr. D.S. Viswanath, Commissioner for Labour, Karnataka clarified that it is not true that there is no transparency or clarity in the functioning of welfare boards. These core values have to be adhered to, in order to withdraw and spend any funds at all.

He also brought attention to certain initiatives that have been taken up in Karnataka:

- Trilingual cards are issued for migrant workers – for instance, construction workers are given an ID card with all the text in Kannada, English and Hindi. The ID card also contains a photograph, contact details and the blood group of the employee so in the event of an accident, he/she can be taken to the hospital and a message can be conveyed to his/her family.
- Minimum wages are periodically updated every three to five years.
- Providing social security to unorganized is considered a priority. As soon as the center has the technology ready, it will be utilized in Karnataka to provide Unorganized Workers' Identification Number (UWIN) card. Funds have been earmarked for this purpose.
- Karnataka was the first state to offer labour department services online with the introduction of the Sakala Services Scheme. Thirteen labour department services are provided online within 5-15 days, and if this is not done then a penalty is imposed. Online payment of fees for these services is possible.
- Self-certification process has been started for 12 Acts.
- Technology upgrade for the purposes of random inspection is underway.
- There are decentralized, *taluq* and block-level facilities for registering complaints.
- A Labour Policy has been proposed which would cover 17 themes, including labour administration. All stakeholders are to be consulted for this.

According to Mr. Viswanath, the way forward is for all three actors in the tripartite relationship to work together and to include all other stakeholders in the decision-making process as well. A crucial step would be to ensure tripartite consultations at the highest policy level. Policy makers themselves, rather than the bureaucrats must be acquiesced with the challenges faced by the workers, particularly in the unorganized sector.

Mr. Radhakrishna Pandian- Deputy Labour Commissioner, Tamil Nadu highlighted some of the best practices in his state:

- Minimum wages have been fixed and revised for 73 of the 93 scheduled employments

- Two methods for fixing minimum wages are used in Tamil Nadu. The first method is tripartite consultation in which the Labour Commissioner acts as the chairman and equal number of representatives from trade unions and employers' associations meet periodically to fix and revise the minimum wages. The second is the committee method, which too is tripartite in nature. The Deputy Labour Commissioner acts as the chairman of the committee and the Inspector of Labour acts as the secretary. The committee also includes once independent person, and representatives from the government, employers' and employees' groups.
- While fixing minimum wages, recommendations made at the 15th Indian Labour Conference are taken into account.
- A fixed formula has been devised within the State Labour Advisory Board for revising minimum wages and a revision process is undertaken every four years. In addition, every year a minimum wage aligned to the consumer price index is announced.
- Tamil Nadu has been a pioneer state in providing social protection to workers in the unorganized sector. For instance, in 1994, the Tamil Nadu Construction Workers' Welfare Board was created which provide 9 types of assistance to registered workers. Interstate, migrant workers can also register and avail of benefits excluding pension. Additionally, all board activities have been computerized since 2009.

During the open discussion, representatives from the trade unions took the time to bring attention to some of the grievances of workers, to highlight some of the shortcomings in the functioning of labour administration and social dialogue and made some recommendations for moving forward.

Mr. Shyamkumar, President, Indian National Trade Union Congress (INTUC), Karnataka, made the following suggestions:

- A major problem that needs to be addressed is that welfare boards exist on paper but do not function properly and their meetings are not held regularly. A time-bound approach should be followed by these boards.
- The Labor Department is often not able to take any action against employers because of external intervention. It must be recognized that all labour disputes are not settled in favor of the employees and a fair process should be followed.
- Economic growth and investment are important but meaningless without the employee who therefore, must not be relegated to the margins. Extending protection to the employees must be considered a priority.

Mr. Ramakant Bhardwaj, Laghu Udyog Bharati made the following points:

- During tripartite seminars such as this one, there should not be more than two speakers on the dais - one for outlining the issue to be discussed and one from the ILO for an international perspective. The rest of the time should be allocated for discussion with the participants so that they can discuss their perspectives and learn from each other.
- With respect to Dr. Sarkar's presentation, he stated that his recommendations should go beyond noting that there are differences in the perspectives of the stakeholders and provide suggestions for overcoming these differences.
- He argued that it is worth introspecting why multinational corporations are willing to adhere to stringent labour laws in other parts of the world as in western European countries but not in India. Perhaps in India, both employers and unions need to devise better mechanisms for addressing labour-related issues. For instance, in Japan, during certain strikes, work continues as usual and workers express their displeasure not by stopping production but in other ways such as by wearing a black ribbon. Practices such as this may help improve the investment environment in India while accommodating the workers' issues.
- Finally, he stated that MSMEs form the backbone of the Indian economy and provide employment to around a million people every month. In order to set up a small business, the entrepreneur invests large

sums of money, often his/her entire life's savings, however, the state provides no security to them. In the absence of this, it would remain difficult to provide a boost to industries.

Mr. V. Veluswamy, Secretary, Labour Progressive Federation (LPF), drew attention to the vulnerability of migrant workers who are easily exploited by their contractors and are unable to access any kind of social protection. He cited an example from Chennai, where a building collapsed around two years ago, and migrant workers from Andhra Pradesh and other states were given no compensation or security in its aftermath.

Mr. B. Rajgopal, BMS, suggested that:

- The government, as a partaker in the tripartite social dialogue process, should ideally be a model employer. However, this is often not the case. In Tamil Nadu, for instance, it has been a challenge for government employees to receive their provident fund savings even after months of having retired; gratuity is pending since 2010 and it is common for employees to retire after working as contract labourer for 25-30 years without regularization. The government should ensure that such issues are resolved and that it acts like an exemplary employer.
- Labour disputes related litigation often takes several years. Perhaps a timeframe for settling disputes should be devised. In case the timeline is not followed, compulsory arbitration could be looked into as an option.
- Labour Law amendments should not impede on rights guaranteed to workers under the legislation in its current form.

Mr. O.P. Sharma, Deputy Secretary, INTUC, recommended the following for improving the performance of the labour administration:

- Filling all vacancies in the labour department as a priority.
- Strengthening the office of the Assistant Labour Commissioner (ALC), which is the bottom rung of the labour administration. The ALC should be endowed with the power to decide on labour disputes and the power to challenge these judgments should be reserved for higher courts. The ALC should also possess the authority to ask a senior employer to be present during the conciliation proceedings. This would ensure that the process is not prolonged for an extended duration. In case the main employer remains absent, the ALC should have the power to impose a penalty.
- Providing better infrastructure for the labour department.
- Ensuring that the labour department keeps a check on trade unions. Currently, many unions do not file their annual returns and this is only discovered when their membership is verified. The labour department must become more proactive and stronger, which in turn would help solve many of the problems voiced by the trade unions.

Representatives from the employers' associations shared some of the challenges faced by employers and provided certain suggestions for improving the functioning of tripartite bodies.

Mr. V. Dhaul, Senior Advisor, Employers' Federation of India, noted that:

- One major challenge with regards to labour is the provision of social security. The entire responsibility for this cannot be taken up by the employers' bodies and some part of this must be borne by the state.
- Chapter V-B of Industrial Disputes Act, 1947, which is viewed as main contributor to the rigidity of the labour market in India, is not the only provision which is in need of reform. There are around 44 labour laws at the national level and over 200 at the state level, all of which need some alterations. The way forward is to step away from reinforced statements and observations that labour law reforms are not moving in the right direction and accepting and accommodating them.

- With respect to the functioning of tripartite bodies, he said that it is important to understand in more detail their enabling factors and reasons for their failure to deliver so as to move forward.
- The next step has to be to set priorities for tripartite bodies and for bipartite meetings and to decide on a timeframe for the reforms process. Consensus building must be brought to trial with the help of a timeline.

Scholars and researchers participating in the seminar shed light on certain general issues of concern with regards to the functioning of labour administration and social dialogue.

Mr. P. Amitav Khuntia, Associate Fellow, VVGNLI, enquired about the proportion of women representatives in the labour administration and tripartite bodies. He then urged both employers' groups and employees' groups to encourage women leadership within their associations so as to give women a platform for voicing their concerns and for contributing more holistically to the discussions.

Mr. Sanjay Upadhyay, Fellow, VVGNLI, remarked that the on-going labour law reforms give the impression that temporary workers, in particular contract labour, will be excluded from their ambit which is a big concern.

He also noted that the labour law reforms process is going to be a long one but there are certain urgent concerns which merit more immediate attention. For instance, the current ceiling under the Employees' State Insurance (ESI) scheme is Rs. 15,000, and workers cannot access health and employment security if their income exceeds this amount. A change in this is warranted immediately and this should be taken into account by the Government.

3. Closing Remarks

At the end of the open discussion, *Mr. Rychly* remarked that it is a good idea to discuss labour administration and social dialogue together since they should go hand in hand. He advised the labour administration to listen to employers' and employees' groups in order to function better. Commenting on the recommendations to enhance the performance of labour administration presented during the course of the seminar, he stated that many of them are quite basic, such as the provision of infrastructure. He insisted that ambitions should be higher than this, given that India is now a middle-income country. He welcomed the introduction of new technology, but reminded the participants that this must be accompanied by more investments in training of staff and bureaucracy. He also urged the administrators to take more interest in adopting and staying up to date with the latest technologies. Finally, he acknowledged that labour matters are highly ideological, but reiterated that this is why social dialogue is crucial. Social dialogue is the instrument to overcome political and ideological differences and to find pragmatic solutions.

Ms. Muller substantiated that there are three main issues surrounding tripartite social dialogue – issues of procedure, participants, and of substance. On the issue of procedures, several points were brought out during the course of the seminar which need attention. With regards to participants, it must be ensured that social dialogue is more inclusive and that representation is given to agricultural workers, contract labourers, and unorganized workers among others. The key issue of substance in India is that of the on-going labour law reforms and the solution to ensuring these reforms are sustainable is social dialogue. She mentioned that the national seminar is to be followed by two 2-day trainings in Chennai and Mumbai. She shared with the participants that she would like to commence these state-level trainings with a session similar to the seminar so as to give all participants a platform for voicing their opinions on improving and institutionalizing tripartite social dialogue in India.

Mr. P.P. Mitra concluded the session by emphasizing the importance of social dialogue in India, given that the country is in the middle of a labour laws reform process. Further, he stated that workers are a crucial albeit vulnerable component of society and it is most important for ministries to take a balanced approach to ensure that they don't suffer as a consequence of new policy decisions. He also spoke about the importance of social security and noted that there is an urgent need to expedite the issuing of UWIN cards. According to him, these cards would also help increase awareness among labour about the various schemes that they can receive benefits from. Commenting on the numerous e-governance initiatives of the states, he said that this was a welcome move but he remarked that the speed of delivery of services is often rather slow. He argued that resolution of disputes is also an issue since litigation takes several years. He suggested that it might be worth looking into compulsory arbitration. Finally, he acknowledged that the ILO-VVGNI seminar led to a discussion on several key issues which would be helpful for charting out future policy directions.

Ms. Nancy Varela, Technical Officer for Social Dialogue and Tripartism, ILO-New Delhi thanked all the panelists, researchers, participants and colleagues for their presence and their valuable contributions. With this the program drew to an end.

ANNEX 1: Final Programme

Tuesday, 13/10/2015	
10:30-11:00	<p><u>Opening:</u></p> <ul style="list-style-type: none"> - Welcome address: <i>Mr Markus Ruck, Officer in Charge, ILO-New Delhi</i> - Introduction to ILO's global research project: <i>Mr Ludek Rychly, Senior Specialist for Labour Administration and Social Dialogue, ILO-Geneva</i> - Inaugural address: <i>Mr Manish Gupta, Joint Secretary, Ministry of Labour and Employment (MoLE)</i>
11:00-11:20 11:20-12:00	<p><u>Session 1: Performance of labour administration in India</u> Chairperson: <i>Mr A.K. Nayak, Chief Labour Commissioner, MoLE</i></p> <p>Presentation by: <i>Dr Kingshuk Sarkar, Fellow, VVGNLI</i></p> <p>Panel discussion:</p> <ul style="list-style-type: none"> - <i>Dr S.K. Sasikumar, Senior Fellow, VVGNLI</i> - <i>Mr C.K. Sajinarayan, President, BMS</i> - <i>Mr R.S. Maker, Director General, EFI</i> <p>Q & A session</p>
12:00-12:30 12:30-13:00	<p><u>Session 2: A comparative overview of reforms and innovations in labour administration</u> - <i>Presentation by Mr Ludek Rychly, ILO-Geneva</i></p> <p>Q & A session</p>
13:00-14:00	Lunch Break
14:00-14:10 14:10-15:10 15:10-15:50 15:50-16:15	<p><u>Session 3: Tripartite social dialogue mechanisms and processes in India</u> Moderator: <i>Ms Angelika Muller, Social Dialogue Technical Specialist, ILO-Geneva</i></p> <p>Introduction to ILO's research on tripartite social dialogue in India: <i>Ms Nancy Varela, Technical Officer for Social Dialogue and Tripartism, ILO-New Delhi</i></p> <p>Presentations:</p> <ul style="list-style-type: none"> - Karnataka by <i>Dr Supriya RoyChowdhury, Professor, ISEC</i> - Kerala by <i>Dr AV Jose, former ILO Official</i> - Maharashtra by <i>Dr Suchita Krishnaprasad, Professor, Elphinstone College</i> - Tamil Nadu by <i>Mr Balasubramanian, Director, Tamil Nadu Institute of Labour (TILS)</i> <p>Panel discussion on comparative tripartite social dialogue practices:</p> <ul style="list-style-type: none"> - <i>Mr Buwa, Deputy Labour Commissioner, Government of Maharashtra</i> - <i>Mr H. Mahadevan, Working President, AITUC</i> - <i>Mr K. Manickam, Secretary General, FICCI</i> <p>Q & A session</p>
16:15-17:15	<p><u>Session 4: Open Forum: The way forward</u> Chairperson: <i>Mr P.P. Mitra, Principal Labour and Employment Advisor, MoLE</i> Moderators: <i>Mr Ludek Rychly and Ms Angelika Muller, ILO-Geneva</i></p>

	The national study on labour administration and the four state-level studies on tripartite social dialogue have prescribed a series of recommendations and suggestions on how to strengthen these institutions and mechanisms. The objective of this session is for tripartite partners to discuss these recommendations and come up with suggestions on the way forward as well as identify areas of future collaboration.
17:15-17:30	Concluding remarks: <i>Mr Manish Gupta, Joint-Secretary, MoLE</i> Vote of thanks