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Current State and Evolution of Industrial Relations in Maharashtra

Abstract

[Excerpt] Maharashtra is one of the highly industrialized and commercially well-developed states in India. It has a population of over 95 million people in an area of over 300 sq. km., giving it a density of 314 people per sq. km. A little over 40 per cent of its population lives in urban areas and the state boasts of a high literacy rate of 77 per cent as of 2001. It accounts for 10 per cent of geographical area and population, 15 per cent of urban population, 11 per cent of working factories and factory employment as of 2002-03. The state's share in India's gross domestic product (GDP) in 2000-01 was 14 per cent. Maharashtra had the second highest per capita net state domestic product (at current prices), next only to Haryana, in 2002-03. It has been the most preferred investment destination for many years. The state figures prominently in the history of labour movement and industrial relations in India.

The study of labour markets and industrial relations in a state has assumed special importance following the economic reforms process that has been under way since 1991. States can now freely compete for capital and design policies for attracting investment. As the economic reform process gained momentum, significant economic policies came to be introduced since the mid-1990s. It is in this context that the study of industrial relations in Maharashtra between 1995 and 2006 will be of interest.

This paper seeks to study the current state of industrial relations in Maharashtra. The exercise covers, as far as possible, the period 1995-2006. Depending on availability, the data for the end year of the period will vary in the case of some variables. The state labour departments are not prompt in compiling statistics, unlike other departments which produce data relating to state income, consumer prices etc. 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 are, therefore, not strong.

Keywords

International Labour Organization, ILO, South Asia, Maharashtra, industrial relations, wage fixing

Current State and Evolution of Industrial Relations in Maharashtra

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First published 2009

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Current Status and Evolution of Industrial Relations in Maharashtra

978-92-2-122784-7(print)

978-92-2-122785-4 (web pdf)

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Printed in India

ACKNOWLEDGEMENTS

I thank Prof. C.S. Venkata Ratnam, Director, International Management Institute, for offering me the state study on “Industrial Relations in Maharashtra”. Working with him is a tremendous learning process, given his broad sweep of knowledge on industrial relations. His warmth and simplicity add quality to the interactions and eases work. I consider it a privilege to be associated with him in this project, as in several others.

I thank Marleen Rueda, Senior Specialist, ILO Office, New Delhi, for the grant of the state-level study relating to Maharashtra and wish to acknowledge the courtesy shown by her. I must acknowledge the fact that Ms. Rueda was open to constructive suggestions in the inaugural meeting held to frame the structure and contents of the project and she probed, prompted and secured many suggestions from the regional consultants and, more importantly, incorporated them and sent the revised structure of the study. I thank Abik Ghose, Senior Specialist, ILO Office, Bangkok for his warm interactions with me during the inaugural meeting in which the project structure was discussed. Prof. Lalit Deshpande’s scholarship and penetrative and philosophical approach to the study of labour institutions have immensely influenced my academic endeavours and my discussions with him form a part of all of my writings and this report is no exception. I am indebted to him. I thank Ms. Rueda, Prof. Venkata Ratnam and other referees who posed some important queries and made some valuable suggestions which led to significant improvements in the report.

I conducted the data collection process more speedily and efficiently as the Principal of my college, Dr. Bina Punjabi (an eminent botanist herself), relieved me early from work so as to facilitate my visits to government offices and for other related works. I thank her for this kind and understanding gesture. The study involved [re]collection of secondary data from the government offices, interviewing social actors and so on. The Office of the Commissioner of Labour in Mumbai was the main centre of my data collection. I thank the Labour Commissioner, Mr. Sanap, for readily granting permission for collection of data. I have to particularly thank Additional Commissioner, Mr. Bothare, and Deputy Commissioner (Administration), Ms. Khatti, for facilitating my data collection from various branches of the Commissioner’s Office. I thank all the officers and the staff in the Office of the Commissioner of Labour, Mumbai, in the Office of the Director of Industrial Safety and Health, Mumbai, in Directorate of Economics and Statistics, Mumbai for provision of data despite several constraints like absence of staff due to deputation of them for election duty, intervention of three big festivals.

I take special pleasure in thanking the trade union leaders, consultants to trade unions and management, and an employer organization’s chief mentioned in Appendix II for sharing valuable insights and some for parting with copies of collective agreements. I marvel at their clearly held views and admire their fearlessness in calling a spade a spade. Their views considerably enriched my understanding of the subject of industrial relations, as is reflected in generous but purposeful use of their views in this monograph. However, I cannot help but moan the significant loss of information both in government offices and offices of trade unions and employers owing to inadequate organization and preservation (either because of inadequacy of resources such as manpower, space, time or due to absence of appreciation of the utility of informational base or due to bureaucratic rules) of valuable information. Maharashtra is a major state of considerable interest not only in India but globally and data and informational systems need to be strengthened.

K.R. Shyam Sundar
Mumbai
14 July 2008

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

CHAPTER I : INTRODUCTION	1
1.1 Structure of the Economy and State Income	2
1.2 Labour Market in Maharashtra	3
1.3 Summary	6
CHAPTER II : LABOUR REFORM MEASURES IN MAHARASHTRA	7
2.1 Nature of Labour Jurisdiction in India	7
2.2 Special Economic Zones and Labour Reforms	11
2.3 Law on Industrial Relations	12
2.4 Flexibility in Shops and Commercial Establishments Act	12
2.5 Self-Certification System	13
2.6 Applicability of the Main Labour Laws	13
2.7 Labour Laws And SEZ	18
2.8 Summary	19
CHAPTER III : TRADE UNIONS	21
3.1 Quantitative Analysis of Trade Unions	22
3.2 Labour Administration in Maharashtra	30
3.3 Summary	32
CHAPTER IV : WAGES	33
4.1 Legal and Institutional Mechanisms on Wages	33
4.2 Wages in the Organized Factory Sector in Maharashtra	35
4.3 Minimum Wages	39
4.4 Major Issues in Wage Determination	41
4.5 Summary	43
CHAPTER V : COLLECTIVE BARGAINING IN MAHARASHTRA	44
5.1 Legal Framework	44
5.2 Economic and Policy Contexts	45
5.3 Basic Details Regarding Collective Bargaining	46
5.4 The Level of Bargaining	46
5.5 Duration of Collective Agreements	47
5.6 Issues, Strategies, New Developments in Collective Bargaining	48
5.7 Contract and Casual Labour	50
5.8 Wage Negotiations in Public Sector	52
5.9 Managerial Strategies	53
5.10 Summary	55

CHAPTER VI : INDUSTRIAL DISPUTES, STRIKES AND LOCKOUTS AND DISPUTE SETTLEMENT IN MAHARASHTRA	57
6.1 Legal Framework for Settlement of Industrial Disputes	57
6.2 Right to Strike	59
6.3 Issues of Work Stoppages in India	63
6.4 Industrial Relations Machinery in Maharashtra	65
6.5 Methods of Settlement of Work Stoppages in India	66
6.6 Working of Industrial and Labour Courts	66
6.7 Summary	69
CHAPTER VII : TRIPARTISM	70
APPENDIX I: TABLES	73
APPENDIX II : DETAILS OF INTERVIEWS AND MEETINGS	76
REFERENCES	77

CHAPTER 1

Introduction

Maharashtra is one of the highly industrialized and commercially well-developed states in India. It has a population of over 95 million people in an area of over 300 sq. km., giving it a density of 314 people per sq. km. A little over 40 per cent of its population lives in urban areas and the state boasts of a high literacy rate of 77 per cent as of 2001. It accounts for 10 per cent of geographical area and population, 15 per cent of urban population, 11 per cent of working factories and factory employment as of 2002-03. The state's share in India's gross domestic product (GDP) in 2000-01 was 14 per cent (computed from figures in Economic and Political Weekly Research Foundation 2003, Appendix 8A.1, p.34). Maharashtra had the second highest per capita net state domestic product (at current prices), next only to Haryana, in 2002-03 (Economic Survey, 2005-06, Table No.1.8, p.S.12). It has been the most preferred investment destination for many years (see Shyam Sundar 2007, a). The state figures prominently in the history of labour movement and industrial relations in India.

Table 1.1 Basic statistics relating to Maharashtra

Serial Numbers	Particulars	In numbers or values for Maharashtra	Percentage of Maharashtra in All-India (%)
1.	Population (in 000s) (2001)	96 879	9.4
2.	Rate of urbanization (2001) (%)	42 43	27.82
3.	% female population	47.98	48.26
4.	Number of main workers (in 000s) (2001)	3 474	11.1
5.	Marginal workers (in 000s) (2001)	6 425	7.2
6.	Density of population (2001)	315 (324)	-
7.	Literacy percentage (persons) (2001)	76.88 (64.83)	-
8.	Number of working factories (2005)	18 409	13.9
9.	Average daily number of workers (000s) (2005)	1 162	13.7
10.	Value added by manufacture (2004-05)	-	19.7

Note: Figures in parenthesis in Column 3 relate to all India

Source: Item Numbers (1) to (9) from GoM (2005); Item Number 10 from http://mospi.nic.in_table3_2004-05.htm, accessed 9 July 2008.

The study of labour markets and industrial relations in a state has assumed special importance following the economic reforms process that has been under way since 1991. States can now freely compete for capital and design policies for attracting investment. As the economic reform process gained momentum, significant economic policies came to be introduced since the mid-1990s. It is in this context that the study of industrial relations in Maharashtra between 1995 and 2006 will be of interest.

This paper seeks to study the current state of industrial relations in Maharashtra. The exercise covers, as far as possible, the period 1995-2006. Depending on availability, the data for the end year of the period will vary in the case of some variables. The state labour departments are not prompt in compiling statistics, unlike other departments which produce data relating to state income, consumer prices etc. 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 are, therefore, not strong.

The paper has largely used secondary sources of data. We have compiled the quantitative data mostly from the records of the official statistical agencies, Office of the Commissioner, Directorate of Economics and Statistics and their statistical outlets (usually annual). Where necessary, we have taken relevant data from the works of academics. We have collected collective agreements and the necessary government policy documents from government offices and trade union offices. We have also benefited from the press cuttings maintained by the Centre for Documentation and Research in Mumbai. We have used mostly formal interviews and, on occasion, informal talks to collect qualitative information concerning various aspects of industrial relations in the state. The informal talk method was mostly used to understand the working of the data compilation process. We have used the usual statistical techniques like correlation, coefficient of variation etc. and figures to analyze and illustrate the data. We have used the Internet, which has become an important source of information for researchers and we have acknowledged the source from which we downloaded the information.

1.1 Structure of the Economy and State Income

The structural changes in the real state income give an indication of the changing relative importance of the three sectors of the economy – primary sector, secondary sector and tertiary sector and some important sub-sectors within each. Table 1.2 presents the shares of the three sectors in real gross state domestic product (GSDP) at constant (1999-2000) prices in Maharashtra for two sub-periods, 1995-96 to 1997-98 and 2003-04 to 2005-06.

Table 1.2: Percentage distribution of real GSDP by sectors and some important sub-sectors, 1995-96 to 2005-06

Serial No.	Particulars	1995-96 to 1997-98	2003-04 to 2005-06
1.	Primary sector	17.91	14.31
2.	Secondary sector	30.97	26.06
	(a) Registered manufacturing sector	17.29	12.89
	(b) Unregistered manufacturing sector	4.85	5.05
	(c) Total manufacturing sector	22.14	17.94
3.	Tertiary sector	51.12	59.63
	(a) Transport & communications	7.98	9.37
	(b) Banking & insurance	8.66	11.59
4.	Real GSDP	100.00	100.00

Source: Directorate of Economics and Statistics, Mumbai.

While the shares of the primary and secondary sectors declined over the decade under study, the share of the tertiary sector increased by a good measure. Transport, communication, banking and insurance are the drivers of the rise in the share of service sector. It is interesting to note that the share of total manufacturing sector declined solely due to the fall in the share of registered segment – from 78 per cent to 72 per cent. The share of the unregistered manufacturing sector rose marginally. Clearly, organized manufacturing sector is losing its importance. The structural changes in the state largely mirror those observed at the national level.

The average annual growth rates of real state income declined from about 5 per cent during 1996-98 to around 3 per cent during 1999-2001, thanks to a dismal performance in

2000-01. However, the economic growth rate picked up during 2002-05 when the average growth rate was almost 8 per cent. The last two years (2004-05 and 2005-06) witnessed high growth rates of 8.34 per cent and 9.20 per cent respectively.

1.2 Labour Market in Maharashtra

The Population Census and the National Sample Survey Organization (NSSO) are the two sources for information on the structure of the workforce in Maharashtra. The Census is universal in coverage while the NSSO uses the sample approach. The NSSO collects information on employment and unemployment on quinquennial basis, while the Census does so once a decade. We use the Census data here. Table 1.3 presents data from the 2001 Census.

Table 1.3: Percentage distribution of main workers in 2001

Serial No.	Industrial Categories	Male	Female	Persons
1.	Cultivators	25.44	38.83	29.43
2.	Agricultural labourers	16.22	35.91	22.09
3.	Livestock, forestry, fishing, hunting and plantations	2.18	1.55	1.99
4.	Mining and quarrying	0.53	0.23	0.44
I.	Primary Sector	44.37	76.52	53.95
5.	Manufacturing, processing, servicing and repairs			
5.A.	Household industry	2.03	3.05	2.34
5.B.	Other than household industry	13.91	3.31	10.75
	Electricity, gas and water supply	0.70	0.07	0.51
6.	Construction	5.10	1.66	4.07
II.	Secondary Sector	21.74	8.09	17.67
7.	Trade and commerce	12.70	2.64	9.71
8.	Transport, storage and communication	6.95	0.67	5.08
	Financial intermediation and real estate, renting and business activities	4.46	2.22	3.79
9.	Other services	9.78	9.86	9.80
III.	Tertiary Sector	33.89	15.39	28.38
	Total Workers	100.00 (24 295 230)	100.00 (10 302 379)	100.00 (34 597 609)

Note: The Census 2001 exercise has adopted a broader classification and is slightly different from that followed in 1991 census. They are however, intra-sectoral changes and the sectoral coverage remains the same between the two censuses. Figures in brackets indicate the absolute numbers of total main workers in each column.

Source: Director of Census Operations, Maharashtra, Mumbai.

The primary sector (consisting agriculture and allied activities) accounts for more than half of the total workers in the state and more than three-fourths of female workers. The modern manufacturing sector (in Census terms, non-household) accounts for only one-tenth of the workers and the secondary sector as a whole, a little more than one-sixth of the total workers. Though the service sector accounts for nearly 60 per cent of real state income, it employs 29 per cent of workers. A comparison of the structure of the workforce in 2001 with that in the earlier census indicates that the shares of not only primary sector but also of the organized manufacturing sector declined. While primary sector accounted for more than half of the total employment in the state (53 per cent), its share in the real state income is hardly one-sixth (14 per cent), which is a reflection on the low productivity of this sector. Thus, the share of non-

agricultural working population, which is relevant for social dialogue and industrial relations, is not high — it is less than even half of the total. These facts are endorsed with the recent NSSO survey results as shown Table 1.4 below.

Table 1.4: Percentage distribution of workers by industrial categories in Maharashtra, 2004-05

Industrial Categories	Percentage share
Agriculture etc.	53.07
Mining and quarrying	0.40
Total primary sector	53.47
Manufacturing	12.46
Electricity, gas and water supply	0.30
Construction	5.07
Total secondary sector	17.83
Trade, hotels, etc.	11.50
Transport, storage & communication	4.78
Other services	12.42
Total tertiary sector	28.72
Total	100.00 (47605.74)

Note: Figures in brackets indicate total number of workers.
Source: Ramaswamy (2007).

It is well known that the labour market in India is 'dualistic' (see e.g. Ramaswamy 2007), divided between 'organized' and the 'unorganized' sectors. The organized sector, in an empirical sense, is usually taken to include all establishments covered by the Employment Market Information by the Directorate General of Employment and Training (DGET). Employment information is collected statutorily in all establishments in the public sector and establishments employing more than 24 workers in private sector and voluntarily from non-agricultural establishments employing 10 to 24 workers in private sector (<http://www.dget.nic.in>). The estimate of the unorganized sector is derived by the 'residual' method, i.e. deduct the organized sector employment from the estimated total employment (using either the Census or NSSO data). Table 1.5 gives the data on employment in the organized sector and the estimate on the unorganized sector in selected states in India for 1993-94 and 2004-05.

Table 1.5: 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 employment	Percentage share of organized sector in total	Total employment	Organized sector employment	Percentage 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	42 5712.8	2 3276.6	5.47

Source: Ramaswamy (2007).

Three facts stand out. One, the share of organized sector employment declined in all the states considered here (though only marginally in Karnataka) and at the national level. Two, the oft-repeated fact that the organized sector employs only a small share of the total number of workers in India is borne out here too – its share ranged from 5 per cent to about 10 per cent in 1993-94 and from 3 per cent to 7 per cent in 2004-05 in the states, while at the national level, it was only 7 per cent and 5.5 per cent in the two time periods. Third, though the share of the organized sector in total employment was low and declined in Maharashtra also, it was highest amongst the states considered here – it ranged from 7 to 10 per cent.

Table 1.6 presents the formal and informal distribution in the manufacturing sector in selected states in 1999-2000 and 2004-05.

Table 1.6: Employment in organized and unorganized sector components in manufacturing sector for selected states in India, 1999-2000 and 2004-05

States	1999-2000			2004-05		
	Total employment in manufacturing sector	Formal sector employment	Percentage share of formal sector employment sector in total	Total employment in manufacturing sector	Formal sector employment	Percentage share of formal sector employment 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	1162 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 (see the text).

Source: Ramaswamy (2007).

The formal part of the manufacturing sector is represented by the coverage envisaged by the Factories Act, 1948. This Act covers factories employing more than nine workers with power and more than 19 workers without power. This forms the basis of the Annual Survey of Industries (ASI) data, which is usually taken to represent the formal manufacturing sector. The informal part of the manufacturing sector again is derived on a residual basis. It is customary to deduct the ASI employment from the total employment in manufacturing as estimated by the NSSO in its various rounds. The informal segment in the manufacturing sector has a significant share in all the states considered here, ranging between 82 per cent and 93 per cent in 2004-05. In the case of Maharashtra, the informal sector accounted for 73 per cent in 1999-2000 and 81 per cent in 2004-05. Thus, its share increased by 8 per cent in case of Maharashtra over the years and by 5 per cent at the national level. The formal sector's share in total manufacturing was highest in Gujarat, accounting for 25 per cent.

Employment in the Organized Sector

Employment levels in the public sector dipped during the post-liberalization period – from around 2.3 million in 1994-95 to 2.1 million 2005-06. The employment level in the private sector declined since 1997-98 and recovered in the last three years 2004-06. Overall, the employment in the organized sector diminished-27,000 jobs were lost in the span of a decade. The compound annual rate of growth of employment in the organized sector was negative during the period, 1992-93 to 2004-05 (- 0.53 per cent); and both its components-the private and the public sectors-also witnessed negative growth rates during the same period (-0.22 and -0.73 respectively). The share of manufacturing in total organized sector employment declined from 32.8 per cent in 1991 to about 29 per cent in 2001 (Planning Commission 2005, Table 14.11, p.315).

Employment in Factories

Figure 1.1 presents employment trends using the data provided by Inspector of Factories office (known in Maharashtra as the Office of Industrial Safety and Health).



Source: Directorate of Industrial Safety and Health, Mumbai

The slump in employment began since 1998. Closures of factories increased since the mid-1990s and the rate of growth of registered factories slowed down. This slowdown was faster since 2000. Secondly, the number of new factories registered and employment created by them declined since 1998. The Government of Maharashtra observed that “the closures of factories and voluntary retirement schemes have affected” the employment scenario in the state (Economic Survey of Maharashtra, 2005-06, p.143). Labour regulations are cited as one of the reasons for closures and preponderance of voluntary retirement schemes (VRS).

1.3 Summary

The shares of the secondary sector in general and total manufacturing sector in particular in total state income and the share of the registered manufacturing sector in total manufacturing sector declined over the years. Employment in the organized sector and the registered manufacturing sector declined in the state in the last ten years or so. The share of the formal segment in the total manufacturing sector also declined, more steeply than in the case of some important states like Gujarat and Tamil Nadu. Not surprisingly, the size of the formal sector to which the labour laws apply had shrunk. These facts should cause concern to the policy makers.

CHAPTER 2

Labour Reform Measures In Maharashtra

2.1 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. The subject of labour figures only in the Union and the Concurrent Lists. Labour is a subject in the Concurrent List of the Constitution of India, on which both the Central and the state governments are competent to frame laws. However, there are some matters, which are exclusively reserved for the Central government.

Table 2.1: Distribution of labour-related subjects 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 otherwise specified. The states are given powers under the Central Acts to make Rules for the purpose of implementing the provisions of the Acts and to suit the individual circumstances in different states. 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 state and Central law on the same subject is that the former remains void to the extent of repugnancy to the latter (Article 254). Further, Presidential assent is needed in case of laws undertaken by the state on matters in the Concurrent List. We will provide a brief overview of the labour laws that governs the labour market and industrial relations system in Maharashtra.

The main object of the Factories Act is to secure better working conditions for workers in factories. It applies to units employing ten or more workers using power and 20 or more workers not using power. However, 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 less than ten workers. It basically defines the working conditions especially relating to health, safety, and welfare of the workers to be followed by the registered factories.

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 employed in employments specified in the Schedule appended to it and added to it from time to time by the state government. It covers all types of workers, skilled or unskilled, manual or clerical, whether directly employed or outworkers. The Trade Union 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 members, will be allowed to register under the Act. The Registrar of trade unions has powers to register and deregister unions (depending on whether they fulfil the conditions of the Act or violate its provisions). The Industrial Employment (Standing Orders) Act 1948 applies to industrial establishments employing 100 or more workers; however, the Government of Maharashtra has applied it to those employing 50 or more workers. The purposes of framing the standing orders are to ensure uniformity in working conditions of employees and enable workers to know of their rights and obligations.

The Industrial Disputes Act 1947 does not apply to persons employed mainly in a managerial or administrative capacity and those employed in a supervisory capacity and draw wages exceeding Rs.1600 per month (in Maharashtra this ceiling has been set at Rs.6500 since 2005) and exercise functions mainly of a managerial nature.¹ The Act primarily seeks to create institutions (and rules for conduct of them) to prevent and settle industrial disputes and work stoppages, define the rules governing conduct of the 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. The regulations relating to lay off, retrenchment and closure apply to establishments employing more than 99 workers.

The Contract Labour (Regulation and Abolition) Act (CLRA) 1970 seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. It applies to establishments employing 20 or more contract workers and to contractors employing 20 or more 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 principal employers should register their establishments and the contractors should obtain license to be eligible to execute work through contract labour. The Act also seeks to promote the health and welfare of contract labour. The Bombay Industrial Relations Act 1946 covers skilled or unskilled persons employed in any industry covered by the Act but excludes persons employed primarily in a managerial, administrative and supervisory or technical capacity and drawing basic pay exceeding Rs.6500 per month (increased from Rs.1000 in 2005). The Act seeks to:

- provide unions with a status (representative and approved unions);
- restrict employers' freedom to effect changes in service conditions;
- formalize service conditions and rules of conduct for employees via standing orders;
- create labour judiciary such as Industrial Courts and Labour Courts to deal with disputes;
- regulate strikes and lockouts by defining their illegality;
- protect workers from victimization by employers for their legitimate and lawful union and strike activities.

¹ The definition of "workers" (though the Indian labour laws use the gender biased term "workman") under different labour laws has been focus of debate in India; a "worker" as understood under the Factories Act may not be a "worker" under the Industrial Disputes Act owing to salary and functional definitional intricacies (such as supervisory duties, etc.). As far as the Industrial Disputes Act and the Bombay Industrial Relations Act go, there have been numerous cases only on the question whether the person(s) under the industrial dispute is (are) worker(s) under the said laws. If they are not declared as "workers" under the said labour laws, they cannot avail protection available under those laws. They are left to protect themselves either by forming associations or by quitting. That is why supervisory and managerial associations have sprung up in India. Secondly, in many medium and large sized establishments, workers are "promoted" to supervisory titles only to remove them from the "bargainable category". It is a form of labour flexibility measure.

The Maharashtra Trade Union Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) is applicable to every industry to which the Bombay Industrial Relations Act and the Industrial Disputes Act (in which the state government is the appropriate government) are applicable. It covers every person defined as an “employee” under the Bombay Industrial Relations Act and as worker under the Industrial Disputes Act. It seeks to:

- provide for recognition of trade unions which will facilitate collective bargaining;
- formalize rights and obligations of unions;
- confer powers on unrecognized unions;
- regulate strikes and lockouts by defining the illegality they involve;
- list unfair labour practices and provide for prevention of these;
- constitute relevant labour judiciary institutions to deal with matters arising out of the provisions of the Act.

Politics of Labour Reform

The peculiar and rather unique feature of the labour movement in India has been a strong nexus between politics and trade unions. This manifests itself in several ways. One, the political parties create a number of associations or wings representing various groups such as workers, students etc. When they are in power, political parties at both Centre and the states, seek to strengthen their own labour wings or organisations and those of allied parties on the one hand and weaken those affiliated to opposition parties and unions of powerful independent leaders like Datta Samant (in Mumbai) and Kuchelan (in Chennai) and these two processes created some significant strikes in India (e.g. the long and violent strike at engineering firm Simpson & Company in Tamil Nadu during the early 1970s fuelled by inter-union rivalries and the textile strike in Bombay during 1982-83). The politicization of industrial relations using the intervention of state institutions has been highlighted by some researchers (e.g. Ramaswamy 1984, 1988; Shyam Sundar 1999, a). Secondly, various changes sought to be made in the legal framework (such as deletion of Chapter V-B or modification of Section 9-A of the Industrial Disputes Act) are also dictated by the aforementioned organizational strategy. Thirdly, the position of political parties on labour reform measures will depend on whether they are in power or in the opposition. Fourthly, the political costs factor (fear of incurring the wrath of the working class) has played a significant role in the strategy of the political parties in introducing labour reforms (see Shyam Sundar and Venkata Ratnam 2007). Fifthly, the post-1990s period saw the end of single party government and the rise of coalition politics. This has had an impact on labour reform measures by weakening the resolve of the leading political parties (the Congress or the Bharatiya Janata Party) to introduce labour reforms. The Congress-Nationalist Congress Party (NCP) government’s efforts introduce labour reforms were defeated by protests from political parties in the coalition as well as opposition parties like the Shiv Sena. The political survival logic often overpowers the reform logic. Sixthly, the political parties have found it safe to introduce reforms like those relating to trade, financial and capital markets which do not directly affect the ‘mass politics’. Labour reforms belong to this ‘mass politics’ category and trigger widespread agitations and inflict political costs, such as unpopularity, electoral defeats, etc. (see Varshney 1999).

For these reasons, we may briefly note the political developments in Maharashtra since the mid-1990s. The Shiv Sena (a regional party) and the Bharatiya Janata Party (BJP) combine

formed the government in 1995 and remained in power till 1999. In the subsequent election (1999 and 2004), the Congress-NCP combine formed the government with the support of other political parties like the Janata Dal, Republican Party of India (Athavale) and Peasants and Workers Party and the Shiv Sena and the BJP have been the main opposition parties.

Labour Reform Measures

Since the late 1990s, there has been a strong perception that labour laws in the state require amendment, as they were proving to be an obstacle to industrial growth and investment. The government believed that “labour laws have to be flexible if industry is to face international competition” (statement attributed to former Chief Minister Vilasrao Deshmukh, see Chatterjee 2000).

The government made several attempts to introduce labour reform measures. The latter are of interest, as they reflect on the importance of the social dialogue process, which is sadly lacking either at the national or at the state level. The issue is not whether they are desirable by themselves; but the fact that they have failed repeatedly and still continue to be on the state agenda speaks volumes of the policy making process in the state. There were two major policy announcements – one in June 2000 by a notification by the Directorate of Industries (<http://www.smallindustryindia.com/policies/statelaw/Maharashtra.html> for full details) and the Industrial Policy statement in 2001. The main proposals revolved around three issues – union affairs, numerical and functional flexibility and inspections.

The proposals relating to unions talked of (a) raising the minimum membership of unions eligible for registration, (b) reducing the role of outsiders in union affairs, and (c) abolition of the MRTU & PULP Act. The reform measures concerning flexibility proposed to remove or relax the regulations relating to lay offs, retrenchment and closure in the Industrial Disputes Act (for example, no prior permission for lay offs, application of prior permission for retrenchment or closure to firms employing 300 or more persons, larger compensation to retrenched workers), removing some peripheral activities from the purview of CLRA etc. There were also measures reducing the number of inspections and providing for inspections on prior approval etc.

These measures were not implemented owing to protests from political parties (both in the alliance and in the opposition) and trade unions (Yeshwantrao 2000). The then Chief Minister, Vilasrao Deshmukh, assured the trade unions that his government would not press for amendments in the labour and industrial laws (see Shyam Sundar 2007, a). The unions took the stand that labour flexibility measures and liberalization of inspections would take a large number of factories outside the purview of the labour laws and thus weaken labour standards (see Bhelarao and Chavan 2000).

The Industrial, Investment and Infrastructure Policy, 2006 also talked of labour reforms and some of the important proposals included:

- permitting lay offs, if adequate compensation is provided;
- allowing female workers to work in night shift and in 12-hour shifts;
- flexibility to firms facing stiff competition;
- changing technological contexts and fluctuating market conditions;
- conducting joint inspections, prosecution or fines only with endorsements from head of the department concerned;

- increase in working hours from 48 to 60 hours, and
- exemption from labour laws to units in backward districts.

2.2 Special Economic Zones and Labour Reforms

The Government of Maharashtra introduced its policy on setting up of special economic zones (SEZs) in the state on 12 October 2001 (*vide* Government Resolution No. SEZ 2001/(152)/IND-2, Industries, Energy & Labour Department, <http://www.navimumbaisez.com>). Following this, a number of measures were taken.

The government holds that all labour laws that are generally applicable outside the SEZs will be applicable within the SEZs as well. However, the state governments enjoy freedom to make some amendments such as declaring the establishments in the SEZs as public utility services, which involves some restrictions on strikes and lockouts under the Industrial Disputes Act. However, the employees enjoy the full rights of freedom of association, collective bargaining, minimum wages and so on. The Development Commissioner of the SEZ will officiate as Inspector of Factories, Conciliation Officer and so on in place of labour department officials. But the laws do apply, with some amendments, and therefore the workers in SEZ enjoy trade union, collective bargaining and minimum wage rights.

There are 269 registered factories under the Factories Act operating in SEZs in the state (Office of the Director of Industrial Safety and Health, Mumbai). The state government issued a series of notifications during November-December 2002 to delegate powers under various labour laws to Joint/Deputy Director (Industries), Nagpur in relation to industries situated in the Textile Zone at Butibori, Nagpur. Similar notifications have been issued by the government during 2002-03 to empower the Development Commissioner of SEZs to act as inspectors under the Contract Act, Payment of Wages Act, as Appellate Officer, Registering Officer and Licensing Officer under the Contract Act and so on. This has been done to provide a one-window system for all matters related to labour legislations and to ensure easy access to government officials in the SEZs. Also, the joint or deputy director would have full knowledge of local conditions and exercise powers suitably. The state government has declared the industries situated in the SEZs in the state as public utility services, which puts the labour-management relations in these units under greater government regulation. Importantly, disputes in these units attract compulsory intervention by the government and legal strikes by workers in them become difficult.

The state government amended Sections 1 and 10 of the CLRA to deem as “temporary and intermittent work” certain ancillary activities - like canteen, gardening, cleaning, security, courier service, transport of raw material and finished products, or loading and unloading of goods – performed within the premises of a factory of the establishment in SEZs and the work in the factories and establishments which are declared 100 per cent export units by the government. *This amendment thus takes these activities out of the purview of the Contract Act.* The justification provided by the government is that these activities “may be performed with more efficiency and at lesser cost on contract basis rather than employing workers on a permanent basis”. Further, these “helping” provisions are expected to help the export-oriented industries in facing tough competition (Bill No. XLI of 2005 printed in *Labour Digest*, June 2005, pp.248-9).

Box 2.1: Central Government's policy on labour laws in SEZs

The Central government's views on the proposals to relax some provisions of some labour laws in SEZs by some state governments like Andhra Pradesh, Madhya Pradesh and Maharashtra is as follows:

- no relaxation of provisions relating to safety and health of workers;
- the provisions of the Central acts need not be relaxed by state governments;
- provisions of the Bills of the state government should not contravene those of the Central Bills under consideration; and
- the principles contained in the National Common Minimum Programme (NCMP) such as no hire-and-fire policy and labour reform by consensus should be scrupulously observed by the state governments (*Economic Survey*, 2004-05, p.165).

The Central government declared that in the case of units inside the SEZ, "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" (quoted in 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 the Parliament that labour laws would not be relaxed in case of units inside the SEZs (reported in *Indian Labour Journal*, October 2005, p.961).

2.3 Law on Industrial Relations

On 17 March 1997, the state government introduced a comprehensive Bill on industrial relations called Maharashtra Industrial Relations Act to fulfil the Shiv Sena-BJP alliance's poll promise that it would change the Bombay Industrial Relations Act and introduce the principle of secret ballot (see Banerjee 1995). However, there was no movement on the Bill for various reasons.

On 13 March 2001, the state government (the Congress-NCP alliance was in power) constituted a Committee called the MRTU and PULP Act Review Committee, which was asked, among other things, to evaluate the utility of the MRTU and PULP Act and recommend whether it should be continued or repealed. The Committee recommended repeal of the Act, but *only* after suitable provisions on union recognition, prevention of unfair labour practices and illegal work stoppages were inserted in the Industrial Disputes Act by way of amendments by the state government. The three specific recommendations of the Committee were: provide for recognition of trade unions by secret ballot system; make 14 days' notice of strikes and lockouts mandatory in case of all undertakings (unlike in the Industrial Disputes Act where it applies only to public utility services); and create a machinery and procedures to deal with allegations of unfair labour practices. It strongly recommended a secret ballot instead of a membership verification method as it believed that this would have prevented many of the ills resulting from the working of the Act (pp.20-21). This recommendation is contrary to the long-held stance of the Congress and its labour wing, the Indian National Trade Union Congress (INTUC), and perhaps that is one of the reasons why the government did not accept the report of this Committee.

2.4 Flexibility in Shops and Commercial Establishments Act

The Government of Maharashtra exempted the software and information technology (IT) establishments (including customer service care centres operating through computers) in the state from Sections 13 to 15, 18 and 33(3) of the Bombay Shops and Commercial Establishments Act subject to some conditions (Government Notification, No. BSE 01/2000/66824/(6990)/Lab-9, dated 3 June 2002; see also IT and ITES Policy released in July 2003 (http://www.indianbusiness.nic.in/indian-states/maharashtra/it_itespolicy2003.htm). This involved giving firms in these sectors flexibility in matters relating to working hours, working days and night shifts by women workers. The same set of exemptions were given to bio-

technology units (Government Notification, No. BSE 04/2002/(7371)/Lab-9, dated 25 July 2002; see also the advertisement of the government, “Maharashtra leads...”, *Economic Times*, 6 February 2004).). The policy incentives extended by the state government for the IT sector are 24X7X365 work; total exemption from labour laws; and self-certification of reports and returns (speech by Arvind Kumar Secretary, IT Department, Government of Maharashtra, at the International Business Conference held in Mumbai on June 7, 2006). The government also granted eight shopping malls (like Shoppers’ Stop, Orbit Mall, Nirmal Life Style) permission to work for all seven days in a week. Further, shops were also exempted from implementing the rest hour provision. As of January 2005, the state government has given over 500 exemptions under the Shops and Establishments Act.

2.5 Self-Certification System

Employers have often criticised the inspection system in India and demanded its abolition so as to enable them to function freely and concentrate their energies on business. The Government of Maharashtra introduced the “self-certification-cum-consolidation annual returns scheme” for factories and establishments in the state on 2 January 2006 (*vide* Government Resolution NO. MISC-05/CR-1698/Desk.Lab-9) under which the employers can, *suo moto*, certify that they are implementing the labour laws faithfully. The scheme, which came into effect from 2 January 2006 and covers 13 labour laws (Table A.3 in Appendix I), is open to all the shops/establishments/factories in the state. These should apply to the Self-Certification Committee along with the stipulated security deposit. The scheme would be valid for five years and establishments are free to withdraw from it at any time. The applicants should file an affidavit on a non-judicial stamp paper of Rs. 100 declaring that they agree to comply with the all the provisions of these labour laws and accept the penalty prescribed for any violation. The applicant should file the self-certification-cum-consolidated annual return along with supporting documents on or before 31 January every year; failure to do so would automatically result in being debarred from the scheme. There are also penalties for providing false information. A random selection of 20 per cent of the covered establishments would be inspected in a year and these would not be visited again during the remaining period of the scheme unless the State Committee receives complaints about them. Inspection visits to inquire into complaints should be authorized by higher level officers.

2.6 Applicability of the Main Labour Laws

There are two laws – the Factories Act, 1948 and the Bombay Shops and Establishment Act (1948 in Maharashtra) – which are generic in the sense that they serve the basis of coverage of other labour laws. The former is the Central legislation and the latter a state law. Table 2.2 presents the applicability of the two Acts.

Table 2.2: Coverage of generic laws in Maharashtra

Name of the Act	Coverage
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.
Bombay Shops and Establishments Act	It applies to <i>all</i> establishments in local areas specified in the Schedule to the law; the Schedule includes 241 local areas. The state government can extend the provisions to any other area by notification.

The Factories Act excludes units operating with power and employing less than 10 workers and those operating without power and employing less than 20 persons. We have noted earlier that around four-fifths of workers in the manufacturing sector in the state are employed in the unorganized segment. It is possible to get some idea of this segment by looking at the share of units declared as factories under Section 85 of the Act even though they fall below the threshold level of employees.

Table 2.3 Details of factories in Maharashtra, 2005

Serial No.	Particulars	Number	Proportion of Section 85 in total
1.	Number of all registered factories (at the end of the year) in 2005	35 699	-
2.	Number of factories under Section 85	10 457	29.3
3.	Number of estimated workers in all registered factories	1 258 198	-
4.	Number of estimated workers in Section 85 factories	37 687	3.0
5.	Average number of workers employed in factories under Section 85	3.6	-
6.	Average number of workers employed in all registered factories	35.2	-

Note: - indicates that the data for the said particular cannot be generated.

Source: Office of the Director of Industrial Safety and Health, Mumbai.

Thus, about 30 per cent of total registered factories employ below the criteria specified in the Act but employ less than 5 per cent of total workers, as the average number of workers employed per factory is just about four.

The trends in the number of factories and the employment in them need to be studied to see the changes in the coverage of this Act.

Table 2.4; Average annual growth rates of number of registered factories and employment, 1994-2004 (in per cent)

Period	Number of registered factories	Employment
1994-97	2.34	1.60
1998-00	1.74	-1.58
2001-04	0.68	-2.34

Note: Computed from the data provided by Office of the Director of Industrial Safety and Health, Mumbai.

The table shows that the growth of factories has considerably slowed down in recent years and the employment actually registered a negative growth rate since late 1990s. During this period, a number of factories closed down in the state and/or many were reported to have relocated to other states owing to a number of economic reasons or factors related to the labour market and industrial relations (see Chapter 5 in this monograph; see also Shyam Sundar 2007, a).

The number of establishments covered by the Shops and Establishment Act has remained at 241 since 1993-94. There were 1.75 million shops and commercial establishments in the state in 2004 and the total employment in them was 2.5 million persons (Annual Report under Shops Act, Office of the Commissioner of Labour). The Economic Census 2006 enumerated 4.37 million enterprises in the state (both rural and urban) with 11.8 million employees (Bhandari

and Kale 2007, Tables 3.6.8 to 3.6.13). It appears that around 60 per cent of the establishments enumerated by the Census and 80 per cent of persons counted as employees are not covered by the Shops and Establishments Act.

Another way to look at the coverage of law is to look at the composition of workers in terms of regular and non-regular categories. Regular workers are usually permanent employees who enjoy various rights, including employment security. The non-regular categories like the casual and contract workers do not enjoy employment security, though they are legally covered under the social security laws. It is another matter that they are denied these even (see SNCL 2002). The CLRA applies to every government, local authority or private establishment employing 20 or more contract labour and every contractor employing 20 or more workers. Table 2.5 presents statistics on the extent of employment of contract labour in selected states. It may be noted here that the official statistics on contract labour are a gross underestimate.

Table 2.5 Proportion of contract labour in selected states, 1995 and 2002 (in per cent)

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).

At a disaggregated level, Shyam Sundar (2007, a) found that of the 16 industrial groups studied in the manufacturing sector during 1998-2001, ten industries employed at least 20 per cent of the total workers in them as contract labour. Also, more than 40 per cent of the factories in the census sector in recent years employed contract labour (Ibid).

Another way to look at the legal coverage of the Act is to look at the composition of employment of workers identified in various NSSO rounds (Table 2.6).

Table 2.6: Percentage distribution of workers by status of employment in India

NSS Survey Period	Rural Male			Rural Female		
	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)

Two important facts can be noted here. Regular and casual categories are taken as constituting wage employment, i.e. an employer-employee relationship exists. That is not the case with self-employment. One, wage employment showed a 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 females. Two, self-employment increased in the case of all categories, especially among rural women and for urban men (to a lesser extent). More than half of rural workers and around 45 per cent of urban workers in India presently do not work for a direct employer. Thus, the elaborate legal framework of the labour market and industrial relations system actually has little relevance for half of the workers in India. This is largely true even if we concern ourselves only with urban areas where non-agricultural activities abound. If casual workers are excluded from the ambit of labour laws (which is not an unreasonable assumption) the segment excluded from protection further widens. This should be a great source of concern for policy makers and lead to the evolution of protective and rights-oriented policies for the self-employed (see Chandrasekhar and Ghosh 2007).

The various social security laws usually apply to factories (as defined in the Factories Act) and other establishments such as hotels, restaurants, shops, cinema and newspaper establishments (in the case of the Employees' State Insurance or ESI Act 1946; mines, oil fields, plantations, ports, railways companies, shops etc. (for Payment of Gratuity Act 1972). The government is empowered under the various acts to expand the coverage of the law by a notification; but such expansion has been slow and inadequate. Some laws like the ESI Act and Provident Fund Act do not cover a large number of workers. The discussion here is limited to industrial relations and wage laws. The Minimum Wages Act 1948 has universal applicability but limited effectiveness (Shyam Sundar 2007, a). But other laws limit the coverage to establishments above a certain size (Table 2.7) or to some categories of employed persons.

Table 2.7: Size criteria of some industrial relations laws

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	50+ workers (in Maharashtra); 100+ workers (in Central law)
Contract Labour (Regulation and Prohibition) Act, 1970	20+ workers for principal employers and 20+ contract workers for contractors
Chapter III^(a) of Maharashtra Trade Union (Prevention of Unfair Labour Practices) Act, 1970	50+ workers

Note: (a) - Chapter III of the Act provides for recognition of trade unions.

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

Table 2.8: Distribution of working factories and workers by size of factories, 2004

Class Intervals	Number of working factories	Percentage	Number of workers	Percentage
1-9	11 481	39.3	57 873	4.9
10-19	7362	25.2	98 574	8.3
20-49	6477	22.1	188 857	15.8
50-99	1878	6.4	125 443	10.5
100-499	1746	6.0	358 703	30.1
500-999	209	0.7	142 386	11.9
1000-4999	98	0.3	182 852	15.3
5000 and over	5	*	37 931	3.2
Total	29 256	100.0	1 192 619	100.0

Source: *Handbook of Basic Statistics of Maharashtra, 2004*, Directorate of Economics and Statistics, Mumbai.

Thus, the MRTU & PULP Act excludes nearly 87 per cent of factories and about 30 per cent of workers in the state. Similarly, the provisions of the Industrial Disputes Act (barring those relating to the grievance redressal authority) exclude 93 per cent of factories and about 40 per cent of workers.

The law or its judicial interpretation could also limit the applicability to certain categories of employed persons. For example, Chapters V-A and B of the Industrial Disputes Act apply to workers who have rendered a continuous service of 240 days; the Industrial Disputes Act (and the Bombay Industrial Relations Act) exclude some categories of persons from the definition of 'workmen' (managerial or administrative persons, persons employed in supervisory capacity and drawing wages exceeding Rs. 6,000 a month or persons exercising managerial functions). Indeed many legal battles have been fought on the issue of definition of workmen. Medical representatives have been excluded from this category by a judicial decision.

Employees in both private and public sectors enjoy freedom of association in the state. Though this is a constitutional guarantee in India, a 2003 decision of the Supreme Court – in the context of a strike by state government employees and teachers in Tamil Nadu – that government employees do not enjoy legal or moral right to strike has changed the legal and organizational atmosphere relating to unions and strikes in India (Shyam Sundar 2004, b).² There are various ways by which some categories of workers are excluded from the right to organize. For example, the exclusion of supervisory and managerial personnel and some categories of informal economy workers like security guards of private housing societies from the definition of 'workmen' deters them from forming trade unions, as they do not enjoy protection relating to aspects covered by the Industrial Disputes Act (interview with Monterio). The analysis

² The Central and State Government Rules (in several states) forbid the employees in government service to join trade unions and restrict their right to strike. The principles established by the ILO supervisory bodies such as the CEACR are that where the right to strike is prohibited or restricted, the government should establish speedy and efficiency arbitration and consultation mechanisms and institutions for both representation and speedy resolution of grievances and disputes of employees. In 1966, the Central Government constituted a Joint Consultative Machinery and Compulsory Arbitration for resolving differences and disputes arising between the Central Government and its employees. It provides for both consultation and compulsory arbitration. The compulsory arbitration will cover disputes on matters such as pay and allowances, hours of work and leave, etc. The Board of Arbitration which was constituted in July 1968, consists of three persons, one of whom is a full time Chairman and the other two members, one from the staff side and the other representing the government (vide Annual Report, 2004-2005, Ministry of Labour and Employment, Government of India).

of unionization has to distinguish between *legal freedom to unionize* and *effective unionization*. While the law could allow the formation of unions, the key issue is whether union formation is aided in practice. For example, the government has constantly held that labour laws would not be relaxed in units in SEZs. But whether conditions in SEZs are ideal for unionization is a debatable point. In fact, it is impractical or nearly impossible because of the tight security governing the entry of outsiders into the establishments inside the zone (interview with Monterio). Secondly, outsider union leaders are not allowed in some states like Gujarat. Thirdly, constant relocation of industries from one backward area to another to enjoy tax incentives could destabilize unionization (see NTUI Note on SEZ; D'Costa 2000). Fourthly, the SEZs are more likely to be established in regions where there is a large supply of unorganized labour (usually in rural areas). Fifthly, the declaration of units in SEZs as 'public utility services' makes strikes difficult, if not impossible. The role of strikes in formation and growth of unions is well known. It is argued that wages and working conditions in units in SEZs are usually low and poor.

2.7 Labour Laws and SEZ

The government holds that all labour laws that are generally applicable outside the SEZs will be applicable within the SEZs as well. However, the state governments enjoy freedom to make some amendments such as declaring the establishments in the SEZs as public utility services, which involves some restrictions on strikes and lockouts under the Industrial Disputes Act. However, the employees enjoy the full rights of freedom of association, collective bargaining, minimum wages and so on. The Development Commissioner of the SEZ will officiate as Inspector of Factories, Conciliation Officer and so on in place of labour department officials. But the laws do apply, with some amendments, and therefore the workers in SEZ enjoy trade union, collective bargaining and minimum wage rights.

There are 269 registered factories under the Factories Act operating in SEZs in the state (Office of the Director of Industrial Safety and Health, Mumbai). The state government issued a series of notifications during November-December 2002 to delegate powers under various labour laws to Joint/Deputy Director (Industries), Nagpur in relation to industries situated in the Textile Zone at Butibori, Nagpur. Similar notifications have been issued by the government during 2002-03 to empower the Development Commissioner of SEZs to act as inspectors under the Contract Act, Payment of Wages Act, as Appellate Officer, Registering Officer and Licensing Officer under the Contract Act and so on. This has been done to provide a one-window system for all matters related to labour legislations and to ensure easy access to government officials in the SEZs. Also, the joint or deputy director would have full knowledge of local conditions and exercise powers suitably. The state government has declared the industries situated in the SEZs in the state as public utility services, which puts the labour-management relations in these units under greater government regulation. Importantly, disputes in these units attract compulsory intervention by the government and legal strikes by workers in them become difficult.

The state government amended the Sections 1 and 10 of the CLRA to deem as "temporary and intermittent work" certain ancillary activities - like canteen, gardening, cleaning, security, courier service, transport of raw material and finished products, or loading and unloading of goods - performed within the premises of a factory of the establishment in SEZs and the work in the factories and establishments which are declared 100 per cent export units by the government. *This amendment thus takes these activities out of the purview of the Contract Act.* The justification provided by the government is that these activities "may be performed with more efficiency and at lesser cost on contract basis rather than employing workers on a permanent basis". Further, these "helping" provisions are expected to help the export-oriented

industries in facing tough competition (Bill No. XLI of 2005 printed in *Labour Digest*, June 2005, pp.248-9).

Box 2.1: Central Government's policy on labour laws in SEZs

The Central government's views on the proposals to relax some provisions of some labour laws in SEZs by some state governments like Andhra Pradesh, Madhya Pradesh and Maharashtra is as follows:

- no relaxation of provisions relating to safety and health of workers;
- the provisions of the Central acts need not be relaxed by state governments;
- provisions of the Bills of the state government should not contravene those of the Central Bills under consideration; and
- the principles contained in the National Common Minimum Programme (NCMP) such as no hire-and-fire policy and labour reform by consensus should be scrupulously observed by the state governments (*Economic Survey*, 2004-05, p.165).

The Central government declared that in the case of units inside the SEZ, "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" (quoted in 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 the Parliament that labour laws would not be relaxed in case of units inside the SEZs (reported in *Indian Labour Journal*, October 2005, p.961).

2.8 Summary

The Factories Act is the generic law that forms the basis of legal coverage by other labour laws; this law excludes small-sized factories. The Shops and Establishments Act should be covering shops, commercial establishments, restaurants, hotels, cinemas etc. but the coverage of this law depends on the coverage of the 'local area'. Some important protective provisions relating to the standing orders, employment protection, union recognition etc. exclude small-sized establishments even among the formal sector. The minimum wage law is supposed to be an 'universal' law covering all types of workers and establishments, but its implementation is poor (see Shyam Sundar 2007, a, b). The legal protection is again poor, when we see the types of employments that are covered; self-employed is a major segment which enjoys little protection. In general, the workers in the unorganized sector lack protection due to non-applicability of laws, poor implementation even if laws are applicable, and absence of 'voice' institutions (it may be noted, however, that the National Commission on Enterprises in the Unorganized Sector is on course to remedy this). The government is seeking to introduce labour reforms under tremendous pressure from employers (domestic and foreign) and international financial institutions; these further affect the protection, though limited, afforded by labour laws.

The governments run by both Shiv Sena and its allies and the Congress and its allies have not been able to nor willing to tinker with the two state industrial relations laws and the Industrial Disputes Act (Chapter V-B) owing to opposition from political parties and trade unions' opposition and lack of political will. Though some major trade unions demanded changes in the Bombay Industrial Relations Act and the K. B. Srinivasan Committee recommended abolition of the MRTU & PULP Act after making necessary amendments in the Industrial Disputes Act, the government chose not to do so. The reasons are well known. Both coalition governments feared reform of industrial relations laws would hurt the organizational interests of their party's labour wings. Union power, opposition from the Left parties, coalition

partners, and political rivals and coalition politics stalled reform attempts. However, the government could introduce some “soft” reforms like providing flexibility in terms of work hours, employment of women in night shifts to new era industries like IT, ITES and biotechnology, exemption from labour laws for IT industries, exemption from weekly holiday to shopping malls, permitting employment of contract labour in ancillary activities in units in SEZs, introduction of “self-certification”, and so on. But the government could not implement the reforms promised on big issues like reform of the Industrial Disputes Act (especially Chapter V-B, Section 9-A), the Trade Union Act, the Bombay Industrial Relations Act, the MRTU & PULP Act, the Contract Labour Act etc.

Chapter 3

Trade Unions

The Constitution of India, through Article 19 (1) (C), guarantees citizens the fundamental right to form associations. The Trade Unions Act was enacted in 1926, when India was still under colonial rule. Under the Act, a trade union satisfying the membership 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 Section 6. Under Section 10, the registrar of trade unions has powers to cancel the registration of a union if it applies for cancellation, if registration was obtained by fraud or mistake, the registered union ceases to exist or ceases to have the required number of members and it contravenes any of the provisions of the 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 to union leaders and members from civil and criminal liability for bona fide union activities. The Act spells out in detail the contents of the rules to be made by the unions, items on which the general fund of the union should be spent, rules relating to constitution of a separate political fund and so on. In a provision introduced in 2001, at least half of the office-bearers of the union in the unorganized sector and two-thirds in other cases should be insiders. Any member of the union (with a membership tenure of at least six months) can, with the consent of the registrar of trade unions, refer disputes on issues such as the validity of executive position or membership status of any person in the union and property issues to the Industrial Court constituted under the Bombay Industrial Relations Act (inserted by an amendment by the Government of Maharashtra in 1969).

In Maharashtra, two state laws – the Bombay Industrial Relations Act and MRTU & PULP Act – also deal with trade unions. The Bombay Industrial Relations Act applies to notified industries in notified areas and covers the textile industry (cotton, silk and wool) units generally employing 20 or more employees, sugar and its by-products industry, units engaged in generation or supply of electrical energy or both, public passenger transport and paper and straw boards manufacturers and banking companies including co-operative banks. It covers skilled or unskilled persons employed in any industry covered by the Act but excludes persons employed primarily in a managerial, administrative and supervisory or technical capacity and drawing basic pay exceeding Rs.6,500 per month (increased from Rs.1,000 in 2005). A union having not less than 25 per cent of the total number of employees in an industry in a particular area (during the three calendar months preceding the month of application) can apply to the registrar (appointed under the Act) for the status of ‘representative union’. Another union can displace the existing union only after two years of registration of the latter and after one year of disposal of previous such application. In addition, the applicant union must comply with the membership conditions stipulated in the Act. The Rules framed under the Act requires the Registrar appointed under the Act to verify the membership claims of the unions by examining the membership register, counterfoils of receipts etc. (see Rule 28A). It is clear that the Act prefers membership verification to secret ballot method to ascertain the membership of trade unions. A majority of the central trade union organisations in India, barring the INTUC, prefer the secret ballot, as membership verification method is fraught with problems such as partisanship, politicization of union movement etc. If there is no representative union in a local area, the union having membership of not less than 5 per cent of the total number of employees in an industry in the local area can apply for registration as a qualified union. If, in a local area, neither of the aforementioned unions is present, then the union having a membership of not less than 15 per cent could apply

for registration as a primary union (more details in Chapter 5). The registration of unions will be cancelled if:

- the industrial court directs cancellation the registration;
- it was registered by mistake, misrepresentation or fraud;
- membership for a continuous period of three months falls below the stipulated levels;
- the union functions in the interests of employers and not employees;
- it has instigated, aided or assisted the commencement or continuation of an illegal strike.

Every registered union should submit periodical returns to the Registrar as may be specified.

The MRTU & PULP Act is applicable to every industry to which Bombay Industrial Relations Act and Industrial Disputes Act (in which the State Government is the appropriate government) are applicable. It does not provide for registration of trade unions but has important provisions on union recognition and strikes.

3.1 Quantitative Analysis of Trade Unions

Economic liberalization, privatization and globalization are expected to weaken the trade union movement. It would, therefore, be interesting to study the trends in organizational indicators of this movement in the post-reform period. As the liberalization process unleashes forces that weaken the union movement, forces of resistance and struggle arise and thus the very forces of destruction pave way for new formations. The economic forces are not expected to sweep away the institution of trade unions; at worst a slowdown in growth of unions and a general decline in its aggressive activities can be expected. Its activities and strategies are more likely to face the forces of change, devise defensive techniques and resist the erosion of rights and privileges. Table 3.1 gives the basic statistics relating to trade unions for the period, 1996-2005.

Table 3.1 Statistics relating to trade unions in Maharashtra, 1996-2005

Period	Average number of registered trade unions*
1996-99	6873
2000-02	7637
2003-05	8371

Note: * This is derived by adding the newly registered unions to those on the register at the beginning of the year and deducting the union registrations cancelled.

Source: *Annual Administrative Report*, Trade Unions Act, 1926, Office of the Commissioner of Labour, Mumbai (various years).

The average number of registered unions (in net terms) increased from 6873 during 1996-99 to around 8371 during 2003-05, an increase of 22 per cent over the years.

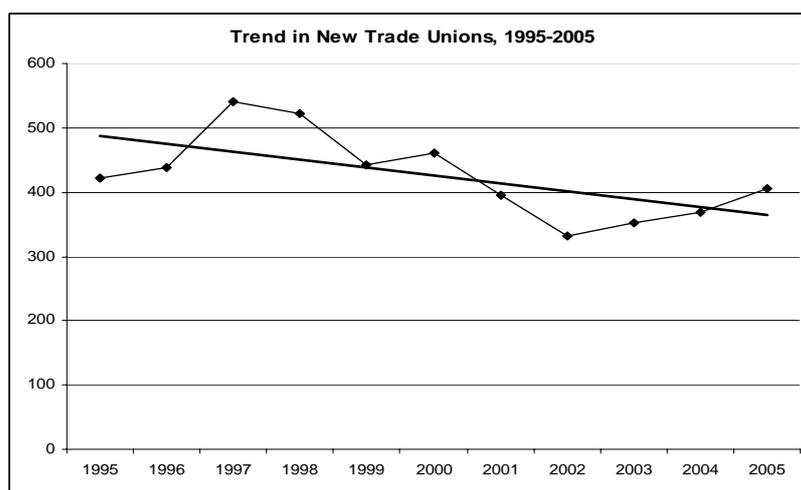
Table 3.2 Average annual rates of growth of registered unions, 1991-2005

Period	Average annual growth rates (%)
1992-95	4.88
1996-99*	1.83
2000-02	4.53
2003-05	3.13
1992-05	3.56
Memo: 1981-92	5.27

Note: * During 1997-99, it was 0.43

The growth rate in the post-reform period was expectedly slower than in the pre-reform period. The second half of the 1990s witnessed poor growth (less than half a per cent) of unions mainly because of higher cancellations of union registrations. The main reason for this is the persistent non-submission of annual returns by trade unions.

Figure. 3.1



Source: Office of the Commissioner of Labour, Mumbai.

Figure 3.1 shows that formation of new unions saw a general declining trend during 1995-2005, though there appears to be signs of revival in recent years. This decline may be due to three factors. One, the rate of growth of factories has slowed down. Two, factories and investment have shifted from union-conducive areas to union-free areas where the cost of new organizing activities may be high (see Shyam Sundar 2007, a). Three, the forces of liberalization, privatization and globalization forces have weakened the union movement.

Greater Mumbai still is the major union centre (53 per cent of total number of registered unions in the state) in the state despite the de-industrialization and de-unionization tendencies observed by actors and scholars. Other important union activity centres are Thane (1.5 per cent), Pune (8.7 per cent), Nashik (1.8 per cent), Solapur (2.4 per cent), Nagpur (11.5 per cent).

Table 3.3: Distribution of registered unions and union membership by districts, 2005

District	No. of registered trade unions	Members	District	No. of registered trade unions	Members
Greater Mumbai	2068	2 236 086	Nagpur	991	484 649
Raigadh	204	24 761	Buldhana	126	11 502
Ratnagiri	56	8920	Akola	165	5854
Sindhudurg	30	3708	Vashim	4	355
Thane	943	62 639	Amravati	147	20 826
Aurangabad	487	38 552	Yeotmal	177	22 265
Beed	107	15 393	Vardha	122	179 825
Jalna	68	10 177	Bhandara	206	33 830
Parbhani	155	19 927	Chandrapur	176	36 641
Hingoli	6	686	Gadchiroli	41	2364
Osmanabad	72	20 045	Gondiya	9	429
Nanded	193	25 328	Pune	693	365 752
Latur	106	8318	Satara	91	54 738
Nashik	553	75 812	Sangli	97	58 799
Dhule/Nandurbar	176	52 673	Solapur	174	102 055
Jalgaon	247	49 342	Kolhapur	160	93 638
Ahmednagar	220	81 936	Total	9067	4 207 825

Source: *Annual Administrative Report for 2005*, Office of the Commissioner of Labour, Mumbai.

It may be recalled here that under Regulation 17(1) of the Bombay Trade Union Regulations, 1927, while registration of unions is voluntary, submission of annual returns by registered unions is compulsory. Section 10 of Trade Unions Act provides for cancellation of registration on grounds of contravention of any provision of the Act which includes furnishing of annual returns. The Registrar sends notice to the defaulting unions notice under Section 10(b). Not all registered unions submit returns in time. The Registrar scrutinizes these returns and takes into account only those found to be in order. In 2003, only 1027 of the 9,067 registered unions submitted their annual returns and, upon scrutiny, only 924 returns were found to be in order and only these were included in the official statistics (*Annual Administrative Report under Trade Unions Act for 2005*).

The validity and reliability of union membership figures depend on the rate of compliance by the unions. Table 3.4 presents statistics on the rates of compliance.

Table 3.4: Compliance rates by trade unions, 1980-2003

Year	Compliance Rate (%)
1995	19.0
1996	17.6
1997	17.7
1998	18.2
1999	15.0
2000	13.5
2001	10.7
2002	11.6
2003	11.3
2004	11.2
2005	10.4

Note: * - Proportion of registered trade unions submitting valid annual returns.

Source: *Annual Administrative Report Under Trade Unions Act* (various years).

The rate of compliance by unions in the state is rather poor. It has worsened from more than 19 per cent in the mid-1990s to around 10 per cent in recent years. It may be noted that the compliance rate was little more than 50 per cent in the 1980s (Shyam Sundar 2007, a). But this decline is not unique to Maharashtra and has manifested itself in all the states in India (see Shyam Sundar 1999, b).

However, the Office of the Commissioner of Labour estimates the membership of all the registered unions by looking at the union records available with it. Table 3.5 provides the estimated membership figures for the 1995-2005 period.

Table 3.5: Estimated membership of registered trade unions in Maharashtra, 1995-2005

Year	Estimated union membership	Total employment	Union density ^(a) (%)
1994	4 079 263	37 854 550 ^(b)	10.78
1995	4 060 669		
1996	4 957 620		
1997	4 098 990		
1998	4 452 517		
1999	4 057 410		
2000	4 160 492		
2001	406 7015	34 597 609 ^(c)	11.76
2002	4 179 971		
2003	4 224 708		
2004	4 194 972		
2005 ^(d)	420 7825	4 760 5740 ^(d) /22339.02 ^(e)	8.83/18.84

Note: (a) Union members as a proportion of the total workforce

(b) NSSO estimate for 1993-94

(c) Main workers enumerated by the Census 2001

(d) NSSO estimate for 2004-05

(e) NSSO estimate for non-agricultural sector for 2004-05

(f) Using organized sector employment, we get union density for 2005 as 118.87 per cent.

Around 11 per cent of total workers (including agriculture) were unionized in the state during 1994 and 2001, regardless of whether the NSSO estimate or census figure is used. The level of unionisation declined marginally to 9 per cent by 2005. When the non-agricultural workforce is used as the denominator, then union density improves to 19 per cent. Some trade unions in the state have organized the agricultural workers, though marginally (interview with union leaders mentioned in the appendix, see Table 3.6).

Table 3.6: Distribution of trade unions and membership by major industry divisions, 2005

Serial Number	Industry	Number of Unions		Membership
		Registered	Posted	
1.	Agriculture, hunting, forestry and fishing	387	21	26 821
2.	Mining & quarrying	153	8	23 259
3.	Manufacturing	2 501	336	203 675
4.	Electricity, gas & water supply	189	20	55 356
5.	Construction	209	15	3 509
6.	Wholesale & retail trade etc	1 129	36	17 916
7.	Hotels and restaurants	103	14	2 127
8.	Transport, storage & communication	1 078	82	1 018 760
9.	Financial intermediation	588	90	66 541
10.	Real estate etc.	349	32	21 428
11.	Public administration etc.	1 944	241	19 5754
12.	Miscellaneous	6	1	54
13.	Total	8 636	896	1 635 200

Note: * includes private households with employed persons and extra territorial organizations and bodies.

Source: As in Table 3.3.

The fact that unions are organizing workers outside the conventional organized sector is endorsed by the fact that the union density figure crosses the 100 per cent mark when organized sector employment is used as the denominator. Keeping all these facts in mind, the realistic figure of union density should be in the region of 14-16 per cent.

Box 3.1: Trade Unions in New Service Sector

The service sector accounts for a significant share in national income and is an important job-generating segment of the economy. It comprises the 'conventional segment' (such as banking) and 'sunrise segment' such as information technology (IT), IT-enabled services (ITES) like call centres and retail (shopping malls and multiplexes etc.). The jobs in these segments are high stress and low security ones. But the good starting pay and the easy availability of these jobs attract the young population, especially the students and the unemployed youth. Job creation in these segments is relatively higher because of the vibrancy of demand in the product markets and the scope for expansion. This labour market factor is one reason for poor unionization in these new sectors. Discontented employees have two choices – to organize and protest or quit (Freeman and Medoff's famous 'exit-voice' model, 1991). The latter is possible if the labour market is tight, that is, alternative jobs are available. However, easy availability of jobs in these industries has resulted in higher labour turnover (i.e. accessions and separations). The relatively mobile employment and difficult penetrability, busy work schedules, white collar nature of jobs, attractive work conditions etc. act as disincentive against unionization, even if employees are under stress.

The 'mobile' character of capital in some segments is another disincentive – employees in call centres fear that unionization could result in migration of capital and thus loss of jobs (Noronha and D'Cruz 2006). Employers in sectors like business process outsourcing (BPO) fear that unionization will destroy their business (Ibid.). It is interesting to note that many employees in the IT sector did not feel the need for unions, as they felt that they had sufficient negotiating power (see Chatterjee 2005). Call centre agents did not even know of the concept of a trade union and ruled out its existence (Ibid). Datta Iswalkar (leader of the Mumbai Girni Kamgar Sangharsh Samiti) floated an organization called Young Professionals Collective (YPC) in 2006 to represent employees in the call centres. This is not registered as a trade union but works as a 'welfare association'. Its aims are "to establish space to negotiate with employers and interact closely with HR Departments of BPOs to resolve employees' problems and to build a movement of call centre employees to work with government, professional bodies and international agencies in order to develop guidelines for their working conditions, security and health issues". It has entered into a dialogue with National Association of Software and Services Companies (NASSCOM) also (see <http://infotech.indiatimes.com/articleshow/msid-1413805prtpage-1.cms>). Of the estimated 2,50,000 employees in the BPO sector in India, around 50,000 work in Mumbai. So far, YPC has able to register only around 50 employees (<http://www.thinkdigit.com/index.php?action=article&proctel=1367&page=2>). This organization is "set to tackle everything from the racism and phone rage of some overseas customers to the problems of working permanent night shifts" (<http://www.indiadaily.com/editorial/4144.asp>). The employers of BPOs do not want a trade union but a NGO as unions would discourage foreign clients from outsourcing business to Indian IT firms and hamper their growth (<http://infotech.indiatimes.com> cited above).

There are several shopping malls and organized retail chains in the city – Big Bazaar, Subhiksha, Vishaal, D'mart, Shoppers' Stop – and department stores like Akbarallys Departmental Stores, Asiatic etc. The Santa Cruz unit of Akbarallys had to close down owing to competition from big malls. The malls and retail chains are slowly spreading to small towns also. Union presence in organised retail is limited. The Bharatiya Kamgar Sena (BKS), affiliated to the Shiv Sena, has some presence in the retail sector and has applied for recognition in major shopping malls, including InOrbit and HyperCITY. It has formed a union in Big Bazaar, Mumbai, since 2004, which has not been recognized as yet (Kiran Pawaskar, General Secretary of BKS quoted in *Arbiter*, April 2007, pp4-5). When the Big Bazaar outlet in Kandivli, a Mumbai suburb, terminated the services of over 100 probationers in March 2007, the BKS agitated and pointed out that the termination orders were in response to unionization drive in the outlet. The agitation resulted in closure of the Big Bazaar outlets in Lower Parel, Mulund and Kandivli in Mumbai (*Arbiter*, Ibid). The retail outlet is a highly visible business centre and such agitations affect not only the business but also its public face. Owing to these factors, the management reinstated the employees.

BKS and Shiv Sena have also have demanded jobs for Maharashtrais in BPOs and shopping malls in Mumbai and that 80 per cent of jobs in shopping malls in Mumbai be reserved for Maharashtrais (<http://timesofindia.indiatimes.com/articleshow/1848045.cms>). The Union Network International (UNI), a global union bringing together 900 unions with 15 million members worldwide, has launched Union for Commerce Employees (UNICOME), which has concentrated on organizing employees in retail outlets like Metro in Bengaluru (<http://www.uniglobalunion.org>).

There is no union in Shoppers' Shop, a large retail chain. Some employees were not even aware of the concept of trade unions. They have a 'team leader' who represents their issues to the store manager. Shoppers' Stop has a formal grievance redressal system and the employees are satisfied with the way it works. The store organizes weekly meetings and fun games and periodic picnics to relieve the stress of the young employees, many of whom are students. The employer can terminate the services of the employees with one month's notice. The employees feel there is no need for trade unions and that there have been no unfair dismissals (Interview with Manu Prasad). Their confidence arises partly from the fact that they are young and jobs are available elsewhere. The Akbarallys Departmental Stores has a union called Mumbai Kamgar Sabha.

The share of female union members in total membership in the state reached a high of 18 per cent in 1999; otherwise it hovered mostly in the 10 to 13 per cent range. The declining trend in the share of female members in the reported total membership is a cause of concern. It has been observed that either there are very few unions or there is none in the currently active industries like garment manufacturing, IT and units in SEZs where female workers have a significant presence (interview with Monterio).

Table 3.7: Percentage distribution of trade unions and membership by size of unions, 2003

Class intervals of union membership	Unions	Membership
Below 50	22.76	0.48
50-99	15.86	0.97
100-499	36.78	6.98
500-999	10.46	5.86
1000-4999	10.14	16.09
5000-9999	2.16	12.58
10000 and over	1.84	57.04
Total	100.00 (927)	100.00 (11 06 497)

Source: Computed from data in *Annual Administrative Report under Trade Unions Act* for 2003.

The unions in the state are small - 37 per cent of unions account for less than 2 per cent of total reported membership, whereas less than 2 per cent of unions have 57 per cent of the membership. This means the average size of unions should also be small. The average size of unions (membership per union) was on an average 480 during 2003-05 (it was 648 during 1995-97). Table 3.8 presents figures of the membership of major central trade union organizations.

Table 3.8: Distribution of verified membership of central trade union organizations in Maharashtra and India as on 31 December 2002

Serial Number	Name of the central trade union organization	Maharashtra		India	
		Membership	%	Membership	%
1.	BMS	525 650	35.18	6 215 797	27.38
2.	INTUC	447 969	29.98	3 892 011	17.15
3.	CITU	39 402	2.64	2 677 979	11.80
4.	AITUC	100 494	6.73	3 342 213	14.72
5.	HMS	378 224	25.32	3 222 532	14.20
6.	UTUC (L-S)	-	-	1 368 535	6.03
7.	UTUC	-	-	606 935	2.67
8.	AICCTU	-	-	639 962	2.82
9.	TUCC	2324	0.15	732 760	3.23
10.	Total membership of central trade union organizations	1 494 063	100.00	22 698 724	100.00

Note: The figures are provisional. The union federations for which data are not presented do not have presence in the state.

Source: Maniben Kara Institute, Mumbai.

The left-wing trade unions– the Centre for Indian Trade Unions (CITU) and All India Trade Union Congress (AITUC) – are minor players as judged by their membership share whereas the socialist union – Hind Mazdoor Sabha (HMS) – and the Indian National Trade Union Congress (INTUC) and Bharatiya Mazdoor Sangh (BMS) have significant following in the state. However, the central trade union organizations account for only around one-third of the total union members in the state (Table 3.9)).

Table 3.9: Share of union membership of central trade union organizations in Maharashtra, 2002

Particulars	2002
Estimated total union membership	4 179 971
Verified membership of CTUOs in the state	1 494 063
Percentage share of central trade union organizations in total membership	35.74

Source: As in Tables 3.5 and 3.8.

Another significant feature of unionism in the state is the significant share of independent unions in total membership.

Table 3.10: Share of central trade union organizations and unaffiliated trade unions by spheres and sectors, 2005

Particulars	State		Central		Total
	Private Sector	Public Sector	Private Sector	Public Sector	
Central trade union organizations	134 802	35 235	19 025	776 569	965 631
Unaffiliated	291 499	90 673	25 699	261 698	669 569
Total	426 301	125 908	44 724	1 038 267	1 635 200
% of unaffiliated	68.4	72.0	57.5	25.2	40.9

Note: The information relates to unions submitting returns

Source: *Annual Administrative Report under Trade Unions Act for 2005*, Office of the Commissioner of Labour, Mumbai.

Table 3.10 shows that the unaffiliated unions account for a significant share of reported membership in the state sphere and have a moderate presence in the public sector in the central sphere. On the whole, they account for close to 41 per cent of reported membership.

The table shows that the central trade union organizations function mainly in the public sector, especially in the central sphere. They have a significant presence in ports and docks, banks, insurance firms etc. Unionization in the public sector in the state (both state and central sphere) is characterized by two features – multiplicity of trade unions and presence of strong unions. For example, the BEST (Brihanmumbai Electricity Supply and Transport Undertaking) has strong unions led by Sharad Rao (BEST Workers Union), by Dada Samant (under the umbrella of Kamghar Agadi), and by the Shiv Sena; but there are also other unions led by Vithal Rao Gaekwad, Narayan Penany, and Bhai Sanghare. The Brihanmumbai Municipal Corporation (BMC) in Mumbai has 23 trade unions. The Municipal Mazdoor Union led by Sharad Rao (who also heads the BEST Workers Union) has a large following (interview with Rama Kant Bane). State government employees, including the gazetted officers, form unions or associations. The State Government Employees' Confederation led by R.G. Karnik is a strong body boasting

over 500,000 members. Though it is not a recognized body (as there is no provision in the governmental sector to recognize a confederation), it is a strong body and is invited for negotiation by the state government. According to Karnik, there was no restraining clause in the Civil Service Conduct Rules regarding formation of unions or associations of government employees (interview with Karnik). Indeed, the gazetted officers (Class I and Class II) have also formed associations but they are not strong, owing to their limited and scattered presence. However, employees recalled the participation of gazetted officers in some strikes. The employees in government and semi-government offices and in educational institutions formed a Coordination Committee of Government, Semi-government Employees and Teachers' Organization in 1977. This body, which has affiliates in all the 34 districts of the state, has coordinated several general strikes on issues of common interest such as dearness allowance (see Theekedath 2007). The local unions are organized at departmental or at cadre level. The government employees work either at the department level (like public works, irrigation etc.) or on the field (called cadre here). They form district confederations which, in turn, are affiliated to the state level confederation. Police personnel also tried to form their unions or associations and went on strike around the time of the Bombay textile workers during 1982-83 (see Bhattacharjee 1988). The employees in the local bodies like the municipalities also have strong unions, one example being the Bombay Municipal Employees' Union.

Table 3.11: Public sector unions in Maharashtra, 2003-2005
(in per cent)

Year	Public sector unions' share in state sphere		Public sector unions' share in central sphere		Public sector unions' share in total	
	Trade unions	Membership	Trade unions	Membership	Trade unions	Membership
2003	24.7	39.1	76.0	61.0	34.2	48.8
2004	23.9	45.2	79.4	81.3	34.1	63.9
2005	25.5	22.8	83.1	95.9	35.8	71.2

Source: Calculated from *Annual Administrative Report under Trade Unions Act* (various years), Office of the Commissioner of Labour, Mumbai.

Public sector enterprises are located in both Central and state spheres. In each sphere, unions exist in the public as well as private sector. The public sector in the Central sphere accounts on an average for 70 per cent of total public sector membership during 2003-05. As a result, the share of public sector in total in the central sphere was higher at nearly 80 per cent while that in the state sphere was a little over one-third. Public sector on an average accounted for 61 per cent of the total membership in both central and state spheres during 2003-05.

3.2 Labour Administration in Maharashtra

At the state level, the subject of labour is covered under the Industry, Energy and Labour Department, which is headed by a Principal Secretary and has the following institutions under its jurisdiction:

- Office of the Commissioner of Labour
- Office of Director of Industrial Safety and Health
- Office of the Director of Steam Boiler

- The Industrial and Labour Courts
- Maharashtra Institute of Labour Studies

Director of Industrial Safety and Health

Till 1987, the Office of the Chief Inspector of Factories (as it was known till 1990) was under the Office of the Commissioner of Labour, after which it became an independent unit. There are 10 sections in the head office at Mumbai — Establishment, Exemptions, Accounts, Accident, Plan (approval of plans of factories), License, Inspections, Prosecutions, Major Accident Hazard (MAH) Cell (dealing with hazardous factories), and Laboratories. The administrative chart is shown in Appendix I (see Table A.1).

The Directorate is the only authority to enforce the Factories Act, 1948, Workmen's Compensation Act, 1936, the Indian Boilers Act, 1923 (OCL 2006, p.2) and the Environmental Protection Act, 1986 and Rules such as Manufacturing, Storage and Import of Hazardous Chemicals Rules, 1989, and Emergency Planning, Preparedness and Response Rules, 1996. The composition of the Enforcement Directorate is as follows.

Table 3.13: Composition of the Enforcement Directorate

Serial Number	Officers	Sanctioned Posts	Filled Posts	Vacant Posts
1.	Director	1	1	-
2.	Additional Director	3	3	-
3.	Joint Director	13	5	8
4.	Deputy Director	64	45	19
5.	Assistant Director	50	12	38
6.	Total	131	63	68

Source: Office of the Directorate of Industrial Safety and Health, Mumbai.

On an average, a deputy director is, according to the norms, to inspect 150 factories and the assistant director 250 factories in a year. However, in practice, the average number of factories for these two categories of officers has increased to about 575 on account of 68 unfilled vacancies (Office of the Directorate of Industrial Safety and Health, Mumbai).

Office of the Commissioner of Labour

The Commissioner of Labour is assisted by three Additional Commissioners (one each at head office and Pune, Nagpur divisional offices), one Joint Commissioner (who handles the Maharashtra Mathadi, Hamal and Other Workers (Regulation of Employment and Welfare) Act, 1969, 16 Deputy Commissioners of Labour (DCL), 69 Assistant Commissioners, one Officer on Special Duty (at the head office), 141 Government Labour Officers, a Statistical Officer, 232 Shop Inspectors, and 180 Minimum Wage Inspectors as on 31 December 2005 (see administrative chart in Appendix I, Table A.2). For purposes of administration, the state is divided into five divisions, namely Head Office and Konkan Division, Pune Division, Nagpur Division, Nashik Division and Aurangabad Division. There are three Additional Commissioners – one each for the Konkan, Pune and Nagpur Divisions. The other local offices are headed by

Deputy Commissioners. The units in the SEZs come under the purview of the Development Commissioner.

The two primary functions of the Office are maintenance of industrial peace by both preventive and curative interventions and enforcing non-technical labour laws such as the Industrial Disputes Act and the Minimum Wages Act. The Commissioner's Office is responsible for the enforcement and securing proper implementation of 28 Central and state labour laws. The laws cover, among other things, industrial relations, wages, service conditions and social security. Apart from these, it compiles consumer price indices (CPI) for working class in 10 centres, conducts socio-economic surveys on aspects such as living conditions, employment wages etc. and popularizes schemes of workers' participation in management.

Apart from these, a separate Mathadi Cell was created in 2001 and is under the charge of the Joint Commissioner. The primary function of the Cell is to supervise the working of 34 Mathadi Boards and six Security Guard Boards in the state.

The Commissioner's office has been organized on 'ward basis' (municipal administrative divisions are called as 'wards') since November 1993. Each 'ward branch' handles all the laws enforced by the Office; they have sections like conciliation, Personnel Management Advisory Service Scheme (PMAS), enforcement, sections for acts like Bombay Industrial Relations Act, CLRA, etc. Apart from these, there several departments such as Administration, Industrial Relations, Rural Wing, Shops and Establishments, Statistics, and Bombay City Municipal ward, Bombay Suburban (East and West) ward branch. The regional offices are also organized along these lines.

There were 46 Labour Courts and 36 Industrial Courts/Tribunals sanctioned for the state as on 31 December 2005. There was a strong presence of these courts in Mumbai; 12 Labour Courts and nine Industrial Courts were scheduled to function, but a judicial officer in charge of one Industrial Court was not appointed (see OCL 2006: pp.34-5).

3.3 Summary

The trade unions are losing their membership owing to loss of employment, relocation of industries to beyond their reach, rise of industries with negligible potential for unionization like the retail sector, SEZs, IT establishments etc., high incidence of voluntary retirement schemes (VRS), freeze in employment in public sector and steep reduction in government employment, among other things. The rate of formation of new unions is also declining, though revival tendencies have appeared in recent years. The state of trade union statistics in Maharashtra is poor, as it is in most other states. Trade unions and the labour department are to be blamed; the former perhaps more so. The union movement seems to be less dominated by the central trade union organizations in the state save in the central sphere. Realizing the stagnancy or even declining opportunities for unionization in the traditional sectors, the trade unions have taken efforts to reach out to employees in the new service sector. While trade unions are not in danger of extinction, they need to broaden the 'industrial and occupational base' of the membership and switch from politics of fragmentation to politics of aggregation (see Shyam Sundar 2008).

Chapter 4

Wages

4.1 Legal and Institutional Mechanisms on Wages

Issues related to monetary aspects like wages and bonus constitute an important component of employment relations. These issues accounted for 39 per cent of total workdays lost during 2001-04.

Three ways of wage setting can be identified on the basis of the actors involved in the wage-setting process – unilateral (by employer or state), bilateral (collective bargaining), tripartite (wage boards). There are four institutions involved in wage setting – the law (e.g. minimum wage law), collective bargaining, adjudication and arbitration institutions, pay commissions, wage boards and customs and tradition. The wage determination system that has evolved over the years involves all these methods. The legal framework of the system that has developed over the years and its complementary process of adjudication played an important role in fixing the wages for a significant length of time. Their dominant role resulted largely from the weaknesses in the bipartite system. The wage board system was well used till the 1960s after which it has been used primarily for determining wages for working journalists.

Though collective bargaining was not well developed in the past, it assumed importance in some institutionally well-developed industries and regions like cotton textiles in Coimbatore, Mumbai and Ahmedabad and in the jute industry in Kolkata. However, over the years, as employers' associations and unions gained institutional strength, bipartite institutions began to assume importance (see Ramaswamy 1988). The wages and service conditions of employees in the government have always been determined by pay commissions and special commissions like the Dearness Allowance (D.A.) Commissions (e.g. the Gajendragadkar Commission in 1966) (see Sharma 1980). The wages and conditions of employment in the industrial segment of the public sector have been determined by a mixture of bargaining and administrative guidelines issued by the Bureau of Public Enterprises (BPE). The legal framework relating to wages is governed by four important 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 objective of the Payment of Wages Act is to ensure prompt, timely and full payment of wages to certain sections of workers. It applies to factories and persons employed by the railway administration directly or through sub-contractor. The government has extended it to other sectors. The wages payable have been raised from time to time taking into account the price inflation. In Maharashtra, for example, the Amending Act 33 of 2005 raised the wage ceiling from Rs. 1600 to Rs.6500 from 11 August 2005. Under the Act, the employer is responsible for payment of wages to persons directly employed by it as well as those and indirectly employed through contractors. The employer cannot make deductions other than those permitted (such as fines, deductions for housing accommodation etc.) by or under the Act. The law provides for legal remedies for other illegal deductions.

Minimum Wages Act 1948

The Minimum Wages Act requires the appropriate government – Centre 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 to workers in the employments added to the Schedule from time to time through a notification by the state government. It covers all types of workers, skilled or unskilled, manual or clerical, directly employed or outworkers. The minimum wage rates (which may be for time work or piece work) should be reviewed at least once in five years and be revised, if necessary. The government may not fix minimum wages for those employments covering less than 1000 workers. The appropriate government for fixing or revising the minimum wage may either appoint a committee to advise it on the subject (committee approach) or publish proposals by notification and invite reactions from the persons affected by such proposals (notification approach). After considering either the advice or the reactions as the case may be, the government may 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 three elements – a basic rate of wages, cost of living allowance and cash value of concessions. The government will not only fix the wage rate but also the hours for a normal working day or a working week (added by the Government of Maharashtra) – Rule 24 has defined nine hours as normal working hours in case of an adult, seven hours in case of an adolescent, and four and a half hours in case of a child. Work exceeding these hours will be eligible for overtime pay, which may be fixed by the government under this law or any other law, whichever is higher. There are legal remedies for workers against violations such as non-payment or under payment of minimum wages.

Though discussion of the Minimum Wage Act is paramount, especially given the huge presence of the informal economy in India, there is little academic output on the subject owing to lack of accurate data. It has been officially admitted in the Parliament that the implementation of this important law is not up to the mark. Trade unions complain of serious violations and this matter has also figured in the tripartite discussions at the national level (such as those in the Indian Labour Conference) in 2007. It is a subject matter for research in its own right.

Payment of Bonus Act 1965

This Act was passed pursuant to the recommendation by the Bonus Commission in 1964. Neither the Commission nor the Act has defined the term ‘bonus’. The Commission observed that it was difficult to define it in rigid terms. Opinions differ as to 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 norms of which were laid down by the Indian Labour Conference in 1957). An amendment to the Act in the mid-1970s changed the Preamble of the Act to link bonus to profits and productivity. The Act applies to every factory and establishment employing 20 or more persons. It also applies to those units in the public sector which sell goods or services, competes with private sector and earns income. It covers employees who earn wages or salaries up to Rs 10,000 a month (upped from Rs. 3,500 by an Ordinance on 27 October 2007). A minimum bonus of 8.33 per cent of wages 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, among others, 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.

4.2 Wages in the Organized Factory Sector in Maharashtra

This study has used data issued under the Annual Survey of Industries (ASI) by the Central Statistical Organization (CSO) for Maharashtra for the post-liberalization period till 2003-04. The ASI covers the factories registered under the Factories Act, 1948 apart from electricity. It, thus, covers 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 reasons of comparability, we have used data relating to manufacturing sector (excluding repairs) which means covering industry groups 20-38 in terms of NIC 1987. The average real wages of industrial workers in the state showed a negative growth rate (-2.11 per cent) during the ten-year period from 1995-96.

Table 4.1: Compound annual rates of growth (CARG) of average real wages

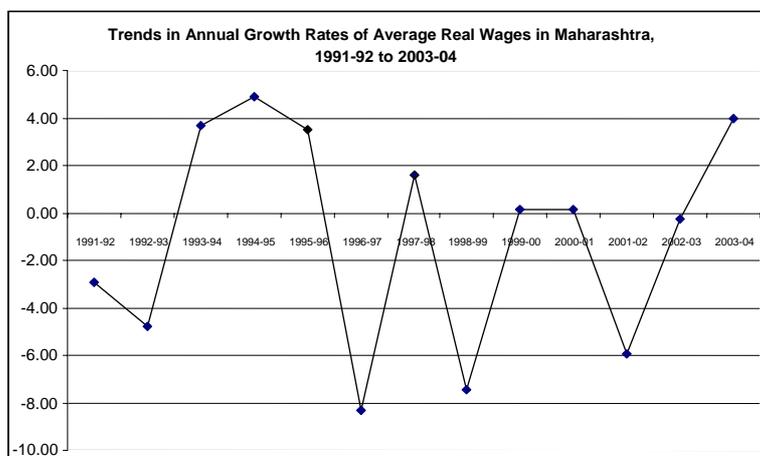
Period	CARG (%)
1995-96 to 1999-00	-3.61
1999-00 to 2003-04	-0.59
1995-96 to 2003-04	-2.11

Note: Real wages are average nominal wages deflated by average Consumer Price Index (CPI) for Maharashtra with base 1982=100.

Source: Nominal wages and number of workers from *Annual Survey of Industries*, CSO (various issues); CPI from Office of the Commissioner of Labour, Mumbai.

Figure 4.1 shows tremendous fluctuations in the annual rate of growth of average real wages during the period.

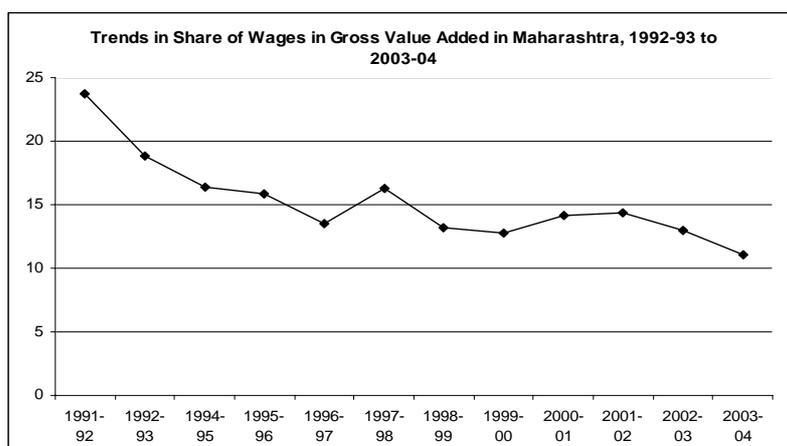
Figure 4.1



Note: Data in the source mentioned for Table 4.1.

The marked instability of the trends in the annual growth rates is indicated by the high coefficient of variation (501.1).

Figure 4.2

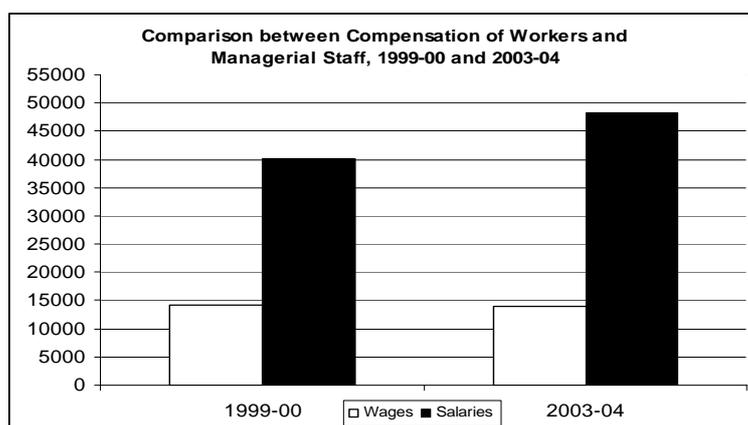


Source: Data from the *Annual Survey of Industries*, CSO (various issues)

Of the 13 years from 1991-92 to 2003-04, the annual growth rates were negative on five occasions. The growth of average real wages in 2003-04 over 2002-03 was almost the same as that was in 1994-95 over 1993-94 (around 4 per cent). The behaviour of average real wages at the all-India level was similar (see Chandrasekhar and Ghosh 2006). Chandrasekhar and Ghosh have also noted a “sharp and persistent increase in labour productivity” during 1993-94 to 2004-05 and found that the share of wages in value added for 1992-93 to 2003-04 (see Figure 4.2) declined generally for India as the authors of this paper have found for Maharashtra.

It is often said that the salaries of managerial personnel have shot up in recent years. Prime Minister Dr. Manmohan Singh in his Ten-Point Social Charter released in May 2007 exhorted industry leaders to be moderate in their compensations (<http://www.aif.org/newsroom/tenpointcharter.htm>), which stirred a hornet's nest. The *Financial Express* argued in response that while the salaries of top executives increased, wealth created by 100 big companies rose as indicated by rise in market capitalization (see "CEO salaries too high? Take a look again", <http://www.financialexpress.com/news/story/199927>).

Figure 4.3



Note: The data relates to Maharashtra.

Source: As in Figure 4.2.

But a study of pay packages of chief executives (CEOs) in 16 large manufacturing firms in India by the Xavier Labour Relations Institute (XLRI) in India in 2002 is reported to have shown that the CEOs rewarded themselves handsomely at a faster pace than the profitability of their firms (Mandal 2002). The gap between the average real wages of workers and salaries of supervisory and managerial staff widened in the four years we have taken (Figure 4.3). The ratio of two increased from 1:2.80 in 1999-00 to 1:3.45 in 2003-04, indicating that the salaries of supervisory and managerial staff rose much faster than that for manual workers. Himanshu (undated) shows the sharp rise in profits as a proportion of net value added for all-India. It increased from 23 per cent in 1981-82 to the 31-32 per cent range through the 1990s; but had shot up to 56 per cent by 2004-05. Mathur and Mishra (2007) have also shown the disparity between wages and salaries (though they measure salaries for non-wage employees). The ratio of emoluments per non-wage employee to wage per worker rose from 2.005 in 1994-95 to 3.120 in 1999-2000. It may further be noted that the rate of growth of emoluments per employee (excluding workers) per annum was 2.74 per cent during 1981-94; but it accelerated to over 4 per cent during 1994-2004. At the same time, the growth rate per annum of real wage per worker was 2.63 per cent in 1981-94, but became negative during 1994-2004 (-0.27) (see Mathur and Mishra 2007: Table 1(a), p.88). Thus, the real wage growth was negative for workers, it was accelerating for non-wage employees.

The gender gap is another issue of serious consideration. The data relating to wages for female and male workers classified by rural and urban and regular and casual are available for three NSSO rounds in 1993-94, 1999-00 and 2004-05. The gender gap, as measured by the ratio of female to male wages, rose over the years for both categories. It has been sharper in the case of urban casual workers than for urban regular workers. It should be a worrying fact that

female casual workers in urban areas got only 58-60 per cent of wages received by male casual workers in urban areas. Though the share of casual female workers in urban areas declined by 26 per cent in 1993-94 to about 17 per cent in 2004-05, their relative position vis-à-vis male casual workers has not improved (Chandrasekhar and Ghosh 2007). It makes sense to expect education and skills to narrow the wage gap between men and women. But Rustogi (2005) finds that though educational attainments improve pay for both sexes, women still lag behind men

Considering the importance of the informal sector in the Indian context, it is necessary to review the evidence on the wages in the two sectors.

Table 4.2: Comparison between organized and unorganized sectors in India

Period	Organized		Unorganized	
	1994-95	1999-2000	1994-95	1999-2000
Absolute Values				
Number of workers (in 000)	6 970	6 281	3 011 5	37 081
Wage per worker (Rs.)	26 533	74233	9 414	11 328
Total GVA per worker (Rs.)	115 234	137 453	8 591	11 413
Unorganized to Organized Ratio				
Number of workers			3.31	4.54
GVA			0.22	0.31
Wage per worker			0.35	0.15

Source: Mathur and Mishra (2007: Table 2a, p.90)

It is important to note that the unorganized employment was nearly 3.5 times of that in the organized manufacturing sector in 1994-95 and that its ratio rose to 4.5 after five years. Though the unorganised sector is much larger than the organised sector in terms of the number of enterprises and the number of workers it employed, its productivity was lower than that of the organised sector. The ratio of average wages was not only low but was also declining, from 35 per cent in 1994-95 to 15 per cent in 1999-2000.

Unni (2005) looks at the formal and informal sector earnings for 1999-2000 (Table 4.3).

Table 4.3: Average wage rates (Rs. per day) for regular and casual workers in formal and informal sectors, 1999-2000

Particulars	Regular		Casual	
	Formal	Informal	Formal	Informal
All	190	82	53	57
Urban	209	86	63	58
Rural	154	73	48	56

Source: Unni (2005: Table 1, p.312)

The National Centre for Labour argued, in 1996, that the minimum wage of Rs. 125 would enable workers to have satisfactory living standards (Unni 2005:p.313). This was much higher than the wage fixed by the Central government. The regular workers in the formal sector overtook this standard, while those in the informal sector lagged behind. The casual workers' wages were similar in both the sectors. In other words, their wage rates were lower irrespective of whether they worked in the formal or informal sectors.

Another way to look at wage differentials between formal and informal (or organized and unorganized) is to take a typically organized and unorganized segment of an industry and compare the wage rates in the two. The cotton mill industry in Mumbai is a classic instance of highly organized industry and the powerloom sector in Bhiwandi (in Maharashtra) represents unorganized segment. The nominal wage cost for a cotton mill (as in July 1996) was Rs. 5,500 per month while the same for a powerloom unit is Rs.1,800 per month – there are other operational disadvantages for organized mill sector such as higher power costs (see Kulkarni 2002:pp.34-5). The wages in the organized mill sector are determined by labour institutions such as trade unions (and collective bargaining and strikes), industrial tribunals and wage boards. The powerloom sector is the least unionized and workers are not only paid low wages and deprived of annual increments (Kulkarni 2002:p.38) but also suffer poor working conditions. The workers in the sector lack bargaining power and accept wages imposed on to them by the employers.

The wage differential between public and private sector has also been an issue of interest in the Indian context given the large share of the former in total employment. Glinskaya and Lokshin (2005) of the World Bank estimated the wage differential between the two sectors. They compared the weekly wages and the ratio of wage differential by gender, type of locality (rural/urban) and sector of employment (public/private) (see Glinskaya and Lokshin (2005: Table 7). The average real wage in the public sector was 2.1 times greater than in the organized private sector; the differential was higher in case of casual workers. The differential could be due to the fact that employees in the public sector have greater human capital and hence they obtain econometrically adjusted wage differential. Irrespective of the econometric methods used, they find that the public sector premium exists adjusting for differences in human capital. Their review of data on wage differential across the world reveals that India has one of the largest wage differentials between public and private sector formal workers.

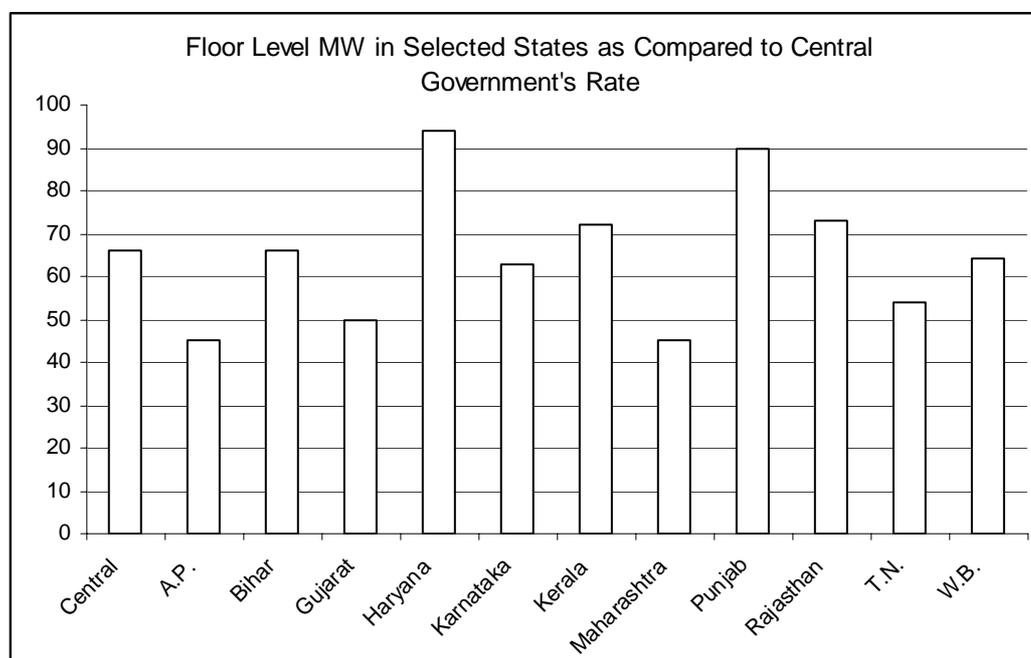
This is an interesting finding for another important reason. The labour flexibility literature argues that there could be trade off between employment security and wages. Employees demanding employment security are worse off in terms of lower earnings level. That is the premium they pay to the employer for prolonged job duration. But public sector employees in India enjoy dual advantages of better wages (than their counterparts in the private sector) and employment security.

4.3 Minimum Wages

Two developments must be kept in mind while studying minimum wages in the Indian context. The 28th ILC recommended, in 1985, that a national level basic subsistence wage should be fixed and wages should not be below this threshold, irrespective of factors like the nature of work and employment etc. However, a national minimum wage, though recommended and desirable, has not been feasible owing to regional differences in prices, industry-specific differences in capacity to pay etc. As a result, the Central government adopted the concept of national floor level minimum wage and fixed it at Rs.35 per day (based on the recommendation of the National Commission on Rural Labour in 1991 and subsequent rise in prices). As a result of subsequent rise in prices, the national floor level minimum wage stands at Rs.65 after its last

revision in February 2004. The Central government has appealed to all state governments to fix minimum wages for all scheduled employments rates not below Rs. 66 (GoI 2007:p.47-8). Secondly, the Central government has introduced the concept of variable dearness allowance (VDA) to protect the minimum wages from inflationary tendencies.

Figure 4.5



Note: A.P. – Andhra Pradesh; T.N. – Tamil Nadu; W.B. – West Bengal.
Source: GoI (2007: Table 5.1, p.52).

It is reported that 26 states and Union Territories, including Maharashtra, have made VDA a part of the minimum wages (Ibid). Some states like Haryana, Punjab, Kerala and Rajasthan have fixed floor level minimum wages higher than that fixed and recommended by the Central government (Haryana has the highest at Rs 94), while the wage rate in Bihar equals the Central rate (Figure 4.5). The New Trade Union Initiative (NTUI) has argued that, in line with the parameters recommended by the 15th ILC, the current value of the need-based minimum wages should be Rs 150 a day for urban workers (NTUI pamphlet: *Eight-hour day and minimum wage for all*). This could, however, be a distant dream. The trade unions complain that minimum wages are not revised regularly, as required by law. The state government announces special allowances from time to time and the total minimum wage is a sum of the basic wage (which is fixed or revised once in five years) and the special allowance (which is required to be fixed once in five years but is often not).

We looked at the dates of fixing or revision of basic wages of 63 scheduled employments in the state as in 2004

Trade union leaders in the state complain that minimum wage laws are observed more in violation than compliance (Interview with union leaders) According to Mahadevan “the existing enforcement machinery, by and large, is either inadequate or inefficient or corrupt or all together” (Mahadevan 2005, p.261). It may be useful to note the types of irregularities committed by employers under the Act.

Table 4.4: Percentage distribution of prosecutions launched* by categories, 1997-2004.

Categories	%
Payment of wages	35.25
Deductions	29.61
Hours of work	18.49
Display of notices, maintenance of registers etc.	16.65
Others	-
Total	100.00 (2482)

Note: * - Prosecutions launched during the year where only one offence was committed exclusively relating to the categories mentioned in col. (2).

Figure in parentheses is the total number of prosecutions in the period

Source: *Annual Reports on the Working of Minimum Wages Act*, Office of the Commissioner of Labour, Mumbai (for various years).

The majority of offences committed by the employers under the Minimum Wages Act relate to either non-payment of wages or unacceptable deductions made in them.

4.4 Major Issues in Wage Determination

The major issues causing frictions in wage determination are dearness allowance (DA) and bonus.

Dearness Allowance

The dearness allowance system can be traced to a practice followed by firms in Mumbai and Ahmedabad during the First World War. The sharp rise in food prices after the outbreak of the war caused discontent among workers and employers paid additional amount known as “dear food allowance”. This payment was discontinued when prices stabilized after the War. The inflationary tendencies during the Second World War saw a revival of this payment system, which continued thereafter (see EFI 1987). The Industrial Court under the Bombay Industrial Relations Act in Mumbai made the first step in linking dearness allowance to the consumer price index (CPI) (Deshpande *et al* 1998: p.125). Over the years, the DA system has undergone considerable variations across firms, industries and regions (see EFI’s 1987 study for complete details of these). Employers criticize the DA system on several grounds. Prices in India rise primarily owing to the rise in prices of food component of the CPI (which has a weightage of 46 per cent in CPI for industrial workers and 69 per cent in the CPI for agricultural labourers), which is often triggered by frequent failures in rainfall. As a result, the money wages indexed to CPI rise faster and the wage rise cannot be passed on to the consumers. The DA is enjoyed mostly by workers in the organized sector and hence seen as introducing inequalities in the society. More importantly for the employers, the DA imposes additional burden in the form of rise in bonus payment, provident fund and gratuity calculations (see EFI 1987).

While the employers’ associations complain about this massive burden, the micro survey evidence on the practice of paying DA seems to show that the system is not prevalent in all industries. Deshpande *et al* (2004), in their survey of over 1,300 firms in ten states, found that very few firms in industries like textile products, metals and alloys and manufacture of machinery

and equipment other than transport paid a separate DA (see EFI 1987 for contrary findings). Even in industries where the DA system is more popular, it is the large sized firms which paid them (see also Deshpande *et al* 1998 for similar findings). As the size of firms increased, the proportion of firms paying separate DA increased, there was a clear 'positive size effect'. They also find that union presence was more likely to be associated with prevalence of the DA system. Trade unions have contributed to the institutionalization of the DA system and the issue has figured prominently in negotiations and strikes in both the private sector and the public sector.

It appears several managements are altering the DA system (Krishna Murthy 2006). It was found that the Brihanmumbai Municipal Corporation (BMC) was paying 129 per cent of the Revised Textile Dearness Allowance despite the well-settled principle that neutralization could not exceed 100 per cent. The BMC management reduced it to 100 per cent later. Similar was the story with BEST, which paid more and reduced later. Some companies are dispensing with VDA and pay only fixed dearness allowance (FDA). However, these companies make compensatory hikes in other components to ensure an impressive wage rise. For example, the table on basic and allowances in Sulzer India Ltd. collective agreement in 2004 mentions only FDA. In fact, the trade unions agreed to this: "In view of the substantial wage increase along with (sic) increases in the subsequent years granted through this settlement, and in view of the fact that the total pay packet available to the workmen is far in excess of the statutory fixed rates, it is agreed that this demand is dropped by the Union and the workmen fully and finally" (Demand No.3, Sulzer agreement 3 June 2004; same in the case of Garware Wall Ropes Ltd. at Wai and Pune). Another strategy of the management has been to reduce the DA (as in Cadbury India Ltd.) or restructure it (as in the Bombay Stock Exchange). Some companies like Godrej Boyce Ltd., Thomas Cook India Ltd., and Hoechst India Ltd., switched from 'double linkage' to 'single linkage' system of dearness allowance. This was done primarily to reduce the wage costs of the companies. Thus, employers who have been complaining about the unreasonableness of the DA system have been able to gradually restructure it. Workers have agreed to the restructuring of DA payment as the loss arising out of such restructuring has been compensated in some instances by a rise in some other components of the wage packet. The wage rise offered over a long period could be one reason for workers accepting the restructuring of the DA system. The state government employees (including teachers at all levels) in Maharashtra fought since 1977 for and got parity of DA rates with that declared by the Central government. When the state government sought to change this, there was a strike.

Bonus

The Payment of Bonus Act was hailed as a "magna carta" of the working class as it seeks to institutionalize the bonus payment. It is a gain for the working class as it is one of the means by which the real wages of workers is protected. The stipulation on minimum bonus tilted the issue in the workers' favour. Two micro level studies examined the practice of bonus payment. Deshpande *et al* (2004) found that 35 per cent of the employers paid minimum bonus and 29 per cent paid 20 per cent or more. Surprisingly, small employers paid higher bonus than others. Large firms shy away from higher bonus payments perhaps because they face stiffer competition (Ibid). Trade unions want the minimum bonus to be raised from 8.33 per cent to 10 per cent. Unions have argued that the old eligibility condition has deprived a large section of the working class from receiving bonus because of wage and price inflation. In response to this demand, the government raised the wage eligibility to Rs.10,000 in 2007. As the employers cannot cross the upper limit of bonus legally, they circumvent the law by adding *ex-gratia* or festival allowance to the maximum bonus. The *ex-gratia* was originally paid by firms to workers during the times of excess profits. Over time, this also has been institutionalized and workers demand it as a matter of right.

Trade unions point out that non-gazetted employees in the Central government are paid bonus irrespective of salary. The BMC employees are not covered under the bonus law but have been getting bonus under different labels like ex-gratia, festival allowance, on-account payment etc. Initially, such bonus was the minimum 8.33 per cent and later a fixed amount was given to all employees. The bonus payment has been a bone of contention and was challenged by an ex-bureaucrat. As a result, the BMC employees did not get bonus from 1999 to 2001. The High Court stayed the bonus payment and questioned the administrative handling of the issue by the BMC. The matter is now before the Supreme Court. However, bonus was paid in later years either under an agreement or some other arrangement and in different names – ‘on-account payment’, ‘festival payment’ (interview with Raman Kant Bane). Similarly, BEST workers have been wrangling over the bonus payment every year and have gone on strike frequently on the issue.

4.5 Summary

It is a matter of concern that not only has job creation in the formal sector dried up, the workers have also not been able to control their real wage growth as evidenced by slow – even negative – growth rate and fluctuations in the real wages. This tendency, in spite of impressive growth of real labour productivity, is disturbing. Thus, the share of wages in the total cake has been declining. It is a blow to the workers from all sides. On the other hand, the top brass in industry has been rewarding itself handsomely. The wage differentials in all dimensions (gender, formal-informal etc.) have widened and these do not augur well for society and the economy on grounds of both equity and demand management of goods (as the marginal propensity of workers to consume is higher). The hard times are forcing the workers to accept the long pending demand of the employers to restructure the D.A. payment system.

CHAPTER 5

Collective Bargaining In Maharashtra

Collective bargaining does not take place in a vacuum. It is embedded in a context. Economic, technological and institutional factors affect bargaining and are, in turn, affected by bargaining outcomes.

5.1 Legal Framework

India has not so far ratified ILO Conventions Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) and Right to Organise and Collective Bargaining, 1949 (No.98). However, as noted before, the non-ratification of these two core Conventions has not meant that workers do not enjoy these rights. The Constitution of India, various laws and judicial decisions have ensured a conducive framework for trade unions to operate and conduct their organizational activities. However, there have been constraints and there four important limitations on the exercise of collective bargaining.

- Some constituents of the labour market have limited rights and opportunities to organize and bargain collectively, as for example, employees in public enterprises (see Venkata Ratnam 2001, 2006: p.193), police personnel, contract workers, informal sector workers and agricultural labourers.
- The Central labour laws do not provide for the determination of a collective bargaining agent, though informal guidelines exist (for example, Code of Conduct). However, some states like Maharashtra, Orissa and West Bengal have laws on the determination of a bargaining agent, among other things.
- The laws governing the legality of strikes are so tough as to render legal strikes well nigh impossible (see Ramswamy 1984).
- Under the Industrial Disputes Act, collective agreements (popularly known as 18 (1) agreements) are placed on a pedestal lower than the settlement reached via conciliation (popularly known as 12 (3) settlements).³ The conciliated settlement is binding not only on the actual parties to the industrial dispute but also on the heirs, successors, assignees of the employer and workers employed presently and in future, whereas the collective agreement is applicable *only* to the parties of the dispute.

The study now reviews the recognition laws in Maharashtra.

The representative union under the Bombay Industrial Relations Act enjoys special rights such as the right to represent all employees in an industry, to act on behalf of any employee in an industry and bind all employees by an agreement. Importantly, the union is required to take the industrial disputes first to conciliation, failing which to arbitration; to resort to strike only after exhausting official settlement methods; not to effect an illegal strike and not to resort to go slow. The employees are protected against victimization by employers for participating in legitimate union and strike activities. The employer or the worker(s) have to give a notice of change to one another if either alters matters such as wages, working conditions, shift working, closure, rationalisation, hours of work (and other items mentioned in Schedules I and II of the Act). The

³ The settlements are so named after the number of the legal provision dealing with conciliated settlements in the Industrial Disputes Act, 1947.

Act seeks to formalize the rules governing employment relationship (like rights and obligations of parties) by requiring the employers to draft a standing order on their own or adopt the model standing order given under the Act. The Act has been responsible for sparking two hard-fought battles to unseat the existing representative union in the cotton textile industry in Mumbai, once in 1950 and once in 1982-83. However, on both occasions, the incumbent union could not be unseated despite losing its representative character (Bhattacharjee 1988; Kulkarni 2002). Since the mid-1960s, strikes “were increasingly directed at the Rashtriya Mill Mazdoor Sangh (RMMS) and the coercive industrial relations apparatus in which it took part and thereby promoted” (Bhattacharjee 1988:p.225).

The MRTU & PULP Act is an important law dealing with union recognition. Chapter III of the Act, dealing with recognition of trade unions, applies to undertakings employing 50 or more workers, though the government can apply it to other undertakings. A trade union, having not less than 30 per cent of total employees in a *unit* as its members, will be granted recognition by the Industrial Court, after following the prescribed procedures. The Act stipulates that there shall not be more than one recognized union in an undertaking and recognition of a union will be granted by adopting the membership verification method. Any union calling for or instigating an illegal strike will be ineligible for recognition. The recognition status, which will be valid for two years, may be cancelled if the recognized union, among other things, commits unfair labour practices mentioned in the Act or is associated with an illegal strike in any manner. The recognized union may be challenged by others if the latter musters the necessary numbers after the end of two years of recognition tenure and may replace the existing union. The law defines the obligations of the recognized unions, like observing the rules relating to running the union organization, as well as privileges, such as membership dues collection, representing grievances of workers etc.).

The MRTU & PULP Act forbids both employers and workers from committing unfair labour practices which are illustratively described in the schedules appended to the Act. The Court will adjudicate on the complaint of such practices within six months from the date of receipt of the complaint. The Act prohibits the employer from interfering with the union organizational activities in any manner and victimizing anybody for legitimate union activities, including participating in legal strikes. The failure of the employers to bargain collectively and in good faith with the recognized union is also an unfair labour practice (Item No.5, Schedule II of the Act). Similarly, the recognized union will be committing an unfair labour practice if it refuses to bargain in good faith (Item No.3, Schedule III of the Act). Schedule IV protects the workers from *mala fide* actions and victimization by employers such as dismissal, punitive transfers etc. Thus, the law provides both positive and negative rights to both employers and workers to conduct collective bargaining.

In public sector undertakings, the Code of Discipline (formulated in the ILC of 1958) is used to determine the bargaining agent (Venkata Ratnam 2006; interview with Damle). According to the Code, a union with at least 15 per cent of the workers in an establishment and at least 25 per cent of membership of workers in an industry as its members would be recognized at the respective levels. In case of multiplicity of unions, the union with the largest membership should be recognized.

5.2 Economic and Policy Contexts

The various economic reform measures have intensified competition in the market and have implications for trade unions and collective bargaining. The competition for capital increases the bargaining power of capital vis-à-vis *both* the state and trade unions (Shyam Sundar

2003, a). The threat of, or actual, re-location of firms outside the state or to rural areas (where unionisation is difficult, if not well nigh impossible) unsettles the state and trade unions. In the liberalized economic environment, state governments offer a number of incentives to attract capital and flexibility on labour laws is one of them. The government has sought to liberalize the labour market and make it more flexible. The government could not carry out some labour reform measures such as amending Chapter V-B of the Industrial Disputes Act owing to stiff opposition from the unions and political parties (see Shyam Sundar 2007, a). But the same objectives are sought to be achieved by stealth. Thus employers are allowed, tacitly or otherwise, to take steps resulting in the flexibility they have been demanding, even as the formal framework is kept intact (see Shyam Sundar and Venkata Ratnam 2007). The informal sector is assuming increasing significance both in terms of employment and trade. As a result of all this, trade unions are on the defensive and their militancy has reduced.

5.3 Basic Details Regarding Collective Bargaining

Collective bargaining usually involves two types of exercises. The bargaining over the issue of bonus is usually an annual exercise, unless there are agreements covering a longer period. This issue may figure among the general demands or could involve single-issue bargaining. The regular bargaining exercise is conducted just around the time of expiry of the existing agreement. The usual practice has been for trade unions to submit a charter of demands to the management and await its response. In recent times, however, the management has adopted a new strategy and is reported to be submitting its own requirements in the form of a charter (see Krishna Murthy 2006; Ramaswamy 2000). This is a counter strategy to union's practice of presenting its charter of demands. This exercise is meant to make bargaining "more meaningful and also make it saleable to the Board ..." (Krishna Murthy 2006). The managerial objectives in collective bargaining have been to reduce the labour costs, increase production or productivity, flexibility in work organization (multi-skilling/multi functioning, changes in worker grades etc.), increase in work time, stability in labour conditions, reduction in staff strength via VRS, stress on quality and so on (see Krishna Murthy 2006; Ramswamy 2000; Venkata Ratnam 2003). The bargaining process is often tedious and consumes a lot of time. The transaction costs, involving real and monetary resources, are stupendous. Union leaders admit that tough bargaining rounds are tough (interview with Nair, Dada Samant, Arvind Shrouti).

5.4 The Level of Bargaining

The dominant level of bargaining in the state is at the *enterprise level*. The significant share of non-affiliated unions in the state has been noted earlier. The enterprise-level bargaining is perhaps the strongest in Pune where non-affiliated and independent unions dominate (Interview with Shrouti, Nair, Abhyankar). Collective agreements are reached on various issues like charter of demands, wages and allowances, bonus, voluntary retirement schemes, etc. However, as industry-wide recognition of trade unions take place in the industries covered by the Bombay Industrial Relations Act, the agreements would cover the industry as a whole. Thus, industry-wide settlements have been taking place in the industries covered by the Bombay Industrial Relations Act like the cotton textile industry, silk industry, BEST, sugar, and so on. There were around 70 cotton textile mills in the 1970s. Most closed down (fully or partially) and/or shifted production either elsewhere in the state or to other states (e.g. Mooraji Gokuldas, Bombay Dyeing etc.) in the two decades following the two-year textile strike (1982-83) in Mumbai. The demise of the organized cotton mills led to the highly unorganized powerloom sector in areas like Bhiwandi (where close to 200,000 workers are employed) flourishing. Trade unions have not been able to organize the workers in the powerloom sector. Nor have their

organizing efforts succeeded in the newly flourishing garment sector. The agreements in the cotton and silk industries since the mid-1990s have been mostly voluntary retirement scheme (VRS) settlements.

Box 5.1: Informalization of collective bargaining: A case study

The decentralization debate is well known to researchers in industrial relations. The proponents of this school argue that there has been a shift from the centralized (economy or sector level) to lower levels of bargaining in many countries owing to several factors such as competition and changes in technology. It needs to be noted here that decentralization does not necessarily mean a fall from centralized to firm-level bargaining, but slips in the bargaining levels, from higher to lower (see Shyam Sundar 2004, c). One variant of decentralization in the Indian context is informalization and fragmentation of bargaining, especially in a highly organized industry such as the cotton mill industry. The general argument is that the collapse of the textile strike in Mumbai (in 1982-83) has led to disintegration of labour institutions. The conventional argument has been that the organized mill sector has suffered due to the presence of labour market rigidities such as union militancy, high wage cost, restrictive practices etc. (see Kulkarni 2002 for a comprehensive treatment on this issue). The tremendous reduction in manpower, weakening of trade unions, the need to restructure the industry which is in an uncompetitive position owing to historical rigidities and partial or full closures of mills are some of the factors that are said to have contributed to the informalization of employment relations. The employment relations in the textile industry are, historically, highly formalized owing to the strong development of labour institutions like trade unions, and industry-level bargaining. Since the individual mills are members of the employers' body, they were bound by the industry-wide agreements. But Kulkarni (2002) painstakingly documents the informalization trends and patterns in a composite mill in Mumbai she studied. She identifies the methods by which the bargaining relations have been 'softened' over the years. These routes reduce the so-called rigidities imposed by formal labour institutions and help the mill to achieve flexibility (both numerical and functional). She shows the increasing dependence on informal, as opposed to formal, documents; the proportion of informal documents in total documents relating to modernization and rationalization increased over the years – from 35 per cent in 1984-90 to 89 per cent in 1996-99 (Table VII.4, p.205). The formal system makes it difficult for the mill employers to remove machines and reduce workers; the informal system was used "on maximum occasions" to achieve these two objectives (see Table VII.5, p.206). She notes a peculiar system of wage determination, called 'personal pay', which is an individualized system of wage determination between the management and the individual worker with complete disregard to collective agreements. It is often granted by the management to individual workers/shop stewards for being "very active", for "promising to help further", or for "indirect benefits to the company" in spinning and pre-weaving departments (p.153). The product market conditions changed in the post-liberalization period and the mill shifted from low end products to high end products. The mill needed to be restructured. Job reduction, widening of job content and redeployment of workers were required in some departments burdened with high cost workers. These were accomplished by informal routes like personal pay for 'facilitators'. She mentions several *chopda* agreements (i.e. informal agreements) accomplishing these (see pp.176-8). These were the informal methods resorted to by the mill management.

5.5 Duration of Collective Agreements

The average duration of a collective agreement in the private sector is mostly three years, extending in some cases to three and a half or four because the tenure had to be extended due to the lack of a new agreement. It has been the practice to pay some lump sum amount for the interregnum between the two agreement dates. This could cause some monetary loss to the workers, as they would lose the provident fund contribution, since the amount paid as compensation is a lump sum amount and not on a scale basis, workers would lose the provident fund contribution on it. In some cases, overtime allowances may also be lost (interview with Dada Samant). In some cases, five-yearly agreements are drawn up, but they are more an exception than the rule (interview with Sharad Patil).

There have been some notable collective agreements signed for ten years in the private sector (e.g. Sulzer India Limited, Pune, Lubricant India Private Limited, Gharda Chemicals,

interview with Dada Samant; Krishnamurthy 2006). This has sparked off a debate among management consultants and trade unions over short versus long term collective agreements (Ibid). Managements prefer long-term agreements for several reasons (interview with Dada Samant, Krishna Murthy Sharad Patil and Krishnamurthy 2006). They ensure 'predictability' of the terms of employment relationship, especially those relating to labour cost. Budgeting becomes easier. Above all, 'uncertainty' regarding trade union behaviour is avoided. Normally, the nature of demands and the extent of increase sought in wages and allowances are unpredictable. During every cycle of negotiations, workers' expectations increase and these affect the monetary demands. With long-term agreements, the probability of frequent agitations over the charter of demands is greatly reduced. In short, they could lead to some 'stability' in the industrial relations scenario in the firm.

Employers point out that that long-term agreements could also benefit workers as they are assured of increases in wages and other allowances over a longer period. Besides, the rate of wage increase in the long-term agreement could be higher than that could have been reached in the shorter versions (interview with Krishnamurthy, Samant, Shrouiti). The long-term agreements could also offer protection to workers, given the uncertainties that arise due to intense competitive market conditions. The long-term settlements have implications for unions also. Trade unions and their leaders would be rendered idle unless disputes arise over the interpretation and implementation of issues covered by the agreements. But there are some snags in this arrangement. Technological developments could require restructuring of firms and reorganization of work and workforce and the ten-year agreement could introduce rigidities in the system unless the agreement provides for freedom to employers in these areas. Some trade union leaders are not enthusiastic about long-term agreements. They are concerned about the problems that could arise in relation to the determination of dearness allowance – the issue of choice of price index (basic year), the linkage formula (how many points to freeze, the conversion of points in terms of rupees/paise), partial or substantial merger of dearness allowance with basic pay etc. (interview with Damle).

The average duration of collective agreements in the public sector, both in Maharashtra and in central public sector units nation-wide, is longer. The duration of agreements in public sector enterprises in the sixth round of wage negotiations has been ten years. The agreements for example in ports and docks, Bharat Heavy Electricals Ltd, Bharat Earth Movers Ltd, National Thermal Power Corporation, etc. were for ten years (see AITUC 2001). This ten-year agreement duration will be continued in the seventh round of wage negotiations also (*Arbiter*, November 2006, p.5). In fact, the Federation of Central Trade Union Organisations operating in the public sector has decided to agitate for shorter term agreements of, say, five years (interview with Damle). The negotiations in the public sector are prolonged mainly due to two factors — the apathy of the government and the bureaucracy and the conflicts arising between multiple unions (there are as many as 41 trade unions in Maharashtra State Electricity Board (MSEB) and 11 in Mazgaon Dock, to give just two examples).

5.6 Issues, Strategies, New Developments in Collective Bargaining

The traditional form of bargaining is a one-way exercise. The workers want wage increase as a matter of routine in order to improve their standard of living. However, productivity bargaining links increased benefits with changed work practices. The increase in the salary is financed out of increased revenue arising out of effective utilization of labour, which involve changes in working practices (Fox quoted in Ramaswamy 2000:p.157). The agreements perused for this study deal with introducing new work measurement systems, changes in work

practices, giving production incentives, having flexi-working, increased cooperation, concern for quality etc. Trade unions have realized the need for a productivity drive and in some instances have accepted the managerial freedom in organization of work. For example, the trade union in Sandvik Asia Limited in Pune acknowledged that the financial burden of the settlement could be financed by “increased productivity, production, quality, and freedom for rationalization of systems” and offered full cooperation (settlement dated 25 August 2006). More importantly, the settlement states that “the Company continues to have the right to implement changes in equipment, machinery, methods, parameters, techniques, processes, rationalization of time and infrastructure, etc. ...”.

The work measurement system has been a bone of contention in Mumbai and Pune. Employers and some unions favour the Maynard Operation Sequence Technique (MOST).

Box 5.2: What is MOST?

There are two work measurement systems — stopwatch method and predetermined time standard method. There are several systems using the latter, namely MOST (Maynard Operation Sequence Technique), MODAPTS (MODular Arrangement of Predetermined Time Standards), MTM (Methods-Time Measurement) etc. MOST was developed at H.B. Maynard & Co., Inc. in the United States in the 1970s. It sets the standard time in which a worker should perform a given task. The work is divided into a number of motions and each motion is assigned a numerical element and they are added up to arrive at a standard time. It is based on the logic that movement of objects follows a certain pattern “such as reach, grasp, move and position of object”. These patterns are identified and arranged as a sequence. Some of its well-known advantages are, wide application, reasonable accuracy, minimum of paperwork, etc. It is said to be error-free (Badve 2005; Samant 2005).

Internet References: <http://www.iiie.pune.com/most.htm>;
http://en.wikipedia.org/wiki/Maynard_Operations_Sequence_Technique.

In India, MOST was first introduced by Mahindra & Mahindra Ltd. at its Igatpuri plant in Maharashtra in 1994. It is now used in many companies, including Crompton Greaves, Bajaj Auto Ltd., Thermax Limited, Godrej and Boyce Manufacturing Limited and Siemens India (see Badve 2005). Trade unions are divided in their opinions over this system, ranging from accepting it to being sceptical to open opposition. Dada Samant’s union accepts MOST because it is said to be systematic and scientific, unlike the existing exercises by the National Productivity Council (interview with Samant). He is all for signing settlements which provide wage rise linked to efficiency maximization (e.g. the Hawkins Cookers settlement). The example of a Crompton Greaves plant in Nashik is cited to show the impact of MOST. Workers in the plant were producing an electrical product at the rate of five pieces per shift per worker. Under MOST it was estimated that a worker could produce 31 pieces and this result was achieved following the introduction of MOST with the cooperation of Dada Samant’s union (see Samant 2005). As a result, the company has now transformed from a loss-making one to a profit-making one (see Badve 2005; Samant 2005). However, Samant’s union has faced difficulties when the introduction of MOST in one of the companies resulted in a reduction in the number of workers (see Krishna Murthy 2006).

Some unions are sceptical of MOST. The workers are not sure what is expected of them. It is also not clear whether MOST accommodates fatigue time and this issue has even sparked a four-month strike in the Mahindra and Mahindra plant in Igatpuri. The employers are trying to maximize the available time for work. Bajaj Auto Limited has imposed 480 minutes of work time in its Waluj unit in Aurangabad (interview with Damle, Sharad Patil, Shrouiti, Dada Samant, Rajan Nair). The Waluj agreement requires the workers to give a “net production output of 480 minutes” in the first, second and general shifts. However, the time spent on breaks

for tea and food and change of dress is not included in the 480 minutes. This work time sets a new standard in the industry, though the workers are reported to get a handsome rise of Rs 4500 in their monthly pay (Kshirsagar 2007).

There are several instances where the trade unions have understood the financial position of the company and have offered their cooperation in various ways. For example, in Centron Industrial Alliance Ltd. in Aurangabad, the wage increases were financed fully by the extra production; this has been so especially in case of companies making losses (Samant 2004:p.14). In the ABB plant in Nashik, Samant's union signed an agreement for a production incentive of Rs. 1650 for a 20 per cent increase in production. Once the market situation picked up, the company's turnover increased. In Ralliwolf Ltd. Samant's union signed an agreement of three years' duration in 1999 agreeing to 19 per cent reduction in basic pay, DA, house rent allowance etc. for permanent workers as the company had been making losses in the preceding three years. The union also made a number of other concessions such as withdrawal of perks like leave fare assistance, medical reimbursement, withdrawal of court cases etc. (see AITUC 2001:p.621). However, the employer did not improve its marketing effort and unsold stocks increased. Allegations have been made that the company was possibly marked for selling to the builders to make big money (Samant 2004:p.15).

The unions have agreed to the introduction of new practices like "flexi working" and "redeployment of workers" and "changes in work practices" to improve efficiency, as for example, SKF Bearings in Pune in 2000, (AITUC 2001:pp.664-80) and giving power to the employers to devise methods to ensure "quality of the products" (e.g. Tata Motors Agreement). These reflect the unions' grasp of changes in market conditions in the globalized economy. In fact, Tata Motors introduced a Quality Linked Payment to reward the workers for their contribution to improving the quality of the product. The union in Sulzer India agreed to changes in work practices resulting from changes in inputs, technology, processes and methods and to minimum productivity (Sulzer agreement, Part III.3).

Some unions like the Maharashtra Labour Union led by Rajan Nair insert provisions to provide health and family security and improve the educational entitlements of employees and their children into every agreement. Both employees and employers make contributions to a 'fund'. In the case of the Saint Gobain India agreement of 30 October 2005, the employees contribute one and half days' wages every month and the management adds four days of all employees' salary (dated 30 October 2005).

5.7 Contract and Casual Labour

Trade unions give examples of several firms where contract workers outnumber the regular workers, disproportionately so in some cases. The former are paid lower wages than the regular workers even though they perform similar, if not identical, jobs. There are far too many cases of the number of permanent workers being reduced and their work outsourced to be individually cited here. The legal position on the abolition of contract labour currently is that the law does not provide for regularization of contract labour after the abolition of the same by the government on recommendation from the Contract Labour Advisory Board save in cases where sham and fake contracts exist. The trade union movement has always fought for the abolition of contract labour. However, in the post-Steel Authority of India Limited case (SAIL) case, it has realized the fact that while concentrating largely on abolition, unions have largely ignored the issue of regulation (see NTUI Pamphlet, *Organising Contract Labour: Learning from Experience*). The trade union movement proposes to pay attention to three issues of regulation – a fair statutory minimum wage, eight-hour day and the principle of equal pay for equal work.

New approach to contract labour

Three struggles resulting in agreements benefiting contract labour are worth mentioning here. Reliance Energy Ltd. (REL), belonging to Anil Dhirubhai Ambani Group which supplies electricity in the Mumbai suburbs has around 3000 regular employees and around 4500 contract employees. The latter are said to be in service for periods ranging from five to 15 years (Vasudevan 2007). They perform regular work and are reported to be paid 40 per cent of the wages paid to regular employees. REL is covered under the Bombay Industrial Relations Act and hence approved and recognized unions exist in the company. The recognized union, Bombay Electric Workers' Union (BEWU) usually signs settlements only for regular employees while wages for contract labourers are unilaterally determined. Contract workers are not covered by the recognized union and are not represented in its executive committee. The contract workers struck work for 15 days when the management refused to pay death compensation to the widow of a young contract worker, who died of burn injuries at a work site. She was paid only after the strike and the intervention of Trade Union Solidarity Committee (TUSC), a solidarity organization, and the Minister for Labour. The success of the strike led to formation of Mumbai Electric Employees Union (MEEU) in July 2005.

The new union demanded, among other things, that the contract workers should be paid the minimum wage paid to unskilled workers in REL. Though this worked out to be Rs.495, the recognized union agreed (in a settlement signed on April 19 2007) to the daily rate of Rs.195 for the period 2006 to 2010. This was rejected by the contract workers who then agitated. They suspended the agitation after an understanding was reached in the conciliation proceedings that the April 19 agreement would be renegotiated to their satisfaction. Meanwhile, the recognized union refused to renegotiate and there was the stalemate, as this union is supreme under the Bombay Industrial Relations Act. Conciliation proceedings were revived and the management offered to renegotiate the agreement, in order to buy peace. But the recognized union, perhaps wanting to hold on to its original agreement, refused to cooperate, prompting fresh agitations by the contract workers. The REL management negotiated with contract workers' union and finalized the terms of the new agreement with them. The recognized union was compelled to sign the new agreement on the terms negotiated with the non-recognized contract workers' union. The contract workers gained another Rs 40 spread over a three-year period, the spread amount acting as an annual increment. Also, the contract workers gained 21 days paid leave per year and better working apparel (gumboots etc.). The monetary gain may appear paltry but this was perhaps the first occasion in the history of the Bombay Industrial Relations Act that contract workers succeeded in extracting a revised settlement and compelling the recognized union to scrap the terms it agreed with the employer (Vasudevan 2007). The TUSC played an important role in the entire affair.

The Centre for Indian Trade Unions (CITU) has organized the contract workers in Rashtriya Chemical Fertilizers (RCF). The contract workers went on an indefinite relay hunger strike demanding allotment of provident fund code number to them, employment to dependents of deceased contract workers, provision of regular work to certain categories of contract workers, continuity of services of contract workers and with existing benefits and wages and periodical revision of service conditions. The significant demands were continuity of employment (with existing wages and benefits) and periodic revision in service conditions. The RCF management agreed to continue the services of the contract workers with the successive contractors, subject to availability of work and satisfactory performance of the workers. The union agreed to withdraw all court cases if a long-term settlement was arrived at and the management agreed to continue the dialogue on this matter. In the SAIL case, the Supreme Court ruled that the Contract

Labour (Abolition and Regulation) Act, 1970 does not provide for regularisation of services of contract labour after the abolition of contract labour by the government. Hence, the strategy of the union changed. They did not demand the abolition of contract labour but asked for continuity of service of contract workers irrespective of changes in the contractors hired. The grant of this demand by the RCF management meant an important victory for this class of workers. Buoyed by this success, CITU has taken up similar issues with the management of Bharat Petroleum Company Limited and Hindustan Petroleum Company Limited (interview with Dr.Monterio).

The Airports Authority of India (AAI) and Air India were the biggest employers of contract labour, with the number of workers running into thousands in each case. All the ills of the contract labour system manifested themselves – uncertainty of work, presence of mafia, contractor retaining the airport passes or identity cards of the contract workers in the evening and giving them the next morning, extortion and so on. Additionally the workers paid bribes to get jobs. Deepti Gopinath, an union activist, organized them and took their complaints to the Central Bureau of Investigation (CBI), police, labour commissioner and labour minister, to no avail. When workers refused to submit to extortion demands, they were victimized in various ways. The contract workers' union at the AAI demanded that a notification under Section 10 of the CLRA issued in 1976, prohibiting contract labour in sweeping, cleaning and dusting (see Cox 2002; interview with Deepti Gopinath) be implemented. The management rejected the demand. The union filed a case in the court and was being heard during the mid-1990s by the Supreme Court.

Around the same time, the United Labour Union from Air India also filed a case citing the same notification. The December 1996 Supreme Court order for automatic absorption of contract labour upon abolition came as a big relief to both unions. The AAI management, however, did not heed the judgement. Trade union leaders like Gopinath mobilized contract workers in all five major airports, as the notification applied to them as well. An All India Airports Authority Coordination Committee, comprising leaders from all the airports, was formed and they launched an agitation, shouting slogans, taking out processions and even gheraoing the civil aviation minister when he came to Mumbai airport. Finally, the leaders gheraoed the AAI chairman and demanded implementation of the Court's orders. The Chairman agreed and passed the necessary orders in December 1997 (interview with Deepti Gopinath). This is another instance of contract workers seeking to better their employment conditions by organizing themselves. The disturbing aspect of the struggle was that it got little support from the permanent workers.

The unions in the government sector demand wages for contract workers equal to Class IV employees and retention of contract workers even when the contractors change. They no longer demand abolition of contract labour system. In a few cases like in the Navi Mumbai Municipal Corporation, the unions have succeeded in getting contract labour abolished. This seems to be the new approach of the Contract Labour Advisory Board as well (proceedings at the meeting of the Board on 6 June 2007).

In Century Rayon, the trade unions agreed for the closure of unviable departments and separation of workers through VRS and transfer of others to other departments in exchange for permanency of casual workers. The union in Century Rayon has been demanding the promotion of casual workers as new permanent workers. The management agreed to consider this demand provided the union extends “cooperation in closing down sections/departments which have become uneconomical to run, continue to cooperate for outsourcing of unviable activities and introducing automation wherever possible”. The union agreed to outsourcing of some activities,

closure of Cenray engineering services division (central workshop), separation of workers via VRS and redeployment of workers not accepting VRS. In exchange, the management regularized the services of 300 casual workers and put them on six months' probation (Century Rayon agreement dated March 2004).

5.8 Wage Negotiations in Public Sector

The most important issue that concerns trade unions in public sector enterprises (PSEs) is 'parity' between comparable entities (see Ramswamy 2000; Roye 2001). The long strike in PSEs in Bangalore in 1981-82 was over the issue of parity in wages with Bharat Heavy Electricals Limited (see Ramswamy 2000:p.178). State government employees in Maharashtra demanded parity in D.A. with the Central government employees and got this accepted. However, trade unions' demand for parity is seen to affect innovations in bargaining (Ramaswamy 2000:pp.178-9).

The guidelines of the Central PSEs for the seventh round of wage negotiations for the agreements which came into effect from 1 January 2007 clearly stipulate that there would be no budgetary support for the wage increase and that the resources should be internally generated through increased productivity and profitability. The wage revision should not result in increase in unit labour cost which means that productivity must increase to the extent of wage increase (*Arbiter*, November 2006, p.5).

Box 5.3: Collective bargaining in the public sector in Maharashtra: A case study of wage negotiation process in BEST

The Brihanmumbai Electric Supply and Transport Undertaking (BEST) is Mumbai's state-owned public transport and electricity provider. The yearly budget of BEST is approved by the BMC and is monitored by a 17-member body of municipal corporators (BEST Committee). The BEST management has to take the sanction of this Committee for wage negotiations proposals. Electricity and bus fares have to be approved by the BMC. The BEST Workers' Union, led by Sharad Rao, is the recognized union under the Bombay Industrial Relations Act. The last agreement lasted for five years from 1 April 1996. On the expiry of this agreement, the union submitted a charter of demands and a three-member Pay Revision Committee (PRC) was constituted in June 2002 with mutual consent. The Committee submitted its report in June 2004, which was rejected by the BEST Workers' Union. The Union demanded a change in the formula to compute variable dearness allowance (VDA). In March 2005, the BEST workers went on a two-day strike on the issue of DA (see *Arbiter*, March 2005, p.5) and the issues were referred for arbitration by a high court judge, whose award was to be binding on both parties. A similar process was followed in negotiating wage settlement in BMC in 2005 (interview with Bane). Since the extent of neutralization of DA reached 100 per cent, beyond which neutralization cannot be granted, the BEST management sought to implement the recommendations of the PRC without signing the wage agreement with the representative union. This led to the workers striking work for three days in April 2006. A settlement was finally reached on 6 June 2006 and the agreement was to be in force for five years from 1 April 2001 to 31 March 2006 (three months before the actual signing of the agreement). The extent of neutralization finally agreed upon was to be "uniformly 100 per cent" (Clause 4.iv of the agreement). Meanwhile an agreement was reached on 6 June 2006 to pay interim D.A. from April 2006 for a maximum period of six months or till the signing of the final agreement for the period 2006 to 2011. Both the parties agreed to finish the negotiations within a timeframe and the union agreed not to agitate till the wage settlement was done. But the negotiations are riddled with problems and litigations.

5.9 Managerial Strategies

The presence of unions is challenged and weakened in many ways. The first is to reduce the number of permanent workers by various methods. The prohibitive provisions in laws such as the Industrial Disputes Act and the Industrial Employment (Standing Orders) Act restrain large-sized employers from laying off or retrenching the workers. In the absence of formal

separation mechanisms, employers offer voluntary retirement schemes (VRS), which are hardly voluntary and have an element of compulsion. It was first initiated in Ciba Geigy in Mumbai in the early 1990s and has been widely used by both the private sector and the government. Several Mumbai firms closed their factories using this tool in the late 1990s (see Shyam Sundar 2007, a; TUSC, undated; see also *Arbiter* 2006, p.4). Thus, it is possible for employers to “get rid of their workforces even without any change in the law” (Hensman 2001;TUSC, undated). Nationalized banks also used VRS in a big way since the mid-1990s.

The trade unions adopt two approaches to VRS. Some unions, especially the left-oriented ones, keep aloof and take the stand that the unions would not support VRS and negotiate with the employers and that if the workers desired it, they would leave it to them to negotiate their deals individually. Some unions, on the other hand, try to secure a better deal for their members and get a ‘cut’ in the deal for the organization or for the trust floated by the unions or their affiliated political parties.

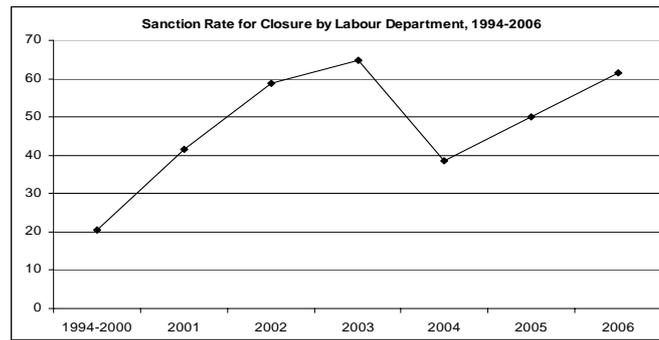
The second strategy of the employers to weaken trade unions is ‘idleness pay’. Workers are asked to not ‘work’ in the factory and get wages for the ensuing years. There are some variations of this strategy. In some cases, the workers were asked to report for work to the factory but were given no work or harassed in various ways (for example, a worker is asked to do work much below his grade) and get the pay packet on the pay day, as was done in Hindustan Lever, Mumbai (interview with D’Costa, D’Souza; see also TUSC, undated). In 2007, Bajaj Auto first cut the workweek from six to four days but paid for five-and-a-half days; it then asked the workers to remain at home and collect the pay packets. The workers, however, are not willing to get salary without doing work (the President of the Bharatiya Kamgar Sena quoted in *Business Line*, <http://www.thehindubusinessline.com/2007/09/09/stories/2007090951610100.htm>).

Employers also promote the workers to lower level managerial posts, such as supervisors or officers, and thus take them out of the category that is covered under wage bargaining. In some cases, the ‘promoted employees’ may not even get higher pay but are required to do multiple tasks, while as ordinary union workers they would have performed ‘single task’. The first thing the ‘promoted workers’ have to do is to relinquish union membership (interview with Samant and Shrouti). Union leaders say this is a widespread phenomenon (see also Shrouti and Nandkumar 1995).

Another strategy has been to start ‘parallel production’, which means setting up of production units either in remote areas in the state or in other states. Constraints on expansion, availability of incentives to start units in backward areas, high cost of operations and union presence in Mumbai and Thane, availability of cheap and union-free labour in other areas are some of the reasons for starting parallel production centres (Shrouti and Nandkumar 1995, pp.17-8). A majority of workers in the units in these centres work on contract or casual basis and are not unionised. However, some efforts were taken to unionize them in Pfizer, Blue Star, Voltas and so on (ibid). Union’s allege that firms have manipulated the subsidy incentive to reap undeserved benefits (see D’Costa 2000).

Figure 5.1 gives statistics relating to the number of cases in which the Commissioner’s Office has given permission for closure of units ever since the power to do so was vested with the Commissioner in 1994. Till the end of the 1990s, the Labour Department sanctioned closure only in a few cases (see Table 6.14 in Shyam Sundar 2007, a) and it did not sanction it in the review of cases either. However, since 2001, sanction rates (proportion of applications for closure sanctioned, excluding review cases) has been on the rise. The number of review applications increased from 16 in 1994-2000 to 35 in 2001-06 and closure permission was granted in five cases (ibid).

Figure 5.1



Note: Sanction rate is the proportion of applications for closure sanctioned, excluding the review cases.
Source: Office of the Commissioner of Labour, Mumbai.

Officials in the Labour Commissioner's office point out that refusing permission for closure does not protect the interests of workers. Employers adopt ingenious strategies to get around the restrictions on closure in the Industrial Disputes Act. It has been pointed out that legal protection to workers affected by transfer of undertaking is not provided for in Chapter V-B, though it exists in Chapter V-A. Thus, workers in units employing more than 100 workers could be terminated by transferring the undertaking to another party (Tapole 2005). This loophole has been used in some cases to terminate workers or close down the undertaking (e.g. Voltas Switchgear Company, Mumbai, see Tapole 2005). On 17 July 2005 Hindustan Unilever (HUL) sold its Sewri factory in Mumbai to Bon Limited, which was a subsidiary of HUL with a share capital of only Rs 5 lakh. The sale was financed by the seller to the buyer. It is clear that the buyer company lacked even decent resources to manage the company. There were 1100 workers on the rolls before the transfer and the management effected VRS of 100 workers each before and after the transfer. The trade union tried in vain to prevent the transfer through litigations and the Labour Department refused to entertain the union's complaint against the transfer. The company got approval from the Bombay High Court to provide compensation to workers unwilling to join the new company (*Arbiter*, July 2005:p.7). On 26 July 2006 the management of Bon Limited informed the employees of the closure of the factory with immediate effect and offered VRS to them. It is clear that transfer of company was done with the sole intention of ultimately closing down the unit. However, as the sale deed was under judicial review, the closure announcement was not legal. Bon Limited pleaded closure on several grounds such as competition, location disadvantages, high overheads, loss (of Rs. 15 crores), extensive litigation with labour and complete non-cooperation from the trade union (Bon Limited 2006). The Commissioner of Labour refused permission for closure. On a review of the case, it is reported that the Commissioner's office has given the permission for closure (IUF (undated), interview with Bennet, D'Souza) and the closure compensation has been executed.

5.10 Summary

The weakening of the union movement in the conventional industries and the interest evinced by unions in organizing hitherto ignored workers and those in new sectors obviously have implications for collective bargaining. The institution of collective bargaining has assumed importance despite this, as the firms need to work with trade unions and workers' bodies to maintain quality and meet quick orders. The demands imposed by the new economic environment and the consequent pressures have necessitated new directions and patterns of

collective negotiations – productivity concerns, quality of the product etc. have assumed importance. Concession bargaining also has been attempted in some industries facing economic problems. But there are signs of dilution of bargaining practices at least in the sunset industries. Alongside these dialogue practices, the managerial strategies such as VRS, idleness pay, parallel production, transfer of undertaking are actions to circumvent the so-called rigidities created by labour institutions like employment protection laws, unions and collective bargaining. Meanwhile, there appears to be some shift in the policy of the government as evidenced by rise in permissions granted for closures. Whether this is a short term aberration or a pattern needs to be assessed over the medium to long term. The general feeling and even the admission of the government is that closures have been on the rise since the late 1990s (see Shyam Sundar 2007, a).

Chapter 6

Industrial Disputes, Strikes And Lockouts And Dispute Settlement In Maharashtra

6.1 Legal Framework for Settlement of Industrial Disputes

The principal objective of the labour policy for long has been achievement of industrial peace; indeed, the legal framework of the industrial relations system has been primarily designed to achieve this objective (see Shyam Sundar 1999, a, and the references cited therein). The labour policy which influenced the strategy to manage the industrial relations system preferred state intervention to collective bargaining in view of the compulsions arising out of the economic planning (ibid). As a result, the role of third party intervention via labour laws, conciliation, adjudicatory bodies and courts, etc. assumed greater importance than voluntary institutions like collective bargaining.

The Industrial Disputes Act (a Central law), the Bombay Industrial Relations Act and MRTU & PULP Act (both state laws) deal with, among other things, industrial disputes and industrial actions arising out of them, the major institutions created by the Industrial Disputes Act for the settlement of disputes are:

- conciliation (conciliation officers and Conciliation Board, the latter a tripartite set up);
- investigation;
- collective bargaining;
- voluntary arbitration;
- compulsory adjudication (Central and state-level tribunals and courts).

The formal conciliation machinery can intervene in not only actual, but also apprehended, industrial disputes and in cases of strikes and lockouts where notice has been given in public utility services. In the case of private firms, it is the discretion of the machinery to do so. If the conciliation succeeds, it results in a settlement called 12 (3) settlement. Otherwise, the conciliation officer submits a 'failure report' to the government. The government enjoys wide and sweeping discretionary powers to refer – or refuse to refer – disputes for compulsory adjudication in establishments which are not classified as public utility services. The resolution process is compulsory in two senses: one, the parties to the dispute have no option but to accept adjudication; two, the award of the adjudicatory body is binding. Compulsory adjudication not only settles the disputes but, in the process, also creates “rules” that govern the employment relationships in firms or an industry or a sector.

The Industrial Disputes Act makes a distinction between 'individual dispute' and 'industrial dispute'. Sec. 2 (k) defines industrial dispute as “any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen ...” An individual dispute was not considered as 'industrial dispute' till 1965. Section 2-A (inserted in 1965) accorded the status of 'industrial dispute' to disputes between an individual worker and an 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 literature on industrial disputes distinguishes between ‘interest disputes’ and ‘rights disputes’. Interest disputes deal with substantive matters like wages, working conditions, leave etc. and arise usually out of failure in collective bargaining (ILO 1980). Rights disputes relate to interpretation or application of rules specifying the rights of the parties in the rulebook, which may be an award, an agreement, a convention or law. The dispute resolution literature recommends that interest issues are left to collective bargaining and voluntary arbitration while the rights issues are best resolved by adjudication. The adoption of such distinctions presupposes the development of collective institutions such as trade unions and collective bargaining (ibid). The British legal system has generally been followed in countries that had been under colonial rule (ILO 1980; Schregle 1976). The British law offers general definitions of labour disputes and does not make explicit distinctions between the two. Hanami (1980:p.495) observes in non-Western countries, the distinction between the two is “more obscure or flexible ...”. This is because the law enforcement and conciliatory functions are vested with same government officials.

Though in the Indian context, no specific distinction is made between ‘interest’ and ‘rights’ disputes, labour courts and tribunals deal with individual disputes and interpretation of agreements or awards. The National Commission on Labour (NCL) (1969:p.335) talked of such distinction when it recommended that Labour Courts would deal with “interpretation and enforcement of all labour laws, awards and agreements” (see also Schregle 1976). The collective bargaining and the dispute resolution machinery of the government deal with both interest and rights disputes. The Second and Third Schedules appended to the Industrial Development Act talk about both issues. The Labour Court usually deals with ‘rights disputes’ and the Industrial Court the ‘substantive issues’.

Box 6.1: Jurisdiction of Industrial Courts and Labour Courts

The Industrial Court and the Labour Court are judicial institutions created under the MRTU & PULP Act and the Bombay Industrial Relations Act to adjudicate on issues relevant to the Acts. The jurisdictions of the two courts differ and are specified in the MRTU & PULP Act (Section 5 and 7 of the Act).

The duties of the Industrial Court include, among other things:

- granting recognition to the applicant union and the matters connected with it (such as claims by a competitive union, or an employer);
- deciding on complaints regarding certain types of unfair labour practices; and
- assigning work and monitoring the Investigation Officers appointed under the Act.

The Labour Court decides on those labour practices which are not under the purview of the Industrial Court and tries offences punishable under the Act.

Under Section 44 of the MRTU & PULP Act, the Industrial Court can exercise superintendence over the Labour Court. The Industrial Court can, in case of an appeal, “confirm, modify, add to or rescind any order of the Labour Court” (Section 43).

The purpose of the Bombay Industrial Relations Act, as set out in its preamble, is to “regulate the relations of employers and employees, to make provision for settlement of industrial disputes ...”. The government should appoint a Chief Conciliator, an Additional Chief Conciliator, Conciliators and Special Conciliators (for specific reasons like an industry or one or class of industrial disputes) and Conciliation Board (a tripartite body). Under the Act, employers and workers (via unions) are required to serve notice of change regarding service conditions like wages, hours of work, leave and holidays, dismissal, reduction in employee strength etc. The conciliation machinery commences its proceedings on receipt of the objections to the notice from either. In case the conciliation efforts succeed, the settlement is signed. The Conciliator or Board can refer the dispute (involving question of law) to the Industrial Court. In case of failure, the failure report is sent to the concerned higher authorities. The parties can, together or individually, refer any industrial dispute for adjudication. However, the government reserves the right to refer any dispute for adjudication.

The MRTU & PULP Act defines the conditions of ‘illegal strikes and lockouts’ such as non-serving of notice for industrial actions, absence of majority in the strike ballot, industrial action on issues during the pendency of conciliation and arbitration proceedings, the issues of the industrial actions are referred to labour judiciary, and so on. The employer, the union or the government may refer the strike or the lockout to the Labour Court for deciding on its “illegality”. The recognition status of the union will be cancelled if “it has instigated, aided, or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act ...” [Section 13 (v)].

6.2 Right to Strike

The Constitution of India assures the fundamental right of freedom of association. But there is no constitutional guarantee relating to the right to strike. The judiciary, especially the Supreme Court, has, over the years, recognized the role, legitimacy and functions of strikes in changing the ‘rules’ of employment relationship in the industrial relations system (see the recital of the landmark judgments in High Court and Supreme Court in Kochar 1990). However, the judiciary has been clear that even a liberal interpretation of the fundamental right of freedom of association does not ensure a guaranteed right to collective bargaining or to strike (Supreme Court judgment quoted in Upadhyay 1983:p.96). There have been debates on the issue of whether the protection or discharge of the ‘core right’ (freedom of association) necessarily leads to protection or discharge of ‘concomitant rights’ (collective bargaining or strikes). The unions have argued that freedom of association has little meaning if the activities such as collective bargaining or industrial actions are not also ensured. The judiciary has rejected this argument: “Once the association was formed, the right to form association exhausted itself” (see Dhavan 2006:p.42). Some landmark judgments have held that the right to strike was not constitutionally guaranteed (see Dhavan 2006). In a ruling in 2003 on the strike by government employees and teachers in Tamil Nadu, the Supreme Court observed that the public employees in India do not have a fundamental, statutory and moral or equitable right to strike (see Shyam Sundar 2004, b). Venkata Ratnam (2006:p.104) notes that the Tamil Nadu Government Servants’ Rules, 1975 prohibits government employees in the state from striking (Rule 22). Such prohibitory clauses are not present in the Civil Service Conduct Rules governing state government employees in Maharashtra (interview with R.G. Karnik).

Notwithstanding these judicial pronouncements, the three labour laws mentioned earlier do permit strikes and lockouts subject to specified conditions. They define the conditions for ‘legal strikes and lockouts’ and failure to honour them render the industrial action ‘illegal’.

Academicians and union leaders point out that the stringent conditions laid down in the laws make it well nigh impossible to conduct legal strikes (see also Ramaswamy 1984). The Industrial Disputes Act defines strikes as illegal when they happen even as the conciliation or adjudication or arbitration proceedings are on (after seven days and after two months respectively) or during the period of operation of award or settlement and matters covered by them. Conciliation is compulsory in the case of public utilities and can be initiated even when a party to the dispute is merely apprehended and the conciliation process takes a long time (see Shyam Sundar 1999, c). The Act provides for a certain procedure, such as serving a notice six weeks before, for legal strikes. The state laws are equally tough, especially on imposing penalties for striking illegally. Under the MRTU & PULP Act, a strike called without giving the employer notice and without securing approval from the majority of union members will be declared illegal. However, what constitutes 'majority' has not been defined. In addition, the recognition of a union will be cancelled if it has instigated, aided or assisted the commencement or continuation of an illegal strike.

Apart from these, the Central and state governments have been invoking the Essential Services Maintenance Act (ESMA) from time to time to ban strikes. The law vests enormous power with the government and adopts general definitions of 'essential service' to enable governments to use the law against any class of employees. The Government of Maharashtra (see Shyam Sundar 2004, b; Upadhyay 1983) has invoked ESMA on strikes by government employees, by BEST workers in road transport (http://www.ibnliv.com/printpage.php?id=8502§ion_id=3) and doctors. The concept of 'essential service' is a highly abused one in this context, with the Government of Maharashtra invoking this law even on striking junior college teachers in 1999. (*Indian Express*, 1999, <http://www.indianexpress.com/india-news/ie/daily/19990323/ige23091p.html>).

Work Stoppages

Stoppages of work are of two types—strikes (initiated by workers) and lockouts (initiated by employers). There are three measures of the three industrial actions, viz. frequency or count (WS for number of work stoppages), workers involved (WI), and workdays lost (WDL). We study trends in all the three forms of industrial actions, using employment in the organized sector as a deflator to standardize the conflict variables.

Table 6.1: Indicators of industrial conflict, 1995 to 2004

Period	WS/N	WI/N	WDL/N
1995-98	17.85	8.36	375.07
1999-2001	6.76	15.52	314.89
2002-04	2.71	83.98	236.24

Note: WS/N – No. of total work stoppages per million employees in the organized sector.

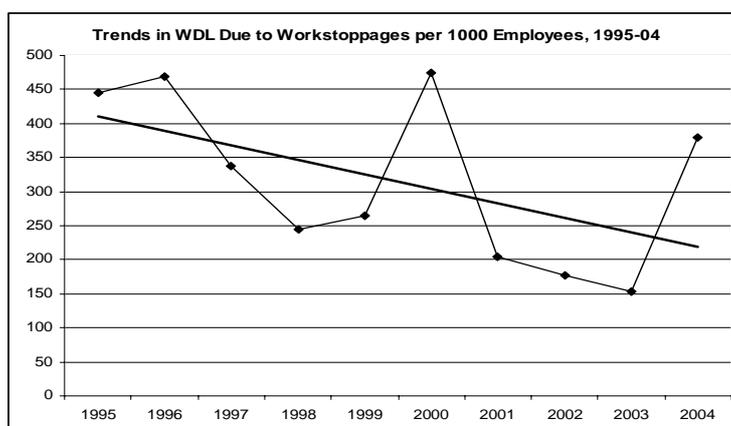
WI/N – No. of workers involved per thousand employees.

WDL/N – Workdays lost per 1000 employees.

Source: for work stoppages, strikes and lockouts, *Indian Labour Year Book*, *Indian Labour Statistics*, Labour Bureau (various issues); for employment *Economic Survey of Maharashtra*, (various issues)

The number of work stoppages declined steeply from 69 during 1995-98 to less than 10 during 2002-04. The relative volume lost due to work stoppages also declined, but not as steeply as did the relative frequency measure. The workdays lost measure behaves more erratically than frequency measure, as a few big work stoppages in a year could increase the figure abnormally (see Shyam Sundar 1999, c). Thus, while there are fluctuations in workdays lost (Figure 6.1), the linear trend line shows a general declining trend during 1995-2004. The dramatic feature of the graph is the rise in the workers involved in work stoppages. The strikes during 2002-04 involved a significant number of workers, as a result of which the workers involved shot up in this period. The post-liberalization period witnessed a number of protests involving a number of workers and number of sectors and industries against the economic and labour-related policies of the government and the employers, which involved multitudes of workers across firms and industries and sectors.

Figure 6.1



Source: as in Table 6.1.

The incidence of lockouts increased in the post-textile strike period (1982-83) and the workdays lost as a result increased in the second half of the 1980s (see Shyam Sundar 2004, a, 2007, a). Offensive action by employers began to rise from this period and the average duration of lockouts increased considerably in the post-textile strike period (see Shyam Sundar 2004, a, Table A.3). Table 6.2 shows the share of lockouts in total workdays lost.

Table 6.2: Percentage share of workdays lost due to lockouts in total workdays lost, 1995-2002

Period	Percentage share in total of		
	WS	WI	WDL
1995-98	25.1	18.4	66.3
1999-2001	21.3	5.4	49.4
2002-04	31.0	0.6	59.1

Note: 1988-91 – 80.4; 1992-95 – 74.6

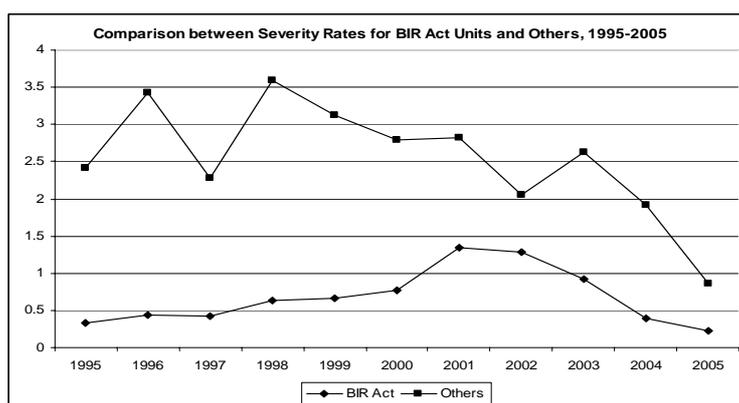
Source: as in Table 6.1.

The striking feature of the table is the low and declining share of workers involved in lockouts in the state. Strikes involve a large number of workers as they cover more firms, industries or sectors in case of general strikes. General strikes have been a feature of the post-

liberalization period. There is no clear trend in the case of the share of the number of lockouts and workdays lost in total during the study period. However, if we take a longer period (see footnote to the table), we find that lockouts caused less workdays to be lost over the years. In contrast, the share of lockouts in total workdays lost in India as a whole increased from 61 per cent in 1995-98 to 65 per cent in 1999-01 and to 78 per cent in 2002-04.

Though the primary objective of both Bombay Industrial Relations Act and the Industrial Disputes Act is to promote industrial peace, the former is better placed to achieve it for several reasons.

Figure 6.2



Source: *Important Labour Statistics* (various years) and Office of the Commissioner of Labour (2004, a, b; 2006).

The Industrial Disputes Act comes into play only when a dispute occurs or is apprehended, whereas the Bombay Industrial Relations Act is always in active play. Secondly, the Bombay Industrial Relations Act provides for a legal framework for the vexatious issue of union recognition and makes striking work much more difficult for the unions by imposing tough obligations. Figure 6.2 shows that the severity rates (workdays lost standardized by factory employment) in units covered by the Bombay Industrial Relations Act were lower than in other units. The severity rate for the former set of units increased till 2001, after which it declined. On the other hand, the severity rate for other units started declining much earlier – from 1997.

6.3 Issues of Work Stoppages in India

Table 6.3 lists the issues responsible for causing work stoppages in India.

Table 6.3: Percentage distribution of workdays lost due to work stoppages by issues, 1995-2004

Issue	1995-98	1999-2001	2003-04
Wages & allowances	18.5	11.8	10.0
Bonus	7.9	5.1	1.1
Personnel	7.1	8.2	2.2
Indiscipline & violence	36.4	39.6	55.7
Inter/Intra-union rivalry	2.8	0.2	0.1
Non-implementation of labour enactments, awards, agreements, etc. or related issues	3.4	11.5	0.4
Charter of demands	7.5	9.1	15.6
Others	16.5	14.4	15.5
Total	100.0 (22061984)	100.0 (79316786)	100.0 (5412278)

Source: *Industrial Disputes in India* (various issues), Labour Bureau, Shimla.

Monetary issues such as wages, allowances and bonus accounted for over 26.4 per cent of workdays lost due to all work stoppages in the 1995-98 period, but declined to 11.1 per cent in 2003-04. Non-implementation of laws, awards and agreements was one of the major issues only in the 1999-2001 period. Work stoppages on account of failure of negotiations over charter of demands have been rising steadily across the three time periods. Indiscipline and violence has been a major issue across the three time periods and accounted for more than half of the work days lost in 2003-04. Tables 6.4 and 6.5 list the reasons for strikes and lockouts separately, giving some understanding of the issues behind work stoppages.

Table 6.4: Percentage distribution of workdays lost due to lockouts by issues

2001-04*

Issues	%
Wages & allowances	6.8
Bonus	0.9
Indiscipline	62.9
Violence	1.5
Personnel	1.0
Charter of demands	13.4
Others	13.5
Total	100.0

Note: * - excludes 2002

Source: as in Table 6.3.

Employers cited undisciplined acts of workers as a major cause for imposing lockouts, accounting for more than 60 per cent of work days lost due to lockouts during 2001-04, though it accounted for only 3 per cent of work days lost due to strikes by workers. This is seen as a way for the employers to 'legitimize' their industrial actions. Unlike in the West, lockouts are not deployed purely as a bargaining weapon but lockouts are often 'closures in disguise' (see Datt 2003; Shyam Sundar 2004, a), especially when they are prolonged.

Table 6.5: Percentage distribution of workdays lost due to strikes in 2001-04

Issues	%
Wages & allowances	28.8
Bonus	10.5
Indiscipline	3.0
Violence	0.1
Personnel	7.9
Charter of demands	24.0
Others	25.7
Total	100.0

Note and Source: as in Table 6.4.

Wages and allowances, bonus and issues figuring in collective agreements together accounted for over 60 per cent of total workdays lost. Miscellaneous 'other' issues accounted for 25 per cent of workdays lost.

Table 6.6: Percentage share of strikes in total workdays lost for each issue, 2001-04

Issues	%
Wages & allowances	47.1
Bonus	71.6
Indiscipline	1.0
Violence	0.9
Personnel	63.4
Charter of demands	27.5
Others	28.7
Total	100.0

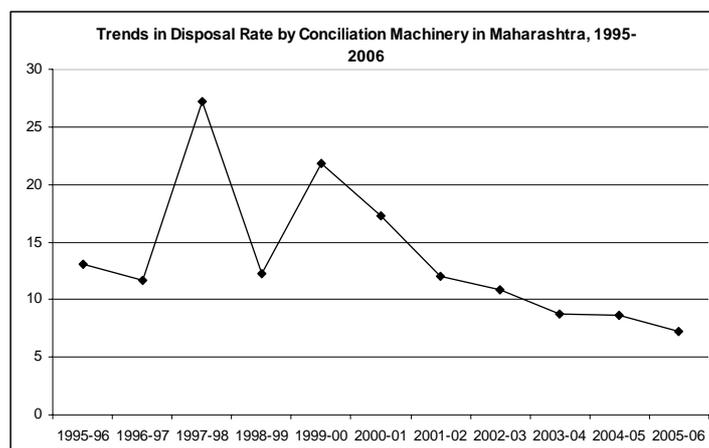
Note and Source: as in Table 6.4.

Table 6.6 clearly shows that considerable workdays were lost due to strikes over wages and allowances, bonus and personnel issues. Indiscipline and violence are predominantly employer issues.

6.4 Industrial Relations Machinery in Maharashtra

There is a statutory conciliation machinery in the state to settle actual and/or apprehended industrial disputes both under the Industrial Disputes Act and the Bombay Industrial Relations Act. In addition, there is a special service called Personnel Management Advisory Service Scheme (PMAS), which has been in existence for a long time. The PMAS is 'informal' mediation machinery and deals with disputes as well as strikes and lockouts, "which cannot normally be processed by the Statutory conciliation Machinery" (sic) (OCL 2006:p.2). The officers under the Scheme seek to "bring awareness among the contesting parties regarding their rights and obligations under the various labour laws, agreements, settlements, awards, etc. and make suitable recommendations to them for resolving their disputes". The advice offered is purely informal in nature. We evaluate the performance of both the machineries here.

Figure 6.3



Source: Office of the Commissioner of Labour, Mumbai.

The 'disposal rate' of disputes by the conciliation machinery (i.e. disputes resulting in settlement as a proportion of number of disputes handled in a year) fluctuated for a few years and started its downward slide from 1999-2000. While the number of disputes handled has remained constant in the region of 6,000-7,000 in a year, the number of settled cases declined considerably over the years.

Table 6.7: Settlement record of PMAS, 1995-2006

Period	Number of Cases Handled	Settled	Disposal Rate (%)
1995-96 to 1998-99	36 733	9 385	25.5
1999-00 to 2002-03	72 434	3 988	5.5
2003-04 to 2005-06	17 248	2 883	16.7

Source: Office of the Commissioner of Labour, Mumbai.

The PMAS had a poor record since 1999-2000. It is learnt that parties to a dispute prefer direct negotiations (collective bargaining) to conciliation.

6.5 Methods of Settlement of Work Stoppages in India

The Labour Bureau classifies the methods of settlement into four major categories – government intervention (mediation or conciliation and adjudication), mutual settlement (direct negotiation, arbitration), voluntary resumption (by employers or employees), and others. There are several work stoppages each year for which information is not known; we exclude this from the total.

Table 6.8: Percentage distribution of work stoppages by methods of settlement, 1995-2004

Particulars	1995-97	1998-2000	2001 and 2003*
Government intervention	29.2	35.9	31.8
Mutual settlement	23.8	26.5	38.1
Voluntary resumption	44.3	34.6	27.9
Others	2.7	3.0	2.2
Total	100.0 (2 710)	100.0 (888)	100.0 (635)

Note: * The percentage distribution for 2001-2004 (excluding 2002) is 42.7, 58.5, 25.8, and 3.0 respectively. The year 2004 seems to be an unusual year in which about 70 per cent of work stoppages were settled by government intervention.

Source: As in Table 6.4.

Voluntary resumption was a dominant method in 1995-97, but its relative importance declined considerably and in recent years it accounted for only 28 per cent of work stoppages settled. Mutual settlement (mostly by direct negotiations) is emerging to be a significant method of settlement over the years, though government intervention is still inevitable.

6.6 Working of Industrial and Labour Courts

Employers and trade unions also fight their battle in the courts. Litigation is both complementary and an alternative to mechanisms like work stoppages. The resort to litigation is higher where there are more laws and in cases where issues are subject to legal decisions like legality or illegality of strikes, recognition of unions or verification of allegations of unfair labour practice by either employer or workers.

The state government has increased the number of Industrial and Labour Courts over the years (Table 6.9).

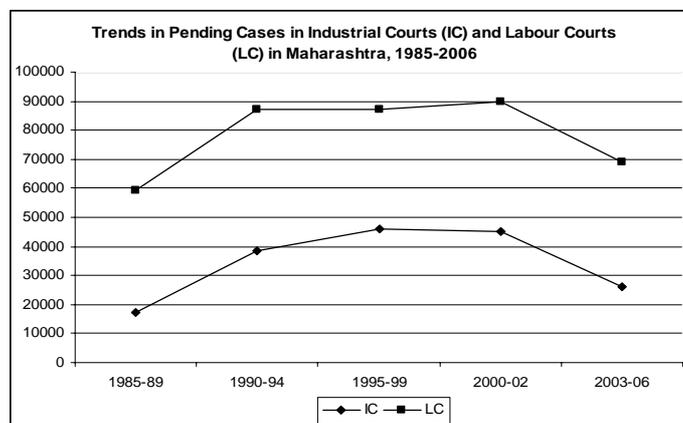
Table 6.9: Number of labour and industrial courts, 1975-2000

Year	No. of Labour Courts	No. of Industrial Courts	Year	No. of Labour Courts	No. of Industrial Courts
1975	19	10	2000	40	31
1992	38	26	2001	N.A.	N.A.
1993	39	27	2002	N.A.	N.A.
1994	40	27	2003	41	31
1995	40	27	2004	45	36
1996	40	27	2005	46	36
1997	40	27	2006	46	36
1998	40	27	2007	47	37
1999	40	31			

Source: for 1975, 1992-2000, Srinivasan Committee (2002, Appendix IV); for other years, Office of the Industrial Court, Mumbai (official communication).

The number of cases pending at the end of the year in the Labour Courts shows the extent of litigation by both parties and the extent of intervention by the labour judiciary in industrial relations matters in firms.

Figure 6.4



Source: For 1985-91, *Performance Budget*, Industries, Energy and Labour Department, (various issues); for remaining years Office of the Industrial Court, Mumbai.

There is a steep increase in the number of pending cases in the Industrial Court and the Labour Court till the end of the 1990s (Figure 6.4). This could be an indication of the fact that the labour judiciary infrastructure is inadequate, the rate of disposal of cases by the Labour Courts is poor and the tendency of parties to litigate is high. Though there are 47 Labour Courts against 37 Industrial Courts, these are hardly adequate given that they have to deal with over 40,000 cases more than the Industrial Courts. But the number of pending cases declined since 2000 though they have not reached the levels in 1985-89. The decline in case of Industrial Courts is partly due to better disposal rates during 2000-06 and a short respite in terms of lower number of cases filed during 2000-03 (Table 6.10)

Table 6.10: Average number of cases filed and disposal rates 1992-2006

Period	Industrial Courts		Labour Courts	
	Average number of cases filed	Disposal rate ((%)	Average number of cases filed	Disposal rate ((%)
1992-95	11 942	20.1	36 083	21.3
1996-99	14 057	20.3	33 060	16.5
2000-03	10 226	26.1	27 756	18.6
2004-06	12 269	39.4	30 185	30.9

Note: Disposal rate is the proportion of cases in total number of cases (number of cases pending at the beginning of a year + the number of cases filed during the year).

Source: As in Table 6.9.

Though the average number of cases filed in Labour Courts during the period declined, the disposal rates during the 1996-2003 were poor. However, they picked up considerably

during the 2004-06 period. Table 6.11 looks at the nature of pending cases in the Labour Courts.

Table 6.11: Details of pending cases in the Labour Court ^(a)

Serial. Nos.	Acts	No. of cases		% share	
		1990-94	1998-02	1990-94	1998-02
(1)	(2)	(3)	(4)	(5)	(6)
1	Bombay Industrial Relations Act	22 457	25 770	5.11	5.70
2	MRTU & PULP Act	142 992	182 414	32.54	40.32
3	Bombay Labour Welfare Fund Act	1 800	610	0.41	0.13
4	Mathadi Hamal Act	3 908	7 616	0.89	1.68
5	Workmen's Compensation Act	17 236	29 756	3.92	6.58
6	Payment of Wages Act	12 664	6 229	2.88	1.38
7	IE (SO) Act	181	233	0.04	0.06
8	Industrial Disputes Act	175 319	172 399	39.89	38.11
9	ESI Act	602	669	0.14	0.15
10	Payment of Gratuity Act	50 347	19 959	11.46	4.41
11	Minimum Wages Act	10 230	5 982	2.33	1.32
12	Other Acts	1732	745	0.39	0.16
	Total	439 468	452 382	100.00	100.00

Note: (a) Cases under some Acts mentioned here like Bombay Industrial Relations Act, MRTU (PULP), Act Payment of Gratuity Act, Industrial Disputes Act are also filed in Industrial Court/Tribunals; cases under these acts account for a large proportion of total cases filed there, with MRTU & PULP Act having highest share (see e.g., Table (a), p.15, in *Important Labour Statistics* for 1994).

IE (SO) Act – Industrial Employment (Standing Orders) Act, 1946; ESI Act – Employees State Insurance Act, 1948.

Source: Compiled from data given in *Important Labour Statistics* (various issues), Office of the Commissioner of Labour, Mumbai

Industrial relations and trade unions matters were the most contentious matters in the state. Together these two issues accounted for 70 per cent to 80 per cent of cases pending with the Labour Court. The MRTU & PULP Act accounted for 30 per cent to 40 per cent of pending cases. The MRTU & PULP Act has been blamed for creating a culture of litigation in the state and hence inhibiting investment flows (see Shyam Sundar 2007, a). In view of these allegations, the pros and cons of the Act need to be reviewed (Box 6.1).

Box 6.1: Pros and cons of MRTU & PULP Act

The MRTU & PULP Act is lauded for several reasons. It provides for the recognition of trade unions at the enterprise level, something that is missing in most other states and even at the Central level. By ensuring 'one union one enterprise', it helps tackle the problem of multiple unions, the most irritating feature of unionism in India. The conciliation and referral processes under the Industrial Disputes Act are lengthy, bureaucratic and even political. In contrast, under the MRTU & PULP Act, the parties to a dispute can *directly* approach the labour judiciary and seek legal redress. Both the parties could get injunctions against the actions of the other; thus, no party could do anything without the due process of law be completed. Thus, it provides easy avenues for both, especially workers, to approach the court to prevent or challenge arbitrary actions.

However, on the negative side, this easy access to the courts that the Act allows has encouraged high amount of litigation. The parties approach the courts apprehending the conduct of some unfair labour practice or the other and get stay orders.

The Srinivasan Committee (2002) found two disturbing consequences of the Act. Firstly, a large number of unions did not seek recognition under the Act. The Committee found that as of 31 December 2001, only 1,445 applicant unions out of 3,302 were granted recognition under the Act. The important reasons for poor response include reluctance of the unions to comply with clauses imposing difficult obligations; long duration of recognition proceedings primarily because of the adoption of membership verification method (the average time taken is two years but there have been cases where it has taken eight years to grant recognition to unions). In the case of Bajaj Auto, it has taken nearly two years for the independent union to replace the existing recognized union affiliated to Bhartiya Kamgar Sena (BKS); by then, the important developments leading to stoppage of production and eventual closure of the factory had taken place (interview with Shrouti). Similarly, the AITUC challenged the recognition of BKS in Bajaj Tempo in Pune in March 2003; it got recognition sometime in the first quarter of 2006. The company and the union then appealed against the recognition order (interview with Damle).

Secondly, the law failed to check unfair labour practices. Both employers and unions are guilty of approaching the court frequently and, as a result, the pendency of cases relating to unfair labour practices increased in all types of cases. The important cause for litigation by workers relates to unfair discharge by employers (an unfair labour practice under Schedule IV of the MRTP & PULP Act). The main reason for high pendency was the long time taken to dispose of cases, which in turn, was due to (a) time consuming procedures adopted to decide on the disputes, (b) frequent and long adjournments sought by the parties, and (c) reluctance of the parties to comply with the procedural requirements of the Act. Litigation and the delay in disposal of cases cannot promote industrial harmony.

6.7 Summary

Virtual withering away of strikes, dominance of lockouts (though this is declining), and high litigation are the three distinct features of the industrial relations system in the state. It is clear that incidence of stoppages of work – whichever measure one uses – declined in the state. Lockouts accounted for more workdays lost, but their share was declining in the state unlike in the rest of the country. Lockout is both a labour market and industrial relations strategy of employers. Lockouts are often “closures in disguise” and are resorted to when unions resist restructuring efforts of the employers or closure of the firm. It is an industrial relations strategy of the firm to weaken union power and counter excessive litigation by unions. Lockouts could indicate not only employer militancy but also the extent of irritation caused by unions to employers. Work stoppage is one of the expressions of conflict. Employers and trade unions fight their battle also in the courts. Litigation is both complementary and an alternative to street battles like work stoppages. Its incidence is higher where laws are more and in cases where issues are subject to legal decisions like legality or illegality of strikes, recognition of unions or verification of commitment of unfair labour practice by either employer or workers.

Chapter 7

Tripartism

There are two types of tripartism forums – the legally stipulated ones and the non-formal ones. The Boards created under the labour laws such as the Industrial Disputes Act, Minimum Wages Act and CLRA belong to the former category. The Indian Labour Conference (ILC) and the state-level Advisory Boards belong to the latter category. Apart from these, the government consults with various social actors in formulating the labour reform proposals. We note below the main features of tripartite and consultative institutions in the state under two laws – the Mathadi Act, 1969 and the Contract Act, 1970.

Mathadi Workers Boards

The state government enacted the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act in 1969 to regulate the employment of unprotected workers such as mathadis and hamals employed in certain employments. It applies to employments mentioned in the Schedule appended to the Act, such as cloth and cotton markets, iron and steel market, docks, grocery markets etc. Under the Act, the government has to establish Boards for mathadi workers, comprising members representing the employers, unprotected workers and the state government. The government has to design a scheme for the full and proper utilization of services of unprotected workers and define the terms and conditions of their work. The Board has to administer the scheme. The representatives of the employers and unprotected workers should be equal in number and the government representative should not exceed one-third of the total members. The government will nominate and specify the terms of office of members of the Board. If the employers or unprotected workers do not nominate their members, there could be a one-person Board until a tripartite Board is constituted. Table 7.1 gives the year-wise break up of the 34 Boards constituted from 1969 till date. There are 10 Mathadi Boards covering Mumbai, Thane and Raigad and 24 Boards in the remaining districts of the state. The Act is not yet applicable to Yeotmal district but there is a proposal to do so (interview with More). Table 7.1 shows that the Boards have been constituted in spurts, with a rise in some years and a decline later and with gaps in between. Four Boards were constituted after a gap of eight years in 2004.

Table 7.1: Constitution of Mathadi Boards: A Time Analysis

Year	Number of Boards constituted	Year	Number of Boards constituted	Year	Number of Boards constituted
1969	2	1976	1	1990	1
1971	2	1978	1	1991	5
1972	1	1984	1	1992	5
1973	1	1985	1	1996	1
1974	2	1988	3	2004	4
1975	1	1989	2	Total	34

Source: Office of the Commissioner of Labour, Mumbai.

It is interesting to note that the state government by a notification dated 3 January 2005 dismantled the tripartite character of the Boards; presently they are one-person Boards, having the government member (No: Miscellaneous 01/05/CR-1654/LAB.9). The proposals to nominate non-

government members are under consideration of the government (Interview with Joint Commissioner of Labour, Mumbai).

The Contract Labour Advisory Board

The Contract Labour (Regulation and Abolition) Act, 1970 applies to establishments employing 20 or more contract workers and to contractors employing 20 or more 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 principal employers should register their establishments and the contractors should obtain license to be eligible to execute work through contract labour. The state government may constitute an Advisory Board – the Contract Labour Advisory Board (CLAB) – under the Act to advise it on matters relating to its administration. According to the Rules made by the Government of Maharashtra in October 1971, the Board shall consist of a Chairman, the Commissioner of Labour, one government representative, five representatives of employers (three representing the principal employers and two representing contractors) and five representatives of workers. The government appoints all the constituents of the Board. The tenure of all, save the government representative, will be three years; the government representative shall hold office during the pleasure of the government. The function of the Board is “to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act”. According to the rules, the chairman of the Board shall decide the dates and venues of the meetings. Thus, the law does not stipulate the number or the frequency of the meetings. Presumably, the chairman decides on the agenda of the meetings. The issues in the meetings will be decided by the majority and the voting is by show of hands. The most controversial clause of the Act is Section 10 (1) which 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:

- whether the process or work is incidental or necessary for the industry;
- whether it is of perennial nature;
- whether it is done ordinarily by regular workers; and
- whether it is sufficient to employ considerable number of full-time workers.

Two important judgements of the Supreme Court on the abolition of contract labour affect the functioning of the CLAB. The apex court held that following the abolition of contract labour, the contract workers would automatically be absorbed as regular workers of the principal employer. The Court argued that without automatic absorption, contract workers would be “rendered persona non grata” and the remedy would be worse than the disease. This judgement, in the context of Air India, was referred to a Constitutional Bench and the case also included contract labour in other public sector units like SAIL (Cox 2002). The Supreme Court then rejected the earlier judgement and pronounced that the scheme of the CLRA does not provide for automatic absorption. The Court argued that abolition of contract labour does not result in unemployment of contract labour, as is often assumed, and that it may be relocated.

The CLAB was constituted four times during the study period of this report. Dada Samant recalled that there was no CLAB functioning for some time in the mid 1990s and around 140 cases were pending resolution. He filed a writ petition in the Bombay High Court on this issue and the court passed strictures against the government. The government quickly

formed the Board, headed by the then Labour Minister. It transacted business briskly and recommended ‘abolition’ of many contract labour cases. Table 7.2 provides information on meetings of the Board since 1996.

Table 7.2: Meetings of Contract Labour Advisory Board (CLAB), 1999-2007

Year	Number of Meetings	Year	Number of Meetings
1996	9	2002	6
1997	2	2003	10
1998	3	2004	21
1999	2	2005	*
2000	1	2006	*
2001	3	2007 (till October)	2

Note: * - The CLAB was not existent.

Source: Office of the Commissioner of Labour, Mumbai.

The Contract Act appears to have been taken seriously only in 2003 and 2004. The CLAB was constituted on 4 January 2002 and dissolved on 3 January 2005. The Legislative Assembly elections for the state took place in mid-2005 and a new government assumed power. The new government did not constitute the Board for quite some time. The new Board was constituted on 21 March 2007 but met only twice (6 June and 8 August 2007) till October 2007. It took up only eight cases which were referred to it by the Bombay High Court.

The state government has so far prohibited employment of contract labour in around 50 activities, among them, security department services, sweeping and cleaning, loading and unloading, canteen services, factory maintenance, housekeeping, moulding, melting, casting and iron pipe fitting department, peons in administrative departments and gardening. The government has prohibited the very activities for which the firms demand freedom to employ contract labour.

To sum up, the tripartite institutions have been functioning in an inconsistent manner, though the government has been proactive in the case of the CLAB. The government has not grasped the relevance and importance of social dialogue, especially tripartism. The government often announces labour reform measures and faces stiff opposition from unions and political parties and withdraws the measures. Employers are discontent that nothing is happening in the formal legal terrain and the unions are unhappy that reform measures are announced or introduced without prior or adequate consultations.

Table A 3: List of labour laws covered under self-certification scheme in Maharashtra

Serial Nos.	Act/Rule
1.	The Payment of wages Act, 1936 and the Rules
2.	The Minimum Wages Act, 1948 and the Rules
3.	The Contract Labour (Regulation and Abolition) Act, 1970 and Rules
4.	The Maternity Benefit Act, 1961 and the Rules
5.	The Payment of Bonus Act, 1965 and the Rules
6.	The Payment of Gratuity Act, 1972 and the Rules
7.	Equal Remuneration Act, 1976 and the Rules
8.	Maharashtra's Workmen's Minimum House Rent Allowance Act, 1986
9.	The Factories Act, 1948
10.	The Bombay Shops and Establishments Act, 1948
11.	Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and Rules, 1980
12.	Industrial Employment (Standing Orders) Act, 1948
13.	Workmen's Compensation Act, 1923

Source: as given in the text.

APPENDIX II

DETAILS OF INTERVIEWS AND MEETINGS

Dr. Vivek Monterio, General Secretary, Centre of Indian Trade Unions, Maharashtra, 24 October 2007, Mumbai.

R.G. Karnik, General Secretary, State Government Employees' Confederation, 1 November, 2007, Mumbai.

Sharad Patil, Secretary General, Employers' Federation of India, 19 October, 2007.

Dr. R. Krishna Murthy, Industrial Relations Institute of India, 11 October, 2007, Mumbai.

Bennet D'Costa, formerly Secretary, Hindustan Lever Employees' Union, Mumbai, 12 October, 2007, Mumbai.

Franklyn D'Souza, former President, Hindustan Lever Employees' Union, Mumbai, 12 October, 2007, Mumbai.

Vasudevan, General Secretary, All India Blue Star Employees' Federation, 22 October, 2007, Mumbai.

P.N. Samant (Dada Samant), Kamghar Aghadi, 10 October, 2007, Mumbai.

Damle, Sukumar, General Secretary, All India Trade Union congress (AITUC), 19 October, 2007, Mumbai.

Arvind Shrouti, Director, Options Positive, 2 October, 2007, Pune.

Rajan Nair, Maharashtra Labour Union (affiliated to Indian National trade Union Congress, INTUC), 4 October, 2007, Pune.

Ajit Abhyankar, General Secretary, CITU, Pune, 4 October, 2007, Pune.

Manu Prasad, Team Leader, Shoppers' Stop, Chembur, 10 November, 2007, Mumbai.

Sharad Rao, Chief, Mumbai Mazdoor Union, 12 November, 2007, Mumbai (A brief chat).

Rama Kant Bane, Secretary, Mumbai Mazdoor Union (BMC), 12 November, 2007, Mumbai.

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