

**GOVERNMENT OF MAHARASHTRA**

NO. MISC-2010/CR-171/LAB-9  
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Date : November 6, 2010

**To,  
All Social Partners.**

The Labour department has formulated a Labour Policy for the first time in the State. A draft Policy is uploaded here. Kindly give your suggestions and objections on the same by 31<sup>st</sup> of December, 2010 on email- sudinagricos@yahoo.com.

Thank you

With regards,

Yours sincerely,

**( Dr. Kavita Gupta )  
Principal Secretary (Labour)**

Encl : As above

# GOVERNMENT OF MAHARASHTRA

## DRAFT LABOUR POLICY 2010

### ( for suggestions and objections from social partners)

#### Introduction

This policy document represents a statement of intentions. It provides guidelines for future action but, in itself, is not legally binding. It may, however, lead to the introduction of new laws to give positive expression to stated intentions and thus provides a framework for change.

This **Labour Policy 2010** represents a statement of the Government's intentions concerning the world of work and thus provides guidelines for interactions between workers and employers in the organized sector, the role of trade unions and employers' organizations, guidelines for the protection of workers in the unorganized sector, including of persons in self-employment, and guidelines for the intervention of government directed to ensuring policy intentions are actually implemented.

Although the Government of India does not have a labour policy as such, it has prepared a series of policy documents that are integral to labour protection and related matters. Accordingly, this labour policy for Maharashtra State has taken account of the policy pronouncements of the Government of India with particular reference to its Industrial, Investment & Infrastructure Policy of Maharashtra 2006, draft, National Employment Policy, Safety and Health Policy, Child Labour Policy, and the National Policy on HIV/AIDS and the World of Work.

The Industrial, Investment & Infrastructure Policy of Maharashtra 2006 has special reference to labour. It briefly talks about creating a Labour Market Information Cell (LMIC) which will provide the pivotal linkage between the employers, the education and training providers, and the prospective employees. The cell will compile, collate, and disseminate information about trends in the labour market, nature of skills in demand, and the nature of skill sets stock and training available. The cell will function as a coordinating body and provide the industry and education and training providers the support to ensure greater synergies between the two. In addition to this, The policy also gives emphasis to providing a conducive labour environment both in terms of availability of skilled man power and a favourable legislative framework for facilitating investment in various sectors and to labour reforms.

The draft National Employment Policy is of particular significance in that it makes particular reference in its preamble to the need for employment that is productive, decent and fair.

***Employment is the main source of livelihood and self-fulfilment for most women and men. It is critical to the way women and men live and view their lives. A well-nurtured and productive labour force contributes to a dynamic economy and equitable society. Lack of access to employment that is decent and remunerative, lowers self esteem and leads to denial of basic needs of the individual and the family, and can lead to social instability.***

***It is, therefore, important to work towards the goal of decent and remunerative work for all women and men seeking such work, in conditions of freedom, equity, security and human dignity.***

### **Draft National Employment Policy, 2008**

**Labour Policy 2010** should not be seen as an instrument of social change, solely concerned with issues of welfare and assistance to workers. It must also be seen as an important component of economic progress in that key elements of a modern labour policy have a significant impact on the economic well-being of both workers and employers. The State's workforce must be seen as an economic resource rather than creating social burdens. Accordingly, the guidelines for the utilization and reward of that resource have a significant impact on the State's economic development efforts.

### **The challenge**

The Government of Maharashtra faces a number of challenges in ensuring that its work force is productive, protected, motivated and fairly treated. It is clear, however, that a labour policy must not only address issues that concern workers but also consider the position of employers. It is the employers who create employment opportunities through their willingness to invest and take risks, and who thus provide actual jobs. Accordingly, a balanced labour policy must ensure that issues relating to the competitiveness and efficiency of enterprises, and the related flexibility of labour markets, are considered alongside issues of protection and fairness for workers.

The preparation of such a policy also requires balance in the consultative process with government, employers and worker representatives actively engaged in policy shaping activities.

### ***The unorganized sector***

A major challenge to the Government is to improve the position of workers in the unorganized sector where protection is virtually non-existent, workers are caught in the low-wage low-productivity trap, where they have no voice, where safety and health considerations are largely ignored, and where social security is non-existent.

Some workers in the unorganized sector have an employer, others are self-employed, but both categories need assistance. Maharashtra has demonstrated a capacity to assist workers in the unorganized sector through the introduction of specific-purpose boards that have succeeded in bringing unorganized sector workers under the protective umbrella of the organized sector. It is estimated there are some 40 million workers in the unorganized sector. Although some have had their status transformed, the millions that remain unorganized present a major challenge for Government. Indeed, with the number of unorganized sector workers more than 10 times the number in the organized sector, the protection of workers in this sector and improvements in their conditions and working environment arguably represents the Government's greatest challenge over the next few years.

### ***Safety and health at work***

Work accidents and work related diseases represent a significant social and economic cost to the State. Many accidents have a human error element and are thus avoidable. Work related diseases, although more difficult to manage because of the lead-time between exposure and the on-set of sickness, are also avoidable. The reduction and eventual elimination of both accidents and diseases requires that employers and workers change behavior and embrace a culture of safety in all workplaces, whether large or small, high risk or low risk. Behavior change requires new awareness and knowledge, new skills, and a stronger commitment to prevention. With more than 3 million work establishments throughout the State, improved safety and health at work is of the highest priority.

### ***Competitive pressures***

Increasing globalization sees more and more enterprises from more and more countries competing in the world's product markets. Trade liberalization together with relatively free flows of financial and human capital, and supported by the pervasiveness of information computer technology, means that Maharashtra's enterprises face an intensity of competition in both regional and international markets that is unlikely to diminish in the foreseeable future. Obviously, not all Maharashtra's enterprises are directly engaged in world or regional trade but as more and more enterprises, both large and small, become a link in the supply chains that characterize the modern production process they, too, will feel the pressure of competitive forces.

Increasing competition relating to price and quality, as well as the need to meet tight production deadlines, creates a need for Maharashtra's enterprises to be more cost efficient, more innovative, and more flexible. At the same time, the State is committed to improving working conditions and the general working environment for its workers in all sectors, thus requiring its establishments to provide increased levels of labour protection.

Herein lays the challenge for the State's policy makers. Employers want to improve their competitive situation by seeking greater flexibility in the operation of the State's labour markets with the aim of reducing unit labour costs. Workers seek increased rewards for their productive efforts through increased pay, improved working conditions, safer and healthier workplaces, and better social security. All of these have the potential to increase labour costs, both wage and non-wage, and thus impact negatively on the drive for increased competitiveness.

It should be stressed, however, that there are real and potential benefits to enterprises that adopt a positive approach to compliance with labour protection standards and, indeed, for an increasing number of investors such compliance is an essential factor in the decision-making processes for new investment. In short, fair labour standards and high levels of compliance by enterprises may well be a source of competitive advantage, together with price and quality considerations, rather than a deterrent to private sector growth.

Bilateral interactions between employer and workers may assist in resolving a situation in which both parties want more and better, but these matters are of such significance to the nation as a whole, government intervention is required. Such interventions must strike a reasonable balance between encouraging economic efficiency and competitiveness in the interest of employers, on the one hand, and greater protection and fairness in the interest of workers, on the other. There is also a distinction to be made between positive Intervention and negative interference on the part of government. The former can contribute to enterprise performance and growth: the latter to increased costs and excessive bureaucracy.

Maharashtra's industrial sector is not the engine of growth it aspires to be. It faces increased competition from imports and is losing jobs to other states offering more benefits to attract investors. Job growth is in the unorganized sector, a sector that is largely unprotected.

Clearly, finding a suitable balance between competitiveness and labour protection is a major challenge for the State, its workers and employers.

### ***Productivity enhancement***

Increasing productivity in general, and labour productivity in particular, is a fundamental requirement for improved competitiveness, increased profitability of enterprises, and increased rewards and benefits for workers. Insufficient attention is given to the importance of productivity in workplaces and, indeed, frequently there is no real agreement as to how it can be measured and improved. The Government can assist in productivity enhancement but the major effort must come from employers and workers. This opens a new area for cooperation between employers and workers, and represents a new challenge for government to determine how it might assist enterprises in their quest for productivity enhancement, but without the negative interferences referred to above.

## ***Vulnerable groups***

There is a need for targeted protection and assistance to some of the State's most vulnerable workers including children, young persons, women workers, disabled workers, and contract workers in both organized and unorganized sectors. In addition, a number of issues of concern to the State's workers and employers, including HIV-AIDS, sexual harassment and discrimination, require policy level interventions as a take-off point for specific action within the work place.

## **Purpose**

The overall purpose of **Labour Policy 2010** is to contribute to economic and social progress throughout the State by supporting improved performance for work establishments and appropriate protection for workers. The policy is intended to

- provide protection to workers throughout the State and encourage them to be more productive, more efficient and more motivated
- encourage employers to see labour protection not solely as a production cost but as an investment for future gains
- signal on the part of Government an intention and desire for inclusiveness -- that **all workers** irrespective of their skill level, location, gender, or status are part of the State's workforce and deserving of recognition and assistance
- indicate to the people of Maharashtra that the government embraces the principles of good governance and supports the application of those principles in its dealings with workers and employers and the community at large on all matters relating to labour
- inform the international community, potential investors, the overseas buyers of Maharashtra's products, and international observers, that the State is committed to labour protection and fair treatment of its workers and conscious of its obligation under international treaties and conventions.

## **Good governance**

Governance is concerned with the way in which decisions are made and implemented. Good governance is not only the concern of governments but applies to all institutions where decision making and decision implementation take place, including work establishments, trade unions, non-government organizations, and community groups.

The Government is conscious of the need for the application of the principles of good governance concerning labour matters including policy shaping and formulation, policy implementation, and the operational interventions and procedures that support the implementation process through its Department of Labour.

With regard to the formulation and implementation of **Labour Policy 2010** the Government is committed to the following principles.

**Participation** in decision making and implementation through representative institutions and their representatives, and allowing those affected by decisions to have their say in the formulation of those decisions. This requires that such institutions be permitted to exist, are free to express their views, and are recognized as legitimate. It also encompasses participation by men and women.

**Adherence to the rule of law**, requiring that decision making is underpinned by fair legal frameworks, impartial law enforcement arrangements, equal protection and treatment, respect for and protection of human rights for all, including minorities, an independent judiciary, and the absence of corruption in law enforcement agencies.

**Transparency** in decision making that ensures that decisions are made and implemented in accordance with clear procedures and rules, that information is available in a form that is easily understood, and that information is accessible to those who will be affected by such decisions and their implementation.

**Development orientation**, meaning that decisions and their implementation reflect national and state development goals and priorities, and are made in the interest of sustainable progress, both social and economic, as distinct from decisions that reflect the interests and aspirations of the decision makers, or a particular section of the society.

**Responsiveness in decision making**, to ensure that decision making institutions and processes take account of and attempt to serve the interests of **all** the legitimate stakeholders.

**Consensus orientation**, requiring that arrangements are in place to moderate and, if necessary, mediate the competing interests of those affected by decisions and reach a compromise that is in the best interests of the society as a whole.

**Equity and inclusiveness**, to ensure that those who have a stake in the decision making process do not feel excluded from the mainstream and requires that all groups, including the most vulnerable, get the opportunity to improve or at least maintain their well-being.

**Effectiveness**, to ensure that decisions and their implementation produce positive results and outcomes, as distinct from mere outputs, and meet the needs of those intended to benefit from the decisions, and society as a whole. It also means that the decisions take account of their potential adverse impact on society, or segments of it, including the sustainable use of resources and the protection of the environment. Effectiveness also requires that appropriate arrangements are in place to monitor and evaluate the implementation of decisions.

**Efficiency** in the decision making and implementation process means making the best use of available resources – both human and non-human – and includes making the best use of the time available to ensure that the results and outcomes are delivered in a timely manner. Efficiency, as with effectiveness, also requires the existence of sound management practices to ensure that resources are used to the optimum advantage.

**Accountability**, meaning that the decision makers – both institutional and individual – are responsible to those affected by their decisions and actions. In a wider sense, this means government departments and bodies, the private sector, and civil society organizations, must be accountable to the public at large and to their institutional stakeholders. Accountability extends beyond accountability for the use of resources and achieving results, to include accountability for the processes of decision making as well.

## Policy elements

### Element 1 Coverage of protection

The State of Maharashtra for some years has made significant and specific efforts to address the issue of labour protection in the unorganized sector. The first Mathadi Board became operational in 1974 and represented the State's first major effort to protect a group of workers in the unorganized sector and bring them under the umbrella of labour protection established by law. This was an important step in demonstrating that it was possible to transform unorganized workers into organized workers with protected pay, access to social security, and a voice on matters concerning their working conditions. The experience of the first Mathadi Board has

now been replicated in a number of cities, and boards for other occupational groups such as security guards, domestic workers and construction workers are either in the process of being established, or already operational.

With in excess of 90% of Maharashtra's workers engaged in the unorganized sector economy, the sheer number requiring protection represents a major challenge for the Government and its Department of Labour. The Department is urged to prepare a strategy of inclusiveness to devise ways in which the mass of unorganized, unprotected workers can be brought into the labour protection net, not simply on a short-term basis but under arrangements that are sustainable in the longer-term.

Unorganized workers fall into a number of occupational groups, some of whom are employees and others self-employed. In both cases, however, the workers concerned need protection. Those unorganized sector workers who have an employer, typically, are engaged in low-pay low-productivity jobs, have no social security, are not unionized, and work in conditions that are unhealthy and hazardous. Because of their employer-employee status such workers are protected by minimum wage laws but these are not applied for various reasons possibly including ignorance of the law, or knowledge of the law but a failure to respect it because it is too costly to do so, or knowledge of the law coupled with a deliberate intention to ignore it and, essentially, exploit workers both with regard to the level of wages paid and hours worked.

These workplaces, currently, are not inspected by labour inspectors largely because labour laws, with the exception of minimum wage laws, do not apply but also because inspectors are fully occupied with inspection and related matters in the organized sector. Indeed, the current level of inspection penetration of the organized sector is already too low, leaving no time for inspection of establishments in the unorganized sector. This situation must change. Concentrated inspection will bring unorganized sector workers into a protective environment of minimum wages and maximum hours of work. It may also provide an opportunity for some of them to register with the Labour Welfare Board and, through contribution, together with contributions from the employer and the State, have access to a range of welfare benefits. It may also be possible for arrangements to be made for such workers to participate in social security schemes.

Extending labour protection to the unorganized sector requires that steps be taken to amend laws to bring all establishments where one or more persons are employed within the scope of existing laws. This can be done by extending the coverage of the Factories Act, 1948 and the Shops and Establishments Act, 1948. The Department of Labour will pursue this as a matter of high priority.

Inspection of the unorganized sector will require a different approach from that used for the organized sector where the employer-employee relation is clearly defined, where family-member workers do not complicate the situation, and where the distinction between a worker, as distinct from a self-employed person, is relatively clear. The Department of Labour has already commenced to re-train some of its

inspectors to undertake regular inspections of unorganized sector workplaces and is preparing the necessary systems and monitoring procedures to enable this work to proceed. The Government is supportive of this initiative.

Initially, labour inspectors will adopt a relative informal approach to this new area of inspection relying on the provision of information concerning wages and hours of work, and giving advice to employers to ensure they understand what they need to do to actually comply. Inspectors will be made aware that unorganized sector workers should not become worse off as a result of the inspector's intervention. The objective is to improve the position of workers, not make them worse off through possible unemployment due to rigid approaches to law enforcement.

The inspection of unorganized sector workplaces will also require inspectors to address the issue of child labour, as well as the employment of young persons 14-18 years of age. Clearly, the employment of a child who has not attained the age of 14 years is illegal in hazardous employments and occupations unless, of course, a parent is also the employer of his /her child. Some parents, out of poverty or ignorance or both, require their children to work and thus inspectors need to consider and address parental attitudes and behavior, along with other factors in their handling of child labour issues.

The situation with young workers or adolescents 14-18 years of age is less complicated because they are permitted to work, provided the work is of a non-hazardous nature. In such circumstances, the role of the inspector is to advise employers what they must do to avoid hazardous work and dangerous processes for such young persons.

Safety and health laws do not apply to unorganized sector workplaces but inspectors should be in a position to give advice to employers as to how work can be organized to eliminate, or at least minimize, the risks to workers safety and health. This advice needs to go beyond the provision of protective clothing and equipment to include a basic understanding of hazards in the workplace and how they can be eliminated or controlled.

The situation of self-employed workers is even more complicated. They are not in an employment relation at all and have no protection under the law relating to hours of work and wages. In some cases, children are engaged as an extension of the self-employed person, often a parent but, as the child is not an employee, protection is more difficult to provide. In such cases, education, awareness and persuasion may be more appropriate.

Some self-employed persons in the unorganized sector may appear, on the surface, to be truly self-employed but in reality have some arrangement with an enterprise, dealer or agent that has some resemblance to an employer-employee relation. The actual situation of self-employed persons requires closer study, including their access to welfare and social security schemes. If, for example, self-employed persons were to participate in provident and welfare schemes to which workers and

employers both contribute, the self-employed person would need to pay both the employers and the workers contribution which may be beyond their capacity to pay. It would be useful for the Department of Labour to undertake some rapid response surveys to assess the working conditions and the working environment for self-employed persons to determine more precisely priority needs for protection.

If a board system is to be introduced for self-employed workers, consideration needs to be given as to whether such a system would operate on the basis of selected occupations or whether a general board is preferable. As a starting point it is necessary to identify the self-employed occupations most in need of protection, assess their specific needs, identify sources of funding to ensure sustainability of services offered, introduce a system of registration, and decide on the modalities of service delivery.

Improved safety and health for both unorganized sector employees and self-employed persons is an identified area of need, but not one necessarily accorded high priority by workers themselves. If a board system is accepted as the preferred approach to delivering protection, inspectors appointed under a board need to do much more than register workers. They need to be trained in the basics of work safety and health and provided with the knowledge and skills to enable them to inform and advise workers on what they can do by way of self-protection.

Welfare Boards for both domestic and construction workers are in the process of being formed and protocols for the registration of workers under these boards have been prepared. The operation of these boards will provide various forms of protection and assistance to an additional 3 million unorganized sector workers, thereby at least commencing their transformation from unorganized to organized status.

## **Element 2                      Contract Labour**

The issue of contract labour is one on which employers and unions are strongly divided. Employers see contract labour as an essential component of labour market flexibility that will contribute to economic efficiency and competitiveness. Trade unions see contract labour as a form of exploitation and a means to deny workers permanent jobs.

Contract labour must be distinguished from outsourcing of tasks to particular entities for cleaning and security services, computer technology expertise, and consultancy services. These are commercial contracts for service as between the user and service-provider and fall outside the scope of labour legislation. The provider-entity, however, is an employer and thus is required to comply with all appropriate labour laws.

Out-sourcing and commercial contracts are not the real issue. The real issue is the employment of labour, under contract, for specific durations or specific tasks as a means of cost-cutting, or to provide flexibility, or as a substitute for jobs that would normally be regular and permanent.

The Department of Labour proposes to facilitate discussions with the social partners on the issue of contract labour with a view to deciding on a model that provides both fairness and flexibility. This may involve some discussion on possible amendments of existing laws as, for example, preventing employers from using lower-cost contract labour as a substitute for permanent workers, and by paying a loading to contract workers to compensate for their loss of benefits including leave and access to social security. It might also consider whether the current system of contracting agents as the employers of contract workers, as distinct from the direct employment of such workers by the principal employer, is in the best interests of works and employers.

The productivity of contract workers is also an issue for tripartite discussions.

The Department of Labour, through discussions with social partners as mentioned above, would like to evolve models and/or structures through which a win-win situation can be developed, both for the employers and the workers in a globalized scenario. The win-win situation could be developed if the employer is given flexibility to engage labour and the labour is ensured protection of rights. One such proposal could also be to engage contract labour with a loading factor as a premium for flexibility.

It is also suggested that in order to develop a long term solution on contract labour and develop models to meet the twin concerns of flexibility to industry and fairness to labour, it may be necessary to go through a transition phase in which, the first step could be to study the present labour laws and their actual implementation to identify on what is incentivising contract labour and disguised employment? It would also be necessary to define fairness in terms of “equal treatment”. What is “equal treatment” would also have to be agreed upon more specifically between all social partners in a clear-cut manner.

Further, there would be need to work out solutions along with changes in law if required, which would further the objective to reach towards the end goal of increased productivity in a situation of ‘flexibility’ and ‘fairness’ as defined by ‘equal treatment’.

### **Element 3    Bilateral interactions in the workplace.**

Prime responsibility for relations between employers and workers in workplaces obviously rests with the concerned employer and workers. Employers and workers must take greater responsibility for the issues that affect them and, in many cases,

need to develop a greater maturity in their handling of labour relations in workplaces. Such relations extend to issues of labour protection.

Workplace bilateral relations essentially are of two types, namely, negotiation between workers and employers leading to binding agreements, and consultations between workers and employers leading to advice to the employer. Bargaining normally takes place between a representative group of workers in the form of a trade union that has a legal existence and is recognized for bargaining purposes. Bargaining, however, can also take place between a group of workers such as a workers' committee and management if there is no union in the workplace, or the union movement is too fragmented for meaningful bargaining to take place. Enterprise level bargaining offers many advantages and deserves to be encouraged provided it is done in good faith, and the parties have both the ability and willingness to bargain. Ability and willingness should not be assumed and employers, workers, and their respective organizations, together with government bodies as appropriate, have an important role to play in ensuring that bargaining to resolve conflict does not lose sight of common interests.

Bargaining need not be confined to matters of substance concerning such things as pay, overtime, work rosters, rest breaks, safety, and working hours but can also cover a range of procedural issues including agreement on the arrangements for handling complaints and disputes. These procedural arrangements can include a clear internal grievance procedure to handle worker complaints as well as procedures for resolving more serious disputes.

Enterprise level bargaining requires that procedures are in place that recognize the basic right of workers to organize and bargain and that these rights are not frustrated by unnecessary and excessively detailed bureaucratic procedures. Recognition is fundamental and this is an issue the trade union movement itself must confront.

Consultation leading to advice is also to be encouraged through the creation of various enterprise level committees including works councils, safety and health committees, welfare committees, training committees, sexual harassment committees, and other similar bodies. In such committees worker and employer representatives come together to share information, discuss problems and make decisions in the form of recommendations to management. Such forums can play a crucial role in resolving issues before they escalate into major problems and disputes. It is important, however, that consultative bodies have access to reliable information, that worker representatives are independent of management, that management representatives are sufficient senior to speak on behalf of the employer, and that the outcomes of discussions are made available to workers in a form they can readily understand.

Enterprise level consultative bodies have an important role to play but should not be used as a means of excluding, by-passing or minimizing the influence of trade unions.

Consultative bodies give advice to employers; representative and recognized unions negotiate binding agreements.

Clearly, smaller establishments will not be able to establish and maintain the same consultative arrangements expected of larger establishments, but there is no reason why they cannot share information and hear the voice of workers through less formal procedures. Employers can share information through notice boards, circulars attached to workers pay slips, and calling general meetings. It is essential, however, that information be communicated regularly and in languages that workers readily understand. Communication between workers and management can be encouraged through general meetings as well as the introduction of suggestion box schemes provided, of course, such schemes are not mere window-dressing with suggestions never acknowledged and generally ignored.

The very nature of employer-worker relations is such that disagreements and conflicts are inevitable, if not always openly expressed. Establishments can take steps to prevent disagreements escalating into conflict and possible disputes by ensuring that procedures exist for handling complaints within the establishment itself by the application of a clear, fair and time-bound grievance procedure. Such a procedure would establish a step-by-step approach to handling complaints with the emphasis on complaints being resolved at the lowest rather than the highest step in the procedure. Such a procedure would come with guarantees that workers making complaints would be protected from punishment and reprisals from employers for lodging such complaints.

Improved workplace cooperation and better industrial relations, essentially, is a matter for employers and workers in each individual workplace. It is enterprises that invest and take risks, enterprises that pay wages and benefits, enterprises where most accidents occur, and enterprises where complaints arise and are best resolved. This does not mean, however, that employers' organizations and trade union organizations have no role to play. They have a major role to play in training and advice concerning improved workplace relations and the government, too, can play its part. In this regard, the Government will ensure that the Department of Labour prepares and posts on its website guidelines for improved workplace cooperation for establishments to download, and also for a model grievance procedure to be made available for workplaces to modify and adapt as appropriate to meet their individual requirements.

The Government is committed to improved industrial relations in all establishments whether large, medium or small and requires its Department of Labour to demonstrate this commitment by preparing and implementing a time bound action strategy that further elaborates on the guidelines contained in this policy document as they apply to workplace industrial relations.

The essence of improved bi-lateral relations can be reduced to four things – organization, recognition, willingness and ability. Workers must be organized into representative bodies, those bodies must be recognized for bargaining purposes,

and employers and unions must be both willing and able to bargain. In the organized sector, these elements are present at least to some degree but in the unorganized sector a start is yet to be made. That starting point is effective organization. Organization of workers on an area basis rather than the traditional occupational or industry lines may give workers the voice they sadly lack in this sector and allow them to progress from individual and largely ineffective interactions with their employers to interactions through representative groups.

Even in organized sector, the Department would endeavour to encourage improvement of bilateral relations and a dialogue process between the employers and the workers. The Department would endeavour to see that there are complaint boxes and forums through which the workers can give suggestions or address other grievances. It is important to start this process of dialogue in the unorganized sector so that the workers in the unorganized sector are able to find a mechanism for encouraging any bilateral discussions and redressing their grievances.

#### **Element 4 Industrial disputes**

An industrial dispute is normally understood to mean a disagreement or difference between an employer and an employee or employers and employees concerning matters relating to employment, work, wages, hours of work, privileges, rights or duties of employers and employees, dismissal, demarcation issues between employees, and matters arising from an agreement, settlement or award.

In an economy operating under market forces labour disputes are considered inevitable and, indeed, 'normal'. Employers and workers have both conflicting interests and common interests. The conflict creates the need for both parties to come together to try to resolve their differences either informally or formally. It is the common interest, however, that provides the motivation to come to an agreement and actually resolve their differences.

Employers and workers both benefit from dispute prevention which requires that arrangements are in place within the workplace to address problems as they arise. Accordingly, the proposed introduction of grievance redressal machinery in establishments employing 20 workers or more to address individual grievances is a step in the right direction. The effective operation of this machinery, however, will depend on the commitment of both workers and employers to follow its procedures, and not lose sight of their common interests. The grievance procedure, presumably, will apply to individual rights disputes and not interest disputes thereby requiring that other arrangements apply for resolving such interest disputes.

By their nature, interest disputes lend themselves to negotiation and bargaining whereby the two parties come together to talk and listen, discuss their differences, are prepared to make concessions, and seek to reach a binding agreement. In theory, therefore, it should be possible for all interest disputes to be resolved within the workplace, provided suitable institutional arrangements are in place and the

parties have the required information, willingness, and ability to solve their problems. Clearly, however, a large number of disputes are not resolved in the workplace thereby requiring the government to provide alternative institutional arrangements and procedures for conciliation, arbitration, and adjudication.

The Department of Labour is urged to consider approaches to dispute resolution that are fair, seen to be fair, and speedy. At present, cases that come before Labour Courts can take several years to settle suggesting that procedures need to be streamlined. Rights disputes, or disputes over existing entitlements established by law or agreement, are essentially legal disputes and are not really amenable to conciliation. Settling rights disputes in many cases is a matter of knowing the law, applying it to the facts of the case, and making a decision. Labour inspectors have an important role to play in this regard both during their visits to establishments to undertake routine inspections, and also when receiving complaints from workers. It may be possible to 'fast-track' such cases without compromising the fairness of outcomes.

Interest disputes are well suited to conciliation if negotiation fails. Interest disputes are concerned with future benefits including higher wages, shorter hours, additional benefits and improved safety and health in the workplace, and invariably are collective in nature. Ideally such disputes are handled by negotiation with the aim of reaching a mutually acceptable agreement, binding on the two parties. Conciliation is really an extension of the negotiation process in which an independent third party, acting as a combined facilitator and resource person, brings the disputing parties together and assists them to reach an agreement. The conciliator has no power to impose an agreement – the dispute belongs to the disputing parties and is for them to resolve.

As Maharashtra's economy grows it can be expected that workers will seek more benefits from establishments as their share of the proceeds of production. Employers may offer increased benefits but the extent to which these do not measure up to workers expectations, more interest disputes will result. Such disputes may be resolved by the procedures laid down in collective agreements, involving the appointment of a conciliator by the disputing parties themselves. This is to be encouraged but it can still be expected that a large number of interest disputes will be referred to the Department of Labour for settlement. The Department has a number of experienced conciliators but all lack training in the skills and techniques of conciliator and the capacity to bring innovative solutions to sometimes complex issues. Accordingly, the Department is urged to plan and implement a comprehensive training programme for its conciliators, both existing and new. Additionally, and particularly if the need for conciliation services increases, the Department should consider identifying conciliators from the private sector, possibly on a retainer basis. The issue of identifying and recruiting suitable persons from the private sector and the issue of payment for their services would need to be addressed. One approach, of course, is for the disputing parties to appoint their own conciliator and share the costs.

On the notification of an industrial dispute, the Office of the Labour Commissioner must intervene quickly with such intervention coming from an officer sufficiently senior to resolve the issue. It is acknowledged that required interventions from the Office of the Labour Commissioner would be improved if staff positions currently vacant were filled as soon as possible. There may also be advantage in Department of Labour officers visiting trade union offices more regularly to increase their awareness of the existing industrial relations climate and become alerted to potential flash-points.

At present industrial disputes are confined to the organized sector, but if and when the unorganized sector finds a voice and its knowledge of protective laws increases, rights and interest disputes can be expected with related staffing implications for the Department of Labour.

### **Element 5 Improving labour productivity**

There is little doubt that increased labour productivity is of fundamental importance in improving the well-being of workers. Workers, however, and indeed some smaller employers may have no real understanding of the concept, and even less acceptance of how it might be measured. A worker operating under a piece-work pay system may have some appreciation of its importance as he or she strives to produce more in a given time period to increase the level of pay. This approach, however, is purely a physical measure of productivity, and one that stresses the path to higher rewards in terms of working faster and harder.

Apart from physical measures of productivity, financial measures are used as, for example, with unit labour costs where productivity is measured by dividing total costs by the number of units produced.

Whatever measures are used it is important that there be some agreement between workers and employers on those measures, particularly if productivity gains are to be used as a basis for deciding wage increases.

The Government supports the preparation of a State-wide productivity policy not only concerned with labour productivity but also addressing productivity in general. The preparation of such an all embracing policy is best undertaken by existing productivity organizations throughout the State. It is important, however, that a comprehensive policy give due attention to labour productivity that extends far beyond exhortations that workers must work harder.

Labour productivity gains can be generated through many initiatives in the workplace including improved safety and health, less industrial disputes, better equipment and machinery, improved technology, better work organization, less accidents, the application of information computer technology, and a general approach of encouraging innovation and 'working smarter'. Apart from changes

within the workplace itself, a range of external factors beyond the immediate influence of employers and workers have a significant impact on productivity levels. These include improvements to infrastructure and services (roads, communications, power, water), improved skill levels of workers, better health services, better transport, and improved living conditions for workers.

Productivity enhancement is not an objective in itself but a means to secure increased benefits for both workers and employers and, indeed, society as a whole. This raises the issue of how productivity gains can actually be shared. Employers rightfully claim that in many cases productivity gains are the result of management initiatives including new work processes, the introduction of new technology, less wastage of raw materials, increased training, and improved workplace cooperation. This additional investment by employers deserves increased rewards in the form of increased production and higher financial rewards in the form of profits, dividends and retained earnings.

Workers rightfully claim that productivity gains could not be secured without them actually implementing changes introduced by management and, indeed, in some cases proposing changes to improve work processes and work stations, to reduce wastage, improve lighting and temperature conditions, and instigating arrangements for improved consultations.

Clearly, there is scope for bargaining over productivity gains within the enterprise, provided both sides are willing to do so and information on productivity movements is shared and readily understood. Bargaining at enterprise level is to be encouraged and can result in agreement as to how productivity gains can be shared. It may, however, create some problems for an industry in which some enterprises have registered productivity gains and others have not. Workers in low productivity enterprises, seeing that workers in higher productivity establishments have secured wage increases for work that is the same, may agitate for pay increases thereby leading to spill-over effects that may be harmful for low productivity establishments.

Productivity increases also apply to the nation as a whole which raises the question as to how workers in the unorganized sector or those in the organized sector without representation can secure a share of productivity gains. This would need to come through adjustments to the different categories of minimum wages, possibly through special cases (say every 2 years) where wages are adjusted solely on productivity grounds as distinct from changes in the cost of living.

The Government strongly supports initiatives to increase productivity throughout the State and urges the Department of Labour to work in cooperation with existing productivity bodies to raise awareness on labour productivity matters in particular, and encourage both employers and workers to initiate changes in the workplace that lead to increased productivity. The Department of Labour should initiate discussions with a local chapter of the National Productivity Council, together with representatives of employers and workers to establish a workable framework for productivity improvement throughout the State, and for both organized and

unorganized sectors. The same group might also discuss the question of sharing productivity gains with workers – permanent and contract, organized and unorganized – with a view to advising on sharing gains through higher wages, higher piece rates, other forms of performance related pay, profit sharing, equity participation, or other schemes.

Productivity enhancement in work establishments, in the first instance, requires leadership and commitment from management. Workers must cooperate if improvements are to produce tangible results but the first step must come from management. This is not a matter of compulsion but one of education and self-realization driven by the efforts of employers' organizations, productivity councils, and even trade unions provided unions have some assurance that productivity gains will not lead to retrenchments.

## **Element 6 Safety and health, work accidents and diseases**

The Government is aware of the need to establish occupational health and safety institutional arrangements at industry and enterprise levels that emphasize the key principles of good governance including participation, transparency, responsiveness, accountability, efficiency and effectiveness. There is also a need to

- (a) strengthen the capacity of the Department of Labour to effectively implement occupational safety and health policies and laws for the benefit of both employees and employers,
- (b) assist industries and enterprises to assume greater self-responsibility for the elimination of workplace hazards and the prevention of occupational diseases and accidents,
- (c) encourage increased public awareness of occupational health and safety issues.

There is a need for a stronger emphasis on accident and disease prevention at all levels.

**“Building and maintaining a ‘national preventative safety and health culture’ means increasing general awareness, knowledge, and understanding of the concepts of hazard and risk, starting from the age of basic education and continuing throughout working life. Such a culture requires the development of practices that contribute to the prevention and control of risks at all levels. It should include the promotion of safety consciousness in general, and an openness to**

**build on lessons learned. It can be significantly enhanced by strong leadership and visible commitments to high standards of occupational safety and health. Such a culture can make a contribution to creating decent work by encouraging respect for workers' safety and dignity."**

**"ILO, Geneva, 2007."**

Improved safety and health in the State's work establishments starts with the preparation and implementation of an occupational health and safety policy whereby the establishment commits in writing that it will

- (a) address hazards and risks in the workplace,
- (b) outline the procedures and responsibilities for preventing, eliminating and minimizing the effects of these hazards and risks,
- (c) prepare emergency management plans for each workplace,
- (d) specify how training and information are to be provided to workers at the workplace and indicate the consultative arrangements to be put in place for both the preparation of the policy and its implementation.

The Department of Labour will have responsibility for ensuring that establishments do in fact prepare a safety and health policy, and also that rules are prepared to support policy implementation. The Department will prepare a model policy document and rules to be posted on its website for enterprises to download and modify to meet their particular requirements. The Department should also conduct training activities to assist enterprises to prepare their occupational health and safety policies and rules.

The Department of Labour will encourage enterprises to see occupational health and safety not as a separate and 'stand-alone' issue but as an integral part of the overall business. Enterprises should be encouraged to see occupational health and safety expenditures not simply as an expense item in their financial accounts but, rather, as an investment that generates future benefits through a better protected, more motivated, and more productive workforce.

The practice of tripartite spot audits within establishments, using on-site representatives of employers and workers is supported and encouraged, as is the use of private safety audits.

Many larger establishments have taken positive steps to improve their safety and health procedures and performance, and can serve as a model for other enterprises to replicate. The safety and health situation in the State's small and medium sized enterprises and the unorganized sector remains a serious challenge. Such

enterprises lack technical knowledge of safety and health issues, lack resources to implement programmes and, generally, see other aspects of the production process as having higher priority than safety and health.

The Department of Labour should consider a targeted approach to small and medium enterprises assessed as high risk because of the inherent nature of the work they perform, or through a formal but simple process of risk assessment. The Department should encourage big-brother little-brother partnerships wherever possible that would see larger enterprises with good safety and health practices providing assistance to smaller enterprises with poor standards. Safety and health improvements need not be high cost and the Department should provide advice to enterprise that will enable improvements to be made at relatively low cost.

The Department of Labour has a cadre of inspectors with technical qualifications in various fields of engineering who undertake safety inspection, and a much smaller group who attend to occupational health matters. The Department's general inspectors have no training at all in even the basic aspects of work safety and health and the Department should reconsider this matter. General inspectors undertaking the inspection of shops, commercial establishments, farms and even small factories could be trained to check compliance on basic safety and health matters including such things as machine safety, materials handling and storage, housekeeping, protective equipment and clothing, noise, dust, ventilation and other areas of occupational hygiene. When inspectors trained in these areas confront problems beyond their immediate capacity they would be able to call on the assistance of their technical colleagues.

The closer integration of inspection services will result in a more efficient use of scarce resources and bring the inspection system closer to a goal of 'one establishment, one inspector.'

To the extent that work accidents and diseases do occur, it is necessary to have machinery in place to ensure fair compensation for those employees and their dependants who suffer loss of earnings and incur various expenditures as a result of work-related accidents, diseases, or death. The State has laws relating to such compensation dating back to 1923 and the need for compensation and the circumstances in which it is payable are well established. The actual form of compensation, however, may require review to ensure that injured persons are not only compensated for loss of earnings but also receive assistance with rehabilitation, retraining, and assistive devices in cases of disability, with a view to their returning to productive employment as soon as possible.

Prime responsibility for safety and health in work establishments rests with the employer. Employees are required to cooperate with their employer in safety and health matters but, clearly, employers must meet the minimum standards established by law or take the consequences. In many cases, however, the 'consequences' are not sufficiently severe or onerous requiring that the penalties,



The future development of the State's social security system needs to consider the balance between social insurance, on the one hand, and social assistance, on the other.

Social insurance is a form of labour protection covering unforeseen, or delayed, circumstances. It involves contributions from employees and employers to create a fund from which payments are made to meet unforeseen circumstances such as sickness, invalidity, work accidents and injuries, unemployment, and delayed circumstances, such as old age. This approach to labour protection is not financed by the State but by regular contributions from employers and employees. It is also possible for the system to cover self-employed persons if they are in a position to contribute both the employee's and employer's contributions.

Social assistance, on the other hand, is more concerned with providing assistance to persons in difficult circumstances, not directly related to their working lives. Financial assistance to single parents, for orphans and disabled persons, for parents with very large families, and persons facing hardship of various forms, fall within the scope of social assistance. Such assistance can be funded from government revenues, but may also be provided by community groups and non-government organizations.

Maharashtra also operates a successful system of social welfare in which a range of services including access to libraries, sporting facilities, excursions, entertainment, and other community activities are available to workers participating in the system. Workers make monthly contributions, as do their employers and government, to a fund administered by a board. The Department of Labour would consider how these welfare services might be accessed by workers in the unorganized sector, including those who are self-employed. The Department also proposes to see if the Labour Welfare Board could be oriented to take up concerns regarding child labour and other unorganized sector workers.

There are two areas of social security of concern to Maharashtra that have potential policy implications, namely, unemployment benefits and maternity benefits, respectively. Maternity benefits including medical bonus, payment of wages and a guarantee of job security during the confinement period are already provided under the Maternity Benefit Act, 1961. The issue for employers, of course, is the 'payment of wages without work' raising the question not whether benefits should be paid but, rather, who should pay. Alternatives to existing arrangements include the benefits being paid by the State from consolidated revenues, or from a social insurance contributory scheme.

As the Department responsible for the administration of the Maternity Benefit Act the Department of Labour should monitor the actual payment of maternity benefits as part of its inspection processes, and periodically advise government on the general effectiveness of the scheme.

The issue of unemployment benefits may require clear policy guidance at some future time. The Government considers that any development of such a scheme is essentially a long-term consideration. It is clear, however, that an unemployment benefits scheme would have considerable appeal to both employers and workers, and the Government at some future date, through the Department of Labour, will seek the views of employer and worker organizations as to the feasibility of such a scheme.

Should a working group be established at some time in the future to consider the feasibility of introducing an unemployment benefits scheme at some future date the issues to be considered include the funding of such a scheme, eligibility for benefits, level of benefits, the institutional and administrative arrangements for the collection of contributions (unless a non-contributory scheme is favored), arrangements for the payment of benefits, the linkage between the receipt of benefits and finding a new job, and a wide range of related issues to enable government to better understand the nature and operation of unemployment benefit schemes, as a prelude to future policy development.

The Constitution of India makes reference to the right of citizens to what amounts to social security. Article 41 of the Constitution states

*The State shall ..... make effective provision for securing public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*

A major challenge for Maharashtra is to extend this right to the mass of workers in the unorganized sector. The provision of assistance to mathadis, security guards and, in the near future, to construction and domestic workers is a significant achievement. But much remains to be done if all citizens are to be protected. The extension of the board system to other areas of the unorganized sector and the financing of benefits to such workers will be addressed as a priority issue but the Department of Labour might wish to consider the most appropriate institutional arrangements for social security for the unorganized sector including, for example, whether it is preferable to have a multiplicity of boards – one for each group of beneficiaries -- or one single board with various beneficiaries.

The Department also envisages to formulate Other Unorganized Sector Workers' Social Security Boards, including the Domestic Workers' Board, the Construction Workers' Board, the Safai Kamgar and Ragpickers Board and other such welfare Boards to deliver social security benefits and welfare schemes to the workers in specific unorganized sectors and having specific issues and problems.

The actual working conditions that apply to work situations are of fundamental importance to the well-being of workers. Workers in the organized sector receive protection concerning wages, overtime rates, bonuses payments, gratuities, hours of work, rest periods, paid leave, safety and health protection, and various other benefits established by a formidable body of legislation. This breadth of protection, however, is only available to a small proportion of the State's workforce and, as pointed out in **Element 1** of this policy document, much needs to be done to ensure that workers in the unorganized sector are brought into the labour protection umbrella.

The Government is also aware that the standards as set out in the various enactments covering working conditions are minimums to be improved upon by negotiation and bargaining between recognized trade unions and employers. Good faith bargaining, together with supporting information and negotiation skills, can produce benefits above statutory minimums for workers, without compromising the financial viability of enterprises. Bargaining of this type is to be encouraged but requires that workers be organized, that unions be recognized by the employer for the purpose of bargaining, that positional bargaining in which one or both parties takes a fixed and immovable position is put aside, and that the parties engage with each other to genuinely try to reach an agreement.

For workplaces in the organized sector that have no union or representative group of workers, or a relatively compliant 'management union', and thus no bargaining, improvements in working conditions are dependent on government intervention in the form of minimum wage adjustments and related matters. From the viewpoint of worker protection, such adjustments should be at regular intervals particularly in times of inflation if workers real benefits are to be protected. Adjustments to minimum wages on an annual basis to accommodate changes in the cost of living is reasonable, but decisions should be made some time in advance of actual payment dates to provide employers with sufficient lead-time to plan for the announced increases. As mentioned under policy **Element 5** on labour productivity, wage adjustments might be made on the grounds of productivity factors every two years, thereby enabling workers not just to keep pace with inflation, but to actually benefit in real terms.

Workers in the unorganized sector will continue to suffer unless trade unions become more active to serve them, or government intervention increases. In this regard, Department of Labour inspectors have a crucial role to play. The Department is now taking steps to ensure its inspectors visit these workplaces on a regular basis to provide advice to workers and employers, and to seek compliance with the laws that apply.

The Department of Labour needs to consider whether the existing arrangements whereby inspectors focus on particular types of establishments – some for shops and establishments, some for farms, and some for factories – makes best use of the Department's inspection resources. A reconsideration of inspection priorities, different approaches to inspection planning, some redeployment of inspectors,

retraining of inspectors, the involvement of other agencies in aspects of assistance to the unorganized sector, are some of the factors that need to be considered to see how the Department of Labour can reach out to these workers and their workplaces.

Working conditions for particular groups of workers also raise particular issues for the Department of Labour and some of these are considered under **Element 10** below.

## **Element 9 Living conditions**

The circumstances under which workers live and their performance at work, clearly, are connected. Although there may not be empirical evidence to support this connection, anecdotal evidence and regular observation support the view that the productive efforts of workers will be enhanced through improved living conditions including better housing, better sanitation, domestic hygiene, nutrition, and disease prevention (including prevention against HIV infection).

Accordingly, the Government is of the view that the linkage between living conditions and the world of work is an important element of a labour policy although not necessarily the direct responsibility of the Department of Labour. Indeed, the issue of living conditions for workers is not the responsibility of any one government agency, but requires a concerted and coordinated effort of many different departments.

The Department of Labour, however, has an important role to play in this matter through its regular contacts with trade unions, employers' organizations and individual work establishments and by making them more aware of the linkage between living conditions and worker productivity. The Government is committed to encourage discussions on this issue and ensure that every effort is made to improve the living conditions for the State's workers. The Government, through its Department of Labour, encourages work establishments, in consultation with employer and worker organizations, to consult with their workers on the introduction of 'life skills' programmes within enterprises, possibly outside working hours, to provide workers with the knowledge and skills for improved personal health, better diet, and disease prevention. The design and delivery of awareness programs in this field need careful planning both in content and delivery, particularly for workers with low levels of education.

The Department of Labour, however, could and does have a direct role to play in improving the living conditions of the State's workers. Firstly, for establishments that provide housing for their workers, either on- or off-site, the Department's labour inspectors could be empowered to visit such sites to ensure they meet acceptable standards of water supply, of sanitation, and for food preparation.

Secondly, the Department of Labour is charged with responsibility for addressing the problem of HIV-AIDS in workplaces, with obvious spill-over effects on living conditions.

The Department of Labour will prepare HIV-AIDS Guidelines for use in work establishments which can be down-loaded from its website covering not only prevention from infection, but also including issues of job security and related matters for infected workers.

## **Element 10 Special issues**

There are a number of special matters that need to be addressed in a comprehensive labour policy, some of which relate to particular groups of workers and others to specific issues. These are presented below.

### ***Child labour***

The issue of child labour is clear in law but challenging in practice. The employment of persons under the age of 14 years is prohibited but in practice child labour is found in the unorganized sector, on construction sites, on farms, in rural non-farm enterprises, and probably in private homes as domestic workers.

The law in itself is insufficient to eliminate child labour. Information, education, and the presentation of viable alternatives are some of the factors that need to be considered. In many cases, parents represent the main obstacle to removing children from work situations as they see the child as an economic asset bringing income to the family unit. Taking the child out of employment is seen as putting the family's survival in jeopardy.

This suggests a need for child labour elimination programmes to ensure they not only consider the rescue of children, but also address the whole question of parental attitudes to working children.

The Government will ensure that its actions in the field of child labour are supportive of and consistent with the Government of India's National Policy on Child Labour and its related programmes and projects.

### ***Young persons***

Young workers over the age of 14 years but less than 18 years are permitted to be employed in certain circumstances as defined by law. For the organized sector compliance with these provisions is generally secured, but for the unorganized sector the situation remains largely uncontrolled. The employment of young persons in both physically and hazardous work is expected, but largely undetected.

The extension of the Department of Labour's inspection services to the unorganized sector will include the inspection of young workers with a view, in the first instance, to educating employers of the dangers of exposing adolescents to such hazards and, at a later stage, imposing penalties for such employment.

### ***Gender equality***

Maharashtra applies legislation relating to equal pay for men and women performing equal work and thus in the interest of non-discrimination meets the national obligation to implement the articles of ILO Convention 101 as ratified by India.

Complying with the requirement of the convention on equal pay for work of equal value, however, is considerably more complicated. What, precisely, constitutes work of equal value? Assessing the value of a job involves an exercise in job evaluation the skills of which are not always available to establishments or labour inspectors. In addition, job evaluation is not an exact science and thus it is difficult in the final analysis to conclude, for example, that a quality control supervisor performs work of the same value as a production supervisor. If they are assessed to be of the same value and one is performed by a man and the other by a woman, the convention dictates they should receive equal pay. The jobs are different, but the value is assessed to be the same.

Non-discrimination extends beyond the field of wages to include recruitment (including recruitment advertisements), access to training opportunities, promotion, and general career advancement.

The Government supports the principles and practice of non-discrimination and requires the Department of Labour to re-assess its strategies and modalities in this field to ensure they meet the standards required under the State's international obligations.

### ***Migrant workers***

Standards relating to the employment of inter-state migrant workers are administered by the Department of Labour through the Inter-State Migrant Workmen Act, 1979. The Act is designed to provide protection for a special group of contract workers who, historically, were recruited in one state for work in another, and subjected to highly exploitative working conditions, taking advantage of their illiteracy and lack of voice. The Act applies to every establishment in which five or more Inter-State workmen are employed. Contractors are required to secure a license in both the sending and the receiving state.

The Department's inspectors are empowered to check on wages, displacement allowance, journey allowance, equal pay for men and women performing equal work, residential accommodation, medical facilities, and protective clothing.

This group of contract workers is particularly vulnerable and the Department of Labour should consider the introduction of 'blitz' inspections to ensure protection for such workers. Although contractors are required to submit an annual return to the Department on numbers employed and related matters, saturation inspection is likely to have a greater impact.

### ***Disabled workers***

A disabled worker is usually considered to be one unable to perform a range of tasks considered normal for that age cohort. The number of persons in Maharashtra of working age 'unable to perform a range of tasks considered normal', and thus disabled by definition, is likely to be high. But many are still able and willing to work and thus make a contribution to the State's productive efforts.

Placing disabled persons in meaningful, productive and decent employment falls outside the scope of a labour policy but, once employed, disabled persons require protection which clearly falls within the scope of a labour policy and the work of the Department of Labour.

There is a tendency to equate disability with 'inability' and thus some employers see disabled persons as unemployable or, at best, employees of last resort, to be considered for jobs only after non-disabled persons have been placed. In some cases, employers take on disabled workers as an act of charity, 'feeling sorry' for their 'situation.' If this attitude prevails when taking on a disabled person it is likely to spill-over into the actual working environment resulting in frustration and stress for the disabled worker and the loss of a potentially productive worker. There is ample evidence from many countries that disabled persons can, and do, make good and productive employees provided they are given opportunities in the first place, and then provided with a work environment and working conditions that are supportive.

The provision of workplace guidelines to accommodate disabled workers is not the responsibility of the Department of Labour alone. Many agencies including the Departments of Employment, Social Justice, employers' organizations, trade unions, and non-government organizations all have a role to play in implementing policies for disabled persons. But the Department of Labour has prime responsibility for their protection once they are in employment.

Crucial in this regard is the education of managers and co-workers on some of the basic aspects of disability, including the basic distinction between impairment and disability. A person who has paralysis has an impairment – the disability is difficulty in movement. But if a wheelchair, ramps, and pathways are made available the impairment remains but the disability disappears.

Disabled persons face various obstacles at work apart from negative attitudes, including unsuitable work stations (e.g. unsuitable height of work benches), lack of access to toilets and facilities, narrow doorways, lack of willingness to make some adaptations to a job's tasks, poor lighting, and a lack of assistive devices (e.g. magnifying glass for a visually impaired person, wheelchair for a physically impaired person.)

Making workplace adaptations comes at a cost and it needs to be decided who should provide the resources and, more importantly for a labour policy, whether the Department of Labour has a role to play in encouraging, advising on, and supporting establishments to adapt to make it easier for disabled persons to work.

Some disabled workers, particularly in the early stages of their employment, may not be fully productive leading to calls for lower pay on the grounds of lower productivity. This issue could be addressed through generous tax concessions to the employer but, in time, may not be necessary as many disabled workers often have higher productivity than their non-disabled counterparts.

The employment of disabled persons is not only a social issue. Employment provides the means for disabled persons to sustain themselves without relying on government assistance and thus should be encouraged on economic grounds.

The Government is supportive of the employment of disabled persons and requests that its Department of Labour prepare guidelines, in cooperation with other agencies, on the working conditions and working environment required to ensure that disabled workers are as productive and accepted in workplaces.

### ***Sexual harassment***

The Government is aware of the existence of sexual harassment in the State's workplaces but is also aware of the likelihood of widespread under-reporting of cases due to fear of victimization and the lack of suitable complaint procedures. This requires that workers and employers, both male and female, know what constitutes sexual harassment, that procedures exist within workplaces for dealing with sexual harassment complaints, and that procedures also exist for handling complaints lodged with the Department of Labour.

The Department of Labour is charged with responsibility for the preparation of a State-wide sexual harassment policy and rules with a view to preventing or minimizing sexual harassment at work, and further preparing a set of procedures for lodging sexual harassment complaints with the Department should a complainant be dissatisfied with the outcome of the workplace procedure or simply opt not to pursue that procedure for various reasons.

In preparing a sexual harassment policy for the consideration of Government, the Department of Labour shall consult with employers, workers and other stakeholders with a view to preparing a comprehensive document that includes the following.

- (a) A clear definition of sexual harassment together with examples of behavior that constitutes sexual harassment, stressing the unwelcome nature of such behavior.
- (b) The obligations of an employer including

- a statement that the establishment does not condone sexual harassment in any form.
- a commitment to the prevention and eradication of sexual harassment in the workplace.
- a statement reminding all employees whether worker, supervisor or manager of the seriousness of sexual harassment charges.
- an explanation of the penalties to be imposed by the employer for substantiated sexual harassment conduct, including verbal warnings, written warnings, transfer, suspension, termination of employment, and the possibility of damages to the victim.
- a commitment to ensuring that all sexual harassment complaints and related personnel actions are kept confidential.
- a commitment from the employer to protect the person making a complaint of sexual harassment from retaliation from the alleged harasser or others.
- a commitment to preparing and implementing an internal procedure solely concerned with sexual harassment complaints or a general grievance procedure that includes special arrangements for handling sexual harassment complaints.
- a commitment that a victim will not be required to address complaints through a supervisor who is involved in, condones, or ignores sexual harassment.
- a commitment to the enforcement of the policy through action that is taken quickly, consistently and aggressively and through investigations which are prompt, thorough and documented in detail.
- a statement that the victim will not be worse off as a result of any remedial action taken. A transfer of the victim, for example to avoid interaction between the victim and the harasser, is unacceptable unless agreed by the victim.
- an indication that all newly recruited staff will be provided with a copy of the sexual harassment policy.

- a commitment to the training of all employees to improve their knowledge and understanding of sexual harassment issues.
  - a commitment to communicate the policy widely throughout the workplace.
- (c) A time-bound complaints procedure to advise victims of the steps they should take within the establishment to lodge a formal complaint against an harasser, as well as the procedures they should follow to lodge a complaint with the Department of Labour.
- (d) The situation of an employer of a person found to be guilty of sexual harassment including whether that employer should be legally liable to the victim if the employer knew or reasonably should have known of the harassment and failed to take action. (Employers who have prepared and conscientiously implemented a sexual harassment policy, have taken positive steps to educate and inform their employees on sexual harassment and its consequences, and who have clear internal procedures for handling sexual harassment complaints, would not normally be liable to the victim.)
- (e) The issue of compensation for victims of harassment in situations where the victim has suffered psychologically, as well as where no psychological damage is evident.

Once the sexual harassment policy has been finalized, the Government shall decide whether it will be implemented in establishments through a voluntary Code of Conduct, or whether legislation and rules are required to address the problem.

### ***HIV-AIDS***

As with other areas of labour protection, prevention and improvement, addressing the problem of HIV-AIDS in the workplace starts with policy commitment, followed by the preparation of implementing rules, supported by implementation procedures that are clear and monitored.

The Government accepts that HIV-AIDS is a State-wide issue requiring a range of interventions and involving many agencies. The Government is supportive of the National Policy on HIV-AIDS and the World of Work and is committed to applying the ten guiding principles of that policy. The Department of Labour is expected to play the leading role in the implementation of the national policy including the promotion of preventive measures in the workplace and ensuring that HIV infected persons are not discriminated against.

The Department shall prepare a model policy and rules for posting on its website to enable establishments to download and adapt the policy and rules to meet their

particular circumstances. The Department should also play a leading role in raising awareness through publicity campaigns and workshops directed to HIV-AIDS prevention.

## **Element 11 Other Issues in the changing context**

### ***Code of Conduct for Trade Unions***

Over the years, it is observed that the trade unions movement has to be made more effective by ensuring a certain degree of responsibility and accountability so that labour interests can be met in the long term. The Department proposes to come up with a code of conduct for trade unions so that no member of trade union or the trade union could abuse their power/authority. This is necessary, since such behaviour often results in hampering the trade union movement and the interest promoted by responsible trade union is also diluted by the activities of certain members/certain trade unions that may indulge in irresponsible behaviour. Also it is seen that such irresponsible behaviour work is to the detriment of long-term labour interest. The Department would also endeavour to see how this code of conduct could be made enforceable

### ***Corporate social responsibility***

The Government of Maharashtra endorses the principles in the **United Nation's initiated Global Compact** and endorses the efforts of enterprises in embracing the principles and practice relating to human resources, labour standards, the environment and corruption. The **Compact** is not a regulatory tool as it is not supported by any policing or enforcement measures. Its application relies on public accountability, transparency and sharing. In effect, the principles of the Compact provide the foundation and guidelines for corporate social responsibility. The ten principles of the Compact are as follows.

### **Human Resources**

1. Businesses should support and respect the protection of internationally proclaimed human resource standards.
2. Businesses should make sure they are not complicit in human resource abuses.

### **Labour standards**

3. Businesses should uphold freedom of association and effective recognition of the right to collective bargaining.
4. Businesses should eliminate all forms of forced and compulsory labour.
5. Businesses should support the effective abolition of child labour.
6. Businesses should eliminate discrimination in respect of employment and occupation.

### **Environment**

7. Businesses should support a precautionary approach to environmental change.
8. Businesses should undertake to promote greater environmental responsibility.
9. Businesses should encourage the development and diffusion of environmentally friendly technologies.

### **Anti Corruption**

10. Businesses should work against all forms of corruption, including extortion and bribery.

Corporate social responsibility guidelines focus on how enterprises can manage their business processes to produce an overall positive impact on society at large. These are voluntary arrangements and extend beyond good employment practices, labour rights and environmental responsibility as outlined above, to include issues of fair trading in the market place, corporate governance, and investment in community outreach. These are important issues, but extend beyond the mandate of the Department of Labour.

The Government through its Department of Labour is committed, however, to ensuring that corporations comply with the minimum standards they are obliged to meet under the labour laws that apply in the State and, wherever possible, encourage them to voluntarily improve on those minimums as a commitment to the practice of corporate social responsibility. It must be made clear, however, that an establishment that fully complies with all labour laws cannot claim this as an indicator of its 'social responsibility' in that it is doing no more than it is obliged to do. Clearly, corporate responsibility must extend beyond the law to embrace wider objectives as, for example, with the Mutual Aid Response Groups (MARG) which take the form of industry self-help groups in which larger enterprises assist smaller

enterprises, including contractors, suppliers of raw materials and transporters, to improve their safety and health practices.

## **Element 12                      Information and research**

Information is widely accepted as an essential resource for sound decision-making and the Government is conscious of the need to ensure that the Department of Labour's information systems generate accurate, relevant and up-to-date data related to all areas of its operations. The recent introduction by the Department of MAHASHRAMM -- its computerized labour management system represents a significant step forward in collecting and collating a wide range of data associated with the Department's day-to-day administrative processes. Data will be captured as a by-product of such processes and will provide automatically a wide range of essential information for use at various levels within the Department and government provided, of course, establishments in particular provide the information required of them under the law.

The development and operation of the Department's labour management system is an example of a public-private sector partnership in which the computer hardware and software is provided by a private sector provider, in accordance with the needs of the Department of Labour as the client. This arrangement will provide an on-line facility for establishments to feed required information into the system and generate the information required by the Department for its internal use, to ensure that establishments comply with the law. Workers will benefit by the requirement that all their wage and other financial benefits be paid through the banking system, with provision for payments to be verified automatically.

The labour management system will collect and collate information electronically but the system will need to be closely monitored to ensure that all the required data inputs, particularly from establishments, are forthcoming in the required detail and in a timely manner.

Access to the information envisaged in the labour management system has the potential to dramatically change the Department's approach to labour inspection. Areas of non-compliance will be automatically flagged thereby allowing the inspection system to respond accordingly either by on-line follow-up or by selective inspection visits.

Apart from information generated by its administrative procedures, the Government and Department of Labour would benefit from information resulting from well-planned and executed research studies. This does not require the Department to establish a dedicated research division, but it does require that it has the capacity to determine research needs and for it to be able to prepare the terms of reference for studies to be undertaken by other agencies. Research of an applied nature might then be undertaken by universities, research institutes, employers' organizations, trade unions and others, possibly using their own resources. What is important is that

labour research relate to real needs, be of an applied nature, and the results communicated to end users in a form that is readily understood.

The Department of Labour is both a producer and user of information. Some of the information it produces is for the support of its internal operations and procedures but much of it, once collated, has wider appeal. Accordingly, the Department of Labour is encouraged to create a website and post information on a regular basis for others to download. It should also consider the preparation of a quarterly labour bulletin, in both print and electronic formats, that provides basic analysis of data collected on such matters as labour disputes, cases conciliated, work accidents, and labour inspection.

The Department should also take the necessary steps to prepare an annual report comprised of both statistical and narrative information that provides to readers a clear indication of the Department's activities over the preceding year. Such a report as well as reporting on completed activities can also be used to highlight various future issues the Department plans to address. There is scope for the Department to seek sponsorship for the production of such a report without compromising its impartiality on labour matters.

### **Element 13 Capacity building for department of labour**

The Government's Department of Labour shall be the prime agency for the implementation of **Labour Policy 2010** and for monitoring and assessing progress concerning the implementation of the policy's various elements.

This will require the Department to be strengthened, revitalized and probably restructured to give full effect to policy intentions and ensure adherence to the principles of good governance. The Department has already taken important steps to improve its overall performance by embracing a culture of service to clients, namely, employers and workers, and strengthen its commitment to delivering compliance with the laws and regulations that fall within its responsibilities.

The Government is supportive of the Department's innovative and recently introduced computerized labour management system which is designed to better serve employers in meeting their obligations under the law through on-line registration and license application and renewal, and the submission of prescribed reports and returns. Workers will be assisted through on-line registrations and lodging of complaints as well as through checking the receipt of their financial entitlements through on-line verification with banks. This system has been developed as a public-private partnership which the Department is required to closely monitor to see if the system's stated objectives are being achieved, and to determine whether such partnerships might be applied to other areas of the Department's work.

The Government's **Labour Policy 2010** will require the Department of Labour to reconsider its objectives, structures and operational procedures to ensure that it can adequately serve the various elements contained in this policy and ensure that the principles of good governance are respected. Accordingly, within the next 12 months the Department should prepare and implement a restructuring plan that takes account of the need for the following.

(a) The need to significantly increase the number of unorganized sector workers throughout the country who benefit from labour protection services.

(b) The need to improve the overall efficiency and effectiveness of the labour inspection services including a rationalization of the five different existing groups of inspectors through closer integration of their activities.

(c) The need to prevent industrial disputes from arising by assisting establishments to plan and implement workplace cooperation programmes.

(d) The need to resolve more disputes at first point of contact with the Department thereby significantly reducing reliance on prolonged adjudication procedures.

(e) The need to prevent and reduce work accidents and diseases through the strengthening and reorganization of the Department's safety and health services.

(f) The need to prepare a staffing plan with reference to numbers, levels and deployment to ensure the fullest possible implementation of the labour policy.

(g) The need to adopt a systematic and coordinated approach to staff training and development to cater for induction, refresher and upgrading training and the preparation of training materials for labour officials, as well training for the benefit of employers and workers, including the establishment of a dedicated training unit within the Department to plan and implement an annual training programme to replace existing ad hoc approaches.

(h) The need to build relations with the private sector by monitoring the existing partnership arrangement concerning the labour management system, by exploring the possibility of private sector providers engaging in the actual delivery of services related to inspection, dispute prevention and resolution, and engaging in regular contact with international buyers and third party auditors involved in checking compliance within enterprises with buyer codes of conduct, and with ISO certification procedures and outcomes.

(i) The need to prepare a resource plan to ensure that the Department and its field services have access to adequate transport, communication and computer facilities.

(j) The need to maintain and develop linkages with other agencies in government concerned with elements of the labour policy, as well as with appropriate non-government organizations.

The Government is very supportive of the Department's efforts in extending labour protection services to the mass of workers in the unorganized sector and is committed to ensuring that this work continues in future. As indicated in Element 1, the Government considers this an area of high priority.

### ***Labour inspection***

Much of the Department of Labour's resources are devoted to labour inspection. Currently, the Department has five different types of inspectors, namely, safety and health inspectors, boiler inspectors, shops and establishment inspectors, minimum wage inspectors in agriculture, and government labour inspectors with responsibility for the inspection of larger shops and commercial establishments, construction sites, and workplaces engaged in processing and manufacturing not covered by the Factories Act.

All inspectors are mandated to secure compliance with labour laws through the provision of information on the content and meaning of laws, advice on what employers and workers need to do to comply, and enforcement and penalties for contraventions. Whether the State requires five different types of labour inspectors is questionable. Accordingly, the Government requires the Department of Labour to prepare a time bound labour inspection strategy that makes the best use of the State's inspection resources, including

- the closer integration of inspection services, including the modalities for non-technical inspectors (shops and establishments, minimum wages, government labour officer inspections) being grouped as general inspectors but undertaking the basic aspects of safety and health inspection in workplaces,
- the possibility of the private sector being involved in some inspection functions,
- the likely impact the computerized labour management information system will have on future inspection activities and resource requirements,
- the deployment of inspectors throughout the State to ensure there is the right number in the right places,
- a staffing plan indicating the number of inspectors the Department requires over the next 5 years taking into account projections of the number of establishments legally liable to inspection, the projected impact of the computerized compliance monitoring system, and the merging of the three groups of general inspectors into one integrated general inspectorate.

The development of the State's labour inspection system needs to take account of the state's obligations under International Labour Organization (ILO) conventions concerned with labour inspection as well as work safety and health. In particular, Convention No.48 Labour Inspection (1948) was ratified by the Government of India in 1949 and its various Articles provide essential guidance for labour inspection in Maharashtra.

The development of labour inspection in the State also needs to consider the activities of international buyers and third-party social compliance auditors who visit enterprises to ensure they not only meet agreed quality standards, but also meet international standards relating to working conditions and the working environment as embodied in buyers codes of conduct. As a starting point, the Department of Labour should maintain a register of all establishments that operate in accordance with such codes, with a view to determining how labour inspectors might cooperate with international buyers and their third-party auditors in pursuit of their common interest in protecting workers and improving working conditions.

## **Policy congruence**

Although this **Labour Policy 2010** encompasses a wide range of labour matters it does not profess to make policy pronouncements in related areas that although having some overlap with and impact on labour policy issues, require their own policy guidance.

Thus this policy document is not a policy for employment creation, a foreign investment policy, a trade policy, a human resource development policy, or a housing policy. It is important, however, that a labour policy be in harmony with other policy initiatives concerned with social and economic progress, thereby highlighting the need for wide ranging consultations in policy formulation.

Accordingly, the issues of global competitiveness and labour protection cannot be considered in isolation from policy pronouncements in other fields including employment, skill development and vocational training, industrial development (including industrial estates and export processing zones), productivity, housing, education, health and various other fields.

## **Consultations**

The formulation of a labour policy requires extensive consultations with stakeholders, particularly representatives of workers and employers. This not only encourages a commitment to implementation once the final policy is in place but will normally result in a policy that is more relevant and realistic.

A labour policy should also spell out the institutional arrangements required for on-going consultations and advice. Apart from a State level tripartite body to advise on labour matters, regional and purpose-specific bodies should also be encouraged including committees or working groups concerned with safety and health, labour productivity, dispute prevention, sexual harassment, bi-lateral cooperation, and more.

A high-level tripartite consultative body to advise the Minister on both new policy issues as well as matters to be addressed concerning the implementation of existing policies is fundamental to ensuring that the labour administration system responds to State and national needs. Although such a body has no executive responsibilities and its decisions are purely advisory, it is an important component of a good governance agenda. Such a body should be truly representative of employer and worker interests, have a suitable gender balance, and provide opportunities for inputs from acknowledged experts (e.g. academics) on particular issues, as required. It should meet on a regular basis, maintain contact with the media, and consider the possibility of conducting some of its meetings in locations other than Mumbai to provide an opportunity for local leaders to be consulted.

The Government has considerable experience with tripartite consultation under boards and bodies established under various statutes. This experience has had positive results and encourages the government to further support the development of consultative institutions and processes at all levels.

## **Private sector involvement**

Maharashtra's future development as a State will depend to a large extent on the strength of its private sector. Workers and employers in the private sector are usually the recipients of services provided in the delivery of a labour policy, receiving benefits generated under the policy, on the one hand, and meeting their obligations, on the other.

It is possible, however, for the private sector to become a service provider in the labour field and become involved in the actual delivery of services for the benefit of workers and employers -- services that might otherwise have been provided by government officers. For example, with regard to improved workplace cooperation the private sector can provide consultants quite experienced and able to provide the information and advice required for the development of an effective system. In a more direct way, private sector operators can and do provide services as competent persons in the area of occupational safety and health, particularly concerning the inspection of specialized equipment (e.g. cranes, hoists, lifting devices, elevators), and there is already provision for boilers to be inspected by qualified persons in the private sector.

In the field of industrial relations, private conciliators and arbitrators could be appointed to settle cases and, indeed, do so in many countries. A labour policy that

provides a role for the private sector in policy delivery does not mean an abdication of responsibility on the part of government. The government still retains ultimate responsibility and accountability for services provided under the law, but gives the authority to private individuals to do the actual work. Government officials assume the role of manager and supervisor of a system rather than direct providers which, in some cases at least, may result in better and more efficient service delivery.

These are examples of public-private partnerships confined to service delivery. It is possible to conceive, however, more elaborate arrangements where the private sector is contracted to finance and construct a building according to government specifications to be used by government (e.g. a community welfare building) and leased by government for an agreed period. It would be even possible in the above example for the private sector to actually run the facility, and charging government for management services, as well as for the leasing of the building.

The main issue concerning private sector involvement in service delivery is who pays for the services provided? It would be possible for government to pay by raising a special budget line in the Department of Labour's budget allocation to permit payment on a retainer basis or, alternatively, on the basis of direct fee-for-for service. The normal practice in the labour field, however, is for the user to pay thereby requiring that employers meet the cost of the labour related services provided from the private sector, or, in those cases where private conciliators or arbitrators are engaged to resolve or settle conflict, employers and unions sharing the cost

## **Relations with national and international agencies**

The Government recognizes that the range and complexity of issues addressed in **Labour Policy 2010** will require that the Department of Labour develop its linkages with other agencies concerned with such matters both within India and abroad. Within India, the Department should further develop its relations with research bodies and training institutions in other States. and take advantage whenever possible of training opportunities they offer for the Department's staff.

The Department should also further its relations with the International Labour Organization consistent, of course, with the Government of India's obligations to, and interactions with, that body. The technical assistance and training opportunities provided by the ILO should be accessed wherever possible to provide advice and assistance in the implementation of this labour policy.

## **Policy implementation**

This **Labour Policy 2010** provides broad guidelines for the State's work in labour and related matters for several years. The implementation of the various policy elements will fall largely to the Department of Labour and its offices throughout the country.

In the light of these policy guidelines, the Department will need to revisit its structural and operational arrangements both at headquarters and in the field to ensure they respond to policy requirements. Of particular importance is the restructuring and revitalization of the inspection system to ensure it meets the needs of the workers in the unorganized sector and the requirements of good governance.

The Department is about to commence the operation of its computerized labour management system. This system, as well as providing for the highest level of compliance delivery through increasingly paperless transactions, must also generate the information required for the monitoring of **Labour Policy 2010**.

The introduction of these new policy guidelines together with an innovative computerized management system marks a new era for labour administration in Maharashtra. The Department needs to ensure that it has the right structures, the right people, and the right procedures, including quality monitoring and evaluation arrangements, to enable it to make the fullest possible contribution to the State's progress.