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RIGHT TO ORGANIZE IN NEPAL: HOW RIGHT THE LAWS ARE?

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Chapter- 1

INTRODUCTION

Background of the Paper

Industrial relations in Nepal has never been in the forefront of discussion and research owing to a multitude of causes which include: a predominantly agrarian economy, a poor share of manufacturing industries in the GDP, absence of classical nurseries of trade unions- railways, mines and dock, lack of pluralism and democracy except for brief periods, ban on trade unions and absence of a true employers' association and the modern management practices in confinement of the domain of academics. Therefore it is quite natural that out of the three actors in the arena of industrial relations the dominant presence of government has been observed throughout the history of industrial relations in Nepal. With a small private sector and a ban on trade unions, the worries of labour administration until recently were few. As an example of this a law covering the various aspects of industrial relations which was enacted in 1959 remained in force until recently with some modifications.

However, matters began to change with the advent of democracy and restoration of multi-party political system in 1990 when the old political regime was overthrown by a people's movement. A new era of political liberalization commenced and along with it came the era of economic liberalization. Aforementioned changes have drastically altered the environment in which Nepalese labour administration now has to work. Table 1.1 briefly describes it.

The right of association guaranteed by the constitution which is also a distinguished feature of democratic societies, should be manifested in and supplemented by other legal provisions for its meaningful application. What else could be more pertinent field associated with this fact than the field of industrial relations where workers have to organise to use their collective number in order to overcome their individual weakness vis-a-vis the employers. Put in other words, the right to form trade unions

is the practical extension of the right of association in the field of industrial relations.

Table-1.1

Comparative Scenario of Nepalese Industrial relations environment before and after the democratic changes of 1990

Aspects	Before 1990	After 1990
Right of expression	Restricted	Guaranteed
Right of association	Restricted	Guaranteed
Trade Unions	Non Existent in true sense	Functioning
Party politics	Prohibited	Permitted
Political Backing of workers	Non Existent	Present Largely
Economic Policy	Controlled	Liberal

In this regard it is important to note that new laws concerning the regulation of trade unions as well as streamlining of the dispute settlement mechanism have been enacted in Nepal. This has occurred in the wake of democratization of wider societal institutions, constitutional guarantees of freedom of expression and right of association on one hand and liberalization of economy *inter alia* steps taken to attract foreign investment on the other.

Statement of the problem:

With the spread of capitalism and industrialization, the number of wage earners began to increase. The industrial revolution brought about a change in the production system through new inventions, machinery and production process and all these gave rise to what is known as the factory system. The relationship between employees and the employers used to be determined by the theory of free contract. However, this theory suffered from a gross shortcoming in that it did not take into account the position of economically weaker partner, i.e, worker vis- a- vis the employer. In that era workers had to face considerable amount of sufferings because they had to toil under harsh and

inhumane working conditions. The prevailing economic theory of that time was that of Laissez-faire, and this fact complicated matters most because the state was supposed to refrain from economic activities and also from intervening in the matters of the market. In such a situation as Dhyani (n.d.:7) argues, " The economists, the social scientists and the jurists faithfully reflected their environment and produced convincing arguments in favour of unbridled competition. Hence this economic and social hiatus created the problems of relationship between employers and the employees. Consequently workers combinations emerged to prevent exploitation and obtain better conditions of service. Modern trade unionism as a positive ideal of combining workers collectively for subserving their common needs, aspirations, interests and security with their collective strength is, therefore, the direct outcome of both the capitalist and the factory system."

The 'action' of exploitation of labour by capital and 'reaction' of labour to resist it by means of organization hint to some fundamental issue such as: What motivates workers to join trade unions? What are the reasons because of which workers opt to collectivise? Barbash (1956) lists some reasons behind workers' desire of joining the trade unions: more plus (i.e. for higher wages and shorter hours of work, anti favouritism motive (to protect oneself from favouritism of management), outlets for gripes (to use unions as an outlet to channel and express gripes and fears without the fear of retaliation from the management), union shop (in those places where membership is a condition for employment), " band wagon" (joining the unions means, "... being in the swing of things..." and remaining out of the union means, "... risking the hostility of the group..." (1956: 13), and leadership aspiration, though this may not be the motive for every worker who joins the union.

Most of the reasons listed by Barbash (1956) show that workers join the unions as a defensive posture. The basic instinct for collectivisation seems to be the feeling of insecurity on the part of workers when he or she has to face the might of employer.

Van de Vall (1970:131) argues that, "... vague but intense feeling of anxiety about individual difficulties at work constitute the psychological basis in which voluntary membership in a trade union is rooted." The individual difficulties at work cited by him include: unfair treatment, unjustified dismissal or demotion, under payment and incorrect application of social legislations. These issues are basically related to work place and work organisations. In this regard i.e. regarding the motives behind collectivisation, Ramaswamy (1985:m-77) observes, "... every pressure for collectivisation emanates from the work organisation." Though his observation is in the context of managerial trade unions but this is quite obvious that this observation is valid in the case of workers (non managers) as well.

Crisp (1984:1) pursues Marxist line to show the motives behind control over labour by capital and resistance of labour:

The directing motive, the end and aim of capitalist production is to extract the greatest possible amount of surplus value, and consequently to exploit labour power to the greatest possible extent. As the number of cooperating labourers increases, so too does their resistance to the domination of capital, and with it, the necessity to overcome this resistance by counter pressure. The control exercised by the capital is... consequently rooted in the unavoidable antagonism between the exploiter and the living and labouring raw materials he exploits.

Following the above line it can be argued that resistance of labour and formation of organizations for the purpose is the natural outcome of exploitation of labour by capital. It means the motive behind the organization is to exert counter pressure against the exploitation by capital. Realization of the fact, that an individual worker is no match for and almost nonentity before capital, must have induced workers to be organized. Thus the cause and the rationale behind workers desire to associate was to act as a cohesive body to improve their wages and the working conditions. From now on workers as a body no longer remained a nonentity to be ignored by the employers. Though Offe (1985) argues that organizations of labour are no match for the organization of capital (business firms), nevertheless, organized labour is in a better position compared to an

individual worker in safeguarding its rights and interests.

On the whole it can be argued that basic motive for a worker to collectivise is to resist exploitation and resist unfair treatment particularly in those issues which are related to the work place. This is also echoed in the observation of Flanders (1970), who says that workers join trade unions, "... for the sake of gaining immediate improvements in their lot which can only come from collective action." (1970:38)

As mentioned earlier the factory system and capitalist mode of production were thus responsible for the formation of trade unions but the rise and development trade unions was not smooth at the beginning. As has already been said, due to the prevalence of theory of free contract between man and man, any association or work done by the association of workers, deemed contrary to the contract was punishable under law. Indeed in the initial stages of trade unions workers were penalized for the collective actions taken by them. However, these ideas changed gradually, and society and the state gradually began to tolerate and recognize the right of association of the workers. Citing a comparative study of France, Britain and the United States by Riminger (1977) Bean (1985:102) points out, "... government relations with the labour movement has undergone a similar historical evolution from a initial phase of suppression of workers' organizations and collective action at the onset of industrialization, moving to one of toleration and encouragement." With the liberal political thought gaining ground and the spread of the concept of human rights (Articles 20 and 23(4) of the Universal declaration of human rights contain the provisions regarding right to association and right to form trade unions) the right to organize got further impetus and it has been incorporated as a fundamental right in the constitutions of many countries, e.g. Article 12 (2) (c) of present constitution of Nepal (The Constitution of Kingdom of Nepal, 1990) and Article 19 (1) (c) of the Constitution of India.

With the gradual recognition of trade unions, legal provisions were made in different societies to facilitate the activities of trade unions. Usually the legal provisions accord legal personality to trade unions, provide immunity from legal proceedings and as well as provide for the procedures of their registration and so on. These aspects are required to give trade unions the status of legal entity, legalize their actions and to a certain extent a reasonable control over them by the society. Thus legal provisions can be seen as facilitators of the right to organize. However, particularly in the case of the third world, history of trade unions hitherto has largely been the history of control over them. While discussing various strategies of controlling labour, Crisp (1984) argues that one of the strategies, "... is represented by those designed to influence the institutional behaviour of labour. For example, the state is able to use a wide range of legislative measures to obstruct the unionization of workers... and to prevent workers from leaving weak trade unions to join or create more militant organization." (1984:5) It is to be noted that here state is seen as the collaborator of capital in controlling labour and also that laws are used as instrument to control labour. This may come in different forms such as: denial of the right of workers to join the trade unions of their own choosing, denial of the right to some categories of workers to form trade unions, stipulating unreasonably high number to form a trade union and prohibition on trade unions on joining the federation and confederations. In addition to above aspects which are related to structure or composition of trade unions, control is laid on aspects such as collective bargaining and strike activities and thereby restricting the activities of trade unions and circumscribing their role. In such cases laws have been used as controlling devices.

Thus the legal provisions can be seen both from the perspective of facilitator and as well as from the perspective of a controlling device. As has already been mentioned quite recently new labour legislations (e.g. The Trade Union Act, 1992 and The

Labour Act 1992) have been enacted in Nepal which have a direct bearing upon the right to organize. Therefore it is a matter of quest for a student of industrial relations to see which category the legislative provisions belong to? Do they facilitate the right to organize or they tend to control it?

Research questions:

In the light of above this paper attempts to answer the following questions as the theme of the paper:

1. Do the legal provisions in Nepal encourage the formation of trade unions or they are more tilted towards controlling it?
2. Do the legal provisions encourage collective bargaining and allow the workers to go on strike as a legitimate means to defend their occupational interest or the legal provisions are more inclined towards its control.
3. Taking the above aspects in totality, is right to organize facilitated or there is a tilt towards a control over it?

Objective of the paper:

This paper intends to undertake the task of reviewing and analysing relevant legal provisions concerned with the right to organize in Nepal. The objectives of the paper will be to assess how far the legal provisions facilitate or control the right to organize in Nepal which is supposed to be restored after the advent of multi-party political system in 1990.

Sources of data and methodology:

This paper will be based on secondary sources. Owing to the fact that focus of the paper will be on the assessment of legal provisions as to whether they facilitate or control the right to organize, the major source of data will be the relevant laws themselves. Apart from this The Constitution of the Kingdom of

Nepal, government publications, articles published in journals and publications of the trade unions will also be used. In addition to above ILO Convention No.87 (Freedom of association and protection of the right to organize) and various relevant publications of ILO concerned with right to organize will also be used.

This paper will proceed by analysing the relevant legal provisions regarding right to organize in Nepal and an attempt will be made to assess their implications. In doing so the provisions of ILO convention No. 87 and views expressed by ILO committee of experts on freedom of associations will be taken as guidelines.

Limitations:

A paper such as this is bound to suffer from a number of limitations. As has been said earlier industrial relations has been one of the most neglected aspects of studies about Nepal, inside or outside the country. Even the articles about this aspect are available in a very small number let alone their quality. This paper therefore faces the problem of poor data and this is the major reason why this paper has to take the legal approach while analysing an important aspect of industrial relations. Matters actually happening in the field would have been more interesting subject of investigation for a researcher but limitations as discussed above and the fact that this paper is not going to be based on field survey and primary data collection, have made the choice of legal approach more of a matter of compulsion than of a matter of motivation. Therefore the paper will largely be confined in the analysis of the relevant legal provisions.

Significance of the study:

The role of the state has remained very significant in shaping the industrial relations system of a given country. Legal

provisions are used by the states as tools in this regard. Besides this laws are also the principle tools of implementing the public policies in any given field and hence analysis of the relevant legal provisions will be helpful in analysing public policy in a particular field. Therefore in the present case analysis of labour laws will be useful in analysing public policy towards labour in Nepal. It is expected that this study will be a sound foundation for further research designed to help frame public policy in Nepal regarding industrial relations in general and right to organize in particular.

Organization of the paper:

Chapter two of the paper will examine the causes as to why states enact legislations which control formations of trade unions and their activities. Then the chapter will proceed to discuss different forms of control over formation of trade unions and also over collective bargaining and right to strike. The chapter will argue that while assessing the right to organize in a country, not only legal provisions regarding formation of trade unions but also legal provisions regarding collective bargaining and right to strike should be taken into account.

In chapter three right to organize in Nepal will be discussed in historical perspectives. Attempt will be made to show the state of right to organize in different historical periods. Efforts will be made to show the link between presence or absence of right to organize and presence or absence of liberal political system in various historical periods.

In chapter four relevant legal provisions concerned with the right to organize will be presented and then attempt will be made to analyze them. There will be a special focus on the implications of the provisions and effort will be made to show what the provisions would mean to workers, employees and to even government when these provisions are translated into reality.

Chapter five will be the concluding chapter. In this chapter conclusions will be drawn and final assessment of legal provisions as to whether they facilitate or control the right to organize will be made.

Chapter-2

Conceptual Framework: The Right to Organize

Organizations of workers, namely trade unions have been accorded a prominent place in the literature of industrial relations. Described in pluralist theories, as an actor of industrial relations system (Dunlop, 1958:7) their role is projected to be limited to issues related to the work place. On the other hand, Marxists, though there are certain variations among them, look upon trade unions as the schools of socialism and according to them ultimate goal of trade unions is to overthrow capitalism and establish socialist system where workers are thought to be emancipated. Therefore it is obvious that both the schools accord prominent place to trade unions while explaining industrial relations. Indeed so far trade unions have remained as institutions to channelize workers' expression and to safeguard their rights and interests and for a long time to come they are likely to remain so.

Freedom of organization for workers is necessary for meaningful bargaining to take place between workers and capital. An ILO committee of experts (1973: 87) observes, " The importance of freedom of association as a prerequisite for the effective furtherance of occupational interests within the traditional process of labour management relations is now generally accepted." To resolve the disputes or conflict between labour and capital they should be allowed to bargain freely without the interference of outside force inter alia state has been the essence of what is known as principle of voluntarism. In this regard it is essential to note that International Labour Organization has attached great importance to the freedom of association and collective bargaining. The preamble of the constitution of ILO declares, recognition of the principle of freedom of association, as a means of improving conditions of workers. Besides this it has adopted a convention (No.87) concerning freedom of association and the protection of the right to organise (1948). The important provisions of that convention

include the right of workers without distinction whatsoever to establish and join the organization of their own choosing, right of workers to elect their representatives freely without the interference of the government in the lawful exercise of these rights and the right of such organizations to join federations and confederations.

Reasons behind the control over trade unions:

Though theoretically it is accepted that workers should be allowed to form and join organizations of their own choosing and there should be no interference inter alia from the state, the opposite seems to be nearer the truth, particularly with respect to the LDCs. In these countries a strong presence of state has been observed and the activities of workers including their right to organize is controlled. The main reasons behind the control of trade union activities are twofold, namely economic and political.

The active involvement of government in the economic affairs of the state was largely influenced by Keynesian economics. In developing countries in particular much emphasis was given to development planning and industrialization with the active involvement of the government. The above reasons brought the state to the centre of development process and in these countries, " Of all the development effects ... none is more fundamental than the likelihood of the state being involved in economic and industrial relation activities." (Dore, as cited in Poole, 1986:181) Owing to the fact that industrialization is given top priority in the development process poor industrial relations and industrial unrest in a country is seen to have an adverse effect on whole of the economy. Besides this, the formal sector of the economy is particularly susceptible to the trade union activities and collective bargaining. Wage bargaining in this sector has an important impact on the income distribution in a given country. As said earlier state being at the centre of development process cannot ignore the matters taking place in the

industrial relations system. In this regard Giugni (1974:131) argues, "...intervention by the state in respect of wages - as indeed of industrial relations generally- appears to be growing everywhere." States put forward many reasons to justify their intervention in collective bargaining or in the affairs of trade unions. The usual ones being, the fragile economies of these countries are not able to bear the burden of strikes and industrial unrest which are detrimental to production and export and hence to the whole development process.

Similarly arguments are put forward against the unrestricted wage demands of the workers and usually wage restraints are advocated on various grounds. Some of these as identified by Gladstone (1980) are: wage restraints promote greater savings, investment and competitiveness in the world market, and that these are useful as anti-inflationary and redistributive measures. The whole notion which comes to the front is that states justify interventions into the affairs of trade unions on the ground of larger societal or national interest. As such governments have a tendency to keep close watch on trade union activities and collective bargaining process and as Muir and Brown(1978:124) argue, "... the more the outcome of the collective bargaining process affects the economy, the greater will be the government's concern and involvement in the collective bargaining process."

The review of post independence era of state- trade unions relationship in third world countries also portrays the picture of state's regulation of trade unions. There were close relationships between trade union movement and national movement to free the countries from the colonial rule. In the aftermath of independence there were good relations between new rulers and the trade unions. However the honeymoon period usually did not last long and soon the political leaders began to preach the gospels of responsibility to the trade unions. Describing it as the responsible trade unionism theory Ramaswamy and Ramaswamy (1981:68) argue, " The plea for responsible unionism has its origin in the problems confronting newly independent societies

upon the exit of their colonial masters. The labour movements of most of these societies, including of course India, had earlier been a part of their nationalist independence movements. Under the colonial regime worker protest was welcome because it added to the discomfiture of the colonial ruler. With the advent of independence, unhampered industrial production and rapid economic development became major goals. Worker protest then began to be seen as an obstacle standing in the way of the larger national interest. Trade unions were now asked to help increase production, and be more moderate in pushing the interests of their members. Stated briefly, the crux of responsible unionism is the idea that unions should cease to be the advocates of purely sectional interest, and be responsible for the larger interests of society." Discussing about the post independence era Gladstone(1980:55) argues, "... many governments in the newly independent countries sooner or later came to the conclusion that measures to deal with trade unions and reform the industrial relation systems had to be taken." In this regard the reasons to "deal with" the unions were largely the economic considerations as discussed above. Related to this was the idea that labour force was a sort of privileged minority group which was enjoying disproportionate share of national income compared to people in the subsistence sector.

While discussing the economic reasons the aspect of foreign investment is pertinent to discuss. The third world countries usually lack financial resources and hence they want to attract foreign investment for industrialization and employment creation. For the investors availability of cheap labour is the most important attraction and prefer an environment which is trouble free in their eyes. In other words they do not want the presence of militant trade unions. Therefore suppression of trade unions and restriction on their activities become the inevitable choice for the governments and thus this has emerged as an important reason for the increased regulation of trade unions in the third world countries.

The control over trade unions can be seen as one of the impacts of the relationship between capital and the state. As Offe (1985:191) argues, " Although governments can forbid certain type of activity, they cannot command business to perform. They must induce rather than command..... The entire relationship between capital and state is not built upon what capital can do politically through its associations but upon what capital can refuse to do in terms of investment decided upon by the individual firm." Thus state has to depend upon capital for investment and to run business and industrial activities. Though states have themselves invested considerably in industries but this has a limit and particularly in the present era of economic liberalization and privatization policies state's investment is diminishing. As such the dependence of state over capital definitely affects the relationship between labour and the state. Needless to say one can expect more control over labour and it is no wonder that labour often finds both the state and capital in the opposite camp and experiences control over itself as a joint venture of the two. Technological advancements in the field of communications and computers have made possible the transfer of capital almost instantly from one country to another. This fact coupled with the wave of economic liberalization policies sweeping the world has made capital extremely mobile and literally there is no boundary for it today. For an investor today it is both easy to comprehend investment opportunities and transfer capital to any other country. States have to take this fact into account while framing the policies to attract investors. In this regard it has been observed, for example, that establishment of export promotion zones have been accompanied with the control over trade union activities such as ban on strikes. The protective provisions in the labour laws are usually repealed to enable the management to deal with the labour and thus these have become contemporary economic reasons of controlling the activities of trade unions.

Besides these reasons which are economic in nature there are some reasons that are related to politics. During the colonial

days advancement and promotion of trade unions in the colonies was denied because of the fear that union movement might convert into the movement directed against the colonial rule. In the post independence era also sometimes the trade union activities were regulated from the fear that it may become the movement against the ruling elite. In this regard Gladstone (1980:85) argues that regulation of trade union activities is often caused "... by a desire of ruling elite to protect itself from any organised source of present or future opposition." Similarly referring to the Latin American countries in general Epstein (1989: 1) argues that influential political groups, "... look to the state as an instrument to be used to control labour, given the states's access to the means of coercion." More often this scene is observed in the cases where there is absence of pluralism. Repressive regimes such as military rules perceive trade unions and the labour movement as the organised potential opponent. Therefore autonomous labour movements become undesired elements in the eyes of those who are in power.

However, while discussing political considerations it is to be noted that every regime has not used coercive methods or suppressed trade unions. There are some cases where rulers have let the trade unions grow with the hidden agenda of the desire to use trade unions to get political support, as has been observed in the case of Egypt as described by Bianchi (1986).

Legal provisions and control over the right to organize

Controlling the right to organise is one of the ways of controlling the activities of the trade unions. This may be done in various forms: curtailing the right to organise in general, banning all but the official trade unions, restricting or limiting the membership of the union to similar occupations and by denying the right to organize to certain categories of workers etc.

However, the question which arises here is whether there can be an absolute right unchecked by any kind of societal control or

limitations? Is such a right possible? In other words should labour have untrammelled right to organize or should such a right be subject to certain controls and regulations which any society might consider necessary. Of course, no right is absolute and even the fundamental rights guaranteed in the Constitutions are subject to restrictions as mentioned in the Constitutions themselves e.g. Article 19(4) of the constitution of India and Article 12 (2) (e) (1) of the present Constitution of Nepal. This is because right of some have to be balanced against the right of others. At this point arises the bigger and more complex question how to distinguish between a law which provides the right to organise and the one which controls it? What is the line of demarcation between a controlling one and an enabling one which provides the right to organise? At what point does freedom end and control commence? Indeed it is not as easy as the earlier one to answer.

The attempt to answer this question will be in other words the search for a framework against which legal provisions as to how far they promote or control the right to organize in a country can be evaluated. In the process of answering the above question provisions of ILO convention No.87 concerning freedom of association and protection of the right to organize have been taken as a base and guidelines. The provisions include the right of workers, to join the organizations of their own choosing, to choose their representatives freely and the right to draw up the rules and constitutions of their own organizations. In addition to above, the convention says that the organizations should be free to join federations and confederations and that the workers without any distinction whatsoever should be accorded the right to form their organization.

The above provisions, despite having immense importance regarding right to organize are concerned primarily with the structure and composition of trade unions e.g. who can join trade unions or whether trade unions in turn can join associations or federations However, there are some other aspects which are directly related

to the structural aspect of right to organize. Cordova (1985) remarks that internal dynamics of labour relations is composed of - right to organize, collective bargaining and industrial action. Hence structural aspect of right to organize should be seen along with the aspects of collective bargaining and right of industrial action. Trade unions are voluntary organizations and as any other organization they are not an end in themselves but are means to achieve some ends. Therefore trade unions must have the rights which enable them to pursue those objectives which they basically stand for. Lack of the right to bargain collectively and the right to go on strike are the aspects which to a large extent circumscribe the role of trade unions to represent, defend and promote the rights and interests of their members. In this regard Shafritz, Hyde and Rosenbloom (1981: 304,305) argue, " Many labor leaders and sympathizers believe that the prohibition of the right to strike is a denial of a fundamental and inherent right. Moreover, they are wont to claim that collective bargaining can never be more than a charade in the absence of the right to strike. It is felt that management will not take labor negotiations seriously unless the worker has some sanction available. In the absence of the right to strike management may be patronizing at best, or at worst obstructionist. Yet in the view of many labor leaders, collective bargaining depends upon the rough equality of the parties; as a process it 'transforms pleading to negotiations.' In theoretical consequence, a strike or threat of one is an essential part of labor -management negotiations." Thus denial of the right to strike takes out the sting from labour and virtually turns the right to organize into a piece of decoration.

The close link between right to form trade unions and collective bargaining & right to strike is also evident from the following observation of ILO committee of experts in its report (1973:86,87), " Workers... should not only have the right to establish the organizations of their own choosing, but such organizations should also be free to organise their activities and formulate their programmes for furtherance and defence of the

interest of their members. Two questions merit special consideration since they relate to basic aspects of trade union activity in the field of labour relations. The first of these questions concerns collective bargaining ... The second question concerns the right to strike, which has been considered by the ILO supervisory bodies as a legitimate means whereby workers' organisations may defend their occupational interests."

Hence the assessment of laws whether they control or facilitate the right to organize should not be limited to the structural aspect of formation of trade unions but the aspects of collective bargaining and the right to strike should also be taken into account. The control over these aspects virtually means control over trade unions. Therefore an attempt is made here to encompass not only various form of control over structure but also the aspect of control over collective bargaining and the right to strike into the discussion.

Control over the structural aspects of right to organize

Control over the right to join the organizations of workers' own choosing

One of the forms of control over the right to organise is to ban all the trade unions except the official one. In other words the official trade union is guaranteed the monopoly of representation and thus workers have no choice but join that particular trade union and thus their right to join the organization of their own choosing is seriously affected. To exemplify this the following case of formation of NUTA (based on Bienefeld,1979) in Tanzania can be taken .

All independent trade unions were disbanded and outlawed and the membership was transferred to the single union NUTA in 1964. It's finances were secured through a check off system. The general secretary and his deputy were to be appointed by the president of the country. The key officers were to be appointed by the

general secretary. The whole staff was salaried and appointed centrally. The executive council consisting of the general secretary and his officers was made responsible for day to day affairs and was entrusted with the task of appointing officials in regional and branch level.

In the above case monopoly of representation was imposed by law. An ILO committee of experts differentiates between monopoly imposed by law and monopoly achieved voluntarily by workers in the following words, (1973:31) " ... although it is not the purpose of the convention to make trade union diversity an obligation, it does at least require this diversity to remain possible in all cases. ... There is a fundamental difference between a situation in which a trade union monopoly is instituted or maintained by legislation and the factual situations which are found to exist in certain countries in which all the workers or their trade unions join together voluntarily in a single organization, without this being the result of legislative provisions adopted to this effect." Therefore if monopoly is imposed by law then it should be regarded as control over workers' right to join the organization of their own choosing. Line of demarcation here should be: monopoly imposed by law is control whereas voluntary monopoly is not.

Restrictions on formations of federations of trade unions

Yet another form of controlling the right to organise is limiting the membership of the trade union to a particular occupation or organization with the intention of forbidding the formation of a general trade union. Erstling (1977:6) cites a report of ILO which says, " In certain cases the desirability of general unions (not restricted to the workers of the same trade or occupation) may arise, especially in situations where industry is scarcely developed with a few small or medium sized undertakings scattered throughout the country." Usually this form of control arises out of the political considerations.

The provisions of this kind when linked to administrative power to decide similar occupation or trade so as to limit trade union within that category may become a tool for controlling the right to organise. The case of Malaysian Trade Union Ordinance, 1959 is an outstanding example in this regard. The provisions of the ordinance accord absolute power to registrar to define 'similar occupation or trade'. On top of that there is no labour court of appeal and therefore if workers are not satisfied with the registrar's decision then they have no other way than to fight expensive litigations in general higher appellate courts. According to Henley (1980) under the provisions of the above mentioned ordinance trade unions can only be formed in similar occupation or trade. The intentions behind such provisions was to use the ordinance as, " ... a realistic measure to bar subversion and ensure industrial peace." (Henley, 1980:33) The intention of the government in promulgating such law can also be judged from the portion of the speech of the labour minister delivered in 1971, as cited by Henley (1980:33)

Refusal to permit the formation of large scale unions open to workers in a variety of industries or occupations is intended to keep out opportunists and subversive elements who might seek to use the trade union movement as an instrument to build up mass support for political agitation and other purposes which are detrimental to the true interest of trade union movement.

Obviously political reasons were behind the scene. However, legal provisions of this kind limiting the formation of trade unions within 'same occupation or trade' as defined by the administrative authorities and thus curtailing the right to form general trade unions or trade union federations and the confederations should be regarded as the control over the right to organise.

Restrictions on the right of associations to certain categories of workers

Restrictions regarding the formation of trade unions belonging to particular categories of workers or employees is another form of controlling the right to organise. There are instances of denial of right to organize to various categories of workers.

Civil servants and the managerial staff are often denied to form trade unions. Hodges- Aeberhard (1989) cites the cases of denial of the right to organize to banking staff, agricultural and plantation workers, domestic workers and persons working in charitable institutions.

Civil servants are the foremost examples of this category. The organizations of civil servants and their rights to strike has remained a controversial and debatable issue. Moreover, in many countries civil servants are in considerably high proportion in the total work force. Therefore providing them the right or denial of it will, to a large extent determine the overall state of the right to organize in any particular country. These facts justify to deal with this issue or this aspect of right to organize at some length.

In some countries the right to organise is denied outright to the public servants and the countries where they are accorded this right various strings are attached. According to Erstling (1977) legislations of countries such as Ecuador, Ethiopia, Jordan, Liberia, Nicaragua, Peru and Turkey deny the right to form trade unions to the employees of public service. In countries where this right is accorded to the public servants, restrictions of other type are attached. The legislations of Cyprus, Mauritania and Switzerland forbid the organizations of the public servants from affiliating to the organizations of the workers of the private sector. In plain words the trade unions of public servants and that of the workers of the private sector should be separate altogether. Besides this, legislations of some countries (e.g. Malaysia and Mexico) restrict the membership of such trade unions to a particular government unit. In other words a trade union encompassing the whole civil service cannot be formed and every trade union in individual government department must have a separate identity. Within public services also certain categories such as firemen and the prison staff are denied this right. Hodges - Aeberhard (1989) cites the example of Japan in this regard.

Right to organize in the case of public employees (like in private sector) should be seen along with the right to collective bargaining and the right to strike. Some governments recognize the right to organize to the public servants but they have refrained from granting the other two. Therefore unlike private sector where the terms and conditions of employment are determined through collective bargaining (or jointly) the tradition in the case of public employees has been that of unilateral determination by the government. The ideological basis for this principle as argued by Ozaki (1987:287), "... is the doctrine of sovereignty of the state, according to which as the representative of the popular will (or general interest), the state has an unassailable right to act unilaterally in matters coming within its legislative powers, a right that can not be challenged by groups representing particular interests such as public servants organizations." However, this principle has been diluted over the years and there are distinct examples which show the shift from unilateral determination to joint determination. Ozaki (1987) cites some examples in this connection. These include joint consultations in various countries modelled after the British Whitley councils and the determination of salary on the recommendations of ad hoc committees (salary or pay commissions) in India, Malaysia, Nigeria and Sri lanka. These commissions receive representatives from unions and associations of public servants. Though it should be admitted that pay is still determined more or less unilaterally in these joint consultations but as Ozaki (1987:289) argues, "... public servants may still indirectly influence pay determination through the joint consultative machinery, as happened in India when both sides negotiated the terms of reference for the third and fourth pay commissions." Obviously, this falls well short of the dimensions of collective bargaining prevailing in the private sector.

Why then collective bargaining is not so forceful in case of civil service compared to that in private sector? It is the legal framework that determines the limits of manoeuvre of the parties

as to what actions they can take and what they cannot. In other words it is the legal frame work that stipulates which actions the parties can take if impasse occurs. In the private sector the parties can go for the industrial actions like strike and lockout. As regards collective bargaining between civil servants and the government lock out is out of question and strike is usually prohibited. Strike is regarded as the ultimate weapon in the arsenal of labour but the instances of equipping labour with this right are exceptions rather than the rule. This creates the imbalance between the two parties. The implications are that the civil servants cannot press for their concerns and the terms and conditions of their service are unilaterally determined.

However, this is only half of the story and without listening arguments from other side the prohibition on the right to strike can not be condemned. Many of the functions of government are unique without any parallel in the private sector. Unlike private sector where employer's economic interests are threatened at most as a consequence of a strike, strikes by public employees can make the whole society suffer. Strikes in vital government services can create chaos. As Shafritz, Hyde and Rosenbloom (1981:305) argue, " While holding the public welfare and convenience hostage, public employers are in a strong position to blackmail the society into the acceptance of unreasonable demands. Were this the case simply with reference to economic matters it would be potentially difficult enough. However, it is not uncommon for strikes to be over policy considerations as well... the determination of policy questions without any semblance of popular participation is antithetical to democracy." Even ILO seems to have some reservations regarding the right to strike by public servants. An ILO committee of experts (1973:84) observes that in the case of public servants, a distinction was drawn between right to organize and right to strike, during the preparation of Convention No. 87

Both the supporters and the opponents of legalizing public sector strikes have valid questions and have developed a series of

arguments. Some of the arguments as listed by Siegel and Myrtle (1985:377,378) are as follows:

Arguments against

1. Strikes violate sovereignty - conceding authority to any special interest group contravenes the public interest.
2. Public services are essential and cannot be interrupted. In effect all government services are vital.
3. Traditional channels of influence on public policy exist for unions: lobbying and voting. With strike leverage, public employees gain advantage not available to other employees in the economy.
4. Whereas strikes in the private sector are usually of an economic nature, those in the public sector are political. They are strategies that use the leverage of public inconvenience to cause a redirection of budgetary priorities.
5. Government is a model employer and public employees are privileged as a class.

Arguments for

1. Public employee strikes occur whether or not they are legal and regardless of heavy penalties prescribed by law...."
2. In strike situations, labor management conflict becomes channelled and socially constructive - both management and labor gain greater understanding of each other and consequences of work stoppages.
3. The right to strike enhances a union's strength as a bargaining agent. Lack of the ultimate ability to withdraw services weakens labor's position on the bargaining table.
4. Many private sector workers doing the same work that public employees do (for example workers in transit, health care, garbage collection and communications) have the right to strike and for many other public employees (clerks, for instance) the public consequences of striking would be little different than they are when private sector clerks strike.
5. There are no market -system constraints on government - it has a monopoly and can not go out of business; and in

a strike revenues continue to accumulate with reduced corresponding expenditures.

6. Former special benefits of government employment (for example, pensions and paid leaves and holidays) now are also provided by the private sector.

In addition to above the following arguments of *Commissaire de Gouvernement* submitted to the French *Conseil d'Etat* concerning the appeal of an *agent de prefecture* against the sanction imposed on him for taking part in a strike seem very pertinent, "... although the whole tendency of the recent years has been to draw civil servants and private law employees close together, it would create a radical difference between them in this fundamental matter of the right to strike on the grounds- which are increasingly belied by the facts - that if the life of the nation is to go on, the former must be at work while the latter need not. In recent years it has been pointed out often enough that a strike of bakers or milkmen has more effect on the life of the nation than the strike of museum attendants or mortgage registrars. ... The dividing line between professional activities which cannot be interrupted without grievously harming the life of the nation and those which can tolerate strikes does not by any means coincide with the line between civil service officials who are subject to disciplinary law on the one hand, and private law employees who have collective agreements on the other. Any legal practice which took no account of this *de facto* situation would be open to serious criticism." (cited in Fougere,1967:278) Thus the legalization of the right to strike by the public servants is a delicate, complex and controversial issue. The solutions therefore are not easy and simple. The fact which has been observed so far is that anti- strike laws, "... reflect a purely administrative approach to a socio-political phenomenon, the fact remains that in most countries legal prohibitions and restrictions have been powerless to prevent strikes."(Cordova,1985:163). Similarly as Posey (1956) argues, " It is folly to expect that laws will stop crimes. Anti- strike laws will not stop strikes. A strike against a government is a breakdown in its employee relations for workers do not lightly undertake to strike. A strike can injure them as much as it can

injure the employer. A strike is a result, not a cause. The control of strikes lies with preventing the cause of strikes."(Posey in Fougere, 1967:279)

Thus on one hand the restrictions on the right to strike makes right to organize purposeless while on the other these restrictions are unable to stop the strikes and therefore the very purpose of anti-strike laws is defeated. Therefore anti-strike law is not the answer. The crux of the problem in this regard seems to be unavailability of the avenues of participation for the employees in those decisions which affect their daily life. Therefore providing genuine opportunities of participation seems to be a solution.

Legal provisions regarding role of trade unions in dispute settlement:

The right to organise should go hand in hand with those rights which enable trade unions to pursue the objectives which they basically stand for. In other words right to organise should be supplemented with those rights which facilitate the trade unions to take those steps which enable them to advance the living and working conditions of the workers. These rights include the right to represent the workers, right to collective bargaining and if it fails the right to take industrial action, e.g. right to go on strike and immunity from criminal proceedings while lawfully furthering the rights and interest of their members. The aspects such as procedural formalities before launching a strike action and a comparatively recent phenomenon - the strike ballot are also pertinent in this regard. In fact these aspects to a large extent determine the role of the trade union and their activities. Therefore the review of the pertinent aspects of dispute settlement mechanism along with the structural aspects of right to organize seems to be the appropriate way to assess the right to organize in real terms.

It is said that disputes between employers and employees over

terms and conditions of service is as old as employment itself. The disputes may result in costly work stoppages which may adversely affect not only the social partners but also the whole economy. Industrial conflict is seen as detrimental to the aspects such as attracting foreign investment, increasing exports, increasing productivity and overall production and therefore elaborate arrangements are made in concerned laws to minimize and resolve industrial disputes. Though these disputes can be resolved through bilateral negotiations between the employees and the employers or between their representatives but, if negotiations end into a deadlock then two possibilities are left. Either industrial actions, viz strikes and lock outs are launched or there emerges the possibility of third party intervention into the dispute to prevent this. In this regard Bean (1985:119) argues, " Even where an agreement has been concluded and relations between management and workers regularised at the level of undertaking, grievances are inevitable. It therefore became recognised that third party, peace-keeping procedures would be both useful and necessary to help resolve disputes with a view to the avoidance of industrial action." Indeed keeping this in view elaborate arrangements are made in labour laws regarding the settlement of industrial disputes with third party intervention and the most common procedures of such mechanism are, conciliation & mediation and arbitration.

Conciliation & Mediation : The word 'Conciliation' is derived from the Latin word 'Conciliare' which means 'to bring together.' According to an ILO publication (1980:15) conciliation is, "... a procedure whereby the third party brings the parties together, encourages them to discuss their differences and assists them in developing their own proposed solutions." Similarly according to Gladstone (1984:2), " The conciliator attempts to conciliate or bring together the parties to the dispute by exploring with them, and eliciting from them, changes in their respective demands and positions ... but it is not the accepted role of conciliators (unlike arbitrators) to substitute

their judgement for that of the parties and possibly impose a solution with the substance of which the parties may not agree."

The word 'Mediation' is derived from the Latin word 'Mediare' which means to occupy a middle position. According to an ILO publication (1980:15) conciliation and mediation are considered as interchangeable and the countries where distinction is made between the two it is done on the basis of the initiative taken by the third party. Similarly according to Gladstone (1984:2), " Mediation is very close to conciliation and in most cases those terms are used interchangeably, although under a few industrial relations systems a distinction is made between the two. Mediation also involves a usually neutral third party, but more emphasis is placed on the active role of the mediator, who is expected to put forward settlement proposals. ... However, like a conciliator, a mediator cannot impose solutions on the parties." Thus the two terms are almost similar except that the role of the third party is seen more active than in the process of mediation. The difference seems to be more that of degree than that of the kind.

Arbitration: Arbitration ... " is a procedure whereby a third party (whether an individual arbitrator, a board of arbitrators or an arbitration court), not acting as a court of law, is empowered to take a decision which disposes of the dispute". (ILO,1980: 15) In the case of a right dispute the arbitral body interprets the existing rules to make a decision about the dispute whereas in case of interest dispute arbitral body is supposed to find the solution balancing the economic and the related interest of the employees and the trade unions on one hand and that of the employers on the other. The process of arbitration is further classified into two types- voluntary and compulsory. However, the notion of voluntarism and compulsion is related to both initiations of procedures and acceptance of awards given by the arbitral body. The initiation of a procedure is voluntary if consent of the both parties is required and compulsory if it is otherwise. Similarly so far as the manner

of effecting the settlement is concerned, it is voluntary if the consent of both the parties is necessary for giving effect to arbitration award and compulsory if the award is legally binding. In the later case the consent of the parties is immaterial.

Dispute settlement mechanism is part of the public policy towards industrial relations. As such choice between voluntary and compulsory mechanisms can be seen from this perspective. The countries where emphasis is laid on freedom of parties and where settlement is conceived as compromise freely arrived at by the parties voluntary mechanism is preferred but where avoidance of work stoppage is a preference, compulsory mechanism has a greater chance to be adopted. However, these systems are not mutually exclusive. From this point of view disputes settlement mechanism are categorised into three groups. In the first category voluntary mechanism predominates, in the second category emphasis is on voluntary mechanism but compulsory mechanism is adopted in the case of certain sectors such as essential services while in the third category compulsory arbitration is the rule and it is generally applicable to all disputes whether they arise in essential services or in others.

General applicability of compulsory arbitration may come in two ways. "... first, the legislation may provide for the automatic reference of a dispute to arbitration after the failure of conciliation or some other method of voluntary settlement which has been provided for; second, arbitration can be applied for the settlement of any dispute at the instance of the competent authority or on the application of only one party on either side of the dispute."(ILO, 1980:166) If compulsory arbitration becomes the matter of general applicability then it severely curtails the freedom of the parties to bargain collectively and thus contractual freedom of the parties to determine the terms of their relationship is replaced by the decision of a third party. It is because of this reason that general applicability of compulsory arbitration has become controversial method of

dispute settlement. This is seen by many as the direct intervention of state. In this regard Bean (1985:122) cites Miliband (1969) to argue, "... in those instances where governments have felt it incumbent to intervene directly in disputes between employers and wage earners, the results has tended to be to the disadvantage of the latter, even though it may well have been done ostensibly in the name of the national interest. This view strongly challenges pluralist interpretation of the role of the state which is seen as being by and large neutral in relation to the various and (competing groups) in society, merely 'holding the ring' around them."

Indeed activities of trade unions are severely circumscribed in this system of dispute settlement because industrial actions cannot be taken while arbitration is in progress and since the award is legally binding any further action in this regard can be declared illegal. In fact keeping this in sight i.e. with an intention to curb trade union activities, compulsory arbitration has been adopted in many countries. This is clearly demonstrated by Henley (1980) in the case of Kenya. Hence the system of dispute settlement mechanism of a country determines to a large extent the activities of a trade union to further its objectives.

In this connections an ILO committee of experts objects those legislations which prohibit all categories of workers from going on to strike. The committee observes in its report (1973:87), " Where legislation directly or indirectly places a general prohibition on strikes applicable to all workers, such prohibition would constitute an important restriction on the activities of trade unions and, therefore, be inconsistent with the principles of freedom of association." It however observes that restrictions of temporary character may be admissible. The example of prohibition on strike while collective bargaining is in process may be taken in this regard. Similarly it also observes that prohibition on right to strike in essential services and public servants are admissible provided that, "... sufficient guarantees should be accorded to these workers

in order to safeguard their interests, such as adequate, impartial and speedy conciliation and arbitration procedures in which the parties can participate at all stages... " (1973:87) Thus general prohibition on strikes and collective bargaining is a control whereas certain restrictions are admissible subject to above conditions.

Apart from the general application of compulsory arbitration as discussed above the procedural formalities before launching a strike action can also have an impact on trade unions' role and activities. These include notifying the management beforehand, waiting for some time while passing through mediation and conciliation and the provision of strike ballots. The strike ballot has become a controversial issue. The opponents of strike action criticise it as yet another method of control over trade union having a hidden agenda of circumscribing their role. Unions in Great Britain even threatened to ignore the provisions of Trade Union Act, 1984 which inter alia contained the provision requiring the secret ballot before launching an industrial action. (Social and Labour bulletin, 1984:429) The advocates on the other hand argue that this provision promotes democracy in the trade unions and that strike actions which may cause society to suffer should not be left to the whims of a coterie of union leaders. In this connection it is interesting to note that recently leader of the British Labour Party, Mr. Tony Blair, has expressed his opinion in support of strike ballot by saying, " No one believes strike ballots should be abandoned. So why do we say it. We should not and I won't. (Quoted in The International Guardian, 5th October, 1994) Here comes again the question of differentiating between legitimate control of society over trade unions and repressive interference in their affairs. Considering the arguments of both the sides it seems that provision of strike ballot in itself should not be considered as a repressive interference unless the minimum number required in support of launching the industrial action is made unreasonably high. Though a test based upon statistics may not be proper to assess a law with regards to questions posed above but simple

majority, which is more often used as a rule in democracy should be regarded as a line of demarcation in this regard.

Attributes of legal provisions that provide the right to organize:

Now, after the above discussion it is pertinent to attempt to determine the attributes of legal provisions which control or facilitate the right to organize. If monopoly of representation is accorded to a particular trade union by law then such legal provisions should be regarded as controlling ones because in that case workers' right to join the organizations of their own choosing is infringed. The example of formation of NUTA as described earlier is a classical case in this regard. In that case workers had no other choice but to join the only trade union and moreover law did not leave any possibility of forming alternate unions by the workers. Furthermore, representatives of workers and the office bearers of the trade union were nominated and appointed by the state in place by workers themselves. Such organisations can not be called the true representatives of their constituents. Such legal provisions which impose monopoly of representation and accord the state the right to appoint the representatives of the workers and office bearers of the trade unions should be regarded as controlling ones.

Similarly, the other aspect which is to be examined in this regard is the issue whether or not the legal provisions accord the right to form their organization to workers without distinction whatsoever. Of course, the cases of armed forces and the police can be regarded as exceptions because even the ILO convention No. 87 leaves to the legal provisions of concerned countries the extent to which the guarantees of the convention should apply. Generally speaking, if legal provisions make distinctions among employees while providing them the right to form their unions then such laws should be regarded as controlling ones.

Similarly the aspect whether the legal provisions permit or prohibit the trade unions to affiliate into federations and confederations has a direct bearing on the right to organize. Permissions to form federations will add to the coordination of the trade union activities and certainly will add to the strength of the working class. Denying this right means that workers have to fight against all odds with limited resources. More often denial of this right is on political grounds as was seen in the Malaysian case as presented above. Therefore the legislations which prohibit the formation of trade union federations and confederations should be regarded as the controlling ones.

In addition to the above if collective bargaining and strikes are totally prohibited then those legal provisions should be regarded as control over right to organize. However, prohibition of strikes in vital areas like essential services and in the case of civil servants can be taken as legitimate control provided that legal provisions ensure prompt settlement of the grievances of the workers with their active participation in the process. Line of demarcation is: total control on all is control whereas in certain cases prohibition can be regarded as admissible subject to necessary safeguards. Regarding the formalities if minimum required support in the strike ballot is above simple majority then it should be regarded as control.

The assessment of legal provisions of a country as to whether they control or facilitate the right to organize should be seen in totality considering various factors as mentioned above. Moreover, while assessing legal provisions regarding right to organize of a particular country it is also necessary to take into account the country's industrial, economic and political background. Nevertheless, in physical sciences it is relatively easy to pass a precise judgement about a particular substance as to what it is or to what extent it conforms to an ideal. This can simply be done by putting it into different tests. On the contrary it seems rather difficult to pass a judgement about a social phenomenon as to what extent it conforms to an ideal.

Indeed precise 'scientific tests' are difficult to develop in the case of social sciences.

of Ranas and their ubiquitous non-Rana adherents. No peaceful dissent or protest was possible, and internal changes within the Rana system could take place only through coups and conspiracies. The system was continued fundamentally unchanged so far as its reliance on force and coercion was concerned, until its overthrow in 1951. The few changes that occurred during its more than a hundred years were changes not in its aims and methods, but merely in leadership, the consequence of the endless struggle for power within the Rana family itself.

During that autocratic regime when there was no guarantee of the minimum of the civil liberties and when the government was not responsible to the people it was quite natural for the government not do any thing to improve the working conditions of the labour and granting them the right to organize was simply unthinkable.

Even under such circumstances as General Federation of Nepalese Trade Unions (GEFONT) argues, "... the emerging force of industrial labourers did make their union." (1992:21) According to GEFONT the historical factors behind this were the excesses of the Rana regime, indiscriminate behaviour of the factory owners and the impact of Indian and Chinese liberation movements and thus, "... the historical labour movement of Nepal found a favourable situation by the beginning of 1947." (GEFONT, 1992:22) According to Dahal (1988:166) influence of the Indian workers in those factories, who were well acquainted with the industrial environment of their country, was also a reason behind the organization of workers. Besides this GEFONT (1992:22) also argues that trade union movement was also influenced by the political movement of that era and as a result there were two streams in the trade union movement:

- (a) All Nepal Trade Union Congress (ANTUC)
- (b) Biratnagar Majdur Shava (Biratnagar Labour Union-BWU)

Thus the facts behind the emergence of trade union in Nepal were the historical reasons as mentioned above, the influence of Indian workers acquainted with the trade union movement in their country and the impact of the political parties which gave

further impetus to the movement.

One of the notable achievements of workers in that era was a strike in Biratnagar Jute Mills and Morang Cotton Mills which started in March, 1947. Actual leadership for this strike was provided by the political parties. (Pant and Agrawal, 1978: 61) This strike is regarded as a land mark in the history of industrial relations in Nepal. GEFONT remarks, " The strike has been regarded as of immense significance not only because it was first of its kind but also because of the awareness, clarity of demands and the initiator of the wider popular movement." (1992:23) According to Schregle (1982:150) this movement grew, "... out of wage claims, demand for union rights and improved working conditions." This strike could not last long because it was suppressed by the government and its leaders were arrested. Till 1951 Biratnagar workers union, Independent workers union Biratnagar and cotton mills workers union Biratnagar were the unions formed in the industrial sector in Nepal. (Pant and Agrawal, in Dahal, 1988:167)

Right to Organize and Industrial Relations during multi- party period (1951- 1960)

With the overthrow of Rana oligarchy an era of political liberalism commenced in Nepal. In the words of Joshi and Rose (1966 :79), " The revolution of 1950 was... a relatively brief episode but its consequence were epoch making for contemporary Nepal." In the new system of governance, the first major law was Interim Government of Nepal Act which came into force on March 30, 1951. This law, which is also known as the Interim Constitution, guaranteed some rights to the citizens of Nepal which included, "... rights of the citizens to freedom of speech and expression, freedom of assembly, association..."(Joshi and Rose, 1966: 150) According to Dahal (1988:167, 168) in the period between 1951 and 1960 trade unions such as All Nepal Trade Union Congress, Biratnagar Mill Workers' Association, All Nepal United Labour Union and Nepal Labour Unions were established. These organizations were probably established enjoying the general right of forming organizations conferred by the Interim

Constitution because there was no specific law regarding trade unions. Schregle (1982:15) points out that, "... the Biratnagar jute mills labour union requested the government in 1953 to enact a labour law, but in vain." Dahal (1988) quotes Pant and Agrawal to point out that in 1953 workers of Biratnagar Jute Mills continued a strike for 23 weeks demanding recognition of trade unions, to put an end to arbitrary dismissal of workers by the management and increase in wages etc. In the meantime elections for the parliament were held under the provisions of Public Representation Act, 1958 although a new constitution was promulgated before the elections. Nepali Congress Party, which had spearheaded the 1950 revolution got absolute majority and came to power. This was the first instance that a government elected by people had come in power in the history of Nepal. One of the works accomplished by the government was the enactment of Nepal Factory and Factory Workers Act, 1959 (hence after called the Factory Act). This Act provided inter alia the right to form trade unions which were required to be registered with the government. While doing so the trade unions were required to furnish the names and address of the president, vice president and the secretary of the union along with the address of the union. (Dahal, 1988:168)

Right to organize and industrial relations during Panchayat regime (1961-1990)

The parliamentary democracy did not last long and it was killed in its infancy on December 15, 1960 in a Royal take over. The parliament was dissolved, the constitution was suspended and the members of cabinet including the prime minister were arrested. The Royal proclamation levelled serious charges against the government which included setting aside the interest of the country and advancement of party interest, encouraging anti-national elements and corruption but as Joshi and Rose (1966:385) argue, "... these vague allegations have been endlessly repeated in government pronouncements and the local press, but have never been substantiated by documentation or appropriate proceedings

in any court of law." On January 5, 1961 by a Royal proclamation political parties and class organizations motivated by the party politics which also included the trade unions were banned. In 1962 a new constitution was promulgated with the provision that, "... no political party or any other organization, union or association motivated by the party politics shall be formed or allowed to be formed or run." (Article 11.2a) Thus began an era of political conservativeness. The impact was that workers were deprived of the right to organize. The political change and its impact was reflected in the Factory act and through the first amendment in 1962 the provision related to the right to form trade unions was repealed.

Thus the undemocratic step of December 1960 virtually ended the workers' right to organize. However the Constitution recognized formation of class organisation, "... with a view to integrate and utilize the united strength of various classes for the development of the nation ..." (Article 67A). The class organisations were that of Women, Youth, Peasants, Labour, Elders and Ex- Serviceman (retired personnels from the army). Thus Nepal Labour Organisation (NLO) as was then called, was formed as a 'class organisation' of Panchayat polity, a political system which was characterised by partylessness i.e no political party could be formed. In the beginning the class organizations including the NLO were accorded two seats each in the parliament but later on this provision was repealed by the second amendment of the constitution in 1975. The class organizations acted under Class Organization Act, 1979. The objectives of class organizations as laid down in that Act, according to Rastogi (1989) were,

- a. To keep the appropriate class conscious of it's responsibilities and duties towards the country and the King, and channelise it's energies towards national reconstruction.
- b. To mobilise manpower for the successful execution of programmes determined by local Panchayats.

c. To make the appropriate class active in order to strengthen the Partyless Democratic Panchayat System and the principle of class coordination and cooperation.

d. To bring about coordination and harmony in the energies of the appropriate class and those of other organisations on the basis of a programme, and

e. To work for the all round well-being and progress of the appropriate class.

Thus it is obvious that NLO was not a trade union in true sense. It was only a 'class organisation' and was supposed to function in a coordinated way with other class organisations. The integration of the class organisations was so much that in the district level all these class organisations had a common office and a common secretary provided by the government. The objectives of NLO as laid down in the Act were nowhere near to the objectives of a trade union. In this regard Rastogi (1989:11,12) remarks, " The constitutional recognition of NLO as the exclusive class organisation of workers, has rendered the workers freedom to form unions ineffective. On the other hand NLO has been provided with a structure which is more appropriate for it's political role than what would be compatible with industrial relations function of such an institution."

In a later (1992) publication General Federation of Nepalese Trade Unions (GEFONT) charges the then NLO comprising of regime's spies and agents which was created to keep an eye on and suppress labour activities. In this regard Shaha (1992:102) argues, "... in practice, these so called class organisations had such a sheltered existence that they could never stand on their own feet." In fact these organizations were established, funded and guided by the regime to perpetuate itself. Creation of these organizations had a hidden agenda of denial of the right to organize to the people of Nepal. This is obvious from the Preamble of Unions and Organizations (Control) Act, 1963 which justifies the objective of the Act (the control over unions and the organizations) on the ground that they were unnecessary because the constitution had already made the provisions for the

establishment of class organizations. Thus that era was marked by denial of the right to organize to the people of Nepal *inter alia* workers. This right was restored only after the restoration of multi-party democracy in 1990.

However, GEFONT claims that it operated even during the Panchayat era. According to one of its publications it was founded on July 20, 1989. It claims to include Nepal Independent workers' union, Independent Transport Union of Nepal, Nepal Independent Hotel Workers' Union and Trekking Workers' Association of Nepal. The fact that the convention to establish this centre is claimed to be held underground(GEFONT, 1992:35) and also that only the name of the president was made public (GEFONT, 1992:35) means that this organization operated underground and same can be assumed about the organizations which it claims to include within it.

In that era the factors which are conducive for trade unionism were absent in Nepal. These factors as pointed out by Poole (1986:67) are, "... a market economy with a substantial private sector, a democratic political system and pluralistic institutional forms ..." With the ban on political parties and trade unions, prohibition against expressing views against Panchayat system even in the National Panchayat(Parliament of that era), and ban on the demonstrations are sufficient to prove that neither the system was democratic nor the institutions were pluralistic. As regards private sector in that era the Eighth Plan (1992-97) document remarks, "Excessive control and government intervention prevented the development of the private sector. Whatever increase in the investment of the private sector took place was attracted to real estate and trade rather than to more productive sectors." Thus it can be argued that there was an absence of substantial private sector which became a factor for not advancement of trade unionism. On top of that economy is predominantly based on agriculture and even according to the latest (1991) census more than 81% of total economically active population is engaged in agriculture. This has also acted as a force retarding the advancement of trade unionism in Nepal.

Employers' association As regards the employers' association, though Federation of Nepalese chamber of commerce and industries (FNCCI) was established in 1965 but it's role in the field of industrial relations has not been prominent. As the name implies this organisation has been more oriented towards business promotion. Upadhyay (1971:260) has gone to the extent to say, "In my country employers' association in the strict sense of terminology are not existent so far." Similarly according to Shrestha (1974:73) FNCCI was not equipped, " ... as an organisation primarily dedicated to and involved in labour and industrial relation. Specifically it is not prepared to act as an employers' organisation for industry wide bargaining with labour and for making uniform policies on personnel administration." As recently as 1993 , Khan (1993) while reviewing the state of industrial relation in Nepal, observes the absence of a representative and enlightened employers' association.

Theoretically speaking absence of strong and genuine employers' association in Nepal can be linked to absence of strong labour movement or labour organisation. Poole (1986) links the existence of strong employers' association in some countries with the influential trade unions in those countries. He cites the examples of Sweden, Australia and Israel in this regard. In case of Australia Poole (1986:59) argues, "... Australian employers' association sometimes become defunct when the threat from labour was no longer exigent, only to reform again when pressure was renewed." In case of Israel also this principle applies, as is obvious from, "... in Israel, the challenges posed by labour movement (the Histadrut), more than any other reason prompted employers to establish associations.[Shirom, as quoted in Poole(1986:59)]. Since in Nepal there were no trade unions at that time so following arguments of Poole it can be argued that employers did not bother to form their own association.

Even if we take up FNCCI as employers association then also the consultation with it by public authorities in the matters of

industrial relations was limited. According to Shrestha (1974) FNCCI was represented in bodies such as trade promotion centre, electricity charges fixing committee, university council, Jute development board, National Development Council and minimum wage fixation committee. Most of these bodies were of not much influence and importance. However, some were of significant importance e.g. National Development Council. This was an advisory body to national planning commission. In this council FNCCI was represented by its president but this representation was not more than of token importance. This body was mainly composed of 'politicians' of that era and the bureaucrats who usually have the necessary data and information. Sole representation by the president was nowhere near to consultation and cooperation. The minimum wage fixation committee was however an important committee to be participated by FNCCI. Though more often it argued to keep the wages low but on account of lack of research, data etc. it could hardly show any rationality of its proposals. Moreover as pointed out by Khan minimum wage first fixed in 1973 were revised only five times till 1990 and also that minimum wage fixation committee was to be formed on ad hoc basis there was no regular contact with FNCCI on the matters of minimum wage.

Thus FNCCI as an employers' association was not influential. The consultation and cooperation that should have been sought by public authorities with an employers' organisation while framing policies in the field of industrial relations was never observed. Mere representation in some of the committees and bodies fell well short of advice, cooperation and consultation that is supposed to be sought from an employers' association.

Industrial Dispute settlement mechanism: Factory Act and the rules framed under it were the legal provisions which took care of the dispute settlement mechanism and the industrial relations during this period. The Act provided following procedures to resolve the disputes:

1. In case the government feels that any dispute has arisen or may arise between the workers and the owner of a factory it

may in order to settle or decide such disputes:

- (a) form a Conciliation board of one or more members in order to settle the dispute and have it submit a report to the Government; or
 - (b) form a three member Tribunal consisting of one representative each from both the owner and workers as well as a nominee from of Government for deciding the dispute.
2. The decision made by the Government on the basis of the report submitted by the Conciliation Board formed under clause (a) and the decision of the Tribunal formed under clause (b) shall be final and binding on both the parties.

However, this provision was put to practice on very few occasions. In this regard Shrestha (1974: 169) points out, "During the thirteen years of existence of these two clauses only one case has been referred to the conciliation board and two cases to the Tribunal, in the Biratnagar Jute Mills which employs 2,700 workers." Obviously this could be generalised in the case of the whole country.

The usual process was to refer the dispute to concerned labour office. However, it was not clear in the law about the procedures to be followed and the time frame within which the dispute to be resolved. Expressively it was not even mentioned to refer the dispute to the labour office and there was only indirect mention in the rules that one of the duties of the labour officer was to attempt to settle the dispute between labour and management. Thus the provisions were vague in nature. Regarding the settlement of the disputes Shrestha (1974:169) remarks, "Individual and collective labour disputes are settled between management and labour internally and/or at the local factory/labour inspectors' office to which the matter is referred for conciliation. If conciliation fails there, the dispute is handled by the chief district officer and/or zonal commissioner's office¹, mostly by

¹ Chief district officer and the Zonal commissioner were the officials entrusted with maintaining law and order in the respective district and the zone. Nepal is administratively divided into 14 zones and 75 district with each zone comprising several districts. With the advent of multi-party democracy the

arbitration rather than judicial decision. In a few major cases of disputes the labour director himself arbitrates personally and decides the issues with the mutual consent of the owners and the workers." In the same way Rastogi (1989:12) quotes Pant and Agrawal to depict a similar picture, " ... disputes are often settled at the local labour office, sometimes with the help of the C.D.O. (Chief District Officer) or the Zonal Commissioner. If no agreement is reached at that level, the dispute is immediately referred to the highest possible authority, such as the secretary or the Director General of labour... (Thus) both labour and management rely on the labour department to settle their differences."

Rastogi (1989) lists some of the shortcomings of dispute settlement mechanism of that era:

- a. Though certain provisions of the act including those related to industrial relations were extended sectors such as hotels and transport, but many other sectors were not covered. Even the sectors which were covered, the provisions did not cover the establishments which employ less than ten workers.
- b. Role, duties and procedures of various agencies for various agencies for dispute settlement were not clear. Though conciliation boards had been envisaged, but the provisions such as the decision of the government on the report of conciliation board would be final and binding both the parties, was against the spirit of conciliation. It violates the freedom of the parties to freely arrive at the settlement.
- c. The arrangements provided in the Act were ad hoc in nature. The conciliatory board or tribunal would automatically got dissolved on submission of its report to the government. This approach would not be helpful to develop long term approach and necessary expertise for the purpose.

post of zonal commissioner has been abolished but the post of chief district officer is still maintained.

d. Absence of true and representative trade unions was not conducive for collective bargaining.

Thus the dispute settlement mechanism during that period seems to be a strange mixture of formal rules and the informal practices. Though the disputes were referred to labour offices but even then resolving disputes in the presence of law and order enforcing authorities leads one to think that labour dispute was conceived as law and order problem. The rare use of legal provisions in resolving disputes was also an interesting phenomenon. Absence of true and representative trade union and the provisions such as government would decide on the report of the conciliation board were some of the shortcomings of the dispute settlement mechanism.

On the whole legal provisions as mentioned above and the absence of trade unions and enlightened employers' association meant that the government was the super actor of the industrial relations system of that period.

Political changes of 1990, changes in the environment of industrial relations and their impact

Changes in the political system and the economic policies came in Nepal in 1990 when the Panchayat regime was overthrown by a people's movement which was conducted with the avowed objectives of overthrowing Panchayat system and restoration of multi-party democracy. Great political changes affect all walks of national life and the advent of multi-party democracy in Nepal was not an exception to this often observed phenomenon. Individual freedom, human rights and people's participation are gradually becoming the norms of national life. Soon after the restoration of multi-party democracy a new Constitution was promulgated and the provisions of the constitution tell the essence of the political change in Nepal.

The new constitution, known as The Constitution of Kingdom of Nepal 1990 came into force on November 9, 1990. The basic features

of the constitution are expressed in the following words in the preamble, "...to guarantee basic human rights to every citizen of Nepal and also to consolidate the Adult Franchise, the Parliamentary system of Government, Constitutional monarchy and the system of Multiparty democracy by promoting amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality; and also to establish an independent and competent system of justice with a view to transforming the concept of the Rule of law into a living reality...."

The above mentioned words have become guidelines in forming public policies and enacting new legislations. Importance attached to it by the framers of the constitution becomes clear when we look into the provision of amendment of the Constitution. The provision is that a bill introduced in the parliament to amend and repeal any Article of the Constitution should not be, "...prejudicing the spirit of Preamble of this constitution..." The words incorporated in the Preamble depict the total changed political scenario of Nepal in a nutshell. The policies adopted by the government should now be people oriented and since the sovereignty of Nepal lies in the people the government must now be responsible to the people.

The constitution guarantees some fundamental freedom to the citizens of Nepal. The fundamental rights which have a direct bearing to the industrial relations are the freedom of expression and the freedom to form association and unions. Now trade unions can be formed by the workers and they have the backing of different political parties. The trade unions freely operate, voice their concerns through different channels, such as press or even by holding mass rallies. These activities were unthinkable during the previous regime because these acts were considered to be the sufficient ground for punishment under law. In fact people under the age of thirty had never seen even the May day celebrations in Nepal. Along with these fundamental rights the Constitution has made provisions of an independent

judiciary which has the extraordinary power to declare a law, "... as void either *ab initio* or from the date of its decision if it appears that the law in question is inconsistent with the Constitution." (Article 88.1) Interestingly, the first instance of a provision of an Act of parliament to be declared void was one of the provisions of the Labour Act, 1992. Thus these changes in the political system should be taken into account while forming policies or even enacting laws in the field of industrial relations. Owing to the facts that trade unions are now functioning, freedom of expression is guaranteed, an independent judiciary exists and that there is an overall atmosphere of political liberalism, it is obvious that the government can no longer act as a super actor in the arena of industrial relations. It has to take new steps to suit the changed context which includes the enactment of new legislations. Indeed the enactment of Trade Union Act and the new Labour Act can be seen in this light.

Policy of Economic Liberalization

The other important factor or change in the environment of Industrial Relations is the liberalization of the economy. In Nepal socio-economic development planning commenced from 1956 with the launching of first five year plan. Till now seven periodic plans have been implemented and the eighth is in progress. Though much emphasis was laid on economic growth and industrialization but economic growth and the pace of industrialization has remained sluggish. Though some efforts were made to attract private sector in the process of industrialization but it did not come forward especially during the initial stages of development planning. Lack of capital, lack of entrepreneurship, lack of technical and managerial capabilities in the private sector were some of the causes of it. Underdeveloped state of infrastructure made the problem more serious. While discussing the reluctance of private sector to come forward it will not be fair to put the entire blame on it only. The approach and the procedural complexities of the past

regime is also responsible for this. The eighth plan document clearly spells out this fact. It remarks, " The control oriented approach of the past created many problems. Increased government control, ad hoc regulations and procedures, license requirements and other forms of counterproductive bureaucratic behaviour tended to discourage private sector initiatives." (Eighth Plan 1992- 1997, Summary:5). Government also attempted to industrialise the country by establishing the public enterprises but this attempt has not met with much success. Despite huge investment in public enterprises their contribution to the national economy has been negligible. They have incurred heavy losses, government has to pump money from national exchequer for their survival. In short public enterprises have proved themselves to be liabilities rather than the assets of the nation.

It is against this background that an open and liberal economic policy and under it a new industrial policy is being implemented in Nepal. Interestingly economic liberalisation has come along with the political liberalisation in the country. Government has time and again announced it's objective to make economy more liberal, open and market oriented and indeed has taken various steps in this direction.

The liberalization of the economy can be described in terms of industrial policy to be adopted in the eighth plan (1992-1997), new industrial policy and Industrial Enterprises Act and simplifying the tariff structure.

Industrial policy in the eighth five year plan

Objectives:

In the industrial sector objectives inter alia include:

- a. To develop export sector as an important sector to earn foreign exchange by enhancing production, productivity and quality of exportable items.
- b. To establish import substitution by promoting cottage and small scale industries as well as other industries to meet

domestic demands.

Policies:

Policies to be adopted in the industrial sector include:

- a. To develop industries which can contribute to import substitution and export promotion in order to exploit the comparative advantage of the country.
- b. To accord high priority to increase the participation of the private sector.
- c. To encourage foreign investment in order to promote foreign capital, modern technology, management and technical skills in the domestic industries.
- d. To implement a one window system in order to provide all government facilities and services from a single institution, for both domestic and foreign investors.

New Industrial Policy

Government has adopted a new industrial policy in order to delicense and debureaucratize the legislative procedures regarding establishment of the industries. After the announcement of the policies new Industrial Enterprises act has been enacted to give meaning to the policies. Main features of this act are as follows:

- a. License requirement has been lifted for establishment, extension or diversification of industries except for those related to defence, or which may have adverse effects on public health or on environment.
- b. Those industries for which license is required, applicant should be notified of the decision of granting or not granting the permission within 30 days of the submission of application,
- c. Cottage industries have been exempted of excise duty, sales and income tax.
- d. No income tax is imposed upon export earnings.
- e. Incentives have been given through tax exemptions to establish industries in less developed areas.
- f. Facilities of duty draw back schemes under which tax collected are given back within specified period.

h. Extra incentives to be given to industries established in export processing zones.

The main driving force behind implementing this legislation is the bitter experience of the past. Procedures were much clumsy and red tapism was prevalent. Unnecessary delay to obtain a license to establish an industry was very common and on top of that one had to pass through bureaucratic hassles. Delicensing and debureaucratization of the procedures has encouraged the private sector to come forward.

Lowering and simplification of tariff structure

Government has adopted the policy of gradually reducing the customs duty on imported goods. This is quite obvious from the budget speech of the fiscal year 1992-1993. Custom structure has been simplified by reducing the number of rates from 13 to 8. Additional duty on the imported goods has been abolished. This process was continued in the fiscal year 1993-1994. Tariff structure has been simplified further and additional cuts have been announced on the import duty on the goods which are imported from India, China, other SAARC countries as well as most favoured nations.

Thus it is obvious that there has been a gradual tendency towards liberalising the imports. Domestic industries no more enjoy the same safety of high tariff walls to which they were accustomed hitherto.

Trade policy

Government has adopted a new liberal trade policy. Prior to March 1992 nearly 100 items required import license and for some items system of license auction was also in practice. From the fiscal year 1992-1993 number of items on the auction list was brought down to 12 which has now been further reduced to six. These six items have been identified to be most susceptible to diversion to India. Now a days items which are not in the

negative list can be imported without restriction. Thus the era of quotas and license is over.

Along with these steps government has also tried to attract foreign investment guaranteeing the investors various facilities through an Act of parliament. On the basis of above discussion it is obvious that attempts have been made to make economy more liberal, open and market oriented.

These two changes in the environment of industrial relations have their own implications. The impact of change in political system is obvious. This can be observed in the form of restoration of the right to organize. Political parties and the trade unions are functioning now. Trade unions in the various industrial sectors such as hotel, transport and trekking have been formed and are being registered under the provision of the Trade Union Act. Both of the two major trade union centres in Nepal have held their conventions. Thus the labour is organised in Nepal now. This in itself can be regarded as an achievement because only a few years back they could not organise themselves in trade unions. Trade unions are now engaged in education and training for their members. Advanced programmes (considering the nascent stage of trade unions) such as information management and computerisation of documents have also been organised (Sharamic Khabar, Nov.'93). Similarly trade unions are in the process of obtaining membership of international trade unions. For example Nepal Trade Union Congress (an umbrella trade union organisation) has already established relations with ICFTU, an international trade union.

On the other hand the impact of change in economic policies are not ripe enough to be analyzed fully, yet some distinct indications can certainly be observed. Delicensing and debureaucratization of the procedures of establishing the industries has been welcome by the people and particularly by the business community. The expansion of industries particularly in the manufacturing sector and number of workers has been quite

encouraging. Table 3.1 shows the trend:

Table- 3.1

Number of establishments and persons engaged in Manufacturing industries in Nepal

	1988-89	1989-90	1990-91	1991-92*
Number of establishments	2334	2383	2387	4230
Number of persons engaged	144925	140150	161736	212007

Source: Statistical year book of Nepal, 1993

*(Preliminary results of census of manufacturing establishments where 10 or more people are engaged)

Thus the impact of macro policies being implemented on formation of labour market particularly in terms of expansion of industrial labour force is very encouraging. To a large extent this can be attributed to delicensing and deregulation of the procedures as discussed earlier as well as to tax exemptions and the tax holidays. As the infrastructure of development (i.e. roads, power etc.) will gradually be available in the rural areas of Nepal those areas are also expected to be industrialised. Cheap labour and government's encouragement to establish industries in less developed areas is expected to play a positive role. One of the impacts of the macro policies being implemented can be seen in terms of expansion of services sector. In the post liberal economy era new airlines, banks, financing and insurance companies have been established. Labour force joining this sector is more educated and skilled. This has added a new dimension in the quality of industrial labour force. It is now more conscious of its rights and interests.

Besides this there has been a gradual increase in the number of joint venture industries with the collaboration of foreign companies. A meeting (Nepali Investment Forum, 1992) of investors interested in Nepal was held with the help of UNIDO in Kathmandu. In that forum, according to Econews (1992, Vol.1 :1), approximately 110 letters of intent worth over 423 million US \$ were signed. Though all these letters of intents may not materialise but even 10% of it is invested it will be a huge

private investment in the industrial sector of Nepal. This opens up a new prospect that workers with new skills will be required in the industrial sectors.

Thus seen in the historical perspectives the path traversed by the right to organize has been marked by vicissitudes. Interestingly absence or existence of liberal political system has remained analogous to the absence or presence of the right to organize. This right was curbed both during the Rana and the Panchayat regimes but it became a distinguished feature of the political system that was established after the democratic changes of 1951 and has become so also of the political system that has been established after the political changes of 1990.

Chapter 4

Right to Organize in Nepal: Legal Provisions and analysis

A. The legal provisions

The Trade Union Act, 1992 is the first full fledged legislation enacted explicitly for the trade union purposes. As has already been mentioned this Act was enacted in the aftermath of the advent of multi-party democracy in Nepal in 1990. According to the Act, a trade union means an establishment level trade union registered under this Act to protect and promote the professional rights and interests of the workers. According to the provisions of the Act no enterprise level trade union can be registered unless it has 25% of the total workers of the concerned establishment as its members. Establishment level trade unions can associate into trade union association. At least fifty enterprise level trade unions can form a trade union association. Similarly five thousand workers employed in the establishments of similar nature can also form an association through mutual agreement. Notwithstanding the provisions as mentioned above at least 250 workers of similar enterprises or occupation outside an establishment can also form a trade union association. This provision seems to be rather vague and it seems that this provision intends to accord the right to form associations to the workers of those enterprises which do not come under the definition of an establishment. The Act also provides for the establishment of trade union federations which can be established through mutual agreement by at least ten trade union associations.

Thus the Act provides for the formation of trade unions at the establishment¹ level, association level and at the level of

¹ For the purpose of this Act the term establishment is same as it is mentioned in the Labour Act 1992. According to that Act, establishment means any factory, organisation, institution or firm, or groups thereof, established under current law with the objective of operating any industry, enterprise or service, and employing ten or more workers or employees. The term includes

federation.

In addition to above, the Act also provides for the formation of a recognized trade union to act as bargaining agent on behalf of the workers of the concerned establishment. The Act defines a recognized trade union as an establishment level trade union recognized under section 11 to hold collective bargaining with the management. Section 11 of the Act provides that to get the status of recognized trade union an establishment level trade union should get majority of the votes of the workers of the concerned establishment in the election conducted for the purpose.

According to the provisions of the Act no case can be filed in any court against any establishment level trade union or its office bearer for an action taken by the union in connection with the collective bargaining by fulfilling the formalities prescribed in the Act and the Labour Act even if such actions have any impact on the establishment. The Act also contains the provisions of appeal against the order of the registrar in the labour court, and against the order of a labour court in the appellate court if any side is not satisfied with the order/ decision of the registrar/ the labour court.

The constitution of the trade unions are to be made by the workers themselves but the Act stipulates some particulars that are to be included in the constitution of the trade unions. These include from name and address of trade unions, the number of office bearers to the provisions regarding inspections of accounts and dissolution of the trade unions. These particulars are almost similar to those contained in the Indian Trade Union Act, 1926.

(1) Tea estates established according to the law with commercial objectives, and

(2) Establishments in the industrial districts established by His Majesty's Government, which employ not more than ten workers or employees.

The Trade Union Act lays down some objectives for trade unions, associations and federations. According to the Act a trade union shall have the following objectives (Section 9.1):

- a. To work for the social and economic upliftment of workers by improving their working conditions,
- b. To try to maintain good relations between workers and the management,
- c. To provide assistance for the development of the establishment by increasing its productivity,
- d. To try to make workers dutiful and disciplined.

In addition to above the Act lays down the following objectives for trade union association and federation:

- a. To conduct programmes in relation to providing education to the workers,
- b. To maintain contacts with international organizations and associations for the welfare of workers,
- c. To provide necessary advice to government in relation to framing labour policies,
- d. To publish facts useful to the workers by conducting workshops, seminars, meetings etc, necessary for the development of their social and economic conditions,
- e. To hold talks with the government and adopt other necessary measures subject to current laws in relation to the protection and promotion of the rights and interests of the workers.

Finally, the Act empowers the government to issue orders or directives to prohibit the activities of trade unions if the activities are likely to create an extraordinary situation and thus disturb the law and order within the country or which can adversely affect the economic interest of the country.

Regarding collective bargaining, the recognized trade union can bargain on behalf of the workers. The Labour Act provides for the procedures regarding collective bargaining. In case of collective disputes the demands are to be submitted to the management in writing. The management should try to settle the disputes within

21 days. If the dispute is not settled within that period then an attempt is to be made to resolve the dispute within 15 days through bilateral negotiations in presence of the officials of the labour office. In other words in the labour office attempt is made to settle the disputed through conciliatory means. This step is very important because further actions can take diverse paths. However, if an agreement is reached then it is to be registered in the labour office and the agreement is binding as law on the concerned parties and no fresh demands can be made as regards the provisions contained in the agreement until a period of two years has elapsed.

If a dispute is not settled yet, the matter can be referred to an arbitrator to be appointed through the mutual consent of both the parties. If such arbitrator cannot be appointed the dispute can be presented before a tripartite committee formed by the government with the consent of both parties. The tripartite committee shall comprise of the representatives of the workers, management and the government in equal number. The arbitrator or the committee formed as above shall take a decision within 15 days. The side dissatisfied with the decision can file an appeal with the government.

The Labour Act also contains the provisions regarding strike. However, the Act does not define a strike. If a dispute is not resolved even after the conciliatory measures taken in step two as described above the workers can go on strike. The labour Act requires a strike ballot before launching a strike action. According to it workers can go on strike if a resolution to that effect is supported by at least sixty percent of the total number of workers in the establishment through a secret ballot. Workers are also required to notify management and government agencies before launching a strike action. However, workers employed in those establishments where strike is prohibited by law (e.g. in essential services) and the workers who are assigned jobs such as security or guard duties are not permitted to go on strike.

The Labour Act, also empowers government to issue orders to stop strike activities. According to it government can any time prohibit strikes, proposed or ongoing, which is likely to create an extraordinary situation and thus disturb nation's peace and security or may adversely affect nation's economic interest.

The labour Act also makes a provision for special arrangements regarding dispute settlement. If the government feels that any dispute has arisen or may arise between management and the workers then it may form a committee consisting of one or more persons or a tripartite committee consisting of the representatives of the management, workers and the government to settle the dispute. The decision of the government on the report of the committee formed as above shall be final and binding on both the parties.

The other important law concerning the right to organize is the Civil Service Act. According to this Act gazetted² employees are not permitted to form an organization but non gazetted³ employees are permitted to be the members of those organizations of the civil servants which are formed by obtaining prior approval from the government and are registered in accordance with the current law. The Act prohibits any civil servant from representing any person or a group of persons on their behalf. However, the Act permits the representation on behalf of an organization of the civil servants which has been established with the prior approval of the government. The Act prohibits the civil servants from launching any kind of strike activities.

² Gazetted employees are those whose names are published in the official gazette on their appointment, transfer and promotion and are in managerial and supervisory positions.

³ Non gazetted employees are in lower positions of administrative hierarchy and are engaged largely in clerical jobs.

B. Analysis of the legal provisions

Workers' right to join the organization of their own choosing

The legal provisions do not compel the workers to join a trade union designated or formed by the state. Workers are free to join any trade union which has been formed after fulfilling the legal formalities. Thus no trade union has been accorded monopoly right to represent workers solely on the strength of its affiliation to a particular political party or just because of the reason that other trade unions are disbanded and only a particular trade union is allowed to function. Here it must be pointed out that a trade union can achieve monopoly if the workers want to join a particular trade union voluntarily. Therefore difference should be made between trade union monopoly imposed by law and a trade union monopoly achieved voluntarily. In the later case unity seems to be the appropriate word.

In this connection a committee of ILO observes, " While it may be to the advantage of workers to avoid a multiplicity of trade union organisations and while governments may, in certain cases, consider that a single trade union movement is more convenient for an adequate representation of the workers and their participation in the social and economic field, unification should be the result of a voluntary decision of the workers and should not be imposed or maintained by legislation or other compulsory means. The principle of free choice laid down in the convention is in no way intended as an expression of support for the idea of trade union pluralism, but it does at least require such a possibility to remain open. Freedom of association and trade union unity are by no means incompatible, but only to the extent to which such unity is established on a voluntary basis." (ILO, 1973:85) Legal provisions in Nepal do not impose a monopoly. Even if all the workers are the members of a particular trade union the law does not stop the formation of another trade union in the sense that workers may leave the trade union and may form another by fulfilling the legal formalities.

Right to form trade union associations and federations

The provisions regarding the formation of trade union associations and trade union federations can be seen as the ones which encourage the right to organize furthermore. The provisions permit the formation of general type of trade union association because any fifty establishment level trade union can associate into a trade union association. Therefore trade union associations are not required to be limited within industries of similar nature. The permission of formation of federations gives further impetus to right to organize because this helps, in the words of Ersting (1977:29) "... in the co-ordination, unification and centralization... " of trade union activities. These provisions can be seen as ones which help strengthen trade unions and trade union movement.

Constitutions and trade union representatives

The legal provisions do not empower the government to nominate or appoint office bearers of trade unions. Constitution of the trade unions are to be prepared by workers themselves provided that the particulars as prescribed in the law are incorporated in it. Thus the law does not empower government to interfere in the important aspects related to the internal affairs of the trade unions.

Who can form a trade union?

The Act accords workers the right to form trade unions but the term workers includes employees, "... other than those who are engaged in functions relating to supervision, administrative control or management of the establishment." (Section 2.b of Trade Union Act) This is obviously the case of denial of the right to organize to the employees in the managerial positions. In this regard Erstling (1977:11) cites the remarks of an ILO committee of experts " Regardless of how narrowly and explicitly the terms are defined, provisions which totally deny to managers and supervisors the right to establish and join labour

organizations, are considered to be incompatible with the principles of freedom of association guaranteed by Convention No. 87." Indeed legal provisions do not provide any legitimate avenues to express the concerns of managerial employees and therefore this provision should be regarded as a controlling one. Moreover, the Act applies to 'establishments' which according to law means an enterprise where ten or more workers are employed. This means right to organize is not accorded to the workers of those enterprises which employ less than ten workers. Though the Act permits formation of trade union association by 250 workers outside an establishment employed in similar industries but this provision seems to be rather vague. Moreover, since trade union associations are not given any role in collective bargaining it seems that this provision does not have a big impact on right to organize. Furthermore, the Act does not specifically say anything about the workers who are engaged in agricultural sector, domestic servants and the workers employed in charitable organizations.

Organizations of the civil servants

The other important legislation regarding right to organize is the Civil Service Act, 1992. The provisions that civil servants are permitted to become the members of only those organizations (of the civil servants) which have been registered in accordance with the current law and which have been established by obtaining prior approval of the government, demonstrates the case of prior authorization. Moreover, employees in the gazetted ranks are not permitted to become the members of the organizations of the civil servants. Gazetted employees are in managerial and supervisory positions. Thus this is again the case of denial of the right to organize to the employees in managerial positions. However, the Act permits the civil servants to become the members of the professional organizations, a term which is not defined by the Act. This term may be applied in the case of organizations such as medical association and engineering association. These organizations have nothing to do with employer- employee relationship.

One of the pertinent questions here is the applicability or non applicability of the trade union Act in case of the organization of the civil servants. The three related terms in this regard are establishment, worker and trade unions. (All the three terms have been already explained in this chapter) The inference which can be drawn from a study encompassing all the three terms is that the Trade Union Act is not likely to be applicable in the case of the organizations of the civil servants.

Thus the Trade Union Act seems to have a rather narrow scope and it does not encompass various types of workers. It is only applicable to the workers employed in the 'establishments' as defined by the law and among them also it is applicable to non managerial employees only. This aspect of trade union Act seems to be controlling one rather than enabling one. Similarly the provisions of the Civil Service Act can be seen as controlling ones.

Trade Unions and collective bargaining

The Trade Union Act confers the trade unions the right to represent workers in collective bargaining. The management is required to resolve the disputes through bilateral negotiations with the bargaining agent elected by the workers. If problems are not resolved bilateral negotiations are also to be conducted in labour office. An attempt has been made to make the collective agreement to have a force of law. This means that agreement reached between management and labour is not just a gentleman's agreement. The implication is that it can be enforced by a court of law. According to the provisions of the Labour Act fresh demands can not be raised about the provisions contained in the agreement up to a period of two years means that frequent work stoppages by the workers is checked. Thus law seems to be balanced on both the sides. Indeed these provisions seem to be the ones which encourage collective bargaining. However, the provision concerning statutory requirement to get the support of majority of the workers of the establishments to get the

status of bargaining agent means that there can be not more than one bargaining agent. This provision may create problems because the Act is silent in case of a situation where no establishment level trade union gets the support of the majority of the workers of the establishment. In such a case there cannot be any statutory bargaining agent. Prior to the enactment of the Trade Union Act the Labour Act was enacted with an alternative form of bargaining agent. According to it workers can submit their collective demands to the management also mentioning the names of their representative who would bargain on their behalf, in a document signed by at least 51% of their total membership. After the enactment of the Trade Union Act the right to bargain has been accorded to the recognized trade union. Even if the provision of the Labour Act is still considered effective then also the problem is not resolved. In this case the support should come from 51% which is more than the majority. The provisions do not seem to permit coalition of two enterprise level trade unions to become a bargaining agent. According to the provisions of the law the recognized trade union means an enterprise level trade union which gets the majority of the votes of the workers in the election conducted to elect a recognized trade union. The words are quite clear. Only an enterprise level trade union can become a candidate for the purpose. The possibility remains, of course, for an enterprise level trade union (which does not command the support of majority of workers) to become a bargaining agent if it gets support from nonmembers. However, chances will be very rare, if not impossible, that nonmembers will help a union to get an important status like that of a bargaining agent. This fact virtually raises the 25% barrier to more than 50% because without getting the status of bargaining agent an establishment level trade union cannot engage in collective bargaining - the basic purpose of a trade union.

The Act is also silent about the role of establishment level trade unions which do not have the support of majority of workers. A survey of ILO recommends (1975:18), " Minority unions should be allowed to function and at least have the right to make

representations on behalf of their members and to represent them in the case of individual grievances." No such right is given to minority unions by law. This seems to be a major deficiency in the Trade Union Act.

One of the interesting aspects of collective bargaining is that this right is accorded only to the establishment level trade unions. Thus trade unions associations and federations are not accorded direct role in the task of improving living and working conditions of the workers and therefore their role in the industrial relations seems to be circumscribed. In place of the right to bargain collectively the Act lays down some objectives, as mentioned earlier, for them and establishment level trade union as well. Though the legal provisions do not prescribe that these objectives should be incorporated in the constitutions of the trade unions but the use of the words, " A trade union shall have the following objectives.." raises some questions. Question arises whose job is to set objectives of voluntary organizations? Is it the job of the state to dictate the objectives or the members of an organization like trade union to set their own objectives? In the aftermath of political liberalism there is a proliferation of social organizations, unions and associations. Can state lay down the objectives for all these organizations? Why is it then necessary to lay down the objectives for a voluntary organization like trade union?

Furthermore, the 'objectives' themselves raise some other questions? To work for improving social and economic conditions of workers and at the same time maintaining good relations with the management and making workers dutiful and disciplined seem to be conflicting. Moreover is it the job of a trade union to make workers disciplined? Even if it is laid down in law will they and can they do so? It is astonishing that law empowers management to punish workers in various forms from issuing warning to dismissal from the service but expects them to be disciplined by trade union. On one hand trade union is an autonomous body according to law but again its objectives are

dictated. This seems quite paradoxical. Similarly the law sets holding talks with the government (not with the management) to improve the working conditions as an objective. It is doubtful that a trade union association/ federation can play a meaningful role having only this kind of objectives but not being directly engaged in collective bargaining with the management. The legal provisions have made right to organize in case of associations and federations cosmetic rather than substantial.

Civil servants and Collective bargaining

As has already been mentioned, the trade union Act is unlikely to be applicable to the organizations of civil servants. Moreover, the Civil Service Act prohibits civil servants from representing any person or group of persons, though representation on behalf of organizations of civil servants recognized by the government is permitted. The Act is silent about the matters which the organizations of civil service can take up while making a representation. It is also not clear where and with whom the matters are to be discussed. The probable instances of representation (at least legally) may come when the government seeks it. In other words these chances may come when the government initiates the process. Thus the right of collective bargaining for civil servants is virtually non-existent. The implications are that the legal provisions do not provide reasonable avenues for the civil servants to express their concerns and the terms and conditions of employment are unilaterally determined.

Special arrangement for dispute settlement and collective bargaining

The special arrangement regarding the dispute settlement in the labour Act is in addition to the mechanism where the bargaining agent is involved in resolving the collective dispute. This provision confers the government with wide ranging power. The law does not say that this provision will be applied only when the normal channels of settlement of industrial disputes fail.

This provision may be used even in the cases where a dispute between labour and management is likely to arise. This clearly shows the bureaucratic hangover of the past -the hangover of control. In fact this provision is almost similar to the one in the repealed Factory Act, 1959 which was the only mechanism in that Act. Moreover, the committee formed according to this provision (including representatives of management, labour and the government) does not have the final say. It is the government who is to make a decision on the report of the committee. The abuse of this provision will naturally circumscribe the process of collective bargaining. In fact positive aspects as observed in the legal provisions regarding collective bargaining can be nullified by a single stroke if this provision is abused. However, the law is silent over the question as to whether trade unions can go on strike. The Act prohibits strike activities when dispute settlement mechanism, in which bargaining agent is engaged, is in process. Silence of law as regards to strike while special arrangement is in process seems to be the case of poor drafting rather than an act of generosity.

Right to go on strike

The Labour Act recognizes workers' right to go on strike which they can do by fulfilling the procedural requirements as mentioned earlier. The provisions contained in the Act regarding the requirement to notify the management and prohibition to go on strike while collective bargaining is in process do not seem to pose a threat on right to organize. However, the provision of strike ballot raises some questions. The legal requirement of at least 60% support by total number of workers of the concerned establishment can hardly be said to be democratic. The implication is that strike action can not be launched even if the resolution is supported by 59% of the total number of workers. The democratic norm of the rule of the majority is breached by the law. Its implication for the workers is that for all

practical purposes the law raises minimum requirement for the formation of a trade union to 60%. Unless an establishment level trade union has the support of 60% of the membership it has either to be dependant upon the workers who are not its members or it has to merge with other trade unions to become an effective bargaining agent. So far as management is concerned it may not be serious in the process of negotiations if it has reasons to believe that the bargaining agent does not command the support of 60% of the workers.

Civil servants and the right to strike

The other important aspect of the right to strike is concerned with the civil servants. The Civil Service Act prohibits the civil servants from launching any kind of strike activities. However, the Act does not provide any alternate avenues to the civil servants to express their concerns let alone ensuring their participation in those decisions which has an impact on their daily life. Legal provisions do not provide any means to resolve the grievances of civil servants with their active participation. It seems authorities rely upon classical administrative approach to solve a socio economic phenomenon. Perhaps this is a nice example of adopting a wrong means to solve right problem.

With the prohibition on the formation of organizations of the gazetted employees, denial of the right to bargain collectively to the organizations of non-gazetted employees and a vague term like representation have made right to organize in case of civil servants virtually nonexistent.

Special power of the government to prohibit strikes

The labour Act empowers government to issue orders to stop strikes proposed or ongoing while the Trade Union Act equips

government with the power to issue orders to stop activities of trade unions. The conditions under which these orders can be issued as has already been mentioned, are similar viz if there is the likelihood that law and order situation of the country will be disturbed or that strikes may have adverse effects on economic interest of the country. These provisions possess a great amount of subjectivity because no strike serves the economic interest of a country. In fact every strike can be shown to be disruptive. The words used in the concerned provision of the trade union Act are also interesting. According to it activities of a trade union, trade union association and trade union federation can be prohibited. There was no need to specifically mention trade union association and federation because according to the definition the word trade union also means association and federation. It seems the authorities do not want to take any chances. Moreover, there was no need to repeat almost the similar provision in Trade Union Act when it was already provided in the labour Act. It seems that framers of the legislations want to equip the officials with every weapon, a double layered shield and a foolproof formula to check strike activities.

With only establishment level trade union permitted to bargain collectively, ban on the strike activities in the essential services, prohibition on strike by civil servants, special arrangement to settle industrial dispute and power of the government to prohibit strike activities are sufficient to prove the controlling mentality of the framers of the law.

Though much will depend upon how these provisions are used but the intentions are clear. Prolonged strike activities and strike actions launched in a coordinated way (since only the establishment level trade unions are allowed to bargain collectively) will depend upon the mercy of the authorities. Thus on the whole it can be argued that legal provisions accord enormous power to government which can be used (or abused) to check strike activities, which in turn means a control over right to organize.

The discussion of legal provisions, their analysis as well as their implications will acquire more validity if we take into account the socio political context of the concerned legal provisions. The study will be more realistic since in that case it will be in relation to a concrete situation. The context of legal provisions concerning the right to organize should include the history of trade unionism in the country, the experience of workers in this field and history of people's right to organize in general. In any democratic political system every interest group seeks to be organized for its legitimate concerns and in turn these organizations are supposed to help strengthen democracy in a country. In Nepal workers have almost no experience of trade unionism and in the past people have been deprived of the right to form organizations except for a brief period of multi-party democracy. In a context such as this assessment of legal provisions should be done on the basis of the fact whether these provisions encourage and make simple to form organizations or not.

In this regard it seems that the Trade Union Act and the Labour Act make the trade unions run a hurdles race- hurdles in the shape of numbers. The legal provisions require support of 25% of the workers to register, majority (50%+) to become the bargaining agent and support of at least 60% of workers to launch strike activities. Though discussion centred on figures and numbers may create controversy, nevertheless, the legal provisions should be seen in the wider socio political context as mentioned above. Workers in Nepal have almost no experience of trade unionism. People's right to organize has just been restored. Besides this society in Nepal is hierarchial and stratified. Bista (1994:79) argues that in Nepal, "... there is no dignity in labour. High caste people have always despised physical labour..." In a situation such as this where labour is not dignified and where particularly the workers engaged in physical labour come from lower strata of the society, the need to be organized, in order to safeguard their interest and to resist discriminatory and degrading behaviour from the people of upper strata which also

includes employers seems to be much more. In fact this need is more acute compared for workers in such a situation compared to their counterparts who work in societies where labour is dignified and where society is not so hierarchial. In this background the 25% barrier itself seems to be too high. The point is not that the greater the number of trade unions the better it is for the workers. The point is, given the history and background of trade unionism in Nepal and workers' inexperience in this field, 25% is too stiff a barrier to encourage workers to organize themselves in trade unions. The implications of statutory requirement of support of majority of workers to become a bargaining agent and the minimum 60% requirement in order to launch a strike action makes their task even more complex.

Chapter-5

Conclusions

The legal provisions regarding right to organize in Nepal present a mixed picture of enabling ones and controlling ones. The right to form trade unions at different levels including associations and the federations, absence of legal requirement which would have compelled the workers to join the trade union designated by the state (which means their right to join the organization of their own choosing is protected) can be regarded as the positive aspects. In addition to above recognition of right to bargain collectively, requirement for the management to negotiate with the bargaining agents on behalf of workers and enforceability of agreements by the court can be seen as provisions which encourage collective bargaining. Right of workers to go on strikes is also recognized which enables the workers to use the ultimate weapon in their arsenal. Immunity from legal proceedings for the actions taken by the trade unions while furthering rights and interest of workers can be seen as an added protection and a shield when the workers are to opt for their last resort.

These are the most elaborate, explicit and liberal provisions in the entire history of right to organize in Nepal. Compared to the past regime this is a great leap forward. Advent of multi-party democracy, after which era of pluralism and political liberalism has once again commenced in Nepal, has played a great role in this transformation. Recognition of the right to organize is thus an impact of the restoration of multi-party democracy and of course, it is a distinct feature of liberal and democratic political system. Compared to their predecessors throughout the chequered history of right to organize in Nepal, the present provisions seem to more encouraging and full of promise towards workers' right to organize.

However, the legal provisions are not free from shortcomings and

deficiencies. Some categories of workers are deprived of the right to form trade unions. Indeed as mentioned earlier the Trade Union Act has a narrow scope. Right to bargain collectively has been recognized but the provision of election of bargaining agent seems incomplete. Role of trade union associations and federations has been circumscribed by not providing them right to bargain collectively and thereby barring them from engaging in the direct task of improving economic and working conditions of the workers. The provision regarding special arrangement for settlement of disputes seems to be against the spirit of collective bargaining. Right of strike is there but the sword of provisions prohibiting strikes seems to be always hanging on its head. In fact the authorities equipped with wide ranging power seem to be always in a position to strike a strike.

The deficiencies and the shortcomings may be attributed to two possible reasons. Firstly, the actors of industrial relations system including the trade unions themselves had almost no experience of trade unionism. The second probable reason (particularly in case of those provisions which are related to the controlling aspects) may be the bureaucratic mentality of control of the past. The traditional thinking of equipping the public authorities with emergency or contingency powers to be used in case every thing goes wrong has probably been behind the incorporation the controlling provisions. Though political system has become liberal but the legacy of control, which is deep rooted in the bureaucratic culture seems to take some time to fade away and vanish completely.

On the whole it can be argued that legal provisions regarding right to organize in Nepal, considering in totality encompassing structural aspects of trade unions, collective bargaining and right to strike, despite having a number of shortcomings have a number of positive features and should be considered as encouraging and are certainly more progressive in the history of right to organize in Nepal hitherto.

Keeping in view various shortcomings in the legal provisions, some amendments seem necessary to make right to organize more elaborate and meaningful and to help stimulate the growth of trade unionism considering that they have really to build themselves up from scratch. Following are a few which are suggested in this connection:

1. Appropriate amendments should be made in the laws to encompass even those employees (except in the case of armed force and the police) who are denied the right to organize at present. This will be in conformity with the ideals of democracy, principles of human rights and spirit of the Constitution of the Kingdom of Nepal.

2. In the case of civil servants and the workers employed in the essential services appropriate amendments should be made to ensure that their grievances are resolved in a speedy manner with their active participation in the process.

3. The provision regarding bargaining agent (recognized trade union) should be amended in such a manner that in case no establishment level gets the support of majority of workers in the election for the purpose, then coalition of two or more trade unions may become the bargaining agent provided that the coalition commands the support of the majority of the workers.

4. At the establishment level minority trade unions should be permitted to represent their members in case of individual grievances.

5. The provision of strike ballot should be amended by bringing down the requirement of 60% support to simple majority. This will be in conformity with the democratic norm of the rule of the majority.

6. The special power of government to prohibit strike activities seem to be highly sweeping and wide ranging. These provisions

should be repealed.

7. The provisions regarding special arrangements for the settlement of industrial dispute should be amended removing the elements of subjectivity and arbitrariness from it. The amendments should ensure its use only on rare occasions particularly when the normal channels of dispute settlement fail. Furthermore the amendment should ensure that this provision can become neither an alternative nor a threat to collective bargaining.

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