26th May 2015
Mr. Shankar Agarwal IAS
Secretary
Ministry of Labour and Employment
Government of India
New Delhi

Dear Mr. Agarwal,

We are writing to place on record our views on the '**Labour Code on Industrial Relations Bill 2015**' for which comments have been invited.

Before, we record our submission on specific clauses of the said Bill we wish to place four principal objections:

1. Legislation must by its very name recognise the issue that it seeks to address. Over the past half a century and particularly in over the past two decades disputes between employers and employees have increased not reduced. Furthermore, it is a widely accepted fact, and recognised in law, that the relationship of power between employers over employees is unequally weighed in favour of employers. In all unequal power relationship it is natural for disputes to arise. This is particularly the case in a relationship of employment which also involves an unequal distribution based on the relationship of power between profits and wages. In view of this it to replace the word 'dispute' by the word 'relations' is to obfuscate from reality and portray the context of employer-employee relations as one of equality when nothing can be farther than the truth than this.

2. The present Industrial Disputes Act (IDA) recognises collective bargaining as a necessary condition for a peaceful industrial environment which can only be fulfilled if the sufficient condition of a recognised (whether in law or by practice) trade union is satisfied. In advancing this notion the IDA correctly provides for the failure 'to refuse to bargain collectively in good faith with the recognised trade unions' on the part of the employer as an unfair labour practice. The IDA, or any other law, however fails to provide for a clear mechanism for the recognition of trade unions. A large number of industrial disputes arise as a result of this gap in the statute. The Supreme Court has through multiple judgements upheld secret ballot as a satisfactory mechanism at arriving at trade union recognition in a democracy. The complete silence of the Bill in this regard will be understood as the indirect objective of opening the field further for employer promoted trade unions with whom the employer will bargain with at its own choosing and thereby in a majority of cases continuing to deny recognition to a trade union of the workers choice.

3. The Bill on offer persists, like existing law, with multiple levels of rights for workers based on establishment size and definition as also multiple mechanisms of dispute resolution. While the numbers are based on no acceptable scientific or industrial standard they along with multiple layers of jurisdiction are open to abuse by employers as is currently the case.

4. The Bill in its current form singularly seeks to undermine trade union rights by placing restrictions on the internal functioning of trade unions and the democratic choices of their

members. The Bill also provides government extraordinary powers to intervene in the affairs of trade unions. All of this is violative of Article 19(1)(c) of the Constitution of India and

The ambiguities spelt out 2, 3 and 4 above render the present exercise of codifying the Industrial Disputes Act along with the Trade Unions Act along with the Industrial Employment (Standing Order) Act as at best futile and at worst as being exclusively motivated by the interest of employers and to the determent of employees. The relevant sections of the Bill under circulation are violative of Conventions 87 and 98 of the International Labour Organisation. It remains a shame that while successive governments have refused to ratify these core conventions the present government is now seeking to propose legislation in contravention of the very spirit of these conventions.

In specific terms:

i. **Clause 2(a)**: In dealing with appropriate government, the bill makes no change to the existing definition. The existing definition has led to the victimisation of workers in companies with establishments in different states particularly in instances where transfer of workers from one location to another is used as a coercive measure by employers. Therefore the existing definition must be amended to include the state government where the employer company is registered, as the appropriate government, in the case of a collective dispute. In the case of individual dispute involving establishments in more than one state, the state where the employee was first taken in employment would be the appropriate government.

ii. **Clause 2(n)**: Removal of explanation to definition of 'lay-off' is detrimental to workers interests. In certain cases which may amount to lay-off employers can deceive workers and keep them waiting for work and not provide them with work and wages.

iii. **Clause 2(za)**: Inclusion of 'casual leave' by more than 50% of workers in an industry to be defined as a 'strike' is both an attack on Right to Freedom of Association as well as a breach of the contract of employment between employer and workers with regard to their service conditions which in this case is leave rules.

iv. **Clause 2(ze)**: Removal of HRA and other allowances from the definition of 'wages' not just takes them out of wage rights but would mean that workers lose out in calculation of PF, pension etc. Benefits as well as severance payments such as gratuity and retrenchment compensation will also be lower on this count. The contributions of employers to 'welfare schemes' under clause 24(3) will also be much lower.

v. **Clause 4**: Provides for the creation of one or more Grievance Redressal Committees in establishments of 20 or more employees. This would allow employers to create multiple Grievance Redressal Committees in the same establishment. In the event a collective dispute – being reduced to multiple individual disputes - the multiple committees could potentially come forward with multiple resolutions to the same dispute. Further, Factory Committees / Grievance Redressal Committees are already being used to replace and keep trade unions out in new establishments. Multiple committees in a single establishment could form a coercive mechanism to thwart the Right to Freedom of Association.

vi. **Clause 5**: Restricts the Right to Freedom of Association by raising the threshold of membership in a trade union. Further, the onus of proof of both establishment / industry size rests with the applicant trade union which the registrar is then open to challenge.

vii. **Clause 6**: Requires detailed information on trade union affiliation to a federation or a central union which violates the very democratic spirit of right to freedom of association and restrict political actions of trade unions.

viii. **Clause10**: Fails to provide a time bound disposal of applications of trade union registration while **Clause 11** provides for deemed registration after 60 days in event of failure of the Registrar to point out defects in the application. In effect this means that in the event of the registrar pointing out a defect in the application then such application may remain as such endlessly.

ix. **Clause 12**: Provides for cancellation of trade union registration in the event of a violation of any part of the Bill. This is a blanket power to take away the workers right to association and representation while in the case of employers only specific penalties and remedies have been provided even for the gravest of unfair labour practices. In this case a violative action by an employer promoted trade union may be used to cancel the registration of a trade union of the workers choice.

x. **Clause 24(3)**: aims to compulsorily collect subscriptions to a welfare fund from such workers who are not members of a trade union. In a statute that is meant to govern service conditions, industrial disputes and the functioning of trade unions, such a provision is entirely misplaced. By further mandating that the highest subscription be collected, the provision in effect allows government to compete with unions by offering a welfare provision.

xi. **Clause 25(1)**: seeks to restrict the number of external office bearers a trade union can have to two. This is restrictive of the both the right to freedom of association and the fundamental democratic right of political choice.

xii. **Clause 26**: provides government with the suo moto powers to intervene and issue reference for an inter- or intra-trade union dispute. This amounts to an extraordinary infringement on the Freedom of Right to Association allowing government to intervene in the affair of trade unions and attack, undermine and disrupt them.

xiii. **Clause 27**: seeks to the number of trade unions to ten that any one person can be an office bearer of. This is restrictive of the both the right to freedom of association and the fundamental democratic right of political choice.

xiv. **Clause 35(1)**: excludes employees in establishments with an employment of less than 100 from enjoying the right to object to or raise disputes in regard to the Standing Orders. In effect, it places all powers of writing Standing Orders with the employer and the certifying officer.

xv. **Clause 35(2)**: While the addition of sexual harassment in the workplace as an act of misconduct is long overdue and hence welcome.

This apart, the empathises of this clause in overtly on all manner of misconduct and disciplinary which ought to be only one part of the Standing Orders at the cost of laying out clearly workplace practice and service conditions.

xvi. **Clause 59**: Takes away the powers of the government to refer an industrial dispute while not unambiguously subordinating the process of conciliation to the judicial process. This

in effect creates two parallel and potentially simultaneous jurisdictions where in an employer may use the decision of the conciliation machinery or evidence there during conciliation before the judicial machinery.

xvii. **Clause 85**: The increase in the threshold of establishments covered by Chapter V-B of the IDA in dealing with lay-off, retrenchment and closure has been increased from 100 to 300 workers. This is an arbitrary number which has no relation to any scientific or industrial standard. In fact since Chapter V-B was legislated both the capital-ouput ratio and the capital:labour ratio have increased in favour of capital. What this means is that worker intensity has increased and workers are in real terms producing greater value for less wages. Hence in fact, it would be just to lower the 100 threshold, if based on industrial and scientific principle, and not raise it.

In view of the forgoing imbalance against the rights of workers and the incongruities and infirmities in the bill under circulation, the NTUI calls upon the Government of India to withdraw the bill and hold wide ranging consultations with workers and their trade unions both in Delhi and in every state capital to take into account the experience with the present laws and the what is needed before going forward with new legislation.

Yours sincerely,

Gautam Mody

General Secretary