



**INDUSTRIAL LAWS IN TRANSNATIONAL CORPORATIONS AND
THEIR IMPACT ON THE ECONOMIC CONDITIONS OF LABOUR:
A CASE STUDY OF PHARMACEUTICAL INDUSTRY IN INDIA.**

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DOCTOR OF PHILOSOPHY
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NOVEMBER
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Impact on the Economic Conditions of Labour: A Case Study
of Pharmaceutical Industry in India" submitted by me for
the Degree of Doctor of Philosophy in Economics is the
original work done by me under the supervision of
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certify that this thesis has not previously formed the basis
for the award of any degree, diploma, Associateship, Fellow-
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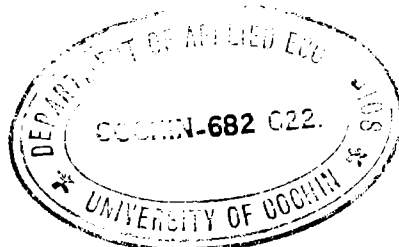
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"Industrial Laws in Transnational Corporations and Their
Impact on the Economic Conditions of Labour: A Case Study
of Pharmaceutical Industry in India" submitted by
MR. Vincent Panikulangara for the degree of Doctor of
Philosophy in Economics is a record of the original work
done by him under my supervision and guidance.

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ACKNOWLEDGEMENT

Experience at the bar for some years brought to me the feeling that there is wide discrepancy between law and practice. As a response to this feeling, I took myself to further studies.

Thus, having done M.Phil.(Economics) at Centre for Development Studies, Trivandrum I joined for Ph.D. at University of Louvain, Belgium in 1976. This thesis is the result of an inter-disciplinary research since then.

Originally this study was intended for presentation in University of Louvain. However, due to certain personal reasons I could not return to Belgium in 1980. Subsequently I joined University of Cochin as research fellow.

Several institutions and individuals in India and abroad had been helpful to me in successfully completing this study. I thank every one of them; for brevity sake I refrain from mentioning the names.

I am grateful to University of Cochin for permitting me to present this thesis for Ph.D. degree. Had it not been for the ardent interest of Professor(Dr.) K.S.Sankaranarayanan, my supervising teacher it would not have assumed the present form. Professor (Dr.) V. Karunakaran has helped me immensely during all stages of its preparation. I thank both of them unreservedly.

I place on record my gratitude to every one who has helped me in the preparation of this thesis.

Cochin,
11-11-1982.

Vincent Panikulangara.

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CHAPTER I
INTRODUCTION

CHAPTER I

INTRODUCTION

1.1 Welfare Legislation

1.1.1 Towards the latter half of this century a trend to make use of the instrumentality of law in order to achieve certain social objectives has emerged almost all over the world. Welfare legislation, accordingly, assumed significance in development efforts especially in the less developed countries (LDCs) towards achieving objectives such as the reduction of inequalities and the regulation of social relations.

1.1.2 Consequent on independence, the people of India, resolved to constitute "a sovereign socialist secular democratic republic and to secure to all its citizens: justice, social economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation...."¹ The Directive Principles of State Policy enshrined in the Constitution of India along with the various other welfare enactments indicate the nation's commitment to

The distribution of powers under the Constitution of India enumerates three lists namely Central List, State List and Concurrent List. Only the Union Government can legislate on matters given in the Central List while only the States can on those in the State List. Both the Centre and the States can legislate on matters provided in the Concurrent List, though the supremacy of the former has precedence over those of the latter. It is a subject in the State List and Labour is one in the Concurrent List. Thus the legal possibility to have uniform legislations in these areas in all the States is secured apart from the variations in the socio-economic conditions in different States.

1.2.2 The impact of the Five Year Plans on the Indian economy as well as the extent of realisation of the objectives under the welfare legislation have been the subject

of such legislation which include welfare features. Both land and labour had been the subject matter of the removal of poverty and the attainment of economic self-reliance. The Government at the Centre and the State from time to time enacted several welfare laws for the Constitution. The Government at the Centre and the State expressed in the Preamble and the Directive Principles of State Policy a vision to realising the social objectives of a just society. The Five Year Plans were shaped and implemented in accordance with the establishment of a post-independence India has been the establishment of a social theme of developmental activities in 1.2.3

1.2 Path of Development

1.2.1 The objectives stated in the Preamble through the instrumentality of law.

matter of studies at various stages and levels.² Such studies indicate that much of an advance is not made towards achieving the goals set out in the Five Year Plans.³ The legislation with wide social objectives does not seem to have made any serious impact on the economy as a whole.

1.2.3 In spite of the implementation of the Plans and the interceptions of the welfare enactments, concentration of wealth has been increasing.⁴ During this period such concentration has given birth to economic monopolies on the one hand and abject poverty on the other.⁴ While the assets of major industrial groups increased several times, the percentage of the population below the poverty line increased significantly. Concentration in the ownership of land also was not reduced in any serious manner while the number of agricultural workers swelled up.⁵

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- * For some detailed discussions see
1. Government of India; Draft Fifth Five Year Plan 1974-79 (1973) New Delhi.
 2. V.M. Dandekar & Nilakantha Rath; Poverty in India (1971) Bombay.
 3. E.N.S. Namboothiripad; Indian Planning in Crisis (1974) Trivandrum.
 4. Charles Bettelheim; India Independent (1968) New York.
- + Government of India; Report of the Committee on Distribution of Income and Levels of Living (Mahalanabhi's Committee) 1963, New Delhi, and Government of India; Industrial Licensing Policy Inquiry Committee Report (Datt Committee) 1969, New Delhi.
- 5 For details see National Sample Survey 8th Round (No.30), 16th Round (No.159) and 24th Round (No.215).

1.3 AGRARIAN REFORMS :

1.3.1 Since in an economy like India's, the ownership and distribution of land is one of the crucial factors affecting agricultural production which in turn influences the economy as a whole, legislations aimed at altering agrarian relations assumed priority. It is essential to unloose the productive forces from the feudal clutches both to ensure higher agricultural production and to evolve people's participation in the developmental efforts. By an effective implementation of the agrarian reforms, it was envisaged that the economy as a whole would gain new orientation and added momentum.

1.3.2 While drawing up the National Plan in 1950-51 it was felt that the agrarian system should be so organised that the fruits of labour were enjoyed by those who tilled and that the land was utilised as a source of wealth for the community. It was also felt that in the interest of social justice and increased agricultural production, land should belong to those who tilled it.⁵ The ripples of this social objective can be traced in varying degrees to the land reform laws passed by the different State Governments from time to time.

1.3.3 It can be said that the following five-fold programme constituted the dominant trend of agrarian reform

laws in the various states viz, :-

- a) abolition of intermediaries,
- b) measures for reducing rents, conferring on tenants permanent rights over the land, subject to the landlord's right to resume certain areas for his personal cultivation; and enabling him to acquire its ownership on payment of a reasonable price;
- c) fixation of ceiling on land holdings and distribution of surplus lands;
- d) consolidation of holdings and prevention of fragmentation; and
- e) development of co-operative farming and co-operative village management.

1.3.4 Draft Fifth Five Year Plan pointed out that a broad assessment of the programme of land reforms adopted since Independence, shows that the laws for the abolition of intermediary tenures have been implemented fairly efficiently while in the fields of tenancy and ceiling on holding, legislations have fallen short of the desired objects and the implementation of the enacted laws has been inadequate. With the abolition of intermediary interests, the ownership of land became more broad-based and the erstwhile superior tenants acquired a higher social status.⁶

1.4 Labour Welfare :

1.4.1 Labour legislations were started in India during the 1920s, mainly as a matter of law and order. The major concern at that time was to ensure unobstructed supply of labour to the new industries that were coming up. Eventually the nature and the scope of legislations on labour underwent an appreciable transformation. Better wages and fair terms of service assumed significance in such enactments, apart from protection from occupational hazards and right to collective bargaining. Consequently, today the industrial labour is governed by a large number of legislations that affect several aspects of the workers.

1.4.2 The major stress of the labour legislations has been to ensure the workers

- (a) a fair share of the products of their labour**
- (b) security of employment**
- (c) protection from exploitation**
- (d) the right to collective bargaining and**
- (e) better standards of health and education. Such enactments were made to cover workers in ports and docks, mines and plantations, banks and insurance agencies, and industries and commerce.**

1.4.3 The agricultural workers who account for as much as 75 % of the total labour force in India, however, do not

come under the purview of such enactments. Except in a state like Kerala, the farm labour is not governed by any comprehensive legislation. However, any attempt to better the conditions of farm labour would to a large extent depend upon the successful implementation of the land reform laws.

1.4.4 Studies on the implementation of the provisions of the labour legislations covering industrial workers also indicate similar trend as that of the agrarian reform laws. The objectives sought for in such laws are more thwarted than realised. Moreover, there are wide variations with regard to even whatever is implemented, from industry to industry and in different units of the same industry. It is pointed out that on the whole there is a noticeable discrepancy between law and practice; be it in relation to the agrarian reforms, the industrial labour or the agricultural workers.

1.5 Law and Practice :-

1.5.1 The discrepancy between law and practice is commonly acknowledged in any society at all times; though the nature and extent of such discrepancy might vary considerably. It can be assumed that such discrepancy is part of the institution of law itself. However, in a situation where social transformation is planned to be carried out through the

instrumentality of law these discrepancies cannot be taken for granted. In the absence of an effective machinery to bridge the widening gap between law and practice, the present national philosophy of development becomes a mere will-o-the-wisp.

1.5.2. The following will be a plausible explanation. Prior to the enactment of a law certain practices might have been in existence. Under such situations the interest of the dominant class get precedence and it continues to change according to changing circumstances. When legislative action is introduced to deal with such a situation, the affected parties, very often the dominant sections, come forward either to water down or to thwart that enactment. This paves the way towards growing divergence between law and practice.

1.5.3. These discrepancies between law and practice can be understood only in terms of the intervention of interest-groups at different stages from the enactment to the implementation of a law. Such interventions may either be to make ineffective the laws that adversely affect the interests of the dominant sections in the society or to force the implementation of the laws that better serve the interests of these sections. The large scale evasion of the land ceiling laws, not to mention that of the tax laws, is a widely

recognised case of how laws can be made ineffective by the intervention of interest-groups.⁷

1.5.4 The non-implementation of the Raj Committee Report⁸ recommending taxation of agricultural holdings is an example of how interest-groups successfully thwart even an attempt to touch upon their possessions. There are, on the other hand, instances where legislations are made use of by interest-groups to maintain high and stable prices for food grains by their earnest interventions.⁹ In the matter of agrarian reform laws the level of legislative advancements vary widely from state to state and therefore, it is almost difficult to make generalisation for the whole country.¹⁰ However this trend of intervention of the interest-groups to tilt the provision of law is discernible, practically everywhere during the course of implementation of the law. Under the Kerala Land Reforms Act, a hutment-dweller gains the right for 3 cents of land if it is in a city, 5 cents of land if it is a town and 10 cents of land if it is a Panchayat. However, during the course of implementation of this provision, the enthusiasm on the one hand to deny the hutment-dweller any land in excess of the prescribed minimum if the plot happens to be larger and the reluctance on the other hand to give him even the legal minimum if the plot happens to be smaller are almost common provocation for litigation.

1.5.5 similar trends can be identified in the case of the implementation of the procurement law or the agricultural workers' minimum wages. Owners of large areas of land report them to be smaller ones by way of under reporting, sub-divisions, benami transactions, bogus conversions etc. and evade the procurement of levy based on total production. When the minimum wages declared for the agricultural workers is lower than the existing rates, the law is efficiently used to bring down the wage rate and when the notified minimum wage is higher than the existing rates, the law is effectively ignored to maintain the existing lower wage rates.

1.5.6 Such flagrant violations of the provisions of law are rampant in the case of industrial labour also. Contrary to the provisions of the respective enactments, labour is deployed in contract, casual and temporary natures for several years. The conditions of employment as well as production are not seriously observed even in major industrial centres and even by companies with advanced know-how and huge economic resources. The discrepancy between law and practice in the matter of labour-management relations reveals that the impact of such a discrepancy is tilted in favour of management. This obviously raises serious and pertinent questions relating to the sociological dimensions of law; the role and function of law in a society where private property and its

appropriation for maximisation of profits are rights protected and fostered by law.

1.6 Law and Society :-

1.6.1 Law is not a being in itself (that is, a closed universe of norms) but a functions within a whole. As Marx and Engels point out :

"Right, law etc. are merely the symptom, the expression of other relations upon which state power rests These actual relations are in no way created by the state power; on the contrary they are the power creating it. The individuals who rule in these conditions, besides having to constitute their power in the form of the state, have to give their will, which is determined by these definite conditions, a universal expression as will of the state, as law.¹¹ Thus law cannot be brought independent of that which first gives it meaning, and so cannot be cut loose from the relationship in the world.

1.6.2 It is not, therefore, right to see private property as a relationship between individual and the thing opposed to seeing it, properly, as a social relation between several individuals which essentially rests on inequality. It is a delusion to seek to derive law exclusively from ideas such as the nature of man and justice. On the other hand, law is part of the history of economics, since economics is evolving

and law follows that development. Just as the nature of man or human society is not fixed once and for all, so law is by nature equally mutable or temporal in character.

"since in each particular case the economic facts must assume the form of juristic motives in order to receive legal sanction; and since in so doing consideration, of course has to be given to the whole legal system already in operation, the juristic form is, in consequence, made everything and the economic content nothing."¹²

1.6.3 The distinctive feature of law is the fact that it embodies the material interests of the ruling class in a universal form, and thus present the law as the embodiment of the interests of the community as a whole. This claim finds its classic expression in Dicey.

"when we speak of the 'rule of law' as a characteristic of our country we mean, not only that with us no man is above law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm With us every official, from Prime Minister, down to a constable ... is under the same responsibility for every act done without legal justification as any other citizen."¹³

1.7 The function of law :-

1.7.1 It needs to be pointed out that the economic and social dominance of an exploiting class in a society does not sustain itself automatically. The exploiting class always strives to turn itself into the ruling class by means of an institutional structure, the state, which operates to sustain and reproduce that position. Thus law serves as an instrument to carry out the will of the ruling class, giving legitimacy and universality to such a will. Engels says that "In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression which does not swing to inner contradictions, reduce itself to naught. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly. All the more so the more rarely it happens that a code of law is the blunt, unmitigated, unadulterated expression of the domination of a class - this in itself would offend the 'conception of right.'"¹⁴

1.7.2 The rules of law not only define social relations but confer rights and powers upon certain categories of individuals. It not only reinforces existing social and economic relations, but in addition it confers authority upon dominant social interests.¹⁵ Thus the law of property is not only

based upon the inequality of property ownership but it reinforces it by allowing and facilitating the owners of property to make use of that property as capital. Similarly, labour law facilitates the capitalist form of relationship between labour and capital; it gives effect to the economic fact of the dependence of the majority upon the sale of their labour power. It embodies the economic power of capital over labour by granting to the employer rights regarding not only the control of labour but also over the hiring and firing of labour.

1.8 The discrepancy :-

1.8.1 The question of the role of law in a society can be deferred for theoretical debates. However, the observations relating to the discrepancy between law and practice calls for further investigation and analysis. The urgency and the relevance of such a study stands intensified due to the fact that the nation is still committed to the cherished ideal of social transformation through law and that the results of such efforts towards achieving these objectives continue to be contrary to the desired goals. Moreover, the existence of such a discrepancy is a hard nut to crack for both the legislators and the administrators even after three decades.

1.8.2 Though this discrepancy can be common, its nature and its extent can be influenced by the degree of militancy and determination of the beneficiaries of the enactment. Under conditions where the state implements a welfare enactment without the participation of any beneficiary group, the scope for such discrepancies is higher. Similarly, when the beneficiaries are weak and unorganised the chances for discrepancies stand to be higher. In situations where the beneficiaries of any welfare enactment are militant and determined the discrepancy between law and practice can be reduced considerably.

1.8.3 Therefore, the discrepancy in the case of an enactment enabling the extraction of surplus produce by the Government, can be fairly high while that in the case of an enactment intended to afford better conditions of work for the farm labour can be less. Similarly the discrepancy in the case of enactments concerning industrial workers can be less compared to that in regard to agricultural workers. However, with the collusion of a section of the workers, even in the industrial sector, the level of discrepancy can be engineered. That is to say, if the management and the permanent section of the workers, strike a deal, it may be possible to reduce the discrepancy in the case of the permanent workers, while aggravating that in relation to the non-permanent ones.

1.9 The Problem :-

1.9.1. This study proposes to verify the above hypothesis relating to labour legislation in the industrial sector. Here, there are as many as fifty enactments of the Central Government alone, since 1920. (except for the Fatal Accidents Act enacted in 1955). These legislations indicating the growth of this branch of law over a period of more than half a century cover a wide spectrum of interests of workers, both individual and collective in different areas of employment. However, this study relates mainly to (a) Trade Unions Act, (b) Industrial Employment (Standing Orders) and (c) Industrial Disputes' Act.

1.9.2 One is often inclined to presume that the non-compliance with the provisions of law is a feature of companies having a small magnitude of operation, less advanced technology of production and on the whole having unfavourable returns to scale. It is, therefore, alleged very often that such non-compliance in the industrial sector are thanks to ill-equipped and ill-managed domestic firms that have smaller capital outlay and poor returns to scales. However, investigations tend to show that such a presumption is unfounded. Moreover, there are pieces of evidence to show that large companies with advanced production and managerial techniques

and having huge returns to scale are also indulging in such practices.

1.9.3 It is being argued that the existence of this discrepancy is much less in the case of labour legislations affecting the developed industries. The pharmaceutical industry run by the transnational corporations (TNCs) occupy a pride of place among the developed industries and are widely acclaimed for faithful implementation of all the provisions of labour law. It may be worthwhile, therefore, to examine the extent to which the provisions of labour law have been implemented by the TNCs, particularly those in the pharmaceutical industry. It is also claimed that the TNCs maintain an ideal industrial relations in the countries where they operate. If this is so, it should mean that the discrepancy between law and practice should, as far as TNCs are concerned, be near nil in any country.

1.9.4 Recent studies on TNCs have paid considerable attention to aspects such as transfer of technology, resource drains, international division of labour, transnational bargaining and so on. The impact of the TNCs on the host countries' income distributions, resource utilisation and employment potential are also studied, at least with regard to the developed countries. It is argued consequently, that

the TNCs because of their superior technology, experienced management, global perspective and centralized operations make high returns that have positive influence on their labour. The claim in other words is that the TNCs are better employers.

1.9.3 It may be pointed out, however, that as regards the position in India, very little of these aspects have been studied in any detail, leave alone the impact of TNCs on the conditions of labour. Similarly the claim of the TNCs as the better employers by way of reducing the discrepancy between law and practice in their firms is also, so far, not examined in much detail. This study therefore proposes to specifically examine (a) the discrepancies between law and practice with reference to labour (b) industrial relations obtaining in these industries and (c) the impact of (a) and (b) on the conditions of labour.

1.10. Hypothesis :-

1.10-1 The discrepancy between law and practice is commonly acknowledged in any society at all times, though the nature and the extent of such discrepancies might vary considerably. It may be explained off by holding that they are part of the institution of law itself. However, in a situation where social transformation is planned to be carried out through the

instrumentality of law these discrepancies cannot be taken for granted. If there are no ways and means to converge law and practice so as to achieve the desired goals, the national philosophy of development becomes impracticable.

¶ 10.2 One possible explanation for this discrepancy may be offered as follows. Prior to the enactment of laws, practices might have been in existence responding to the requirements of the objective conditions. In such practices the interests of the dominant sections might be finding a strong position, which continue to modify itself responding to the requirements of the objective conditions, while an intervention is made on this through legislation, which remains an artificial external agency, the affected party, very often the dominant sections, comes forward to protect its interests. This conflict of interests gives risk to the birth of such discrepancies.

¶ 10.3 Though this discrepancy can be common, its nature and its extent can be influenced by the degree of militancy and determination of the beneficiaries of the enactment. Under conditions where the state is to enforce a welfare enactment without the participation of any beneficiary group, the scope for the discrepancy is higher. When the beneficiaries are weak and unorganized also the chances for the

discrepancy is not low. In situations where the beneficiaries of any welfare enactment are militant and determined the discrepancy between law and practice can be reduced considerably. However, it is also possible to shift the impact of the legislation from one group to another depending upon the nature of the beneficiaries.

1.10.4 Therefore, in the case of an enactment to extract surplus produce by the government, the discrepancy can be very high while that in the case of the one to afford better conditions for the farm labour can be less. Similarly the discrepancy in the case of enactments concerning industrial workers can be less compared to that in regard to agricultural workers. However, with the collusion of a section of the workers, even in the industrial sector, the level of the discrepancy can be varying. That is to say, if the permanent workers strike a deal with the management, it may be possible to reduce the discrepancy in their case, while at the same time it may increase that in the case of the non-permanent workers such as temporary, casual, contract etc.

1.11 Scheme of the study :-

1.11.1 This study consists of altogether eight chapters, of which the introductory chapter is a discussion on the discrepancy between law and practice. This includes a review of the performance of the welfare legislation in post-Independence India particularly those affecting land and labour.

1.11.2 The second chapter is a survey of the literature on the impact of TNCs on labour in host countries. The next chapter deals with TNCs in terms of the concentration of economic resources and the repatriation of profits. The influence of TNCs on the economies of the LDCs is also examined here with reference to India. Certain issues such as the definitional limitations of TNCs, the export of capital from LDCs and domestic based TNCs are also discussed here.

1.11.3 The fourth chapter presents a brief survey of the industrial laws in India. It traces the history and the evolution of labour enactments with special reference to Trade Unions Act, Industrial Employment (Standing Orders) Act and Industrial Disputes Act. The definition and classification of workmen, the notion of continuous service, the eligibility for trade union rights, the conditions for the deployment of contract and temporary labour and the concepts of industry and industrial dispute are discussed here in the light of the judgements of the Supreme Court and various High Courts.

1.11.4 The next chapter discusses pharmaceutical industry in India, in terms of its transnational character and present state of affairs. The hegemony of the TNCs in this sector is examined in the light of the findings and recommendations of the Nathi Committee.

1.11.1 This study is partly descriptive and partly analytical. The methodology is mainly field investigation and personal of official records. Collection of data, as far as possible, had been from direct sources. As regards the investigation concerning the discrepancy between law and practice in the TRCA, reliance had been on informal survey, official and published documents and memoranda of settlements between management and workers.

1.12 METHODOLOGY :-

1.12.6 The concluding chapter discusses the impact of the discrepancy between law and practice on the economic conditions of labour. Having brought to light the distinction between permanent and non-permanent workers the study concludes by pointing out that it was found to not expected it can lead to alarming stagnation in the country.

TRCA.

1.11.5 Chapter six and seven present the practices relating to labour in TRCA in the pharmaceutical industry. Matters such as generation of employment and absorption of labour are discussed in the former chapter, while the latter deals with issues like categorization of labour and differential treatment of permanent and non-permanent workers. These two chapters together bring out clearly the discrepancy between law and practice in the matter of labour in TRCA.

1.12.2 The emphasis of the study had been more on documentation than on quantification. It has not been possible to get enough authentic data to arrive at any quantitative conclusion since the investigation was in relation to practices that are not in conformity with law or that nullify the statute. Information concerning certain practices were obtained by persuasion. By sifting the information so collected, it was possible to establish the existence of such practices. The study is documented with published information and official records.

1.13 Limitations :-

1.13.1 This study does not make any comparison of the treatment afforded to the labour in the TNCs with that of the labour in the non-TNCs, say the Indian private sector or the public sector enterprises. Similarly the situation is not studied in terms of the Indian versus the foreign TNCs. The impact of the nationality of the TNC is also not examined. The regional and the sectoral effect on the discrepancy between law and practice is also not studied. It has also not been possible to examine the influence of political or regional interests of the trade unions on the process of differentiation within the ranks of labour.

1.13.2 The main thrust of the study being the discrepancy between law and practice efforts had been directed to

documentation and not to quantification of the practices that came into conflict with the provisions of the law.

FOOT NOTES

1. Preamble to the Constitution of India.
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CHAPTER II
LITERATURE SURVEY

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2.1 TNCs and labour :-

2.1.1 The very fact that TNCs carry out operations in various countries has created inter-country comparisons of wage costs and labour payments. Such comparisons indicate differences in payments to workers who are performing similar operations in different countries. They shed light on cost variations between countries and consequently on the relative competitive advantages of business operations in several countries.¹ As a result of this the activities of the trade unions (TUs) in the TNCs have been focused on (a) demands for parity between different plants of the same firm, and (b) efforts at the international level to achieve more effective co-operation among TUs, particularly those representing employees of the same firm in different countries, with the object of pressing for harmonisation.

2.1.2 The common presumption is that the TNCs have, in general, the reputation of offering better standards of safety, shorter hours of work, a five-day week, and better fringe benefits especially in areas such as sick pay schemes,

retirement plans, and allowances for education and transport, apart from their attempts to improve living conditions in the LDCs. However, the TU movement is increasingly concerned with what it considers to be the actual and possible problems raised by the TNC, not only as an employer but also as an economic and political force. Thus a major section of the TU movement not only advocates measures on the part of the public authorities to control TNCs on a national and international basis but is also concerned with organising itself better to deal with them on a bilateral basis.²

2.1.3 The power of a TNC to shift production or operations, provisionally or permanently, from one country to another or from one place to another in the same country or from one product to another, its financial ability to withstand a strike, the inability of a local pressure to reach the locus of managerial decision making in a TNC, the frequent changes in the personnel policies, and difficulties in getting adequate information etc. are matters pointed out as serious obstacles to effective collective bargaining. The TNC, an easily identified entity as regards economic resources and decision-making, appears to have the highest potential for conferring transnational features on industrial relations³. The TNC has thus, become a transnational centralised decision-making system which affects investments, employment, wages and prices in

many different countries - those very things the state is trying more effectively to control.⁴

2.1.4 Job security is of vital importance to workers and their organizations. TUs are haunted by the seeming discretion with which TNCs may redeploy resources internationally and thereby endanger present employment. Decision-making on major investment/employment questions tends to be one of the most centralized functions in TNCs.⁵ TUs charge that decisions concerning setting up new production facilities, the expansion of existing ones, mergers, reorganizations, plant closures, etc., are being taken without regard of the consequences for the workers. As TUs see it, such decisions are taken unilaterally by top management in line with global company strategies. David H. Blake points out that labor finds "its job security more or less dependant on the global operations and performance of the firm."⁶ TUs in the United States, in particular, have, over the last few years been very concerned about the phenomenon of "runaway" industries that set up production facilities abroad, while phasing out production at home in order to be more efficient.

2.1.5 The concerns of European workers with regard to job security center more on the immediate hardships suffered from structural employment, adaptation due to reorganizations, mergers, plant closures, etc. Different countries assign

varying degrees of importance to issues raised by TNCs. For example, the issues raised by TNCs in home countries may vary considerably from those in host countries. Similarly, issues may differ between developing countries and developed countries. What is more, labor unions within one country may have different perceptions as to the importance of particular issues.

2.1.6 It is therefore, necessary, to distinguish between general issues and issues particularly relevant to industrial relations. The basis for determining the particular issues will be the relative importance that is being attached to them. As John P. Windmiller has observed: "a few (issues) recur with sufficient frequency to constitute a nucleus."⁷

2.2 Industrial Relations in TNCs :-

2.2.1 The crux of the issue of TNCs and industrial relations is the weakening power position of TUs relative to that of management. The strength of TNCs in the (power) relationship with TUs manifests itself most clearly in the following four areas : (1) ability to switch production, (2) superior financial ability, (3) obscurity of the locus of decision making and (4) the lack of transparency.

2.2.2 A key problem as seen by TUs is the power of a multinational corporation to shift production or operations, provisionally or permanently, from one country to another. In the

absence of concerted resistance on the part of TUs, this possibility can constitute a significant power factor in union-company relations. In collective bargaining the threat of a transfer of production, spoken or implicit, can seriously weaken the TU's position and reduce the effectiveness of strike action.

2.2.3 Production-switching is related closely to the issue of job security. In their dealings with local TUs, TNCs may threaten to move, or at least expand, elsewhere as a bargaining tactic. Such threats, if credible, can seriously weaken a TU's position. Threats of this nature are reported to be quite common.⁸ The most conspicuous examples are undoubtedly the threats made by Ford and Chrysler in Great Britain during an extensive period of labor unrest a few years ago. However, it is very hard to find cases in which TNCs actually have carried out their threat. The American-owned company, Robert's Arundel, packed up its strike-bound subsidiary in Britain some years ago.⁹ The German firm, Müller - Wipperfurth, also did the same in Italy.¹⁰ In general, where operations have been shut down, it is extremely difficult to separate out the labor aspects from the other considerations that led to such a decision. The flexible mobility obviously is constrained by the enormous

costs involved in phasing out of existing plants and setting up new operations.

2.2.4 While TUs maintain that transfers of production have occurred in practice, certain commentators have pointed to the obstacles to such transfers. In the case of temporary transfers, for example during a strike, there would have to be other plant facilities capable of producing the same goods for the market in question. Doubts have been expressed whether transfers are possible at short notice, since investments are subject to long-term production plans; further, the plant to which production might be transferred may not, in fact, be near enough and may not have sufficient excess capacity to take on the production. The question of whether the production of the TNC is organized vertically or horizontally is also significant. Indeed, the bargaining power of a national TU may be greater vis-a-vis a TNC than vis-a-vis a domestic enterprise if a stoppage of production in one country deprives plants of the cooperation in other countries of the components necessary for their production or assembly work.

2.2.5 The shutdown of a plant in one country and the transfer of its production to another can, moreover, be problematical quite apart from considerations of loss of the company's fixed investment and the liability of the employer in certain

countries for extensive severance payments and other financial charges in the event of plant closures. When considering a transfer of production, a TNC will certainly take into account not only labour relations and labour costs in the new location but also such factors as the degree of inflation in the country, its political stability, the possibilities of capital repatriation, tariff regulations, the amount of government intervention, and so forth.¹¹

2.2.6 A somewhat more realistic approach is provisional production switching, e.g., during periods of industrial disputes. TNCs may, when faced by strike action, switch production to a related subsidiary elsewhere and continue to serve the markets that are affected by the strike, thereby effectively countering the striking union. Lynn Townsend, Chairman of Chrysler, was quoted as saying "If you do run into a strike situation or a shortage of parts, there may be some provision permitting you - on a short-term basis - to bring in some parts from another area in order to keep your plant running."¹² But here again, many conditions must be met before such strike busting actually can take place. However, where production switching is feasible it would signal the obsolescence of the TU's most time-honoured weapon - the strike.

2.2.7 A related factor which the TUs see as weighing against them in the balance of bargaining power is the

financial ability of the TNC to withstand a strike, where production at the plant affected by a strike is not necessary for continued operations in plants of the corporation in other countries, the actual loss of revenue resulting from the strike may be relatively insignificant in terms of the total turnover of the corporation.

2.1.8 The superior resources that TNCs command, enable them to minimize the costs that TUs can impose on them through industrial action.¹³ TNCs by their very structural nature have multiple profit centres in various countries, making it relatively easy for them to sustain losses resulting from labour disputes in one country with the aid of profits elsewhere. Moreover, a strike in a particular country may have a relatively insignificant impact on the total operations and profitability of the company.

2.3 Trade Unions' Concerns :-

2.3.1 TUs often complain about the difficulties they encounter in securing adequate information and financial data about the local operations of TNCs for collective bargaining purposes. Particularly, where financial data is reported on a corporate-wide basis, TUs are wholly dependant on whatever information the local subsidiary chooses to reveal.

2.3.2 Moreover, TUs are very concerned about the effects of the alleged widespread practice of manipulative transfer

pricing by TNCs. Although transfer pricing ordinarily is most frequently discussed in connection with tax evasion, its manipulative use also can have serious implications for collective bargaining. Since TNCs are said to have considerable discretion as to pricing in intracompany transactions - of products, services, technology, etc. - they are able to let profits accrue at whatever location in the company they deem fit, thereby giving a misleading picture as to the real source of transnational corporate profits. For example, a local TNC subsidiary may exploit a distorted picture of nonprofitability by arguing effectively against TU demands in local bargaining. Very little research has been conducted to either prove or refute this allegation. Research in this area is very difficult because of the apparent reluctance of TNCs to open their books on these matters.

2.3.3 For TUs a very frustrating aspect in dealing with TNCs is the obscurity that often surrounds the source of decision making on the part of TNCs. The crucial question is, where does this source lie - at the headquarter's, regional headquarter's, or subsidiary level? TUs contend that local management, with whom collective bargaining is supposed to take place, in many instances does not have the final authority to conclude collective bargaining agreements and must first consult with top management. Frequently, so TUs claim, TNCs

"give them the runaround" by denying responsibility for decision making in particular areas at both the headquarters and subsidiary management levels. It is understandable that TUs want to have access to the actual source of decision-making in matters that affect them, at least in order to exert influence where it may have the maximum effect.

2.4 Decision-making in TUCs :-

2.4.1 There is a general consensus among the findings of the studies that day-to-day industrial relations matters are largely left to subsidiary management. However, the findings vary somewhat where headquarters involvement in nonroutine matters such as collective bargaining and the settlement of strikes are concerned. Malcolm Warner and others report that while collective bargaining normally may be decentralized in TUCs, headquarters "... does step in (1) when the trend of the local bargaining may substantially affect more than one local unit; or (2) when unorganized units are organized for the first time; or (3) when management changes bring new, inexperienced management to the local bargaining table."¹⁴

2.4.2 Dunne Kujawa found that headquarters tend to get involved in local industrial relations in crisis situations, e.g., "if company principles are at stake, major labour unrest appears in subsidiaries, or productivity of operations is menaced."¹⁵ On the other hand, Blake sampling only American

TNCs, reports rather considerable involvement of headquarters in local collective bargaining and strike settlements.¹⁶

2.4.3 A most interesting difference came to light between the findings of Blake and those of B.C. Roberts and Jonathan May.¹⁷ The latter researchers, sampling only British-based TNCs, followed a similar methodological approach as Blake in order to facilitate comparisons between the two studies. Roberts and May found that, by far, the majority of British TNCs in the sample, rarely, if ever, became involved with subsidiary collective bargaining or strike settlements, what is more, they found that most of the TNCs in the sample were the least involved of all respondents. Thus, these findings contrast significantly with those of Blake. They lead to the conclusion that American TNCs tend to centralize the industrial relations function to a greater extent than British TNCs.

2.4.4 Thus it appears that the locus of decision-making in industrial relations, while decentralized in its day-to-day aspects, is really contingent upon (1) corporate policy and (2) specific circumstances governing the particular industrial relations situation concerning the impact on the company's global operations. This lends some credence to TU's charge that the place of TNC decision-making in industrial relations is not clear cut.

2.4.5 It is obvious that practices vary among different TNCs, depending, for example, upon the type of economic activity in which they are engaged and upon the question at issue. Managements in TNCs affirm that on many issues, and in any event on those related to collective bargaining, the greatest decentralization in decision making prevails, mainly because collective bargaining policy cannot be isolated from the legal and social environment of the locus of operation, and this, of course, differs greatly from one country to another. It has been asserted, however, that, owing to the very nature of the bargaining process, it may not make very much difference where the decisions are made; the business interests of the TNC will result in the same response to a TU, whether the response originates at headquarters or at the subsidiary. In studies on the foreign operations of US automobile companies certain general findings suggest a relatively high degree of decentralization in decision making on most bargaining issues and, in any event, a careful consideration by the central management of the views of local managements when decisions are taken.¹⁸

2.4.6 A further problem raised in certain TU circles and elsewhere is that TNCs frequently seek to transfer the industrial relations and personnel policies and practices of the

home country to the other countries in which they operate, or fail to conform to the practices of the host countries. Indeed, there are documented cases of this kind, some of which have had adverse business effects on the corporation concerned. Moreover, a foreign company that breaches locally accepted standards is much more subject to criticism than is a local company acting in the same way.¹⁹

2.4.7 A frequently discussed aspect of TNCs as participants in various industrial relations systems is their potential ignorance of and insensitivity to locally established rules, procedures and practices of industrial relations. The fear is that corporate ethnocentrism or geocentrism may lead TNCs to impose alien industrial relations practices upon the local industrial relations partners practices most likely stemming from the TNC's home country. As Robert J Flanagan has observed: "... an American firm investing abroad brings practices developed within the United States into a country with established industrial relations traditions that may include values and practices which differ radically from the American model."²⁰

2.5 Impact on Industrial Relations :-

2.5.1 It should also be noted that TNCs have sometimes been responsible for innovations in industrial relations practices that have generally been recognized as constructive, both in

developing and in industrialised countries. The development of collective bargaining itself in some countries is an example.²¹

2.5.2 There has also been discussion of participation by subsidiaries of TNCs in employers' organisations in host countries as an indication of their integration in the local industrial relations system. Here, however, it is necessary to consider the nature and purpose of the particular employers' organisation; whether it is consultative and concerned only with general policy or whether it is a vehicle for centralised collective bargaining. It is in the latter case that certain questions have arisen. As all events, it is evident that more and more subsidiaries of TNCs are becoming active members of the employers' organisations in host countries. In developing countries TNCs have sometimes even been largely instrumental in the founding of employers' organisations.

2.5.3 TNCs also are mentioned often for their reluctance to affiliate with local employers' organizations, thereby avoiding the obligation of industry-wide collective agreements that cover the industry members of the organization. Similarly, TNCs are more prone to engage in anti-TV activities and to refuse recognition of representative worker organizations. "Worker organizations fear that battles won long ago may have to be fought all over again."²²

2.5.4 However, it seems prudent to refrain from generalising, as the conspicuous nature of these cases should not lead to an exaggeration of their extent. There are serious doubts as to whether TNCs as a category are, indeed, more prone to conflicts in industrial relations than their uninationa! counterparts. For example, studies by John Gennard in Great Britain tend to show that foreign TNCs have, for the most part, accepted the established practices of the British industrial relations system.²³ In cases in which this is not true, TNCs tended to be industrial relations innovators with positive consequences for the British economy.

2.5.5 As regards the more specific questions of personnel policies and practices, there is increasing evidence - for example in the personnel manuals and guides of TNCs - that these corporations seek to adapt their policies and practices to national customs and patterns or at least not to do violence to them. It is not unusual for the internal directives of the TNC to specify that within the framework of central guidance - to the extent that it may be applicable - personnel and industrial relations policies can only be decided by local managements in the light of the local situation.²⁴ Some studies indicate, for instance, that even where most members of the management of a TNC's subsidiary are drawn from the home country,

the person in charge of personnel matters is nearly always a national of the host country.

2.5.6 It has been observed that the managerial staff of TNCs are becoming increasingly international in outlook. This is a result of their own training policies as well as the programmes and curricula of business schools. Such an evolution can serve to diminish cultural tensions in industrial relations and personnel management, since internationally minded managers can appreciate the dangers inherent in seeking blindly to impose alien practices on a local operation.²⁵

2.5.7 TNCs are to a degree, also concerned about the more general effects of TNCs on the economy. Since the welfare of workers is affected significantly by the general state and health of the nation's economy, they naturally are interested in how TNCs affect the achievement of national economic and social goals. Complex issues such as industrial concentration, unfair competition, monetary instability, transfer pricing, remittance policies, tax liabilities, inflation, capital exportation, technology transfers, among other things, frequently are mentioned in this regard. There is considerable controversy as to what the exact role and impact of TNCs are with respect to most of these matters.

2.5.8 As regards the aspects of industrial relations that are regulated by law in the host country - including questions of TU recognition and collective bargaining - the subsidiary of a multinational corporation has, of course, the same obligations as an indigenous company and is likewise subject to the host country's labour administration system, including, for example, factory inspection. TUs agree that cases of refusal by subsidiaries of TNCs to recognise them are not very numerous in the industrialised countries of Europe.²⁶ Mention may be made here of the Swedish Government's scheme for guaranteeing the overseas investments of Swedish companies, under which protected companies must undertake, with due regard for the legislation of the host country as well as national and international practices, to respect trade union rights, bargain collectively and disclose wage information for purposes of bargaining.

2.5.9 The social and economic repercussions of the growth of TNCs and their policies are manifold and extensive. They institute an international division of labour among their subsidiaries.²⁷ These patterns provide the management with the means to threaten TUs in local or national collective bargaining with the transfer of production elsewhere if it is confronted with labour demands.²⁸ As is to be expected,

the union situation varies considerably from country to country, but in general it can be said that the level of union development inevitably reflects the level of economic development and the growth of employment in a country. The content of collective bargaining in developing nations inevitably varies considerably.²⁹

2.5.10 The impact of the TNCs on the industrial relations system of the host country has been of great concern, namely, whether they try to improve and transplant home made solutions, systems, rules and techniques or they absorb the local practices and customs and change and innovate labour relations. Roger Stanpain points out that "it is undoubtedly very difficult, in the absence of more reliable and comprehensive information, to evaluate the impact of foreign multinational corporations on national labour relations systems. Findings on the United Kingdom and Belgium by and large do not support the conclusion that the multinationals, up to now, have really had a great impact. In their approaches there has been less change and innovation than adaptation to local patterns and attitudes."³⁰ In fact, TNCs, impinge upon labour in many ways, directly and indirectly. This makes it very difficult and arbitrary to thrash out the so called industrial relations issues from other issues.³¹

2.6 Nationality of TNCs Headquarters :-

2.6.1 It is pointed out that TNCs "exhibit certain characteristics which are attributable to their nationality, e.g., the relatively high multinationality of British, Dutch and Swiss firms, and the low multinationality of even the most research-intensive Japanese firms."³² Yet another study³³ indicates that the "payment varies considerably amongst different industries and companies of different size and national origin within the same pursuit. According to a national wage Policy Advisory Committee,³⁴ "these differences are too wide to have any logical justification...."

2.6.2 John C Shearer observes that "American firms which operate in foreign countries usually premise their industrial-relations policies on the base of the values, assumptions and habits they have developed in the United States. They then may or may not modify them in response to the different circumstances abroad".³⁵ T. Hamai notes that "In Japan, where foreign investment accounts for only 0.6 per cent of all Japanese employers, the three main characteristics of the Japanese employment system - life time employment, the security wage system and the enterprise union - are being adopted with slight revisions by most foreign enterprises in Japan."³⁶

2.6.3 Warner and others indicate that, TNCs, "largely American, although not necessarily, originally tried to transfer their industrial relation styles to other sites abroad in a wholesale fashion.... They found ... later that they ran into trouble as the unions opposed certain 'alien' labour relations practices, and eventually ... moved to an accommodation grosso modo with the socio-industrial norms dominant in the national culture."³⁷ Biehn points out that "while a large number of respondents indicate that headquarters rarely or never became involved in these issues, an equal or larger percentage say their regional or parent company headquarters participate some times or with even greater frequency in subsidiary collective bargaining and strike settlement efforts [In that case] the nature of that involvement is likely to be more active than just the giving of advice and the setting of standards."³⁸

2.6.4 In their recent study Bianpian and others argue that "the findings obtained through this study leave no doubt that the information, consultation and negotiation aspects of relations between management of transnational enterprises and employee representatives in France, the Federal Republic of Germany and the United Kingdom are, to a large extent, dominated by the national labour relations systems. In many

essential aspects the transnational enterprises covered by the study constitute an integral part of these systems. This is largely the result of existing legislation and collective bargaining and other practices which do not allow transnational enterprises (domestic or foreign) very much latitude to pursue distinctive policies other than making certain refinements on prevailing standards. Further more, it is not only the declared intention of most transnational enterprises to adapt to local practice but also a finding of the present study that at least the enterprises covered in fact do generally conform to local practice even where margins for modifications exist. This also means in certain cases that not more than local minimum requirements regarding information, consultation and negotiation are applied. Adherence to local standards is also greatly promoted by membership in the relevant employers' association which is the case for most of the enterprises in question."³⁹

2.6.5 Another investigation suggests that "considering that there are some two thousand foreign-owned firms in the United Kingdom of which 60 percent are American-owned, the degree of conflict arising out of national antagonism has been extremely small. It would have been much larger had the management of these companies insisted on foreign standards and practices. Even though not compelled to follow British

patterns by law, most foreign companies have accepted them.⁴⁰ John T Dunlop brings out that "the major characteristics of a national industrial-relations system appear to be established at a relatively early stage in the industrial development of a country, and in the absence of a violent revolution in the larger community, a national industrial-relations system appears to retain these characteristics despite subsequent evolution."⁴¹

2.6.6 Many examples of TNCs attempting to impose foreign solutions that conflict with local traditions and values are brought to light by researchers. In Japan unsuccessful attempts were made to introduce wage systems based on job evaluation and merit rating, as opposed to the traditional criteria of educational qualifications and seniority.⁴² Other firms, too, discovered that the applications of some techniques violate social values. "In Italy, for example, it is unsuspectable to pass over an individual for an annual increase merely because of unsatisfactory performance."⁴³ In Germany a strike resulted when John Deere-Lau, A.G., reduced the length of the breakfast break and in Canada General Motors had to abandon the attempt to replace the traditional fixed rest period by a rotating rest period.⁴⁴ Other changes introduced after negotiations were out necessarily felt to be incompatible with

local values. In the United Kingdom, for example, Ford, General Motors, and Chrysler applied a measure-day work system, and only Chrysler had great difficulty in gaining acceptance of the system.⁴⁵ Another example is from the Ford Motor Company in Oenk where an attempt to change the rotating shift assignment pattern was partly accepted by the unions without specific strife.⁴⁶

2.6.7 One study shows that "it seems fairly clear that little or no evidence has been adduced to substantial charges of malpractice or unfavourable conditions of employment in multinational Petroleum enterprises for example that "in order to reduce labour cost multinational enterprises chose for their operations countries where wages were lowest, trade unions paralysed or forbidden, government most amenable to their demands and regulations on environmental and workers' protection the least strict"; or that "petroleum monopolists pursued anti-trade union policies and were generally hostile to the application of international labour standards",⁴⁷ besides other charges of politico-economic character which are not directly within the scope of the present study".⁴⁸ Bianpain and others indicate that "in respect of certain aspects of labour-management relations... there are a number of problems specific to transnational enterprises".⁴⁹ Harrod,

suggests that "In many developing countries governments and trade unions were in such a weak position that multinational corporations could often impose their own pattern, while in developed countries they had to respect the local patterns."⁵⁰ A study conducted by IMF brings out that in Korea and Malaysia, the TNCs were able to get special laws promulgated concerning their labour problems.⁵¹

2.7 Transnationalisation of labour :-

2.7.1 Deane Kujawa devised ways to measure the effectiveness of international collective bargaining by international labour in an internationalized industry such as the automobile industry. Judd Polk tried to reconcile the differences between TNCs and international labour. Charles Levinson and Richard Cox were among those who were more critical of the TNCs. Levinson felt that international collective bargaining was gaining strength and that industrial democracy was helping this process. Cox was aware of the new divisions in international labour that have been exacerbated by the growing transnationalisation of capital.

2.7.2 Raymond Vernon believes that although capital and management are mobile, the state and labour are not.⁵² Thus, labour is generally under the jurisdiction of a single state and its "appeal for the use of public power on its behalf"

can be directed only to the government of that state,⁵³ As Vernon sees it, labour can respond to the growth of the TNC in two ways. Either it adopts an approach, characterized by measures such as the Smoot-Hawley Bill, which Vernon says "invoke the shades of the machine-busting Luddites and saboteurs of the early 1800s"⁵⁴ and presumes that the world can be told to stop. Or it comes to terms with the "powerful underlying forces" of the TNC that have reduced national and regional differences in manufacturing and consumption patterns, and that enable TNCs to plan and control large parts of the world.⁵⁵

2.7.3 International labour, in Vernon's opinion, has been weak because labour unions tend to be nationally oriented and espouse different ideologies.⁵⁶ National unions are passive toward government policies that reward businesses for using more capital than labor.⁵⁷ In fact, in the more industrialized countries, businesses have been particularly successful in obtaining support for technological innovations in order to respond to high labour costs. According to Vernon, these developments have helped to destroy the union's base. Therefore, the only alternative open to labor in its response to TNCs is to "recognize the strength of the forces that are reducing the space between nations and find a course of action

that increases the opportunities and rewards for labour in a world that continues to shrink."⁵⁸

2.7.4 Duane Kujawa has examined whether or not labour in the highly internationalized automotive industry has been able to achieve better contracts than labour in more nationally oriented firms. He measured benefits received by the negotiating parties, including "direct wages, job classifications, wage supplements, vacations, holidays, personal insurance, pensions, and severance (layoff) benefits,"⁵⁹ and specific labor-management relationships, which included "work rules, grievance procedures, employee (or employer) representation units, and limitation on the use of strikes and lockouts."⁶⁰

2.7.5 Kujawa analysed industrial relations in the United Kingdom, West Germany, and France and investigated how constraints upon benefits and specific labor-management relationships influence transnational bargaining. In studying the Chrysler Corporation, the Ford Motor Company, and General Motors,⁶¹ he found that collective bargaining in a single country seems to be more successful in controlling TNCs than transnational collective bargaining.⁶² In fact, Kujawa concludes that labor in TNCs has achieved benefits that are only slightly better than those obtained by workers in more

nationally based firms. The expansion of codetermination (workers' participation in boardrooms) in Europe has strengthened the power and influence of national labour unions.⁶³

2.7.6 Judd Polk has evaluated those criteria that may be useful in resolving the conflict between labour and U.S. TNCs over the impact of direct foreign investment on U.S. jobs.⁶⁴ There was a time, he says, when U.S. labour supported international free trade and enjoyed the resulting benefits that flowed from the classical notions of comparative advantage and national specialization. Now U.S. labour asserts that American workers are losing jobs and that their standard of living is being threatened because U.S. investments have gone to low-wage areas and a growing volume of imports is entering the country.⁶⁵ Organised labour still supports international free trade, but wants the government to impose quotas on a list of imports from U.S. firms in low-wage areas.

2.7.7 In order to resolve this conflict, Polk favors cooperation between U.S. TNCs and U.S. labour. The first cooperative task would be a national assessment of the "facts and implications of differential labor standards" to find the best ways of improving substandard conditions.⁶⁶ Secondly, in response to changes in national and international competition both corporations and labor should encourage U.S. research

and development. This would maintain and probably increase the U.S. lead in high technology. It would also stimulate efforts to retrain workers for employment in more technologically sophisticated jobs and would force industry and government to plan the use of labor more effectively.⁶⁷

2.7.8 International production is growing rapidly but without a clear goal. Polk's proposed minimum goal is the achievement of a \$ 2,250 worldwide per capita income.⁶⁸ He believes that U.S. management and labour are able to cooperate in achieving a smooth adjustment for labour to the new problems of the world economy.⁶⁹ He also suspects that ever-increasing production will force answers to technical as well as social questions. Polk finds that one of the pressing social questions "almost certainly will involve a restatement of a labour theory of value."⁷⁰

2.7.9 Charles Levinson, a Canadian who is general secretary of the International Chemical, Energy, and General workers Unions (ICEU), has been particularly concerned with the erosion of unionized workers' wages and the consequent decline in their standard of living as well as the need to strengthen the structures and processes of international collective bargaining or "multinational unionism." He has suggested a way for labour to maintain its benefits in light of the continuing

inflationary process that he finds is inherent in the operations of TNCs because of their ability to pass along higher costs to their subsidiaries and consumers. Based on his experience with collective bargaining at the national and international levels, Levinson has concluded that wages cannot keep up with prices and that even escalation clauses in contracts are ineffective. He has proposed the use of "asset formation", the setting aside of a percentage of the accumulated assets of industry to create savings and equity for workers, which would provide a "new dimension of wealth and ownership"⁷¹ for the working class.

2.7.10 According to Levinson, labor can and should respond to automation, new technology, and the rise of TNCs by helping to create conditions that encourage the growth of retained earnings, easier money policies through lower discount rates, and the maintenance of higher wages in key capital-intensive industries (which are strongly unionized) with relatively low unit labour costs.⁷² These conditions would help increase company cash flows, ease interest rates, raise capacity utilization rates, and stimulate the output of consumer goods.⁷³ Asset formation would help labor create a greater equality of income and ownership of wealth and would counter the threat to democratic processes posed by the concentration of ownership of capital assets.⁷⁴

2.7.11 Richard Cox, former director of the International Institute for Labour Studies in Geneva, has taken a more critical view of multinationals and labor. In his view, the emergence of a world economy has resulted in a hierarchical structuring of the world's labor force. Those workers directly employed by TNCs represent a labor aristocracy, a relatively privileged minority of the world's workers. Transnational bargaining has taken this segment - what Cox calls the primary labor markets - as its constituency and excluded other workers. The quandary faced by this relatively privileged group is whether or not to ally itself with the state for its own benefit, supporting corporate statism and political authoritarianism,⁷⁵ or to stand up for the rights of all workers, including those who are not privileged.

2.7.12 Cox finds that international production has resulted in the emergence of a pyramidal, global class structure. The apex consists of a transnational managerial class; the middle is occupied by "established labor" or members of the primary labor market; and the bottom comprises the social marginals, members of the secondary labor market.⁷⁶ Labor's response to international production has been to attempt transnational collective bargaining. These efforts have had limited success because: (1) TNCs are big and powerful and

operate within several national jurisdictions, whereas unions are weak because of ideological differences; (2) the distance between rank and file members and union leadership is large; and (3) the sophisticated and manipulative management techniques used by TNCs undermine union organization.⁷⁷

2.7.13 Cox finds that a transnational collective bargaining strategy is most likely to work where unions are strongly organized at the plant level, where a relatively flexible national leadership exists, and where the union regards itself as an instrument for protecting its members' interests within an acceptable economic system.⁷⁸ Yet transnational bargaining really focuses only on the aristocracy of labor. This group will try to maintain the transnational bargaining strategy but in so doing may be confronted by the nationalism of the less-favoured majority of workers.⁷⁹ Labor has two fundamental choices. Trade union leaders either acquiesce in the movement toward corporate statism and coercive authoritarianism - a process of symbiosis - or resist these tendencies by exercising the option of protecting all the workers - showing solidarity.⁸⁰

10. Gunter Kepke; "Union Response in Continental Europe", in Robert J. Flanagan and Arnold R. Weber (ed) Bargaining Without Boundaries: The Multinational Corporations and International Labour Relations, (1974) Chicago p. 207.
11. See Christopher Fugardhat: The multinationals (London, Eyre and Spottiswoode, 1971), p. 169.
12. Quoted in G.B.J. Somers; Multinational Corporations and Industrial Relations (1976) The Netherlands, p.18-9.
13. Leopold Bergman; "Multinational Corporations and Labour in the EEC: A Survey of Research and Development", Paper presented at the Research Meeting on Multinational Corporations and Labour of the International Institute of Labour Studies, Geneva 5-7 December 1973 p.20.
14. Malcolm Warner and others; "The Comparative Measurement of Industrial Relations in Multinational Firms", in Kurt P. Judyka (ed) Multinational Corporations and Labour Unions (1973) Nijmegen p.149.
15. Duane Kujawa; International Labour Relations Management in the Automotive Industry: A Comparative Study of Chevy, Chrysler, Ford and General Motors (1971) New York p.7.
16. David H. Blake; "Cross-National Co-operative Strategies; Union Response to the MNCs" in Kurt P. Judyka (ed) Multinational Corporations and Labour Unions (1973)p.266-7
17. B.C. Roberts & Jonathan Nays; "The Response of Multi-national Enterprises to International Trade Union Pressures", British Journal of Industrial Relations, November 1978, pp. 403-8.
18. Duane Kujawa; International labour relations management in the automotive industry: A comparative study of Chevy, Ford and General Motors, Praeger special studies in international economics and development (New York, Praeger, 1971).
19. The Trades Union Congress in the United Kingdom has found that "most international companies pursue industrial relations policies acceptable to the trade union movement, and at least no worse than those of many British-owned companies" but goes on to cite particular problems with regard to certain multinationals (Trades Union Congress;

Contd...

f.n. 19 continued.

Economic Review, 1971 (London, Mar. 1971), p.57). See also John Gennard and N.D. Steiner: "The industrial relations of foreign-owned subsidiaries in the United Kingdom", in British Journal of Industrial Relations (London), July 1971, pp.143 ff.

20. Robert J. Flanagan in Robert J. Flanagan and Arnold R. Weber (ed) Bargaining Without Boundaries: The Multinational Corporation and International Labour Relations (1974) Chicago.
21. John Gennard: Multinational Corporations and British Labour: A Review of Attitudes and Responses (London, Hamish Hamilton, 1970), pp.44-45.
22. David H. Slater: "The Internationalisation of Industrial Relations", Journal of International Business Studies Fall, 1972, p.30.
23. John Gennard: "The Impact of Foreign-Owned Subsidiaries on Host Country Labour Relations: The Case of the United Kingdom" in Robert J. Flanagan and Arnold R. Weber (ed) Bargaining Without Boundaries: The Multinational Corporation and International Labour Relations (1974) Chicago.
24. It has also been suggested that problems can arise from foreign management assuming differences of a national or cultural kind which do not really exist. It has been asserted that in many areas workers' expectations, goals and so on are similar, regardless of cultural background. See David Sirets J, Michael Greenwood: "Understanding your overseas workforce", in Harvard Business Review (Boston (Massachusetts)), Jan. Feb. 1971, pp. 53 ff.
25. See Frederick A. Teague: "International management selection and development", in California Management Review (Berkeley (California)), spring 1970, pp. 1-8.
26. See, for example, International Confederation of Free Trade Unions: The multinational challenge, ICFTU World Economic Conference reports, No.1 (Brussels, sep.1971), p.19. On the other hand, trade union organisations have expressed apprehension "at the growing practice of governments to indulge in an auction of incentives offering anti-trade union measures among other inducements in efforts to attract foreign investments instead of promoting regionally co-ordinated investment attraction schemes" (Resolution on freedom of association and multinational companies adopted by the ICFTU Executive Board in December 1970. see ICFTU Economic and Social Bulletin, Jan. Feb. 1971, p.21).

27. For some recent discussions see Folker Frobel, Jürgen Heinrichs and Otto Kreye, The New International Division of Labour, (1980) pp 1-48; and George Medeliski, (ed) Transnational Corporations and World Order, (1979) pp.414-39.
28. Karl Casserini, "The Challenge of MNCs and Regional Economic Integration to the Trade Unions, their Structure and their International Activities" in Hans Guntar (ed) Transnational Industrial Relations, op.cit. p.73.
29. Jack Lee, "International Labour Relations and Collective Bargaining" id. p. 99.
30. Roger Bianpain, "Multinationals Impact on Host Country Industrial Relations " in Robert F Banks & Jack Stieber (ed) Multinationals, Unions and Labour Relations in Industrialized Countries (1977), p.133.
31. G.D.J. Somers, Multinational Corporations and Industrial Relations (1976), p.16.
32. Peter J Buckley & Mark Casson, The Future of the Multinational Enterprise, (1976) p. 31.
33. Alice H. Amodeo, International Firms and Labour in Kenya 1945-1970, 1971 p. 137.
34. Republic of Kenya, "Report of the National Wage Policy Advisory Committee, (1965) pp. 3 & 4 (mimeographed).
35. John C. Shearer, "Industrial Relations of American Corporations Abroad," in Solomon Barkin and others (ed) International Labour, (1967) New York, p.117.
36. T. Hanami, "The Multinational Corporation and Japanese Industrial Relations, "IRAA International Conference (1973) p.10.
37. Malcolm Warner and others, "The Comparative Measurement of Industrial Relations in Multinational Firms" in Multinational Corporations and Labour Unions (Mijmegen Conference, May 17-19) 1973 p. 148.
38. David H Blake, "Cross-national Co-operative strategies: Union Responses to the MNCs", ibid. pp. 226-8.
39. Roger Bianpain, Tom Eddy, Alan Gladstone & Hans Guntar, Relations between Management of Transnational Enterprises and Employee Representatives in Certain Countries of European Communities, (1979) p. 41.

40. Hans Gunter (ed) Transnational Industrial Relations (1972) London, p.127.
41. John T. Dunlop, Industrial Relations Systems (1958) New York, p. 307.
42. ILO, Multinational Enterprises and Social Policy (1973) Geneva p. 79.
43. John C. Shearer, "Manpower Environments Confronting American Firms in Western Europe", in Alfred Kamin (ed) Western European Labour and the American Corporations, (1970) Washington p.389.
44. ILO, Multinational Enterprises and Social Policy, op.cit. p. 79.
45. id.
46. Duane Kujawa, International Labour Relations Management in the Automotive Industry: A Comparative Study of Chevrolet, Ford and General Motors, (1971) New York p.234.
47. excerpts from statement made on behalf of the Trade Union International of Chemical, Oil and Allied Workers at the Eighth Session of the ILO Petroleum Committee, April 1973.
48. ILO, Social and Labour Practices of Multinational Enterprises in the Petroleum Industry (1977) Geneva p.95.
49. Roger Bianpain, Tom Eddy, Alan Gladstone & Hans Gunter ; Relations Between Management of Transnational Enterprises and Employee Representatives in Certain Countries of the European Community (1979) Geneva p.47.
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51. IMF, The Subsidiaries of Automotive Multinational Companies in Developing Countries. Their Production Facilities in Asian Developing Countries: Social Conditions and Trade Union Problems, (1973) Geneva pp.18-9 and 25.
52. Raymond Vernon, "Introduction", in Duane Kujawa (ed), International Labor and the Multinational Enterprises (1975) New York: p. ix.

53. Ibid., pp. viii, ix.
54. Ibid., p. ix.
55. Ibid., p. x.
56. Ibid.
57. Ibid., p. xi.
58. Ibid.
59. Duane Kujawa, "Transnational Industrial Relations: A Collective Bargaining Prospect," in Duane Kujawa (ed) International Labor and the Multinational Enterprise, op.cit., p. 97.
60. Ibid., p. 97.
61. Ibid., pp. 97-119.
62. Ibid., p. 126.
63. Ibid., p. 127.
64. Duane Kujawa (ed) American Labor and the Multinational Corporation (1973) New York, p.4.
65. Judd Folk, "American Labor and the United States Multi-national Enterprise in an Emerging World Economy" in Duane Kujawa (ed) American Labor and the Multinational Corporation, op.cit., pp. 270-83.
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67. Ibid., pp. 279-80.
68. Ibid., 280-1.
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70. Ibid.
71. Charles Levinson, Capital, Inflation and the Multinationals (1971) New York, p. 217.
72. Ibid., p.205.

73. Ibid., pp. 203-4.
74. Ibid., p. 221.
75. Richard Cox, "Labor and the Multinationals," Foreign Affairs, Vol. 54, No.2, January 1976, pp. 344-65.
76. Ibid., pp. 351-2.
77. Ibid., pp. 353-5.
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80. Ibid., p. 363.

CHAPTER III

TRANSNATIONAL CORPORATIONS - AN OVER-VIEW

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TRANSNATIONAL CORPORATIONS - AN OVER-VIEW

3.1.1 In the last chapter a review of the literature on the subject was undertaken. In this chapter it is proposed to present an over-view of the TNCs.

3.2 Definition and sign :-

3.2.1 One attempt at defining a TNC points out that "the structure of the multinational corporation is a modern concept, designed to meet the requirements of a modern age; the nation state is a very old fashioned idea and badly adapted to serve the needs of our present complex world."¹ Some researchers find the determining characteristic of a TNC in the organisation of its activities, that is, the extent to which its operations in different countries are actually co-ordinated by a corporate centre, or the degree of "global outlook" to be found in the enterprise's decision-making. Some others use as criteria the number and type of its subsidiaries, the number of countries in which these subsidiaries operate; and the proportion of foreign sales, assets and employment in the enterprise's total sales, assets and employment.

3.2.2 There are still others who look to the nationality mix of its management or to its ownership characteristics. Here, the ILO definition is taken as the basis. Accordingly it may suffice to assume that the essential nature of the TNC lies in the fact that its managerial headquarters are located in one country while it carries out operations in a number of other countries as well.² Table III-1 presents the country-wise distribution of TNCs along with their total assets and annual sales.

Table III-1

COUNTRY-WISE DISTRIBUTION OF TNCs
(in billion dollars)

Country	Number	Sales	Assets
1. U S A	24	234.1	202.2
2. U K	5	47.0	48.2
3. W. Germany	6	41.5	35.2
4. Japan	6	33.7	37.1
5. Italy	3	12.8	17.6
6. France	2	8.7	7.0
7. Netherlands	1	8.1	8.6
8. Switzerland	1	5.2	3.8
	50	391.1	360.4

Source: United Nations, Transnational Corporations in World Development: Re-examination.

1.2.3 The TNCs are invariably large in size, they operate in a substantial number of countries. They have access to a common pool of human and financial resources and they control their widespread activities rather than serving merely as exporters or licensors of technology.³ "The really decisive point in the transition to world enterprise is top-management's recognition that, to function effectively, the ultimate control of strategic planning and policy decisions must shift from decentralized subsidiaries or division locations to corporate headquarters, where a worldwide perspective can be brought to bear on the interests of the total enterprise."⁴ Table No.III-2 presents the ten major TNCs the world over and their total annual sales.

1.2.4 Of the 100 largest economic units in the world, 50 are nation states and 50 are TNCs.⁵ For the major US, European and Japanese TNCs that is estimated to number approximately 100, sales have been growing by about 10% a year while real gross national product (GNP) over the world has, on an average, been increasing at only about half that rate.⁶ The total foreign sales of the TNCs exceeded the GNP of any country, except that of the USA and the USSR.⁷ The value added of all the TNCs in 1971 was estimated at

Table No. III.2

THE TEN MAJOR TNCs IN THE WORLD, 1976.

TNC	Domicile	Sales (US \$ billion)
1. Exxon	USA	48631
2. General Motors	USA	47181
3. Royal Dutch-Shell Group	NL-UK	36087
4. Ford Motor	USA	28848
5.5. Texaco	USA	26432
6. Mobil	USA	26063
7. National Iranian Oil	Iran	19671
8. Standard Oil of California	USA	19414
9. British Petroleum	UK	19103
10. Gulf Oil	USA	16451

Source:- United Nations, Transnational Corporations in World Development: Re-examination.

US \$500 billion, about a fifth of the world GNP, excluding the socialist economies. The value added by each of the top ten TNCs would be in excess of US \$3 billion or the GNP of over 60 countries; the amount of annual sales of the four largest TNCs exceeded US \$10 billion.⁸

3.3 General features :-

3.3.1 The TNCs seem to gravitate to industries with one or more of the following tendencies:-⁹

- (a) high initial capacity outlay,
- (b) rapid growth rates,
- (c) high level of technology,
- (d) rapid rate of replacement in the technologies used
and
- (e) high degree of concentration in the home country.

During the period 1955 - 70 the US direct investment abroad in mining and smelting industries decreased while there was a corresponding increase in manufacturing industries.

3.3.2 The impact of the TNCs have been very significant in almost every sector which has raised concern and criticism from several quarters. "In the last fifteen years, the apparatus of cultural production of the North American Empire has suffered profound mutations. No section, be it the press, the radio, the television, the cinema or advertising has

escaped. In the course of the process of industrial concentration, the owners of high technology have increasingly become the ones who determine not only the manufacture of hardware installation of systems, but also the development of programmes, the content of messages. A field such as education which had not previously been affected by massive industrialisation has begun to be colonised by the newcomers. The internationalisation of production has posed the problem of the internationalisation of cultural merchandise."¹⁰

3.3.3 This assumes significance in the present day capitalist world economy and 'the new international division of labour', a tendency which (a) undermines the traditional bisection of the world into a few industrialised countries on the one hand, and a great majority of developing countries integrated into the world economy solely as raw-material producers on the other, and (b) compels the increasing subdivision of manufacturing process into a number of partial operations at different industrial sites throughout the world, where the division of labour should be understood as an ongoing process and not as a final result.¹¹

3.3.4 The present day growth and flourishing of the TNCs may be partly contributed to the development of a world wide reservoir of potential labour power. This reservoir is practically inexhaustible in that capital can call

on several hundred million potential workers, mainly in Asia, Africa and Latin America. Most of this labour-force consists of the latent over population in rural areas, which through the employment of capital in agriculture provides a constant flow of people into the urban areas and slums in search for jobs and an income where they constitute a nearly inexhaustible supply of labour. Brought about by the development of transport and communications technology and the increasing subdivision of the labour process a world-wide industrial reserve army has come into existence, because - and in as much as - all these potential workers now can compete 'successfully' on the labour market with workers from the traditional industrial countries.

3.3.5 More specifically, this worldwide reserve army displays the following characteristics which indicate its potential use in the valorisation and accumulation process of capital in the context of the present day world economy. (1) The wages which capital actually has to pay in the 'low wage countries' are approximately 10 percent to 20 percent of these in the traditional industrialised capitalist countries, taking into account social overhead costs. Due merely to the subsidising mechanisms mentioned above, these wages have only to, and do only, cover (if at all) the cost

of the immediate daily reproduction of the worker during the actual period of employment (which as a rule is very short). (2) The working day (week or year) is, as a rule, considerably longer in 'low wage countries' than in the industrialised capitalist countries. Shift, night and Sunday work are in comparison much more widespread, which facilitates the 'optimal' utilisation of fixed capital through extended running times. (3) Productivity in 'low wage countries' generally corresponds with that of the traditional capitalist industrial countries for comparable processes. (4) The labour-force can be hired and fired virtually at the discretion of the company. This means, inter alia, that a higher intensity of labour can be enforced through the more rapid exhaustion of the labour force: an exhausted labour-force can be replaced by a fresh one virtually as the company sees fit. (5) The huge size of the available reserve army allows for an 'optimal' selection of the most suitable labour-force (for example, young women) for the specific purpose required.

3.3.6 The contemporary slums and similar poverty stricken areas of the LDCs' cities are overcrowded with the landless rural immigrants (The latest population statistics from at least 10 cities in the LDCs show that more than a million people in each of them were living in such areas).

Transformed into proletarianised wage workers they are forced to seek employment regardless of the level of remuneration and under the most inhuman conditions merely to ensure their sheer physical survival. They constitute a nearly inexhaustible source of the cheapest and most exploitable labour in the LDCs.

3.3.7 This vast industrial reserve army of extremely cheap labour feeds a process of industrialisation which can be observed in many contemporary LDCs. But this process of industrialisation rarely absorbs any significant proportion of the local labour-force. It is oriented to production for export, as the purchasing power of the mass of the local population is too low to constitute an effective demand on the local market for the products of the country's own industry. The markets supplied by the industrialisation of the LDCs are therefore predominantly overseas, primarily in the traditional industrial countries.

3.3.8 The process of export-oriented industrialisation in LDCs is not only highly dependent on foreign companies but also is confined to a few highly specialised manufacturing processes: inputs are imported from outside the country, are worked on by the local labour-force in 'world market factories' (for example, sewing, soldering, assembling and testing) and are then exported in their processed form.

In other words, these world market factories are industrial enclaves with no connection to the local economy except for their utilisation of extremely cheap labour and occasionally some local inputs (energy, water and services, for example) and are isolated from the local economy in almost all other respects.

3.3.9 The labour-force recruited for production in these industrial enclaves is equipped with the necessary training in a period that rarely lasts for more than a few weeks, is exploited for a time-span which is optimal for the companies and is then replaced by a newly recruited and freshly trained labour-force. Under such conditions there is no such thing as a skilled labour-force, or, at best, the skills which the workers do acquire are very minimal. Likewise there is no observable transfer of technology despite the euphoric claims made by firms which manage their manufacturing processes in the LDCs. The technology which is employed in these world market factories is not only in most cases quite simple, but also dependent on the expertise of foreign specialists and managers. This technology is often quite useless for the development of any form of industrialisation which would serve the basic needs of the local population.¹²

3.4 TNCs in the LDCs :-

3.4.1 TNCs are based in a few countries of Western Europe and North America. Thus four-fifths of the total stock of

foreign investment, estimated at US \$165 billion is owned by four countries, viz., USA, UK, FRG and France. Among these, the US firms dominate as they account for more than one-half of the total foreign investment and one-third of the total number of foreign affiliates.¹³ It may be noted that along with the ten major TNCs mentioned above IBM, General Electric, ITT and Standard Oil that rank 11th, 14th, 15th and 16th respectively among the largest TNCs in the world are also based in USA. Most of the American electronics firms receive more than 40 % of their revenues from abroad.¹⁴

3.4.2 The bulk of the activities of the TNCs - roughly two-thirds of the total foreign direct investment - is located in the developed countries. LDCs account for the remaining one-third only.¹⁵ This shows that the "post-war international direct investments apparently do not conform to the theory that capital moves from capital-abundant countries to capital-scarce countries; the problem is not only that in certain cases capital flows in the 'wrong' direction, but that in several cases substantial amounts of capital in fact flow between two countries in both directions at once."¹⁶ Country-wise distribution of TNCs in 1976 shows that 24 TNCs are based in the U.S., 8 in FRG, 6 in Japan, 5 in the U.K., 3 in Italy,

2 in France and one each in the Netherlands and Switzerland,¹⁷
(See table III-1).

3.4.3 The aspect that the absolute quantum of TNC investment in the LDCs is comparatively small should be considered against (a) the tendency of the TNCs to concentrate in a few developed countries and (b) the annual turnover of a TNC that would exceed the GNP of a typical LDC. Moreover, in most of the LDCs "... although private investment is often desperately needed to supplement the dwindling flow of official aid it [TNC] is thoroughly disliked for its alien character."¹⁸

3.4.4 Some LDCs like Chile, Egypt and Brazil have liberalized their foreign investment regulations in recent years. However, the number is small and dwindling. But it is to be noted that Brazil is beginning to revise some of its very liberal regulations, probably in order to take account of public opinion which is not very favourable to TNCs. The great majority of LDCs have introduced legislation limiting foreign investments to joint ventures. These rules are sometimes combined with legislation on foreign disinvestments in order to reduce the existing foreign-controlled companies to the status of joint ventures.

3.4.5 The same tendency is also found in other developing countries in Asia and Latin America. In Eastern Europe and

soviet Union ^{TNCs} can operate only under the conditions set by these nations under a co-operation agreement. Even in the liberal socialist countries such as Hungary, Rumania and Yugoslavia, TNCs operate under minority investment conditions which must be approved by the state.¹⁹

3.4.6 In Korea, on January 1, 1970, "a special law on Trade Unions and Mediation of Labour Disputes in Enterprises Invested by Foreigners" was promulgated, with supposedly obligatory procedures for mediation and conciliation.²⁰

3.4.7 In Malaysia, the IWF reported that the Government, anxious to attract foreign investment, introduced new legislation which supposedly states that in an entirely new industry, trade Unions may not be established for three years. It further stipulates that during five years after a multinational has moved in, fringe benefits of its subsidiaries cannot be improved above the level set by law.²¹ Such patronage to the TNCs local governments has raised new problems in industrial relations.

3.4.8 A study of the International Labour Organisation points out that "in every country except Brazil the unions claimed that they [TNCs] were having a major impact on the level of wages negotiated in the subsidiaries of US-based multinational enterprises."²² It further indicated that "the trade Unions reported that they do not have such

influence in decision making in the subsidiaries of the multinational enterprises apart from the periodic collective bargaining sessions on wages and conditions of work."²³

3.5 TNCs in India :-

3.5.1 Foreign investment in India was started during the colonial era when it got established in mining, plantations, transportations, jute etc.²⁴ However, in independent India, the policy in regard to foreign capital was enunciated in the Industrial Policy Resolution of April 1946 and in the Prime Minister's statement in the Constituent Assembly in 1949. They laid down that :

- (i)** the participation of foreign capital and enterprise should be carefully regulated in the national interest by ensuring that major interest in ownership and effective control should, save in exceptional cases, always be in Indian hands and that the training of suitable Indian personnel for the purpose of eventually replacing foreign experts will be insisted upon in all such cases;
- (ii)** there will be no discrimination between foreign and Indian undertakings in the application of general industrial policy;
- (iii)** reasonable facilities will be given for the remittance of profits and the repatriation of capital consistent with the foreign exchange position of the country; and

(iv) in the event of nationalisation, fair and equitable compensation will be paid.

3.5.2 Following this in a press note issued on May 8, 1961 the Government of India clarified that "some of the important Third Plan projects will involve foreign collaboration or foreign participation in capital."²⁵ This was accompanied with a list of industries in which the Government of India would consider the investment of private foreign capital in joint ventures. Among the 26 items mentioned in the list fine chemicals, intermediates, dyestuffs and drugs were included. Collaboration schemes falling outside this list can be considered on merits. Banking, insurance, plantations and trading and commercial activities were listed as fields in which foreign capital was ordinarily not needed. The Industrial Licensing Policy is revised periodically, though with minor modifications.

3.5.3 The total foreign investment in India was Rs.1550 million in 1948, that increased to Rs.19430 million in 25 years and since 1957 India has entered into about 5000 collaboration agreements with foreign companies.²⁶ The Foreign Exchange Regulation Act, 1973 provides that a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company which is not incorporated under any law in force in

India or in which the non-resident interest is more than forty percent shall not carry on in India any activity of a trading, commercial or industrial nature except with special permission of the Reserve Bank of India.²⁷

3.5.4 In the guidelines for administering this section foreign companies have been divided into those engaged in activities of

- (i) manufacture
- (ii) trade
- (iii) construction
- (iv) plantation, and
- (v) consultancy.

3.5.5 Manufacturing companies engaged in activities specified in appendix I of the Industrial Licensing Policy 1973 or involving sophisticated technology or concerned with predominantly export oriented industry are allowed to continue on the basis of existing approvals, provided they bring down their foreign holding to 74%. Drugs and Pharmaceuticals is the fourteenth item specified in Appendix I of Industrial Licensing Policy 1973. Most of the foreign transnational pharmaceutical firms continue to operate in India under the protection of this provision of law.²⁸

3.6 Impact on the economy :-

3.6.1 As on March 31, 1978 there were 146 subsidiaries and 473 branches of TNCs operating in India. 368 branches out of 473 have assets to the tune of Rs.2,390 crores as per their Balance Sheets. Table III-4 presents the increase in the volume of foreign direct investment in India during 1969-1977 period.

3.6.2 According to the Reserve Bank of India¹⁹ the TNCs operating in India increased their profits before tax by 20.8% during 1971-72. The value of production of the TNCs went up from Rs.2,300 crores in 1970-71 to Rs.2,602 crores in 1971-72. It further shows that the rate of return of the US, TNCs in various countries during 1971 is as follows:-

India	14.2 %
Europe	11.5 %
Australia	10.3 %
Latin America	10.1 %
Philippines	9.2 %
Canada	8.8 %
Africa	6.8 %

The overall earning ratio of US investment in India rose from 11.9 % in 1970 to 12.1 % in 1971.

3.6.3 It is estimated that 407 TNCs operating in India earned 62 % increased profits after tax-deductions in 1969-70

Table III.4

THE GROWTH OF TNCs IN INDIA, 1969-77

Sl. No.	Company	Year of incorporation	Assets (Rs. millions)			Turn over (Rs. millions)		
			1969	1977	% change	1969	1977	% change
1.	ALKALI AND CHEMICALS	1937	146.4	353.6	141.5	151.8	538.9	258.0
2.	ASHOK LEYLAND	1958	223.0	615.1	175.8	291.1	974.1	234.6
3.	ASSOCIATE BEARING	1961	92.5	191.8	107.4	50.5	198.8	293.7
4.	BAYER	1958	86.1	234.6	172.5	57.6	359.5	524.1
5.	BOOTS	1944	25.1	51.0	103.2	54.9	119.8	243.3
6.	BRITANNIA	1918	73.2	174.0	137.7	168.7	441.3	161.8
7.	BROOKE BOND	1912	232.1	550.0	136.9	753.6	1863.0	147.2
8.	DUNLOP	1926	397.8	991.3	149.2	817.0	1668.5	104.4
9.	SEC	1957	60.1	116.9	133.3	21.8	165.8	671.2
10.	FOOD SPECIALITIES	1959	57.2	123.8	116.4	78.7	207.9	164.4
11.	GEC	1911	237.8	347.4	45.5	179.8	586.0	228.9
12.	GLAXO	1924	162.4	382.5	117.1	244.2	265.1	131.4
13.	GRAMOPHONE CO.	1946	36.0	109.4	203.9	39.7	113.4	185.6
14.	HINDUSTAN FERROD	1964	52.6	85.4	662.4	52.8	157.6	198.5
15.	HINDUSTAN LEVER	1933	318.2	1220.2	283.5	1087.9	2615.0	140.4
16.	INDIAN ALUMINIUM	1938	590.3	961.8	65.0	272.9	1171.7	329.4
17.	INDIAN EXPLOSIVES	1954	510.5	799.6	56.6	151.3	915.9	505.4
18.	INDIAN OXYGEN	1935	157.3	337.5	114.6	158.6	481.0	203.3
19.	METAL BOX	1933	218.2	328.8	49.3	289.7	542.0	108.7
20.	MICO	1951	158.5	409.0	158.0	145.9	611.4	311.1
21.	OTIS	1953	57.7	120.1	108.1	26.3	80.7	206.8
22.	PFIZER	1950	125.1	250.6	100.6	158.9	412.9	159.9
23.	PHILIPS	1930	241.8	556.4	130.1	323.3	820.4	154.5
24.	SANDOZ	1947	86.6	165.0	90.5	76.0	364.5	379.6
25.	SANDVIK ASIA	1960	58.5	172.5	194.8	48.1	146.5	204.6
26.	SIEMENS	1957	180.0	479.5	166.1	199.8	777.4	289.1
27.	TRIBENI TISSUES	1946	196.3	191.3	2.6	44.1	128.6	191.6
28.	UNION CARBIDE	1934	352.4	681.8	93.5	441.3	1068.5	142.1

SOURCE : Computed from the figures in the official directory of Bombay Stock Exchange, published in Mainstream, February 23, 1980 (Bombay).

compared to the profit of Rs.67.3 crores during 1968-69. The profits of the 229 U.K. based TNCs valued at Rs.53 crores, recording a 37% rise over Rs.39.2 crores in 1968-69. 69 US based TNCs earned profit of Rs.28.9 crores that works out to be more than 175 % increase over Rs.10.5 crores profit of the previous year. There are 31 TNCs based in FRG, 18 based in Switzerland, and 16 in other countries.

3.6.4 The sales of 173 branches of the UK based TNCs rose from Rs.617.5 crores during 1968-69 to Rs.623 crores during 1969-70 indicating a nominal increase of 1 %. However, the profits after tax reduction during the same year reached Rs.6.3 crores from Rs.1.8 crores. Similarly 25 branches of US based TNCs increased their profit from Rs.1.9 crores to Rs.2.6 crores.

3.6.5 Table No.III.5 presents the profit repatriated by some TNCs in the pharmaceutical industry during the early 1970s. The Indian subsidiary of Hoechst was taking so much profit that it was able to declare a 90 % dividend in its first year, 100 % dividend in its second year and 110 % dividend in its third year. In 1970 Colgate-Palmolive India Pvt. Ltd. declared a dividend that amounted to 48 / 60 % of its share capital. Imperial Tobacco had capitalised Rs.4.9 crores for foreign trade marks being used by its

Table III-5

PROFIT REPATRIATED BY TNCs

Sl. No.	Name of TNC	Country of origin	Amount repatriated (in million)		
			1971	1972	1973
1.	Abbott	USA	2,268	--	2,274
2.	Alkali & Chemicals	UK	3,463	0,635	1,058
3.	Bayer	FRG	--	2,258	10,198
4.	Boots	UK	0,634	0,635	1,058
5.	Burroughs Wellcome	UK	0,755	0,944	1,114
6.	Ciba	Swiss	3,538	3,354	8,777
7.	Cyanamid	USA	2,410	2,410	5,323
8.	Glaxo	UK	3,282	6,210	7,888
9.	Hoechst	FRG	--	--	6,069
10.	Merck Sharp & Dohme	USA	2,120	2,026	2,047
11.	Park-Davis	USA	1,881	2,625	2,375
12.	Pfizer	USA	--	--	9,794
13.	Roche	Swiss	1,680	1,651	4,165
14.	Sandoz	Swiss	0,927	0,735	2,007

Source: Computed from Government of India, Directorate-General of Technical Development, Indian Pharmaceutical Industry (1973), New Delhi.

Indian subsidiary on which it collected Rs.0.68 crores as dividend in 1971. Similarly Olaso, which had capitalised Rs.1.5 crores for its foreign trade mark, earned a profit of Rs.0.21 crores extra during 1971.

3.7 Current trends :-

3.7.1 The TNCs are making new entries through the public sector undertakings. The fertiliser production is one such area where 'modernisation programmes' are effected through TNCs. FRG based TNCs are brought in Mangal and Sindri, and their counter parts in Japan and Italy in Gujarat and Trombay units. Though India has the experienced indigenous know-how to install 900 tons manufacturing unit US based TNC is invited to install 1350 tons unit Bombay High Seed-stock.

3.7.2 In steel and metallurgical industries, US based TNCs have been invited to supply technical know-how in the expansion programme of Hindustan Steel Ltd. FRG based TNC (Siemens) has been invited for similar involvement in the Bharat Heavy Electricals Ltd.

3.7.3 Attempts are progressing for the involvement of Japanese TNCs in the electronics industry. The involvement of TNCs with the public sector core industries will have chain reactions affecting the feeder industries also.

3.8 Certain issues :-

3.8.1 While discussing TNCs it may be useful to take note of two issues that are related to scope of the definition of TNC. The first one is with regard to the size and the number of units of the company against the nationality mix of the headquarters and the subsidiary units. The other issue is with regard to the nationality of the headquarters of the company namely whether the headquarters is based in the home country or in any foreign country.

3.8.2 There are companies with more than one production units at different places in India. This is true with regard to the TNCs as well as the Indian companies that have no units abroad. In a subcontinent like India when a company has plants distributed in various parts of the country, it can be argued that it is also a TNC. If the area of operational market and the number of production centres, and not the internationality of the distribution of units, are treated as the criteria for a TNC, some giant pharmaceutical undertakings in India would qualify to be called TNCs, though they have no unit abroad. Even a small company based in France is considered a TNC if it has a unit in Belgium or Spain. If that is so, Balika India Ltd., an industrial giant with an annual sales of Rs.140 crores and with production units in Bombay, Madras, Meerut (UP) and Kanpur (UP) can certainly be considered a TNC.

3.8.3 Another interesting point to be considered is that in order to be a TNC, a company need not necessarily have its headquarters located in a foreign country. There can be TNCs that have the headquarters based in the home country and subsidiaries in foreign countries. There are several such TNCs in India. Sarabhai and Cipla are two such TNCs in the pharmaceutical industry with subsidiaries in Kenya, Malaysia etc.

3.8.4 It may be useful in this context to remember that India is not only a receiver of foreign capital but also an exporter of capital. There are substantial capital investments of Indian private companies in Malaysia, Singapore, Nigeria, Uganda, Kenya and other Asian and African countries.

FOOT NOTES

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CHAPTER IV

INDUSTRIAL LAWS IN INDIA - A BRIEF SURVEY

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4.1 Constitutional position :-

4.1.1 Under the Government of India Act, 1935 labour legislation was a Concurrent subject, which continues to be as such under the Constitution of India.¹ Thus the Governments both at the Centre and the States are empowered to legislate on matters pertaining to labour as envisaged under Article 246 of the Constitution read with Item 22 of List III, in the Seventh Schedule.²

4.2 The notion of industrial dispute :-

4.2.1 The idea of industrial disputes was practically foreign to India till the close of the World War I. There was no special legislation on this subject in the country. The ordinary principles of master and servant governed the relations of employers and the employees in the industrial concerns. The War provided an opportunity to manufacturers in the country to increase their productions and their profits. Some industries made phenomenal profits and there was also considerable increase in the scope for employment of industrial labour. The successful emergence of the British from the World War-I gave rise to the establishment of a

good number of factories and the involving huge sums. There was, however, no corresponding advance in the conditions of labour coupled with other factors. The year 1919 saw an outbreak of industrial strikes of a scale previously unknown.

4.2.2 The formation of international organisations raised a consciousness among the labour. The first session of the International Labour Conference met at Washington in 1919 in which India also participated. The spasmodic occurrences of strikes and the influence of International Labour Organisation led to some important amendments in the Factories Act, 1922, but nothing was done to bring about the amicable and peaceful settlement of industrial disputes.

4.3 The Commissions :-

4.3.1 The provinces of Bombay and Bengal took the initiative and appointed committees to investigate into the matter to consider and report on the practicability or otherwise to creating machinery for the prevention or settlement of industrial disputes. The Bengal committee recommended the formation of joint workers committee. It was not in favour of Government intervention or special legislation to decide labour disputes. The Bombay committee, however, recommended the setting up of Industrial Courts. A bill was drawn up by the Bombay Government on the recommendations of the committee

and was to be introduced in 1923-24 in the Legislative Council of the State, but due to the intervention of the Central Government, the bill was dropped.

4.3.2 The Government of India, however, enacted the Workmen's Compensation Act, 1923, the Mines Act, 1923 and the Indian Trade Unions Act, 1926. On the model of the British Trade Disputes and Trade Union Act, 1927, the first Indian Trade Disputes Act was passed in 1929. Save for the decision of industrial disputes by compulsory adjudication it contained many a measure which stands incorporated in the Industrial Disputes Act, 1947. This was an experimental measure and was to remain in force for 5 years. Trade Disputes Act was amended in 1932. On 28th April 1934 the Act, in consultation with the Provincial government was made permanent by the Central Government.

4.3.3 In the year 1929, as a result of intensive labour agitation in the country for reforms and comprehensiveness of labour laws, Royal Commission on Indian Labour, was appointed by His Majesty The King Emperor "to inquire into and report on existing conditions of labour in industrial undertakings and plantations in British-India; on the health, efficiency and standard of living of the workers; and on the relation between the employer and the employed; and to make recommendations thereon". As a result of the recommendations

of the Royal Commission the existing Acts were amended. The Trade Disputes Act was, as mentioned above, placed on a permanent footing. The Employers and the Workmen's (Dispute) Act, which had provided for the speedy determination of disputes relating to wages of certain classes of workers employed in certain public works, was repealed in 1932, as it was practically a dead letter. In furtherance of the recommendations, the Payment of Wages Act, 1936 and Employment of Children Act, 1936 were also passed.

4.3.4 Under the Government of India Act, 1935 provincial autonomy was established in all provinces with effect from 1st April 1937. The governments of many States appointed committees of inquiry to examine existing levels of wages and conditions of employment and to make recommendations. As a result of the report of various committees the States adopted several measures to create harmony between labour and management. The most important and progressive measure was the Bombay Industrial Disputes Act, 1938. The outbreak of World War-II in the year 1939 once again changed the complexion of social conditions. The legislative work started by various States with respect to labour and industries was more or less brought to a stand-still; but several emergency measures were adopted by the Central Government concerning industrial disputes during the War.

4.4 Defence of India Rules :-

4.4.1 Under Section 2(xz) of the Defence of India Act, 1939 the Central Government had the power to frame rules (meaning thereby enactments) for the control of any trade or industry, for the purpose of regulating or increasing the supply of or for maintaining supplies and services essential to the life of the community. Part XII of the Rules framed under the Defence of India Act dealt with "Essential Supplies and work". In January, 1942, Rule 81 was added to the said Rules by the legislative authorities to restrain strikes and lock-outs. In May 1942 the Provincial Governments were given similar powers under the Rules. Consequently strikes and lock-outs were prohibited save under some restricted conditions.

4.4.2 Concerted refusal of work unless done in furtherance of trade disputes, was also prohibited under Rule 81-A. The Government had power to refer the industrial disputes to adjudication and to enforce the awards. These provisions and the trade disputes Act, practically formed the back-bone of the Industrial Disputes Act, 1947 and also of some of the legislations of the States.

4.4.3 Although the Trade Dispute Act, 1939 provides means for settlement of trade and industrial disputes in order to avoid strikes and lock-outs, it was thought necessary to have

more elastic provisions during the war and Rule 81-A was added to the Defence of India Rules in January 1942. That rule itself does not prohibit strikes but on the other hand it indirectly recognised strike as a legitimate means to obtain redressal of the workers' grievances. But the rule empowers the Central Government, if it thought necessary or expedient so to do, for securing defence of British-India, public safety, maintenance of public order, or the efficient prosecution of War, or for maintenance of supplies and services essential to the life of the community, to make provision for prohibiting, a strike or a lock-out in connection with any trade dispute. Rule 81-A(4) makes it an offence to contravene any order made thereunder, and prescribe punishment for it.

4.5 Industrial Relations in India :-

4.5.1 The three major enactments which govern industrial relations in India are (1) The Trade Unions Act, 1926, (2) The Industrial Employment (Standing Orders) Act, 1946 and (3) The Industrial Disputes Act, 1947. There has not yet been a comprehensive legislation in this field. Attempts were made along these lines towards the end of 1970s. However for some reason or the other it did not materialise. Currently discussions are going on for enacting a comprehensive law with regard to industrial relations including among

others the provisions of these three enactments.*

4.6 The Trade Unions Act, 1926

4.6.1 The right to form associations or union is a fundamental right guaranteed under the Constitution of India.⁸ Till the passing of the Trade Unions Act, 1926 workers' right to combine and organise for collective action and withhold labour was not at all recognised as a legal right in India. Such unions were construed to be illegal combinations, often interfering with the business of the employer through strike or otherwise. Hence the union and the organisers thereof were held liable for tortious conspiracy and were compelled to pay compensation for the financial loss inflicted on the management. Accordingly as in England (Quinn v. Leathem⁹ and Taff Vale Railway Company's case¹⁰) the Indian Courts held that trade unions were illegal conspiracies and awarded damages to the employers (Suckingham and Carnatic Mills' case¹¹).

4.6.2 Severe criticisms were advanced against the decision of the English Court reflecting an outmoded "freedom of contract theory". Discontent and dissatisfaction among workers

* For a proper appreciation of the laws relating to industrial relations in India, it may be useful to refer also to (a) Industrial Trade Union Act 1946; and (b) Industrial Policy Resolution 1956.

culminating in agitations compelled the British Parliament to enact The Trade Disputes Act, 1906 which inter alia nullified this decision and gave recognition to trade unions and activities thereof. It took 20 years more for workers unions in India to procure such recognition namely Trade Disputes Act, 1926. The Act was designed indirectly to declare combination among workers illegal practically in most cases and thereby to stifle organised trade unionism. The Act made strikes illegal if the object thereof was not one in furtherance of a trade dispute in the particular union's trade or industry or if the object was to inflict hardships on the community or to coerce the government decision.

4.6.3 A purely literal interpretation to the crucial provisions of the Act was adopted by the Madras High Court in 1920 to the effect that Trade Unions were illegal conspiracies.¹² Even bonafide trade union activities met with prosecution and imprisonment.¹³ This provoked the Indian Legislative Assembly in 1921 to adopt a resolution demanding a law for the registration and protection of trade unions. But, nothing materialised for another 5 years. Vigorous agitation commenced and finally in deference to public opinion the government gave shape to the Indian Trade Unions

Act, 1926 with provisions parallel to the Trade Disputes Act 1906 of England.

4.6.4 The Act provides that a Trade Union is "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employer or between workmen and workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions."¹⁴ Thus an agreement made by the union representing the workmen during the pendency of appeal, although may be slightly detrimental to the interest of workmen shall be binding in the absence of any proof of misfidng or undue influence.¹⁵ A different union can make a subsequent application of the subject of application once withdrawn by a union so long as no final order was passed upon it.¹⁶ A trade unions cannot represent the interest of a workmen, who dies during pendency of proceedings.¹⁷

4.6.5 There is nothing in the Act or Rules framed thereunder which confers absolute right upon a person to be admitted as a member of a particular trade union. Such a right cannot be enforced against a trade union although the candidate may possess requisite qualification for being enrolled as a member unless there was an express provision in the Act or the constitution of the trade union that no one

possessing requisite qualifications would be refused for membership.¹⁸ The right of recognition of a trade union by an employer is a statutory right.¹⁹ A registered trade union though unrecognised can represent workmen.²⁰ President or secretary of the union are legally competent to represent workmen and argue their case before any adjudication. They can also take such action which in their opinion is in the best interest of workmen provided their action was not guided by bad faith.²¹ Union has been accorded certain protections under the Act and leaving those protections its members have such liabilities like that of the other persons.

4.6.6 A minimum of 7 members can constitute a registered union. At least one-half of the office bearers must be persons actually engaged or employed in the plant or industry with which the union is concerned. A certificate issued by the Registrar is a conclusive evidence that the trade union has been duly registered. The Registrar is empowered to withdraw or cancel registration of a trade union if he is satisfied that the certificate was obtained by fraud or mistake or that the union has ceased to exist or has wilfully contravened the Trade Union Act or the Rules thereunder. A registered trade union can be dissolved in accordance with the rules of the trade union and the provisions of the Act. The Act also recognises the right to collect and conserve general and political funds.

4.6.7 The office bearer of a trade union is entitled to inspect the accounts of the union. Minors who have attained the age of 15 are entitled to membership though only those who have attained the age of 18 can become office bearers. The trade unions have immunity from civil and criminal liability though an agreement to commit an offence under sec.17 makes the members of the union liable for criminal conspiracy. It is not within the purview of the court to prevent or interfere with the legitimate rights of labour to pursue their agitation by means of a strike so long as it does not indulge in any acts unlawful and tortious.²² The Act insists that the executive of the union is constituted in accordance with the law and that certain matters such as the name, the objects, the rules, the custody of fund, the membership etc. are legally satisfied. Any two or more registered trade unions may become amalgamated. An agreement between the members of a registered trade union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade.

4.6.8. Maharashtra and Madhya Pradesh have made amendments to the Act so as to satisfy their local needs. Except for this the Trade Unions Act, 1926 along with the Central Trade Union Regulations, 1938 governs the formation as well as the operation of trade unions which serve as the basis for collective bargaining in India.

4.7 The Industrial Employment (Standing Orders) Act, 1946

4.7.1 The objective of the Act is to have uniform standing orders providing for the matters enumerated in the schedule of the Act. It was not intended that there should be different conditions of service for those who are employed before and those employed after the standing orders came into force. The standing orders in force in an establishment are binding on all those presently in the employment of the concerned establishment as well as those who are appointed thereafter.

4.7.2 The States of Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and West Bengal have modified the Act to suit local requirements.

4.7.3 The industrial worker has the right to know the terms and conditions and the rules of discipline of his employment. The absence of rules for securing permanency of job, fair deal and on disciplinary actions involving petty matters was of severe consequence to industrial workers. In some large scale industrial establishments there were standing orders and rules to govern the day to day relations between employers and workers. However such rules were one-sided because neither the workers organisation nor the government was consulted before such rules were framed.²³

4.7.4 The Act which is also known as the Model Act contains provisions for effective safeguard against unjust and wrongful dismissals and other disciplinary actions against workers in an industry. The standing orders defining conditions of recruitment, discharge, disciplinary action, holidays, leaves etc. enable smoother industrial relations. The Act applies to all industrial establishments where 100 or more workmen are employed though the government can make the Act applicable to industries with less than 100 workers by special notifications.

4.7.5 It requires that rules be made with regard to the following matters that are specified in the schedule.²⁴

1. Classification of workmen e.g., permanent, temporary, apprentices, probationers or badli.
2. Manner of intimating to workmen, days and hours of work, holidays, pay days and wage days.
3. Shifting working.
4. Attendance and holiday giving
5. Conditions and procedure for applying for and the authority who may grant leave and holidays.
6. Requirement to enter premises by certain gates and liability to search.
7. Closing and reopening of sections of industrial establishments etc.

8. Termination of employment and the notice thereof to be given by employer and workman.
9. Suspension or dismissal for misconduct and acts or omission which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful actions by the employer or his agents or servants.
11. Any other matter which may be prohibited.

4.7.6 Before the expiry of 6 months from the date of operation no modification can be effected except an agreement between employer and workmen with regard to any of the items in the standing orders. Modification can be introduced for (1) a change of circumstances as occurred and (2) the working of the existing standing orders has resulted in any inconvenience, hardship or anomaly or some facts were lost sight of at the time of certification or the applicant feels that the modification was more beneficial. Depending upon the gravity of the offence committed the workmen are liable to the following punishments for misconducts proved in a disciplinary action process.

- (1) warning
- (2) fine
- (3) withholding increment
- (4) demotion
- (5) suspension

(6) discharge

(7) dismissal.

4.7.7 Industrial Employment (standing Orders) Central rules²⁵ provides that employer or workman should give notice in writing for terminating employment of a permanent workman. In the case of monthly paid workman it should be one month's notice or one months' pay in lieu of notice. For the others it must be 2 weeks notice or 2 weeks pay. Such notice however is not necessary in the case of temporary workmen or probationers. The service of a temporary workman should not be terminated as a punishment without giving him an opportunity to explain the charges of misconduct. No dismissal order can be issued unless the workman is informed in writing of the alleged misconduct and is given an opportunity to meet the charges levelled against him. The dismissal must be approved by the manager of the establishment after instituting independent enquiries. The suspension order must be in writing and will take effect only on delivery of it to the workman. The order must set out the alleged misconduct and the workman shall be given an opportunity to explain the charges against him.

4.7.8 In awarding punishment the management needs to take into account the gravity of the misconduct, the previous records of the workman and any such extenuity or aggravating

circumstances that may exist. A copy of the order by the management shall be given to the workman. Merely speaking the requirements to be complied with before inflicting punishment upon a workman are

- (1) charge sheet
- (2) holding domestic enquiry into the charges
- (3) report of enquiry officer
- (4) show cause notice and
- (5) order of punishment.

4.7.9 Unfair Labour Practices

4.7.9.1 Unfair labour practice and victimisation of workman are also brought within the ambit of the law, where the employer interferes with the employee's rights to form unions or he hangs the door of any settlement by negotiations constitute instance of unfair labour practices. Where punishment is inflicted on any employee for his trade union activities it amounts to victimisation whereby the employer is guilty of unfair labour practices. The initial burden of proving victimisation lies with the employee who alleges it.

4.7.9.2 Code of Discipline in industry ~~inter alia~~ provides that

1. the management agrees

- (a) not to support or encourage any unfair labour practice such as any interference with rights of

the employee to enrol or continue as member of a union,

(b) discrimination, restraint or coercion against any employee because of recognised activities of trade unions, and

(c) victimisation of any employee and abuse of charge in any form and that

2. the unions agree not to discharge unfair labour practices such as

(a) negligence of duty

(b) careless operation

(c) damage to property

(d) interference with or disturbance of normal work; and

(e) any insubordination.

It may be noted that the Code imposes only certain moral obligations and that nobody is legally bound by it.

4.8 The Industrial Disputes Act, 1947

4.8.1 This Act has been legislated to make provision for the amicable settlement of industrial disputes. It lays down a procedure to search and to enquire with care and accuracy the instances of industrial disputes and then to bring out a settlement by any one or more of the methods provided in the Act namely conciliation, adjudication etc. The

purport of the Act is clear from the statement of objectives and reasons.²⁶

4.8.2 Experience of the working of the Trade Disputes Act, 1929 revealed that its main defect was that while restraints had been imposed on the rights of the strike and lock-out in public utility services, no provision had been made to render the proceedings institutive under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a court of enquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under Rule 81-A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81-A, which was to lapse on the 1st October, 1946, was kept in force by the Emergency Powers (Continuance) Ordinance, 1946 for a further period of six months, and as industrial unrest, in checking which this rule had proved useful, was gaining momentum due to the stress of post-war industrial readjustments the need of permanent legislation in replacement of this rule, was self-evident.

4.8.3 The two new institutions for the prevention and settlement of industrial disputes newly provided for are the Works Committees consisting of representatives of employers and workmen, and the Industrial Tribunals consisting of

one or more members possessing qualifications ordinarily required for appointment as Judge of a High Court. Power is given to appropriate Governments to require Works Committees to be constituted in every industrial establishment employing one hundred workmen, or more and their duties will be to remove causes of friction between the employers and workmen in the day-to-day working of the establishments and to promote measures for securing amity and good relations between them. A reference to an Industrial Tribunal will lie where both parties to any industrial dispute apply for such reference and also where the appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year.

4.8.4 The Act reoriented the administration of the conciliation machinery provided for in the Trade Disputes Act. Conciliation is compulsory in all disputes in public utility services and optional in the case of other industrial establishments. Time limits are prescribed for conclusion thereof - 14 days in the case of conciliation officer and two months in the case of Board of Conciliation, from the date of the notice of the strike. A settlement arrived at in the course of the conciliation proceedings is binding for such period as may be agreed upon between the parties

and where no period is agreed upon for a period of one year, and will continue to be binding until revoked by a two months' notice by either party to the dispute. Another important new feature of the Act relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings or settlement reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government.

4.8.5 Though the Act embraces the whole of India, amendments have been brought about by the various states such as Assam, Bihar, Gujarat, Hariyana, Karnataka, Kerala, Maharashtra, Punjab, Orissa, Ughar Pradesh, West Bengal, Rajasthan, Andhra Pradesh and Tamil Nadu.

4.8.6 The Act defines an award as an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award. Industry means any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen and an industrial dispute means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen which is connected with the employment or non

non-employment or the terms of employment or with the conditions of labour of any person.

4.8.7 The term employer is defined to mean

- (1) in relation to an industry carried on by or under the authority of the department or Central Government or of a State Government the authority prescribed in this behalf or where no authority is prescribed the Head of the department and
- (2) in relation to an industry carried on by or on behalf of a local authority the chief executive of that authority.

4.8.8 The term workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

- (1) who is subject to the Army Act 1950 or the Air Force Act 1950 or the Navy (Discipline) Act 1934 or

- (2) who is employed in the Police Services or as an officer or other employee of a prison or
- (3) who is employed mainly in a managerial or administrative capacity or
- (4) who being employed in supervisory capacity draws wages exceeding 500 rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

4.8.9 The term wages means all remuneration capable of being expressed in terms of money which would, if the terms of an employment expressed or implied were fulfilled be payable to a workman in respect of his employment or of work done in such employment and includes

- (i) such allowances (including dearness allowance) as the workman is for the time being is entitled to ;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance, or other amenity or of any service or of any concessional supply of food grains or other articles; and
- (iii) any travelling concession, but does not include
 - (a) any bonus
 - (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the

benefit of the workman under any law for the time being in force and
(e) Any gratuity payable on the termination of his service.

4.8.10 Security of Job :-

4.8.10.1 Under the Industrial Disputes Act, continuous service means

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be integrated service on account of sickness or authorized leave or accident or a strike which is not legal or a lockout or a cessation of work which is not due to any fault on the part of the workman;**
- (2) where the workman is not in continuous service within the meaning of clause (1) for a period of one year or 6 months he shall be deemed to be in continuous service under an employer - (a) for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, as actually work under the employer for not less than - (i) 190 days in the case of a workman employed below ground in the mine (ii) 240 days in any other case; (b) for a period of 6 months if the workman**

during a period of 6 calendar months preceding the date with reference to which calculation is to be made, as actual work under the employer for not less than -

(i) 95 days in the case of a workman employed below ground in a mine and (ii) 120 days in any other case.

4.8.10.2 An explanation to the section provides that "for the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the date on which -

- (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946), or under this Act or under any other law applicable to the Industrial establishment;
- (ii) he has been on leave with full wages earned in the previous year;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and if in the case of a female she has been on maternity leave; so however that the total period of such maternity leave does not exceed 12 weeks. The Act provides that those who have put in a continuous period of one year are entitled to several benefits as the permanent workmen.

4.8.10.3 The Act defines a settlement to mean a settlement arrived at in the course of a conciliation proceeding and includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate government and the conciliation officer.

4.8.10.4 A strike means a cessation of work by a body of persons employed in any industry coming in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work out to accept employment. And a lock-out means the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

4.8.10.5 The Act defines retrenchment as the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action but does not include

- (a) voluntary retirement of a workman or
- (b) retirement of a workman or reaching the age of superannuation for the contract of employment between the employer and the workman concerned contains a stipulation on that behalf,
- (c) termination of the service of a workman on the ground of continued ill-health.

4.8.10.6 "lay off" (with its grammatical variations and cognate expression) means failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-out of machinery or for any other reason to give employment of a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched,

4.8.10.7 The Act lays down that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or differences between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union is a party to the dispute,

4.8.11 The Authorities :-

4.8.11.1 The various authorities under the Act are the works committees, the conciliation officers, the Boards of conciliation, the courts of enquiry, the labour courts, the industrial tribunals and the national industrial tribunals. The powers, functions and the nature of jurisdictions of these authorities are enunciated in the Act. The Act also lays down the conditions of a legal strike, lock-out or lay off along

with the rights and the liabilities of the employers as well as the workmen under such circumstances.

4.8.11.2 The Act empowers the government to refer a dispute to

- (1) a Board for promoting a settlement thereof or
- (2) a Court for enquiry of any matter appearing to be connected with or relevant to the dispute or
- (3) a Labour Court for adjudication of the dispute or any matter appearing to be connected with or relevant to the dispute if it relates to another matter specified in the second schedule or
- (4) a Tribunal for adjudication the dispute or any matter appearing to be connected with or relevant to the dispute whether it relates to another matter specified in the second schedule or the 3rd schedule.

4.8.12 Judicial Legislation :-

4.8.12.1 The various High Courts and the Supreme Court have elaborated the ambit of the definitions and the scope of the provisions thereto. There are several judgments which also form part of the law. Accordingly where there is (a) systematic activity (b) organised by co-operation between employer and employee (the direct and substantial element is chimeral) and (c) for the production and / or distribution of goods and services calculated to satisfy human wants and wishes (not

spiritual or religious, inclusive of material needs or services heard of celestial bliss) prima facie the definition of industry is satisfied.²⁷

4.8.12.2 Similarly local bodies doing public utility service is industry²⁸ so also hospitals and clubs though with certain exceptions.²⁹ University and Research institutions along with the solicitors' firms would also become industry.³⁰ Co-operative societies, companies carrying agricultural operations and docks also come under the definition of industry.³¹

4.8.12.3 Similarly the Courts held that the following amounted to industrial disputes namely when closure is a pretence,³² dispute on lockout in disguise of closure,³³ dispute regarding contract labour,³⁴ demand for modification of standing orders³⁵ and alteration of condition of service of employees of a co-operative society.³⁶

4.8.12.4 The courts have also held the following to be workmen namely

- (1) dismissed or discharged workers,³⁷
- (2) retrenched workmen³⁸
- (3) ex-employees³⁹
- (4) Mails employed by mill for looking after gardens attached with officers Bungalows which are situated in the mills colony,⁴⁰

- (5) transport engineers, blending supervisors, foreman, depot superintendents, district engineers, sales engineering representatives, district sales representatives,⁴¹
- (6) employees of municipalities,⁴²
- (7) inspectors and salesmen in the employment of the company⁴³
- (8) manager of a hotel who has to write ledgers, file, correspondence, enter cash book etc.⁴⁴
- (9) employees doing occasional supervisory work⁴⁵
- (10) accountants who are more senior clerks with supervisory duties⁴⁶ and
- (11) clerks in the audit department of a bank.⁴⁷

Similarly the concept of living wages, fair wages and minimum wages are also covered by decisions of the Courts.

4.8.12.5 As is stated above, the industrial relations in India is governed by the provisions of the three enactments such as the Trade Unions Act, the Industrial Employment (Standing Orders) Act and the Industrial Disputes Act along with the amendments to these enactments made by the various States apart from the Rules and Regulations framed thereof and the judgments of the Supreme Court and the different High Courts. A comprehensive enactment detailing the legal requisites for the emergence of a healthy industrial relation is yet to be made. Therefore at the moment the practice of industrial laws is very much at variance with the purported

objectives of the enactments concerned. Moreover industrial relations in India today is guided by several factors other than the provisions of law,

*

FOOT NOTES

1. Subsequent to the Independence on 15th August 1947 the Constitution of the Sovereign Republic of India came into effect on 26th January 1951.
2. Constitution of India, article 146 Seventh Schedule, Concurrent List Item 22. "Trade Unions; Industrial and Labour Disputes."
3. The enactment of a State can operate only within the territory of that State and cannot be enforced through out the country.
4. Constitution of India, article 254.
5. Mah Raj Vs. Alla Bahi 1947 PCR 77.
6. Profulla Vs. Bank of Commerce 1947 PCR 28.
7. Zaverbhai Vs. State of Bombay, AIR 1954 SC 733.
8. Constitution of India, article 19(1)(g).
9. Quinn Vs. Leatham (1901) AC 493.
10. Taff Vale Railway Company's case (1901) AC 426.
11. Buckingham and Carnatic Mills' case, AIR 1953 SC 47.
12. Indian Law Institute, LABOUR LAW AND LABOUR RELATIONS (1968) New Delhi p.14.
13. S.K. Puri, Labour and Industrial Law (1960) New Delhi p.13.

14. The Trade Unions Act 1926, Section 2(h).
15. Ever Textile Mills Ltd. Vs. Mill Handloom Search, (1954) 1 LLJ 47.
16. Campana Cotton Mills Co. Ltd. Vs. Kaddur Handloom Search (1951) 1 LLJ 250.
17. Scheeria Bismen Sugar Factory Vs. Workmen (1952) 1 LLJ 16
18. Mohammed Ibrahim Vs. Assam Iron & Steel Workmen's Union, (1954) 1 LLJ 1.
19. Ever Mashin Breweries Ltd. Vs. Distillery and Brewery Workmen's Union (1951) 1 LLJ 183.
20. Schivra Handic Press Ltd. Vs. Government of U.P. (1951) 1 LLJ 246.
21. Mahadeo Prasad Sharma Vs. Mahesh Gauri Sugar Mills, 1955 LAC 753.
22. Shri Rama Vihar Service Ltd. Vs. Simra & Ganga Cement Works Workmen Union (1979) 2 LLJ 2 (Mad).
23. Indian Law Institute, Labour Law and Labour Relations (1968) New Delhi See Part 6.
24. Standing Orders means rules relating to matters set out in the schedule to the Industrial Employment (Standing Orders) Act, 1946.
25. Industrial Employment (Standing Orders) Central Rules 1946 Notification No.L.R.11(37) dated 10-12-1946.
26. Gazette of India, 1946 Part V Pages 239-40.
27. Bombay Water Supply & Sewerage Board Vs. A. Rajaram (1978) 1 SCC 213 also AIR 1980 SC 610.
28. R.H. Bhandari Vs. P.H. Mitharika, AIR 1983 SC 58.
29. Bombay Water Supply & Sewerage Board Vs. A. Rajaram see also State of Bombay Vs. Hospital Management Board, AIR 1960 SC 610.
30. Bombay Water Supply & Sewerage Board Vs. A. Rajaram (1978) 1 SCC 213.
31. Hari Nagar Case Farm Vs. State of Bihar, AIR 1964 SC 903

32. Piprigh Sugar Mills Vs. Workers Union, AIR 1957 SC 95.
33. Express News Papers (P) Ltd. Vs. Workers, AIR 1963 SC 589.
34. Standard Vacuum Refining Co. Vs. Workers, AIR 1960 SC 940
35. Shahdara (Delhi) Suburban Light Railway Co. Ltd. Vs. S.S. Ry. Workers' Union, AIR 1959 SC 513.
36. Co-operative Central Bank Ltd. Vs. Additional Industrial Tribunal (1959) 2 SCC 43.
37. CPI Service Vs. Bhandari, AIR 1957 SC 104.
38. Campana Tobacco Ltd. Vs. S. Guba, AIR 1967 SC 667.
39. Bennet Coleman & Co. Vs. P.P. Das Gupta (1969) 2 SCC 1
40. J.K. Cotton Spg & Mfg Mills Vs. Bafri Halli, AIR 1964 SC 737.
41. Burnah Shell Storage & Distribution Co. of India Ltd. Vs. Association (1970) 3 SCC 378.
42. Howrah Municipality Vs. Manoj Das Das (1965) 2 LLJ 135.
43. Western India Match Co. Vs. Workers, AIR 1964 SC 472.
44. Indian Iron & Steel Co. Ltd. Vs. Workers, AIR 1950 SC 130.
45. Ambedkar Patrika (P) Ltd. Vs. Workers (1970) 3 SCC 148.
46. South India Bank Ltd. Vs. A.S. Chacko, AIR 1964 SC 1522
47. Llordia Bank Ltd. Vs. P.N. Gupta, AIR 1967 SC 240.

CHAPTER V
PHARMACEUTICAL INDUSTRY

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PHARMACEUTICAL INDUSTRY

5.1 General :-

5.1.1 In chapter IV a brief survey of industrial laws in India is given. In the present chapter it is proposed to discuss Pharmaceutical industry in India, in terms of its transnational character and present state of affairs.

5.1.2 Pharmaceutical industry is one of the most transnationalised manufacturing industries. Major part of this industry is controlled by the TNCs. In 1970 the annual turnover of each of the 20 largest TNCs in this sector exceeded US \$100 million while that of each of the top nine TNCs exceeded US \$400 million. The Swiss TNC, Roche Products alone accounted for US \$850 million.¹ Similarly these TNCs are responsible for above 60 % of the total sales of pharmaceuticals in the world and more than 90% of the total R & D expenditure. They are distributed among USA (14), FRG (4), UK (3), Switzerland (3), France (2), Holland (1) and Japan (1).

5.1.3 Table V.1 shows the percentage share of world drug market served by twenty major countries.

Table V-1

TWENTY MAJOR DRUG PRODUCING COUNTRIES, 1976

Rank	Country	Turn-over in US \$ million	Percentage of world market
1.	USA	7360	17.7
2.	Japan	5360	12.6
3.	FRO	3360	7.9
4.	France	2880	6.7
5.	Italy	2000	4.7
6.	Spain	1309	3.0
7.	Brazil	1200	2.8
8.	UK	970	2.3
9.	Mexico	935	2.2
10.	Canada	880	2.1
11.	Belgium	480	1.1
12.	India	475	1.1
13.	Australia	420	1.0
14.	Netherlands	375	0.9
15.	Sweden	320	0.7
16.	Switzerland	320	0.7
17.	Iran	290	0.7
18.	South Africa	280	0.7
19.	Venezuela	255	0.6
20.	Turkey	220	0.5
	World Total	42700	100

Source: IMS International; World Drug Market Manual 1976-77.

Table V-1 further shows that USA, Japan and west European countries account for a major share of the world drug market. Table V-2 presents the top ten TNCs in the pharmaceutical industry in the world distributed over three countries viz. USA, Switzerland and FRG. Table V.3 presents the pharmaceutical market share held by the domestic industries in the respective countries. It shows that in most of the LDCs, the domestic industry holds a smaller percent of the pharmaceutical market share.

Table V-1

THE TOP TEN TNCs IN PHARMACEUTICAL INDUSTRY IN THE WORLD, 1974

Company	Nationality	Turnover (million Rupees)
1. Hoffman-La-Roche	Swiss	10,000
2. Hoechst Pharmaceuticals	FRG	9,900
3. CIBA-GEIGY	Swiss	8,766
4. American Home Products	USA	8,550
5. Merck & Co.	USA	8,010
6. Sandoz	Swiss	7,272
7. Bayer	FRG	6,750
8. Warner Lambert	USA	6,075
9. Eli Lilly	USA	5,706
10. Pfizer	USA	5,175

SOURCE: Stanford Research Institute, Pharmaceutical Industry -
Dynamics and Outlook to 1985.

Table V-3

**PHARMACEUTICAL MARKET SHARE HELD BY THE DOMESTIC INDUSTRY
IN THE RESPECTIVE COUNTRIES**

Country		1975 (estimated)
1.	Australia	15 %
2.	Canada	15 %
3.	France	55 %
4.	Italy	40 %
5.	Japan	87 %
6.	Netherlands	40 %
7.	Sweden	50 %
8.	Switzerland	72 %
9.	U.K.	40 %
10.	U.S.A.	65 %
11.	West Germany	68 %
12.	Argentina	30 %
13.	India	25 %
14.	Indonesia	15 %
15.	Iran	25 %
16.	Mexico	18 %
17.	Venezuela	12 %

Source: Standard Research Institute, Pharmaceutical Industry: Dynamics and Outlook to 1985.

5.1.4 In most LDCs the pharmaceutical industry is dominated by TNCs that are based in the developed capitalist countries. In such countries the national industry has almost a subordinate role in this sector. The situation with regard to role of TNCs in the industry in India also appear to be similar to that in many other LDCs. It is worthwhile, therefore to have a close look at the pharmaceutical industry in India.

5.2 Position in India :-

5.2.1 The pharmaceutical industry is classified among the core industries in India for purposes of licensing under the Industries (Development and Regulation) Act, 1951. It is also one of the 65 priority industries for purposes of allocation of raw materials.

5.2.2 116 manufacturers borne on the list of the Directorate General of Technical Development, known generally as the large-scale sector, constitute the core of the pharmaceutical industry. To be eligible for inclusion in this list a firm must have investment in plant and equipment above Rs.7,50,000. The small-scale sector, comprising 2324 units is engaged mostly in the production of formulations and controlled by the State Governments. The large-scale sector, on the other hand, is responsible for over 80 % of the total drug production in the country.

5.3 Distribution of the Industry

5.3.1 The units under both the large scale and the small scale sectors are widely scattered through out India. Nevertheless, there is a fairly high concentration of the industry in States like Maharashtra, West Bengal, Tamil Nadu, Uttar Pradesh, Madhya Pradesh, Gujarat and Andhra Pradesh. Maharashtra, specifically Bombay has a high degree of concentration of the industry. Most of the TNCs operate in Bombay, where a large number of small-scale units work as their auxiliaries. Table V-4 presents the territorial distribution of licensed drug manufacturers in India.

5.4 Expansion and sectoral share :

5.4.1 Pharmaceutical industry had a sharp expansion during the last three decades. The investment in this sector rose from Rs.240 million in 1952 to Rs.450 million in 1977, the production in 1978 was worth Rs.10,000 million while that was only Rs.100 million in 1948. During 1976-77 the sector-wise production of bulk drugs accounted Rs.490 million (32.7%) for public sector Rs.910 million (60.7 %) for private sector and Rs.100 million (6.6%) for small-scale sector. The corresponding figures during the same period for formulations was Rs.470 millions (6.8%) for small-scale sector. The corresponding figures during the same period for formulations was Rs.470 millions (6.8%) Rs.3330 millions (76.1%) and Rs.1200 millions (17.1%) respectively.² However when the bulk drugs

Table V-1

DISTRIBUTION OF LICENSED DRUG MANUFACTURERS IN INDIA

States	1969-70	1974-75	1975-76
Andhra Pradesh	172	189	213
Assam	12	10	29
Bihar	39	79	152
Gujarat	140	225	247
Haryana	--	68	101
Himachal Pradesh	9	8	9
Jammu & Kashmir	5	NA	11
Karnataka	56	71	76
Kerala	52	57	76
Madhya Pradesh	108	154	287
Maharashtra	736	909	1392
Manipur	--	--	--
Meghalaya	--	--	1
Nagaland	--	--	1
Orissa	24	60	79
Punjab	106	49	52
Rajasthan	51	89	81
Sikkim	--	--	--
Tamil Nadu	199	301	315
Tripura	4	5	6
Uttar Pradesh	198	154	302
West Bengal	255	367	421
UNION TERRITORIES			
Chandigarh	--	4	3
Dadra & Nagar Haveli	--	4	6
Delhi	81	97	94
Goa, Daman & Diu	8	12	19
Pondicherry	2	21	13
TOTAL	2287	2935	3988

Source: All India List of Licensed Drugs & Cosmetics Manufacturers compiled by the Drugs Controller (India), Directorate General of Health Services, Government of India.

and formulations are taken together the public sector has 19.7%, private sector 68.4 % and small-scale sector 11.85 %.

5.4.2 It may be noted that bulk of the private sector belongs to the TNCs even in the case of the small scale sector. Nearly 60 % of the total bulk drugs and formulations supplied by the private sector is accounted for by the foreign sector. Of the total bulk drugs of Rs.910 million (60.7%) produced by the private sector, the Indian sector account for Rs.290 millions (18.7 %) and the foreign sector Rs.630 million(42%). The corresponding figures for the production of formulations are Rs.5330 million (76.1%), Rs.2410 million(34.4%) and Rs.3920 million (41.7%) respectively.

5.5.1 More than half of the pharmaceutical market of the country is shared by 25 TNCs. Even in the small scale sector, 9 TNCs share nearly 25 % of the market served by this sector.

5.5.2 Of the total turnover of 116 units in the large-scale sector in 1972-73, more than 50 percent was shared by 25 TNCs. The remaining 50 per cent contributed by the 91 units including 20 foreign minority-owned units. Of the estimated turnover of Rs.740 million in the small-scale sector, 24 per cent is accounted for by 9 TNCs and the remainder by 2315 Indian units. In many fast moving pharmaceutical products TNCs are the only producers.³ Table V-5 presents the

pharmaceutical companies that are among the top 200 industrial giants in India in terms of their ranks in size.

5.5.3 These 12 companies in fact account for the major part of the production and sales in the pharmaceutical industry. All of them are private companies except for the one public sector undertaking. Among the private companies 7 are foreign and 4 Indian. These Indian private companies accounted for the sales of Rs.3680 millions and the foreign ones Rs.3840 millions respectively. Among the Indian private sector companies one alone account for Rs.1500 million. This also is a TNC based in India with subsidiaries abroad. All the private foreign companies are subsidiaries of TNCs based abroad. Thus out of the net sales of Rs.8130 million the TNCs alone account for Rs.5340 million, a little less than 70 %. This, in short, means that the pharmaceutical industry is basically a TNC affair in India.

5.5.4 TNCs repatriate huge profits from India in terms of their involvement in pharmaceutical industry. The balance sheets of thirty top most companies for the years 1960 to 1970 revealed that these companies had linked up prices by 400 % over the manufacturing cost and reaped fabulous profits. More than Rs.1000 million were repatriated during a period of 15 years from pharmaceutical industry alone.

Table No. V-5

THE MAJOR PHARMACEUTICAL COMPANIES IN INDIA, 1979

Name of the Company	Rank Number	Sales in Rs. crores	Average annual increase in sales	Nature of ownership	Production units	Operating Profit (Rs. in crores)	Year of incorporation
1. Ambalal Sarabhai Enterprises Pvt. Ltd.	26	150	-	Indian	Baroda, Vapi, Moroda, Ankleshwar, Bombay, Thane & Madras	-	1978
2. Rallis India Ltd.	28	140	16.9%	"	Bombay, Nagarwara, UP, Madras & Konnagar MB	1.83	1951
3. Indian Drugs and Pharmaceuticals Ltd.	61	78	22.8%	Public	Rishikesh, Madras & Hyderabad	4.32	1961
4. Glaxo Laboratories (India) Ltd.	68	71	15.8%	Foreign	Bombay, Thane, & Aligarh	9.29*	1924
5. Alkali & Chemical Corporation of India Ltd.	96	55	15.2%	"	Calcutta, Hyderabad, & Madras	4.25	1937
6. Ciba-Geigy of India Ltd.	103	109	15.2%	"	Mangalore, Bhandip, Coorgoon & Goa	6.35	1947
7. Atul Products Ltd.	105	49	18.9%	Indian	Bulsar	8.98	1947
8. Pfizer Ltd.	126	41	11.0%	Foreign	Thane, & Chandigarh	6.95	1950
9. Sandoz (India) Ltd.	137	39	25.6%	Foreign	Thane	5.35	1947
10. Bayer (India) Ltd.	146	36	22.2%	"	Thane	8.12	1948
11. Hoechst Pharmaceuticals Ltd.	161	33	10.5%	"	Bombay	3.41	1956
12. Alambic Chemical Works Co. Ltd.	185	29	12.2%	Indian	Baroda	2.55	1907

Average for the top 200 industrial giants - 18.2%

SOURCE: Computed from Centre for Monitoring Indian Economy; 200 Top Industrial Giants of India Vol.2 (1979) Bombay.

* 1978

Table V-6 presents the profits repatriated by TNCs in pharmaceutical sector and other sectors.

Table V-6
REMITTANCE ABROAD

	Drug Industry ^a	(In Crores) All Industries ^b
1973-74	4.67	81.37
1974-75	2.16	106.00
1975-76	4.05	115.30
1976-77	6.34 ^c	N.A.

^a Compiled from statement in Parliament by Minister for Petroleum, Chemicals & Fertilisers on 20-11-1978.

^b Statement in Parliament by Mr. S.D. Patil, Minister of State for Law on 6-3-1979.

^c Remittances by companies with more than 40 % foreign equity only.

5.5.5 Out of the 45 TNCs (USA 18, UK 13, Switzerland 6, FRG 4 and others 4) 14 were holding 74 % foreign equity, 11 were having between 51 % and 74 % and 13 between 40 % and 51 %. In 1970-71 the profit of the TNCs was 24.4 % of the capital while that of the Indian manufacturers was only 6.7 %. When the Indian companies earned only 8.1 % on sales, the TNCs were able to make profits ranging from 20 to 37 per cent and pay out dividends between 25 and 100 per cent.⁴

3.6 Research and Development

3.6.1 A little more than 1 % of the total turn-over was spent on R and D in 1973. The corresponding figure in developed countries is between 12 and 15 per cent of the turn over. This shows that the TSCs in the industry do not pay enough attention to R and D in the LDCs and that they only try to dump in their products or know-how to such countries.

Table V-7 presents the inter-industry comparison of expenses on research and development in private sector.

Table V-7

**RESEARCH & DEVELOPMENT EXPENDITURE IN THE PRIVATE SECTOR -
AN INTER-INDUSTRY COMPARISON**

Industry	R & D Expenditure as a % of Sales		
	1972-73	1973-74	1974-75
Inorganic Chemicals	1.29	1.56	1.37
Synthetic fibres	0.56	1.56	1.37
Heavy Organic Chemicals	4.69	3.58	1.87
Paper	0.28	0.18	0.14
Metallurgical Industries	0.47	0.47	0.37
Industrial Machinery	1.37	1.72	1.40
Electronics & Electrical Equipment	0.66	0.79	0.97
Cement	0.41	0.52	0.47
Drugs & Pharmaceuticals	2.60	2.47	2.36
All Industries	0.95	0.95	1.09

Source: "Handbook of Research and Development Statistics
1974-75 Department of Science & Technology,
Government of India.

5.7 Personnel policies :-

5.7.1 The share of Indian employees, as in 1978 in the total employment of TNCs, was 97.8% of whom nearly 90 % were in the salary range of Rs.2001 and Rs.5000. Of the total regular non-Indians employed, a little less than 60 % were in the salary range of Rs.7000 and above per month. Table V-8 presents the percentage distribution of Indians in different salary ranges.

Table V-8

**PERCENTAGE DISTRIBUTION OF INDIANS IN DIFFERENT SALARY RANGES
IN TNCs IN INDIA, 1978**

Salary range per month (rupees)	Percentage of Indian employees
2000 - 5000	99.5
5001 - 7000	93.5
7001 - and above	73.5

Source: Press note of the Ministry of Industry, published in Indian EXPRESS, 2-1-1982.

Note: This data as on 1-1-1978 covers 276 companies. Besides regular employment, foreign nationals are engaged technicians etc, on a short term basis.

5.7.2 It is pointed that the non-Indians employed by the TNCs, occupy top-level positions in their firms though they

have meagre educational qualifications. In a sample of 88 such persons, employed as managers, one-third had a general University degree, while one-third did not study beyond High school and the rest had only vocational diplomas.

5.7.3 TNCs in pharmaceutical industry send their personnel for higher training abroad. According to official reports, about 100 persons of various skills are sent abroad every year to study the latest know-how in product development, manufacturing, quality control and administration from pharmaceutical industry alone.⁵

5.8 The Nathi Committee Report :-

5.8.1 The Committee :-

5.8.1.1 In view of the expanding share of the TNCs in the Indian drug industry, the Government of India in 1974 constituted a committee with Mr. Jai Sushil Nathi as its Chairman to study the state of affairs of the industry.⁶ The Nathi Committee submitted its report to the Government in 1975. As this is an exhaustive study of the state of pharmaceutical industry in India in the context of the dominance of the TNCs, it is discussed in some details here.

5.8.2 The TNC domination :-

5.8.2.1 The Nathi Committee reported that shortly after India became independent, most of the leading transnational

drug companies established themselves as trading concerns. Their initial investments were insignificant compared to their turnover. They started by importing the finished drug formulations and marketing them. Subsequently, they imported the formulations in bulk and got them repacked in this country. As a next stage, they imported the formulation in bulk drugs and got them processed into formulations on a 'job-work' basis by Indian companies. All these activities were carried on without investing in factories or employing technical personnel. Thus, foreign companies could remit substantial profits and build up large reserves and assets within the country for subsequent use or investment.

5.8.2.2 Between 1952 and 1965 and even upto 1968, well-known TNCs and a few domestic firms operating in India received a major impetus to boost their turn-over in the shape of 'Permission Letters'. 364 items were permitted to be manufactured by 15 leading units. 4 of these items were bulk drugs and the remaining 360 items were formulations, many of which could have been easily manufactured by the Indian sector. These formulations included household remedies, many of which did not require a doctor's prescription, such as formulations containing vitamins and minerals, cough mixtures, ring worm ointments, health salts, 'gripe mixtures', laxative tablets, eye drops, malted tonics, digestive tablets, ointments for

burns and piles, tonics containing calcium, alcoholbased tonics, etc.

5.8.2.3 After 1970, as per the new policy decisions of the Government, 12 TNCs and 5 Indian companies obtained 'Carrying on Business' (COB) Licences for 215 formulations and 20 bulk drugs. Some of the tonics and house-hold remedies, which command a wide sale and which were marketed as a result of COB Licences, are: Santovini, Vidaylin, Surbon, Bquadex, Trax, etc. 'Valium' and 'Librium', the two largest selling tranquillizers in the world, marketed by Roche Products were also included in the COB Licences.

5.8.3 MONOPOLIES :-

5.8.3.1 The Hathi Committee reported further that the TNCs had an extremely favourable climate in this country when they commenced operations. They managed for a good length of time with a meagre capital investment, pushed up the sales of their products, remitted profits to their principals abroad and built up substantial reserves. Government's policy permitted payment of royalty even on drug formulations. Whatever basic drugs they manufactured were mostly utilized for captive consumption. High prices were maintained for their drugs for several years. Added to this, money-spinning tonics and house-hold remedies which they could market on the basis of 'Permission Letters' and COB Licences swelled

their profits. By the time Indian companies, particularly those in the western region, braced themselves up to the situation and introduced competitive products, the sales promotion machinery of foreign companies was streamlined and perfected.

5.8.3.2 High pressure sales techniques coupled with distribution of medical samples on a liberal scale to the medical profession was their forte. Attractively get-up medical literature and international brand names of drugs appearing in advertisements in foreign medical journals with which top consultants in the medical profession were acquainted, played their part in popularising the drugs of foreign companies. Large sums of money were spent by foreign companies in systematically training their 'medical detailers' and the general tone of detailing resorted to by them was that their products contained 'something plus' over products with identical composition marketed by Indian units and that the edge in their quality was the outcome of their superior expertise and international standing.

5.8.4 Out flow and expansion :-

5.8.4.1 The total outflow of foreign exchange towards payment of royalty, technical fees and dividends during 1969 to 1973 is about Rs.260 million. This figure does not reflect the additional foreign exchange remittance that is implicit in purchases of bulk drugs, intermediates etc. by foreign

companies in India at prices dictated by their foreign principals. These prices bear no relation to either the cost of manufacture of the final products or international prices. Likewise, exports, a substantial portion of which is made by foreign companies in India to their principals abroad, are often made at prices which are not quite favourable to the country. An interesting feature about remittances made by foreign companies to their principals is that even today remittances towards 'Head Office' expenses have to be permitted because of the operation of trading companies with major foreign interests.

5.8.4.2 It was mentioned earlier that foreign companies built up their financial sinews and achieved the present dominant position mainly through sale of formulations which were allowed to be manufactured by them through the issue of Permission Letters and COB Licences which continued up to 1968. The legal backing for Permission Letters under the Industries (Development & Regulations) Act, and the manner in which COB Licences were secured by foreign companies were examined by the Committee through a specially constituted sub-committee. The latter discussed with the officials in the Ministries connected with the processing and issue of Permission Letters and COB Licences and also obtained clarifications from the Secretaries of the Ministry of Petroleum and Chemicals, the Director General of Technical Development

and the Ministry of Industrial Development.

5.8.4.3 The Committee's view was that Permission Letters do not have any legal backing in terms of the provisions of the Industries (Development and Regulations) Act. Likewise, most of the companies which were granted COB Licences did not inform the Directorate General of Technical Development of the particulars of their diversification activities, 'including their revised manufacturing programmes and the new articles proposed to be manufactured and the value of the minor balancing plant, if any, added by them' as required by Government's Press Note of October 27, 1966. The authorities concerned did not verify whether effective steps had been taken by the companies for the items covered by their COB applications. Permission Letters and COB Licences have given undue advantage to foreign companies to the detriment of the Indian sector.

5.8.5 The Patents and Research :-

5.8.5.1 In regard to Patent provisions relating to drugs, the Nathi Committee was keen on ascertaining the impact of the Patent Act on the drug industry. Quite a number of the principals of multinational units operating in the country, asserted their patent rights over life saving or essential drugs such as Chloramphenicol, Tolbutamide, Oxytetracycline, Metronidazole etc. and proceeded legally against Indian and

other concerns which tried to import the bulk drugs and process them into formulations. The Patent Act was amended in 1970 with the specific object of helping the Indian sector of the drug industry.

5.8.5.2 The Committee noted that young scientists in the country have now bestirred themselves and started producing bulk drugs. However, all applications for drug patents remain 'frozen' in this country from 1963. This has created certain anomalies in the implementation of the 1970 Act according to which a 'Licence of Right' can be given only after three years of the sealing of patents. This means that unless a patent is sealed, no 'Licence of Right' can be given. The task of examining the 'frozen' patent applications and sealing the patents covered by them, it is understood, would take a long time. In the matter of imports of drugs, indigenous manufacturers had represented to the committee that bulk drugs, which are available from overseas countries at competitive prices, cannot, in many cases, be imported because of the anomaly that obtain in this country in regard to drug patents.

5.8.5.3 In regard to Research, barring a few, other TNCs have been taking the line that basic innovational research for 'new drugs' involving co-ordination between multi-disciplinary teams of scientific workers requires giant outlays

and top-grade research scientists. According to them, research should be concentrated in the parent organisations functioning abroad rather than be dissipated in many countries. Eight Indian institutions, including the public sector companies and the National Laboratories, maintain fairly well-organised research facilities and specialise in different classes of drugs. Six Indian firms can also be considered to have made reasonable efforts towards developing basic research activities.

5.8.6 Need for Nationalisation :-

5.8.6.1 By a majority decision Nathi Committee, recommended complete take over of all TNCs in the pharmaceutical industry. Their line of argument for such a take over is as follows :-

5.8.6.2 In India, inspite of the efforts to plan socio-economic growth, the drugs and pharmaceuticals industry, like several others, operates on the principles of free market economics. The Drugs industry is dominated by the TNC units which set the pattern in this industry. The drug needs of any country are characteristic of the climatic conditions, social behaviour and economic conditions in each society. The foreign units which evolve their policies for the rich countries in temperate climates, with radically different socio-economic conditions, operating in free

market systems, promote the same systems in India, which are detrimental to our national interests. Even in the West European and North American countries it is widely realized that the drug firms exploit the socio-psychological factors to reap high profits. It is said that the firms have reduced life to a disease to be cured in those countries by their sales propagation techniques.

3.3.6.3 The experience of the last one quarter of a century in India in the operation of the multinational drug units reinforces these fears. This has been confirmed by the studies conducted by various international agencies also. Throughout the world, TNCs are given facilities to operate with the hope that capital flow and technological development are facilitated. In India however, the flow of capital through the TNC units is almost nil and the accumulation of assets, through their trade operations is very rapid.

3.3.6.4 The claim that flow of technology from parent TNCs on a continuing basis is ensured because foreign equity holding is not valid. Firstly, such flow is usually restricted only to the technology available with the overseas parent companies and not from other competitive overseas vendors of technology even if they may be cheaper. Other points to remember in this connection are (i) introduction of technology

of basic drugs newly into the Indian subsidy does not occur free, since for most such introductions, additional payments have nevertheless to be made, notwithstanding equity interests, and (2) the overseas firms choose to permit flow of such technology to India as it will serve the interest of the parent firms. Rarely new and novel technology is permitted to flow either free or even on payment. Most technologies that flow from parent TNCs into their Indian subsidies or partners are in fact well established all over the world for the last 15 to 20 years and could as well have been imported into the country without taking recourse to equity participation.

3.8.6.5 Fears that technology flow will dry up if foreign equity is discouraged or stopped, is also exaggerated. Countries in which the drug industry is state-owned, have not suffered on this account. They have either bought such drug technologies as they need or have been able to develop them on their own.

3.8.6.6 If the flow of technology that are needed becomes difficult due to take-over of the drug industry, it may be a boon in disguise as it will spur greater national effort in these directions and develop self reliance - a goal to which India is committed. Success of the development of

self reliance by the scientists and technologists in the atomic energy and defence field with its strong scientific and technological capacity, will not be stranded. Indeed such an eventuality is also remote since, unlike the atomic energy and defence areas, drug technology from overseas is not as restricted or difficult.

5.8.6.7 It is contended that the anti-social role of TNCs can be contained by laws of the land and the powers that are available with the Government. Though this is so, the real point at issue is the manner in which such government powers have been used in the past so as to curb the activities of these companies which are not in the national interest. The Committee's findings in this regard, indicate that progress in these directions has been very slow. If this process of change is to continue at the existing rate, it is doubtful if the desired objective of a truly social benefit oriented drug industry will develop in the near future. A quantum change has, therefore, to take place in the rate of change if the desired goals are to be achieved quickly enough.

5.8.6.8 The contention that technology flow through equity participation by TNCs in the drug field is the most effective and economical because of its higher rate of obsolescence, will have to be supported by cogent facts and will

also have to be examined in the context of alternative methods of technology flow not involving equity participation. At present, no such study is available. The assertion that equity participation in several cases would be the only way by which technology flow can be ensured, may be valid only for a few cases. In these cases we may import such drugs but we should at the same time launch a crash programme of R & D to develop self reliance for such drugs. The impediments to development of domestic technology, due to patents in the drug field, have also now been largely removed. There is little doubt that Indian scientists and technologists will develop all such technology if a concerted effort is made and if subsequent use of technology is assured.

3.8.6.9 The drain of foreign exchange by way of remission of profits by TNCs has to be viewed in the context of their import bill for drugs and intermediates in relation to their own export of drugs and not in terms of their total sales inclusive of formulations. It is well known that the value added in formulations is upwards of three times that of bulk drugs. Any comparison of the foreign remittances with the country's total exports is not relevant to the issue of social and economic costs resulting from equity participation by TNC drug companies.

5.8.6.10 Another social cost which cannot be quantified when TNCs hold dominant equity (i.e. their equity holdings are more than the largest single holding by Indian individuals or institutions), is in the matter of self-sustaining growth based largely on domestic R & D carried out either in the company itself or that which is available from other laboratories in India. It is well known that the management and staff of companies with dominant multinational foreign equity holdings tend only to look overseas for most of their technological needs and often even for resolving their day-to-day plant problems. Even where the R & D staff in such companies propose to develop technology of their own, initiatives are usually discouraged by their foreign collaborators and their Indian partners usually on the ground that efforts are futile in view of the possibilities of access to information from parent foreign companies. In this situation, there is little incentive for these companies to become self-reliant for their R & D needs. These social costs which are non-quantifiable, are indeed very serious, since they make the industry permanently dependent on overseas expertise and technology.

5.8.6.11 It is glaringly obvious that the TNC units are not interested in producing bulk drugs in countries like India. In Europe and U.S.A., the multinational units produce bulk

drugs in a spirit of collaborative relationship. In the developing countries, such production is avoided by them and where this is done, the host country pays dearly for such drugs.

5.8.6.12 The multinational units operating in India produce only a small fraction of bulk drugs. The main thrust of multinational units continues to be towards capitalising on drug formulations and non-drug items like cosmetics and luxury goods where technology and capital inputs are much lower and which permits promotion of aggressive salesmanship and brings in much higher returns on investments. The Permission Letters and C.O.B. Licences have further helped these units to build enormous assets, which are completely out of proportion to their investments. Besides, they have repatriated over the years large sums of money in the form of profits.

5.8.6.13 The selective attitudes of TNCs even in the field of R_esearch and Developments are dictated almost entirely by their philosophy of global trade. Indeed, their entire philosophy of building monopolies which lead inevitably to high prices and excessive profits is completely incompatible with socio-economic needs of the country. Their capacity to

manipulate is recognized throughout the world and more regulatory measures cannot curb these activities.

5.8.7 Recommendations :-

5.8.7.1 It is evident from the foregoing that their continued presence in India is a powerful damper on the challenge of achieving the technological goals of self sufficiency and self reliance.

5.8.7.2 Basic drugs are produced in the Indian sector, including the public sector, to the extent of about 90 % in tonnage terms, and this demonstrates effectively the competence that has already been achieved in indigenous technical skills.

5.8.7.3 Continued presence in this country of the highly profit motivated multinational sector can but promote only the business interests of this sector. Their presence in India, as a part of their global effort to capitalise on human suffering in an organised manner, must therefore cease as early as possible.

5.8.7.4 The Committee, therefore, strongly recommended that the multinational units in the field of drugs and pharmaceuticals should be taken over by Government and managed by the proposed National Drug Authority and that such takeover would not create any dislocation in production or

distribution of drugs. Overwhelming majority of the technological and managerial personnel in these units are Indians, with appropriate governmental support, they will carry on their respective functions with greater enthusiasm in reaching the goals set by the nation. Should there be any technical difficulty for such take over, suitable legislative measures may be approved by the Parliament to remove it.

3.8.7.5 The following are some of the other recommendations of the Nathi Committee.

1. that the TNCs should be taken over forthwith.
2. that the potentiality of foreign companies to exploit their names and smother the development of Indian sector of the industry should be blunted and more purposeful and positive policy to help the Indian sector should simultaneously be implemented.
3. that having regard to the present stage of development of the drug industry for the purpose of FERA guidelines, this industry should not be eligible for the preferential treatment given to the items specified in Appendix-I of the Industrial Licensing Policy of 1973. Foreign undertakings operating in this country should be directed to bring down their equity to 40 % forthwith and further reduce it progressively to 26 %.

This however, is without prejudice to other concessions to which they are eligible as a result of the industry being in Appendix-I of the Industrial Licensing Policy of 1973.

4. that dilution of foreign equity should not take the form of dispersed holdings of the shares by large number of Indian nationals. It would be desirable for the Government to purchase these shares either by public sector undertakings which are directly or indirectly connected with the manufacture of drugs/chemicals, or by public financial institutions or by the Government itself.
5. where TNCs are producing in India drug formulations using imported bulk drugs, they should start and complete manufacture from the basic stage within a period of three years; failing which, they should not be allowed to continue marketing the formulations after the said period. If, however, the manufacture of such bulk drugs have been assigned to the public sector units, their manufacture should be taken up by the public sector.
6. All research talents available in the academic institutions and the national laboratories should be mobilised and work on the production of bulk drugs on a time-bound-programme should be undertaken. If for some

reason, the public sector undertakings are not in a position to take up the manufacture of bulk drugs, the Indian sector of the industry should be offered the second choice, who, in turn, should take up this work on a time-bound-programme.

7. TNCs which are already engaged in the manufacture of household remedies, such as alcoholbased tonics, vitamin preparations etc., should not be granted any expansion in capacities, nor should they be allowed to take up such activities as additional items beyond the capacity mentioned in the Industrial Licence or application for registration.
8. that penal actions should be taken against branches of TNCs or 100 % foreign equity holding units, manufacturing drugs without government authority (valid licence).
9. that the M.D.A. should review the norms for payments of research contributions, technical know-how fees etc. by TNCs.
10. The small scale sector should be a prohibited area for TNCs.

5.8.8 Government's decision on the Nathi Committee Report

5.8.8.1 Though the Nathi Committee report was submitted in April, 1975 no action was taken by the Government till June, 1975 when internal emergency was declared. Consequently the

report was thrown to the cold storage as a result of which the TNCs had a hay-day. The TNCs put up big sign boards every where in the factory and office premises ordering the workers to be disciplined to increase productivity and to work laboriously for the interests of their employers.

5.8.8.2 The new Government which assumed office in March 1977, took one year further to declare its drug policy. Based on the Nathi Committee Report it was announced on the floor of the Parliament on 29th March, 1978. Though the new drug policy repeatedly sworn to by the Nathi Committee Report, its main recommendations did not find any place in the policy statement of the Government.

5.8.9 Present Position :-

5.8.9.1 On 25th June 1982, Minister of Petroleum and Chemicals told the Drugs Consultative Committee of Parliament that the role of TNCs in drug industry could be reviewed in the context of national objectives.⁷

5.8.9.2 The Minister stated that at present the government was going ahead with the implementation of the 1978 Drug policy under which a large number of TNCs in the drugs sector had diluted their equity capital. Of the seven TNCs engaged in the production of drug formulations only six had already brought down the foreign equity to 40 per cent. The remaining

unit had been directed by the Reserve Bank of India to reduce its equity to the same level.

5.8.9.3 Of the 24 TNCs falling under the Foreign Exchange Regulation Act, producing both formulations and bulk drugs, two had brought down their equity to 40 per cent while one had been directed to dilute its capital to the same level.

Among the other 13 FERA companies, it was expected that three companies would have 40 to 50 per cent foreign holding, five companies 50 per cent, three companies between 52 to 73 per cent and three companies 74 per cent.

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FOOT NOTES

1. Tom Heller, Poor Health and Rich Profits: Multinational Drug Companies and the Third World (1977), Nottingham p.23
2. Organisation of Pharmaceutical Producers of India, ANNUAL REPORT (1978) Bombay p.14 (This is used as the source to compute the data presented here. The classifications in the original is public sector, private sector, Indian sector and small scale sector).
3. P. Mohanan Pillai, "Multinationals in Indian Industry - Concentration and Diversification" State and Society, Vol.1, No.1, 1980, pp. 109-110.
4. Meena Gupta, "Foreign Monopolies Dominate Indian Drug Industry" Social Scientist No.36, 1976, p.4.

5. Development Council (Drugs and Pharmaceuticals), Directorate General of Technical Development, Government of India, Indian Pharmaceutical Industry (1973) New Delhi P. 21.
6. Government of India, Report of the Committee on Drugs and Pharmaceuticals (1975) New Delhi.
7. Indian Express, 26-6-1982.

CHAPTER VI

LABOUR PRACTICES IN TNCs - I

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6.1 General Practices :-

6.1.1 In the last Chapter, pharmaceutical industry in India was discussed in terms of its transnational character and present state of affairs. It is now proposed to discuss the labour practices in the TNCs in pharmaceutical industry with regard to the general practices, employment generation and deployment of non-permanent labour.

6.1.2 Employers in pharmaceutical industry are rather well organised industry-wise though a similar level of organisational strength is not achieved by the workmen in the industry. There are four organisations of the employers namely:

- 1) Organisation of Pharmaceutical Producers of India,**
- 2) Pharmaceutical and Allied Manufacturers' and Distributors' Association Ltd.,**
- 3) India Drugs Manufacturers' Association and**
- 4) All India Manufacturers' Organisation.**

6.1.3 Among these, Organisation of Pharmaceutical Producers of India mainly represents the interests of TNCs with headquarters in foreign countries. Most of the TNCs in the

industry are members of this organisation and they form the majority of the members. It seems that there is some sort of an understanding among the TNCs in the industry as regards the major policies relating to pharmaceutical industry and also the issues relating to labour. This helps the TNCs take defying stand against labour.

6.1.4 The employees in the industry are organised under different TUs which are either political or apolitical as regards tie-up with any particular political party. Likewise such they are either part of a national TU or of a regional or local one. In most of the units there are more than one TU. On the whole it can be said that the employees in the pharmaceutical industry is yet to be organised on an all India level.

6.1.5 All India Chemical and Pharmaceutical Employees' Federation, and All India Pharmaceutical Employees' Union may be considered as steps along the direction of offering national forum for the employees in the industry. Two of the major Bombay based regional unions are (i) Maharashtra State Pharmaceutical and Chemical Workers' Union and (ii) Maharashtra Sales and Medical Representatives' Association.

6.1.6 There is no industry-wise settlement reached between the employers and the employees in the pharmaceutical

industry. There is also no regionwise industrial settlement in any part of India, even in Bombay. Therefore the conditions of management-labour relations in the industry is widely varying from place to place. Nevertheless, there are certain generalisable common features affecting labour in all these industries. Such generalisations are again subject to local variation. The views expressed by the TUs and the management on some of the issues relevant for this study are presented.

6.1.7 It is worthwhile to recollect that the comments of both the TUs and the management are to a considerable extent influenced by their respective attitudes to TNCs in general. Needless to state that the management's views are consistently in support of TNCs. The views of the TUs are significantly varying from one another. Accordingly the comments of the TUs on industrial relations in the TNCs also are notably differing from one another.

6.1.8 Some TUs point out that they do not have much influence in decision making in a TNC apart from the periodic collective bargaining sessions on wages and conditions of work. The structure of TU representation within the plants varies substantially from one TNC to another. In some cases the TNC deals with only one TU. In other cases many separate

unions are represented and different negotiations are carried out with each TU. Negotiations are carried out on specific company basis and not on an industry-wide or regional basis, in others though there is some unofficial understandings do exist.

6.1.9 In most cases there is a high percentage of unionisation among the production workers in the TNCs. (At the international level the lowest reported level of unionisation was 20 per cent in Brazil and the highest was 100 per cent in several countries). Differences in the levels of unionisation are more from one region to another than from one company to another in the same region. With regard to the procedures for decision making in labour relations matters, the TNCs claim that such matters are treated locally and at as low a level in the enterprise as possible. In cases where the import of the decision transcends the individual unit or might set a new precedent, higher level counsel and approval mechanisms come into play.

6.1.10 While some TUs acknowledge that labour relations matters are basically treated locally by the subsidiary, many hold that the headquarters of the TNC stay very closely involved in much of the labour relations activities of the subsidiaries. The views of TUs in each company about the

specific arrangements in the subsidiaries of TNCs for collective bargaining, cannot be easily summarised and differ substantially from one country to another.

6.1.11 TNCs belong to a variety of employer organisations but only a few of these are for purposes of engaging in collective bargaining. Often these memberships permit access to general studies of wage rates in industries and areas of the countries or show comparative conditions of work or fringe benefits which can be useful for bargaining purposes. Practice varies widely from one company to another.

6.1.12 TNCs hold that training of their labour relations personnel comes most effectively. In some cases care is taken upon recruitment to bring in personnel with necessary basic labour relations skills. However, much of the input to the labour relations field is from internal recognition of talent and internal training. They further hold that local management is responsible for decision-making on the expansion or reduction in the size of the workforce. According to the TUs, however, given the centralised control exercised in financial and new investment matters, much of this control on a large scale actually resides at the corporate headquarters.

6.1.13 Similarly the TNCs state that transfer of employees essentially a local matter. The general philosophy is to promote from within at each subsidiary with transfers only when such local promotion is inadequate or for purposes of advancing the career prospects for special management personnel. TUs differ in their perceptions of the roles they play in influencing transfers of workers. Some refer to negotiated rights protecting workers who are transferred, while others state the degree to which they actually participate directly in actual transfers. These roles vary considerably from one company to another.

6.1.14 The attitude of TNCs to recognition of TUs in the absence of local legal requirements differ considerably. Some view this as the right of employees to decide for themselves. Others accept this right but state their intention to counter any organisation efforts when they occur. Practice varies significantly from one company to another. TUs generally feel that their rights under ILO Conventions Nos.87 and 90 are not being respected.

6.1.15 The TNCs generally prefer to have contact with the TUs at the direct working levels in cases of grievances or when entering into collective bargaining. They sometimes stress the responsibility of the management in the host countries to keep such contacts at as low a level as possible.

TUs have had varying experiences in labour relations with the TNCs. Attempts to train labour relations personnel in "human relations" were viewed with suspicion as designed to counter the influence of the TUs. Experiments aimed at the involvement of workers in joint labour-management committees to improve the quality of work are also being done in certain TNCs.

6.1.16 Differences in labour laws and in local customs and practices account for wide differences in procedures for handling shutdowns, transfers and reductions in personnel. The variations tend to be local rather than from one corporation to another in the same area. TUs report differing degrees of participation in shutdown, transfer and reductions in personnel decisions. Consistent with their description of labour relations as a local management function, the TNCs indicate that there is little significant international transfer of labour relations practices within the corporation. Some does take place because of common training of labour relations personnel or because local management on its own initiative brings in practices from other countries where subsidiaries operate.

6.1.17 TNCs tend to differ on their responsibilities to provide TUs with data before and during collective bargaining sessions. Some of the TNCs feel that only information

that is clearly relevant should be given; though certain others hold that data should be more generously offered so that the unions could be as fully informed as possible. TUs varies very much in their perceptions of how such data was being provided to them by the subsidiaries of TNCs for collective bargaining purposes. The differences seemed to be more from one region to another than from one company to another. These differences stem from local legal requirements.

6.1.18 While there have been some efforts on the part of the TUs to co-ordinate for collective bargaining within the country, there is almost no evidence of collective bargaining on an international level. TUs are almost unanimously in favour of transnational collective bargaining with the TNC. For them the most practical form of transnational collective bargaining consists of mutual TU consultation for concerted action within each TNC.

6.1.19 TNCs are generally opposed to transnational collective bargaining. They argue that their subsidiaries are really local companies operating in local markets in harmony with their local conditions, and that local conditions differ so much from one country to another that it would be of no

advantage to employees to have their agreements worked out at a transnational level of collective bargaining.

6.2 Employment :-

6.2.1 It may be stated at the very outset that as a general rule, TNCs do not enter into any specific agreements with the host governments concerning employment, training, social and working conditions or labour relations. Host country governments generally believe that the TNCs make a positive contribution towards the training of non-power in their countries. But the fact is that TNCs do not make any specific assurances to that effect either to host governments or to TUs. However, in special cases where incentives are provided for investment, some assurances regarding levels of employment are provided for in the agreements.

6.2.2 It is a fact acknowledged by all concerned that unemployment has been growing in India at an alarming rate during the last several decades and that the attempts to counter it by industrialisation has not produced any significant result.

6.2.3 Labour absorption :-

6.2.3.1 In order, therefore, to appreciate the social significance of TNCs it is useful to examine their ability in generating employment opportunities. Table VI-1 presents the turn-over and employment in fifteen TNCs in the pharmaceutical industry.

Table Modified

TURN-OVER AND EMPLOYMENT IN SOME TNCs, 1979

..... Name of Company Head quarters location Year of incorporation (million) plants Turn-over No. of employ- ees No. of employ- ees
Bayer	FRG	1938	23.0	1
Beetle	UK	1944	54.7	1
Cipla	India	1935	17.0	3
Cymamid	USA	1947	94.2	1
Dafar Interfas	NL	1931	25.1	1
S. Merck	USA	1936	13.4	1
Geoffrey Hanness	USA	1943	80.0	2
Glaxo	UK	1943	199.5	3
Hechtel	FRG	1936	129.2	1
Parke-Davis	USA	1938	--	1
Pfizer	USA	1930	--	2
Roché	Swiss	1938	--	2
Sandoz	Swiss	1947	62.2	--
Sarabhai	India	1943	210.0	--
Unid-UCB	Belgium	1939	33.7	1

.....
Source: Computed from reports of Directorate General of
Technical Development, New Delhi.
.....

Table No. VI-2

SALES, PROFIT AND EMPLOYMENT IN 3 TNCs, 1971-80

Year	G L A X O			ROCHELLE			PFIZER		
	Sales (m. million)	Profit (m. million)	No. of workers	Sales (m. million)	Profit x	No. of workers	Sales (m. million)	Profit (m. million)	No. of workers
1971	294.7	15.4	5243	147.8	19.1	1591	208.4	17.4	1288
1972	324.6	18.3	5224	183.6	16.3	1797	243.8	20.0	1391
1973	309.8	14.0	4976	217.2	20.8	1890	257.0	20.0	1429
1974	353.8	17.4	5083	226.0	15.1	1925	277.4	15.2	1474
1975	415.8	15.5	5019	267.4	15.4	1938	338.7	16.7	1506
1976	481.2	20.9	4998	298.3	19.7	1940	393.5	23.7	1531
1977	556.3	30.8	4904	321.0	20.3	2018	412.3	25.6	1630
1978	636.6	33.1	5055	348.3	22.3	2060	435.3	26.4	1639*
1979	735.5	40.4	5155	433.9	26.4	2082	463.7	27.1	1648

Source: Annual reports of the respective companies.

Note: * Following a strike that lasted 111 days in 1977 the practice of deployment of non-permanent labour is abolished in Pfizer. At that time there were 617 non-permanent workers. Among them 46 were taken as permanent employees and all the others were terminated from service.

6.2.3.2 It is evident from table No. VI-1 that the absorption of labour in practically all the TNCs is not of any significant magnitude compared to their turn-over and number of plants of production.

6.2.3.3 Table VI-2 presents sales, profit and employment in three TNCs during 1971-80 period.

6.2.3.4 Table VI-2 clearly shows that the huge increase in sales and profit did not cause any substantial increase in the work force in the three TNCs during a decade.

6.2.3.5 It is estimated that the pharmaceutical industry as a whole employs about 1.5 lakh persons directly in production and about 7 lakh persons indirectly in distribution trade and ancilliary industries. Table VI-3 presents the details of employment in the pharmaceutical industry.

Table VI-3
Employment in Pharmaceutical Industry, 1976-77

Area of employment	No. of persons employed
Direct	
Organised Sector	1,00,000
Small Scale Sector	50,000
Total	1,50,000
Indirect	
Distribution Trade	5,00,000
Ancilliary Industries	2,00,000
Total	7,00,000
Grand Total	8,50,000

Source: Organisation of Pharmaceutical Producers of India, (OPPI) Bombay, 1977.

6.2.3.6 Table VI-4 presents the employment in the distribution net work.

Table VI-4

EMPLOYMENT IN DISTRIBUTION WORK 1977

Area of employment	No. of persons employed
1. Licensed wholesale & retail chemists ..	1,00,000
2. Hospitals and dispensaries	15,000
3. Primary Health Centres etc.	45,000
4. Doctors' Dispensaries & Clinics	40,000
5. General merchants holding Licenses	1,00,000
Total	<u>1,00,000</u>

Source: OPPI, Bombay, 1977.

3.2.3.7 It can be seen that considering the large scale unemployment in the country and the huge capital outlay, the generation of employment opportunities is very limited in the pharmaceutical industry as a whole and especially in the TNCs in the industry. As a matter of fact these TNCs do not seem to be concerned about playing any effective role in reducing the mounting unemployment in the country. On the

contrary any possible opportunity is made use of to reduce the labour content at all levels by way of automation and other technological step-ups. Thus the stress of any new investments is more on machinery than on labour.

6.2.4 Labour Savings :-

6.2.4.1 Firms in the industry are installing powerful computers and thereby not only reducing the employment potential but also threatening the job security of the existing employees. This also reduces and alters the existing staff complement. Through mechanisation and automation the job potential is continuously reduced and the work load on the workers is increased. Substantial amounts are spent towards improved mechanisation and automation and thereby reduction in production costs. Along with increasing the productivity of labour causing a reduction in production costs such sharpenings of the machineries of production cause both the displacement from among the existing labour force and the obstruction of further absorption of labour.

6.2.4.2 Though there is noticeable increase in production and sales there is no corresponding increase in the number of employees. In fact, we can even notice a decline in the number of permanent workers in certain cases. A study of

some memoranda of settlements indicates (a) that any need for increase in production is met by technological improvement and not by absorption of additional labour and (b) that even a reduction in the existing number of permanent workers (say by retirement, resignation or casualty) is not raised by the absorption of any new employees.

6.2.4.3 In collective bargainings, one of the aspects most seriously resisted by the employees is any increase in the number of permanent workers. This is achieved by necessarily incorporating into almost all memoranda of settlements, the responsibility of the workers and the right of the management to increase production and productivity apparently to survive in the competitive market. Thus the trade unions agree to step up productivity and total production without the deployment of additional labour. This aspect is illustrated by the terms of settlement between the management and the TU in almost all the TNCs.

6.2.4.4 In the Escorts Company (India) Ltd. it is agreed, for example, that "recognising the rights and responsibilities of the Company and appreciating that it must sustain and improve its competitive status and earning capacity through concerted efforts aimed at improving efficiency and productivity, the Union agrees to, and assures that it shall render

complete and whole-hearted co-operation in all measures adopted by the company for attaining these objectives through implementation of improved processes, system and procedures, work flow and layout, work simplification, installation of modern and efficient machines and equipment and full effective utilisation of working time by reducing unnecessary and avoidable work. It is understood that while implementing such measures to improve productivity and efficiency there shall be no adverse effect on the employment of existing employees and their promotional opportunities on that account."¹

6.2.4.5 similarly in Pfizer Ltd. it was agreed that: "recognising the rights and responsibilities of the company and appreciating that it must sustain and improve its competitive status and earning capacity through concerted efforts aimed at improving efficiency and productivity, the Union assures that improving efficiency and productivity, the Union assures that it shall render complete and whole-hearted co-operation in all measures adopted by the Company for attaining these objectives and for enforcing discipline."² *

* Anglo-French Drug Co. (Eastern) Ltd.: the union agrees to the management that "the Union will co-operate with the company in the maintenance of discipline and efficiency at all levels."

Gillette India Ltd.: "to continue to extend their full co-operation to the Management (i) in maintaining strict discipline in the company's various establishments (ii) in

6.2.5 This policy of the TUCs namely to minimise the permanent work force and to curtail whenever possible the existing number of permanent workmen finds its clear expression in Globe Laboratories Ltd. where the agreement states that "the company will recruit one for every two exists in the entire

* f.n. contd.

reducing absenteeism (iii) in increasing productivity and production and (iv) in measures taken by the Company to maintain itself as a competitive and economically viable unit in the industry."4 Monarch Pharmaceuticals Ltd.: "It is in the interest of the Company and its workmen that the company must sustain and improve its competitive status and earning capacity. For this, the Union and the workmen agree to co-operate with the Management in all necessary efforts to improve efficiency, productivity and reduction of wastage."5 Sandoz (India) Ltd.: it is agreed by and between the parties that "the Union agrees to co-operate with the company in the company in the maintenance of discipline in its establishments (ii) the Union agrees to co-operate with the company in its efforts to increase productivity all round."6

Roche Products Ltd.: "The union will co-operate with the company at all levels in its efforts to increase productivity at the Company's several establishments."7 Indo-Pharma Pharmaceutical Works Ltd.: "the union and the employees agree that the employees shall co-operate with the company in the introduction of methods/processes and such other changes in production, planning, work-flow, work simplification systems and procedures cutting down wasteful practices as may be decided by the company from time to time."8

workly and these establishments."⁹ Moreover, in Pfizer Ltd., the Employees Union complained in May 1981 that between February 1977 and May 1981, as many as 66 vacancies of permanent workmen arose which the company refused to fill up.¹⁰

6.2.6 Thus it can be seen that the chances for increasing the work force in any TNC is avoided. On the other hand any expansion in the activities of the company is managed through automation and computerisation. In certain cases even the existing permanent workers find threats to their employment due to large scale mechanisations. This tendency of the TNCs indicate that contrary to all their claims TNCs refuse to respond to the social needs of the host country and aggravates unemployment.

6.2.7 It may be seen that "between 1973 and 1977, the organised private sector, dominated by Indian monopolies and the multinationals, increased the employment of the workers only by 18,000 though about 1650 large companies in the private sector earned a gross profit of Rs.130 million in a year ended in March 1978. But this mountain of profit yielded almost nothing by way of extra jobs."¹¹

6.3. Non-Permanent Labour :-

6.3.1 The labour practices in TNCs show that they not only reduce the total labour force required for their operation

but they bring down the number of permanent workers to the bare minimum by manipulating the non-permanent labour. Any additional requirement of labour is met by the deployment of temporary and casual workers. Apart from this for several operations, contract labour is engaged. Contracting out production and large scale engagement for over-time work are also techniques practised by TNCs to reduce the number of permanent workers.

6.3.2 Temporary and Casual Labour :-

6.3.2.1 Table VI-5 presents the distribution of permanent and temporary workers in Pfizer Ltd. during 1968-80 period.

6.3.2.2 Table No.VI-5 illustrates that from 1968-1977, the non-permanent work force increased from less than 10 % to above 60 % of the permanent workers, whereas the number of permanent workers decreased from 1031 to 1013. This would mean that even the natural vacancies of permanent workers were not filled up; leave alone creating any fresh opportunity. The steady and consistent increase in the number of non-permanent workers shows that such demands are not thanks to any seasonal factors. On the other hand it indicates that these are permanent requirements and that these non-permanent workers had been in service for several years. In fact, they are to be regarded permanent workers.

Table No.VI-5

DISTRIBUTION OF PERMANENT AND TEMPORARY WORKERS IN PFIZER LIMITED, THANE 1968-'80

Year	Total	Workers		(4) as % of (3)
		Permanent	Temporary	
1968	1111	1011	89	7.75
1969	1175	1015	160	15.76
1970	1205	1020	195	19.21
1971	1288	1021	267	26.15
1972	1391	1029	362	33.18
1973	1429	1032	397	38.47
1974	1474	1026	448	43.66
1975	1506	1019	487	47.79
1976	1531	1014	517	50.99
1977	1630	1013	617	60.91
1978	1059	1059	Nil*	-
1979	1048	1048	Nil	-
1980	1048	1048	Nil	-

Source: Computed from the circulars of the Pfizer Employees' Union, Bombay.

Note: * See the note to table No.VI-3.

6.3.2.3 The deployment of temporary and casual workers is not against temporary requirements of production. On the other hand they are employed temporarily or casually against permanent requirements which is not in conformity with the provisions of law. The production schedules are so arranged as to enable such workmen not to get 240 days work during a period of 12 months so as to attain permanent status as is required under section 25B of the Industrial Disputes Act 1947. Their services are terminated every time prior to their being able to make 240 days service and engaged afresh in service. Their terms of service has no comparable basis to that of the permanent workers in the same company.

6.3.2.4 There is an interesting example of a post of 'Kuta Mar' (Dog Chaser) in the Aligarh unit of Glaxo Laboratories (India) Ltd. Collection of milk is a permanent requirement in the firm where dogs from neighbourhoods pay visits. Chasing away such dogs is the duty of the 'Kuta Mar'. Both the transaction of milk and the visit of dogs are regular and permanent affairs though only casual labour is utilised for this purpose and that too on a permanent basis. The visit of dogs is neither seasonal nor is it a contingent development. In fact, it is a permanent feature. Yet 'Kuta Mar' is a temporary workman for several years!

6.3.2.5 The terms and conditions for the temporary and casual workers are different from those of the permanent ones. In certain cases the memorandum of settlement contains details of the service conditions of such non-permanent workmen. Details regarding temporary and casual workers in Glaxo Laboratories Ltd., given in the settlement of 1960 is given in Appendix. It may be noticed that the deployment of temporary labour is much less at present. However, casual labour is engaged without such restrictions.

6.3.2.6 In almost all the TNC pharmaceuticals there is a roll of 100 to 200 workmen as casual workers. As nearly as 75 % of them are young women. These workmen are deployed mostly in packing works and they get 6 to 8 months work a year. However, they will not be in a position to put in continuous service for 240 days a year whereby they will have to be made permanent workers, so they remain temporary workers on a permanent basis. This is a reserve team of unemployed people who work on minimum wages and absolutely insecure conditions of service. They can form no trade unions and the recognised trade unions in the company viz, of permanent workmen do not seem to take up their problems seriously either.

6.3.3 Contract Labour

6.3.3.1 Cleaning, gardening, maintenance, security, canteen and transportation, engineering, distribution, sweeping etc. are certain areas where the work is carried out by workmen other than those who are employed by the company. In a similar way the manufacturing company employs contractors to distribute the products to the retailers. They appoint stockists and distributors to do this job. Such deployment of contract labour is not due to any seasonal demand and are not in conformity with law also.¹² It is practised not as a contingency measure also, since such types of work are regular in nature and the appointments continue for years.

6.3.3.2 The contract workers forms a significant portion of the total work force of the company. Moreover it can be seen that the TUs which are of the permanent workmen give sanctions to such practices. For example, in Sandos(India) Ltd., the agreement states that "the transport arrangements will be made on contract basis with private transport contractors",¹³ similarly, in Roche Products Ltd. "it is agreed that the present facility of providing canteen which is run by canteen contractor will continue."¹⁴

6.3.3.3 The agreed guidelines on the kind of engineering jobs that can be given to a contractor is given as "Annexure-B" in the Memorandum of Settlement in Glaxo Laboratories Ltd. This is given in Appendix for further details.

6.3.3.4 It needs to be noticed that though not always, such contracting companies that undertake the production of any item of the deployment of contract labour are often sister concerns of the main company. The sales promotion employees were not considered workmen by the TNCs until the Sales Promotion Employees (Conditions of Service) Act 1976 came into force following the verdicts in May & Baker, and Hatchaj Pharmaceuticals.¹⁶

6.3.4 Overtime Work :-

6.3.4.1 Yet another technique adopted by the TNCs to minimise permanent workforce is engaging the workmen over-time. This helps not only the reduction of permanent workforce but also the enhancement of the income of the permanent workmen.

6.3.4.2 It may be possible by further investigation to establish a positive relationship between the deployment of casual workers and the engagement of overtime work. May be that the engagement of overtime work is more when the deployment of casual labour is dispensed with or minimised.

6.3.4.3 Table No.VI-6 presents the details of over-time engagement in Pfizer Ltd. for one year.

Table No.VI-6

OVER-TIME ENGAGEMENT IN PFIZER LTD. AT THANA, 1979-80

April	1979	..	Rs. 2,09,403.00
May	1979	..	Rs. 2,71,948.00
June	1979	..	Rs. 3,32,312.00
July	1979	..	Rs. 2,69,137.00
August	1979	..	Rs. 3,93,144.00
September	1979	..	Rs. 3,36,012.00
October	1979	..	Rs. 3,90,463.00
November	1979	..	Rs. 4,71,670.00
December	1979	..	Rs. 2,70,278.00
January	1980	..	Rs. 3,63,646.00
February	1980	..	Rs. 3,04,019.00
March	1980	..	Rs. 3,98,331.00

Source: Computed from the circulars of Pfizer Employees' Union, Bombay.

6.3.4.4 Table No.VI-6 illustrates that payments due to over-time is steadily on the increase and that such sums are substantial ones.

6.3.4.5 The nature of over-time engagements is Pfizer Ltd. during a period of four months is presented in Table No.VI-7.

Table No.VI-7

NATURE OF OVER-TIME WORK IN PFIZER LTD, 1960

1960	Single Hours	Double Hours
May	1659.00	26326.00
June	672.50	12058.25
July	574.00	12450.26
August	472.50	8916.00

source: Computed from the circulars of Pfizer Employees' Union, Bombay.

6.3.4.6 Table No.VI,7 shows that the expenditure due to Double Hours is very high compared to that due to Single Hours. This indicates that over-time engagement is given to the same set of workmen repeatedly.

6.3.5 Contracting Out Production :-

6.3.5.1 Contracting out production as well as deployment of contract labour is a feature of the pharmaceutical industry that the TNCs also manifest. In certain cases the entire production is carried out elsewhere. For example, Santivini

and Macalvit of sandoz (India) Ltd., Waterbury's Compound of Warner Hindustan, Bayer's Tonic of Bayer (India) Ltd. are produced in other firms on contract basis.¹⁷

6.3.5.2 Similarly Pfizer Ltd. contracts out the production of Marax to TK Industries, Bombay, Urobiotic to Pharm Pack, Bombay,¹⁸ Pas, Pasonex and sodium Pas to Capsulation Service, Bombay, Agriomycin and all veterinary products like Distadin, Diclin etc. to Vibro Pharma, Bombay and Sunbeam Trading Co., Faridabad and New Delhi. But in some cases only certain stages in the chain of production are contracted out.

6.3.5.3 If the labour utilized in the 'contracted out production', and the distribution net work is also taken into account, it will put in sharp focus that the non-permanent sector is steadily swelling and that the permanent sector is progressively declining. Available data, shows that this is deliberately being practised to obtain higher labour inputs, control over labour and reduction in labour cost.

FOOT NOTES

1. M.S., The Boots Company (India) Limited, 1976 p.1.
 2. M.S., Pfizer Limited, 1977 p.3.
 3. M.S., The Anglo-French Drug Company (Eastern) Limited, 1978 p.12 (mimeographed).
 4. M.S., Ciba-Geigy of India Limited, 1977 p.8 (mimeographed).
 5. M.S., Hoechst Pharmaceuticals Limited, 1981 p.5.
 6. M.S., Sandoz (India) Limited, 1976, p.6-7.
 7. M.S., Roche Products Limited, 1978, p.2.
 8. M.S., Indo Pharma Pharmaceutical works Limited, 1978 p.11 (mimeographed).
 9. M.S., Glaxo Laboratories (India) Ltd., 1976 p.5 (mimeographed).
 10. Pfizer Employees' Union, Bombay, circular dated 19-3-1981, giving the names and the badge numbers of the past employees along with the date of occurrence of the vacancy.
 11. J.S. Majumdar, Multinationals in Drugs and Pharmaceuticals Industry in India, (1979) Patna p.10.
 12. Section 10 of Contract Labour (Regulation and Abolition) Act 1970 lays down that "a workman shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer."
 13. M.S., Sandoz (India) Limited, 1976 p.22.
 14. M.S., Roche Products Limited, 1978 p.18.
 15. May & Baker Vs. Workmen (1961) 2 LLJ 94.
 16. Hoechst Pharmaceuticals case, 1969 ICR 19.
 17. J.S. Majumdar, op.cit. p.10.
 18. M.I. Joseph, "Multinationals in Indian Drug Industry", Social Scientist, No.60-61, 1980.
- M.S. - Memorandum of Settlement.

CHAPTER VII

LABOUR PRACTICES IN TISCO - II

CHAPTER VII

LABOUR PRACTICES IN TNCs-II

7.1 Wage differentials :-

7.1.1 The previous chapter discussed the general practices, employment generation and deployment of non-permanent labour with regard to the labour practices in TNCs. In this chapter also it is proposed to discuss the labour practices in the TNCs in terms of the wage differentials, TU rights and the implications of such practices.

7.1.2 Wages and working conditions at the subsidiaries of TNCs generally are higher and better than those of the local companies, at least in the LDCs. There is some perceptible difference due to the fact that these are subsidiaries of TNCs. The fringe benefits that the TNCs offer at their subsidiaries in host countries are also considerably better than those offered by locally owned enterprises and in all cases in excess of local minimum legal requirements.

7.1.3 Termination benefits offered by the TNCs vary considerably due to local customs and legal requirements. These differences are due to legislation or union negotiations rather than to policy choices of the TNCs themselves.

Pension funds for employees of TNCs are administered in the host countries. Some TNCs show a general policy of willingness to recognise TUs while the others leave the labour relations as a responsibility of local management to be worked out in the context of local practices and legal requirements.

7.1.4 TNCs stress that their overseas subsidiaries are essentially local companies competing in the host country market with other local companies. The decision-making with respect to employment, wages and other conditions of work takes place with this local posture in mind. On the question of wages and conditions of work in host countries, the TNCs generally seek to remain competitive or more progressively pay wages comparable to the leading employers in the industry or area involved.

7.1.5 Many factors can be identified as playing a major role in determining the level of wages paid in a subsidiary. The three most important ones cited are setting levels as a result of local collective bargaining, meeting local legal requirements and taking account of prevailing local practice in the areas in which the TNCs operate. Here again the emphasis is on acting as a local company in the local setting.

7.1.6 Wages in the pharmaceutical industry as a whole is higher than that in other industries. There is also a

slightly higher wage rate in the TNCs in this sector. Nevertheless, as is laid down by the Andhra Pradesh High Court in Globe Laboratories' case it is not necessary that the different units of the same TNC will have the same wage rate.¹ The relative better position of TNC employees is demonstrated more in fringe benefits. Taking into account the high productivity of labour and the huge profits accumulated the wage structure in these industries cannot be considered as comparably high. Moreover such advantages are confined to the permanent workmen alone.

7.1.7 Table No.VII.1 presents the pay structure of twenty leading TNCs in the pharmaceutical industry.

7.1.8 Of the 20 companies given in Table VII.1 the highest salary is paid by ASUNGA and the lowest by 22K12. The highest PBGA is paid by Meachig and the lowest by Roche. One outstanding feature is that a sizeable number of employees in these companies are liable to pay income tax.

7.1.9 Table No.VII.2 furnishes similar details with regard to production grade employees.

Table No. VII.1

WEIGHTED AVERAGE MONTHLY EARNINGS FOR CLERICAL AND TECHNICAL GRADES

Company	Basic plus DA	Total FBGA	Total earnings
1. Abbott	1966.51	126.66	2093.17
2. Bayer	1431.95	175.00	1606.95
3. Boehringer	1577.04	108.33	1785.37
4. Boots	1997.08	121.66	2118.74
5. Burroughs wellcome	2003.41	104.16	2107.57
6. Ciba-Geigy	1798.64	217.50	2016.14
7. E. Merck	1451.44	170.47	1621.91
8. German Remedies	1658.58	141.66	1800.24
9. Glaxo	1801.63	153.75	1955.38
10. Hoechst	1899.00	282.83	2181.83
11. May & Baker	1723.15	192.41	1915.56
12. M, S & D	1813.65	261.66	2075.31
13. Nicholas	1765.02	113.23	1878.25
14. Parke-Davis	1865.12	225.17	2090.29
15. Pfizer	1807.80	149.16	1956.96
16. Richardson	1778.00	92.91	1870.91
17. Roche	1927.49	91.25	2018.74
18. Roussel	2018.90	152.08	2170.98
19. Sandoz	1538.91	111.66	1650.57
20. Searle	1429.62	111.66	1541.28

Source: Computed from the data supplied by the TUs.

Note: FBGA stands for "Fringe Benefits and General Allowances" and includes Leave Travel Allowance (LTA) computed on a monthly basis, House Rent Allowance (HRA)

Contd...

Table No. VII-2

WEIGHTED AVERAGE MONTHLY EARNINGS FOR PRODUCTION GRADES

Company	Basic plus DA	Total FGA	Total earnings
1. Abbott	1487.94	126.60	1614.54
2. Bayer	1126.13	175.00	1301.13
3. Boehringer	1340.00	108.33	1448.33
4. Boots	1568.18	111.66	1679.84
5. Burroughs Wellcome	1518.31	104.16	1622.47
6. Ciba-Geigy	1375.00	167.30	1542.31
7. E. Merck	1226.48	161.10	1387.58
8. German Remedies	1349.45	141.67	1491.12
9. Glaxo	1403.80	123.75	1527.55
10. Hoechst	1339.80	209.00	1548.80
11. May & Baker	1367.48	226.00	1593.48
12. M, S & D	1424.15	257.50	1681.65
13. Nicholas	1346.73	113.33	1460.03
14. Parke-Davis	1380.93	183.98	1564.91
15. Pfizer	1277.04	111.67	1388.71
16. Richardson	1337.99	82.90	1420.89
17. Roche	1409.70	77.08	1486.78
18. Roussel	1592.89	135.00	1727.89
19. Sandoz	1209.60	111.67	1321.27
20. Searle	1260.21	103.33	1363.54

Source: Computed from the data supplied by the YUs.

Note: See Note to Table No. VII-1.

Note to Table VII-1 contd.

and Other General Allowance. Thus FGA includes the following elements of pay: all occupational allowances

Contd...

7.1.10 A significant number of workmen, which amounts to above 60 % in certain cases, are denied such benefits on the ground that they are not permanent workmen. The higher wages to the permanent workmen in the TNCs may also be seen along with the salaries and perquisites of the executives and the Managing Director.

7.1.11 Table No.VII-3 presents the differential scales of pay for workers, executives and Managing Directors.

7.1.12 Table No.VII-3 shows that there is a wide discrepancy between the earnings of the workers, the executives and the Managing Directors. The annual earnings of the executives is approximately four times and that of the Managing Directors is nearly ten times the annual earnings of the workers.

Note to Table VII-1 contd.

of a partial nature, officiating allowance, shift allowance, conveyance assistance, attendance bonuses, medical benefits, end-of-year bonus, provident fund, gratuity, overtime earnings as well as all other forms of payment, benefit or remuneration. In construing the level of PBA the following rules were followed - where benefits are given on a grade or salary slab basis, the relevant benefits are ~~those~~ ^{those} ~~of the~~ ^{of the} ~~particular~~ ^{particular} slab/grades including the (weighted) average basis of the company's manual grades. Where benefits follow the senior pattern, the rates of benefit/allowance accruing to the most senior employees has been selected as the relevant rates.

7.1.13 Another discriminating feature is that whereas ceilings are imposed on the dearness allowance (DA) payable to workers the DA to officers are conspicuous by the absence of any such constraints. Table No. VII-4 presents the DA payable in 15 TNCs at the end of 1981.

7.1.14 From the foregoing details one can come to the facile conclusion that TNCs are more interested in bringing down the wages payable to the workmen than in improving their pay structure. This objective is cunningly achieved by imposing a ceiling on the DA of workers only. As has been commented by a leading Trade Unionist "Instead of improving the wage pattern, the multinationals are increasingly imposing ceiling on the dearer living allowances and thereby, in reality, taking away the existing benefits. The per capita work load and the per capita increase in production are much higher and faster compared to the wages of the employees even if the dearer living allowance is taken into account."²

7.1.15 The TNCs, however, in order to impress upon the permanent workers that they are a favoured group try to enhance their wages through the practice of giving them over-time work liberally. Such over-time engagements are offered to the workmen on a regular basis and for a substantial length of time. There are instances where the workmen make

Table B-11-1
 COMPARATIVE AVERAGE ANNUAL SALARY OF WORKMEN, EXECUTIVES AND MANAGING DIRECTORS
 IN TNCs IN PHARMACEUTICALS IN 1975-76

Sl. No.	Company	Total wage bill (in '000)	Total salary for workmen (in '000)	Total salary for executives (in '000)	No. of workmen	No. of executives	Average salary for workmen (in '000)	Average salary for executives (in '000)	Average salary for MDs (in '000)
1.	Boots	17120	15671	1449	1050	24	14,925	60,275	144,765
2.	Cyanamid	19989	18099	1889	1200	35	15,083	53,971	135,803
3.	Glaxo	97742	88627	9115	4800	175	18,464	52,086	195,094
4.	Geoffrey Hanners	20745	19209	1536	1600	29	12,006	52,960	125,400
5.	German Remedies	11106	9726	1380	---	20	---	69,000	141,159
6.	Hoechst	34605	29408	5197	2800	88	16,338	59,057	---
7.	M. SLD	14539	13010	1529	700	28	18,586	54,607	99,525
8.	Parke-Davis	21833	18862	2971	1000	63	18,862	47,189	146,457
9.	Pfizer	61274	54423	6851	2200	119	24,738	57,571	174,586
10.	Richardson	12950	10853	2097	---	31	---	67,645	124,443
11.	Sandoz	34083	30433	3650	1800	64	16,907	57,031	137,541
12.	Warner	12317	10728	1589	---	28	---	56,750	122,700
13.	Wyeth	8516	7604	912	---	15	---	60,800	---

* For the year 1974-75

SOURCE : Computed from the data supplied by the TUs.

Notes:- Does not include perquisites such as furnished quarters, chauffeur driven car, entertainment allowance etc. given to the Executives and the Managing Directors.

Table No. VII-4

DEBARNS ALLOWANCE IN CERTAIN TINGS AT THE END OF 1981.

			Rs 100	Rs 200	Rs 300	Rs 400	Rs 500	Rs 600
1. Abbott	DA upto basic m.700 only	4	6	7	8	9	10	
2. Bose	No ceiling	5	7.5	8.75	10	11.25	12.50	
3. Burroughs	Upto basic m.700 only	5	7.5	9	9.5	10	10.25	
4. Ciba-Geigy	Upto basic m.425 only	5	7.5	8.75	11	11	11	
5. India chartering	Upto basic m.600 only	5	7.5	8.75	10	11.25	12.50	
6. May & Baker	No ceiling	5	7.5	8.75	10	11.25	12.50	
7. M, S & D	No ceiling	5	7.5	8.75	10	11.25	12.50	
8. Parke-Davis	No ceiling	6	9	10.5	12	13.50	15	
9. Pfizer	No ceiling	2.5	4	4.75	5.50	6.25	7	
10. Repetec	No DA above basic m.500 except 15 %	5	7.5	9	10.50	10.50	10.50	
11. Roche		5	7.5	8.75	10	10.625	10.625	
12. Roussel	No ceiling	5	8	9.50	11	12.50	14	
13. T.C.F.	Upto basic m.400 only	5	7.5	8.75	10	10	10	
14. Warner	Upto basic m.400 only	5	7	8	8.5	8.5	8.5	
15. Wyeth	Upto basic m.700 only	5.50	9	10.50	11	11.50	11.50	

SOURCE : Computed from the data supplied by the TUs.

more than 50 % of their monthly wages from over-time engagements. The table No.VII-5 illustrates the extent of earnings of individual workmen from over time engagements.

Table No.VII-5

**EXAMPLES OF HOURS WORKED AND AMOUNT RECEIVED AS OVER-TIME
IN PFIZER LTD., 1980**

.....

1. Mr RK Sheldh (T/No.1196)	Jan. 1980 - 40 hrs.	..	Rs 578.25
	Feb. " - 46 "	..	Rs 666.01
	Mar. " - 48 "	..	Rs 702.63
	Apr. " - 24 "	..	Rs 350.22
2. Mr C. Krishnan (T/No.1256)	Jan. 1980 - 47 "	..	Rs 643.77
	Feb. " - 31 "	..	Rs 428.78
	Mar. " - 62 "	..	Rs 857.55
	Apr. " - 24 "	..	Rs 333.62
3. Mr GK Subhtankar (T/No.1258)	Jan. 1980 - 47 "	..	Rs 643.77
	Feb. " - 59.5 "	..	Rs 815.72
	Mar. " - 47 "	..	Rs 651.89
	Apr. " - 24 "	..	Rs 333.62

.....

Source: Computed from the circulars of Pfizer Employees' Union, Bombay.

7.1.16 On the basis of this one can argue that the TNCs are helping the workmen realise better conditions of life by enabling them to make higher earnings. It can also be argued that when it comes to the question of realisation of smooth industrial relations and of demonstration of ideal industrial practices, the TNCs do not seem to be better, if not worse.

7.2 Trade Union Rights :-

7.2.1 Only the permanent workers have any TU rights in the TNCs. It is denied to the non-permanent workers. Even the permanent workers are not able to realise their rights fully. Any TU activity with the object of achieving such rights meets with reprisals in the form of abrupt termination, suspension, retrenchment etc.

7.2.2 Table No.VII-6 presents the various 'disciplinary' actions taken against labour in some TNCs for participating in TU activities.

Table No.VII-6

DISCIPLINARY ACTION IN TNCs, 1978

No.	Name of company	No. of terminations	No. of other actions
1.	Bayer	2	-
2.	Biological Evens	24	5*
3.	Becta	1	-
4.	Cyanamid	2	-
5.	Glaxo	19	44 ⁺ , 1 [§]
6.	Hoechst	1	-
7.	JL M, S & J	1	1
8.	Johnson & Johnson	4	10 [§]
9.	Pfizer	1	-
10.	Sandoz	2	-
11.	S, K & F	24	17

* Retrenchment + Charge sheet § Suspension

Source: Computed from the Memorandum submitted to the Minister for Labour and Parliamentary Affairs, Government of India by the All India Chemical and Pharmaceutical Employees' Federation on 19-12-1978.

7.2.3. Table No.VII-6 shows that instances of abrupt termination of service is rather frequent in the TNCs; such terminations being of large scale sometimes.

7.2.4 Table No.VII-7 presents the category-wise disciplinary action against employees in certain TNCs.

Table No.VII-7

CATEGORY-WISE DISCIPLINARY ACTION AGAINST TU ACTIVITIES

No.	Name of TNC	Termination Dismissal	Suspension Retrenchment	Roll in TU
1.	Bayer	2	-	President, Organiser
2.	Biological Evans	24	5	Office bearers, activists
3.	Boots	1	-	Joint Secretary
4.	Cyanamid	2	-	Activists
5.	Glaxo	18	1	Office bearers, activists
6.	Hoechst	1	4	Vice-President
7.	Johnson & Johnson	4	10	Office bearers, activists
8.	John wyeth	1	-	Vice-President
9.	Pfizer	1	-	Activist
10.	sandoz	2	-	Office bearers

Source: Computed from the Memorandum submitted to the Minister for Labour and Parliamentary Affairs, Government of India by the All India Chemical and Pharmaceutical Employees' Federation on 19-12-1978.

7.2.5 It is clear from Table No.VII,7 that in TNCs office bearers and activists of TUs have a hard time. It also shows that even a president or secretary of TU can be terminated from service unless he is willing to the managements' line.

7.2.6 TUs report that they have to struggle for the realization of their demands even in respect of maternity benefits. One such report from Pfizer Ltd. says: "A delegation of over 25 female demonstrators called upon the Labour Minister regarding their demands in respect of Maternity Benefits."³ It is pointed out that the TNCs "are seriously interfering in the normal trade union functions including the right of the workers to form trade unions of their own choices"⁴ and resorting "to victimisation of the leaders and active cadres of trade union."⁵

7.2.7 Coming to the field workers it has to be stated that conditions of service are not governed by any rules. Facilities normal for workmen in the firms' factories and offices are not open to them. Most of them have no right to bonus. This is done under the pretext of incentive commissions earned by a few. There is no dearness allowance linked with the consumer price index, annual increments, Provident Fund, leave

facilities or medical benefits for them. "On top of it all, the fundamental right of collective bargaining is not theirs after all these years of independence."

7.3. Implications :-

7.3.1 The size of the TNC subsidiary obviously determines the degree of impact on the employment market of the host country. The general economic climate will determine whether such impact merely is stimulative or whether it exacerbates an already tight market situation. Generally, given the scale on which the TNCs operate, their investments can have a substantial impact on the local employment market both through those directly hired and those for whom jobs are created indirectly. Comments on the employment effect of the TNCs vary from recognition of a major impact to opinions according to which the impact is minor, due to the capital intensity of such investments. TUs while recognizing the job-creation effect of TNCs point out that probably more employment could have been created by the same capital if it was invested by domestic firms using more appropriate technology.

7.3.2 As far as India is concerned it is evident from their labour practices that the TNCs are inclined neither to create new employment opportunities nor to absorb more labour. Whatever new investment takes place by way of expansions result only in the addition of new and sophisticated machinery that can eliminate or reduce labour component. The TNCs

do not seem to be concerned about the large quantity of unemployed labour that poses a major challenge to development activities in India under the rationale that the advancement of industrial sector will be able to absorb more of them.

7.3.3 It can be further understood that in the TNCs requirement of labour arising any additional in spite of mechanisation is treated in such a manner as to reduce the cost of such labour to the maximum possible extent. Thus in the strategy to cut down the labour cost, the TNCs absorb labour or meet the labour requirement in several forms other than the permanent ones. Consequently, temporary and casual labour, contract work and trainee and apprentice labour are made use of effectively. Likewise, either certain products or parts of products are given out on contract basis for production apart from ascribing certain areas of work to contract labour.

7.3.4 In this process, in spite of the tall claims of loyalty to the laws of the land, the TNCs also do flout the provisions of law. The laws relating to continuous service, deployment of contract, casual, temporary and such other non-permanent forms of labour are not seriously followed. The professed objects of ideal industrial relations and of better conditions for their employees are not seriously practised by the TNCs. On the other hand there is a case to argue that

the TNCs are exploiting the conditions of large scale unemployment coupled with the availability of cheap labour in the LDCs where they tend to operate in a big way. The TNCs in their operations to achieve higher profits seldom pay attention to the social requirements of the country where they function.

7.3.5 One major aspect with regard to the management of labour in the TNCs is the categorisation of labour into permanent and non-permanent ones. Such a categorisation brings in not only monetary differentiation between the permanent and the non-permanent workers but also involves glaring differential treatment in practically every other area of management-labour relations.

7.3.6 TU rights are exclusively confined to permanent workers. Temporary, casual and contract labourers, irrespective of the length of their service, do not have any TU rights. The memoranda of settlements reveal that agreements are entered into only between management and permanent workers. Such agreements, in certain cases confer exclusive benefits to the permanent workers while in certain other cases expressly bar the temporary, casual and contract labourers from enjoyment some privileges granted to the permanent ones in the same agreement.

7.3.7 The memorandum of settlement in Sandos (India) Ltd. states: "The parties agree that save as provided in regard to item No.1 (pay scales), No.4 (dearness allowance), Nos.13 and 15, and working hours the provisions of this settlement shall not apply to temporary or casual employees,"⁷ (item No.13 is shift allowance and item No.15 is milk allowance.⁸ This shows that the non-permanent workers are denied the benefits of a large number of items in the settlement."

* Such items include fitment, up-grading of individual workmen, dearness allowance, holidays, leaves, (sick, casual, privilege, accident and maternity leave), weekly offs, tea breaks/lunch breaks, canteen, gratuity, factory transport, other allowances, lunch allowance, officiating allowance, factory duty allowance, inconvenience hazard work allowance, outstation allowance, medical scheme, overtime, factory medical attention, provident fund scheme, uniforms and shoes for workmen, ambulance room attendant, timings for ayahs and sweepers, grace period, house rent allowance, leave travel assistance, educational benefits, death, permanent total disablement to continue work, employment for sons and daughters of workmen, promotions, abolition of contract system, special concessions on religious basis, arrears etc.⁹ Under the item, House Rent Allowance will not be payable to (a) probationers, (b) temporary workers and (c) casual workers.¹⁰ In Hetchet Pharmaceuticals Ltd, it is agreed that "the provisions of this settlement shall be applicable to all the permanent workmen who are on the company's payroll at its Factory, Head Office and Bombay Branch."¹¹

7.3.8 while making settlements in The Scots Company (India) Ltd., and Ciba-Geigy of India Ltd., it is indicated specifically against each item if it applies exclusively to the permanent workmen or to the others also, what is prima facie evident in the memoranda of settlements is that such agreements differentiate between the permanent workmen and the non-permanent ones in explicit terms and such differentiation has telling economic impact on the non-permanent workmen leave alone their insecure conditions of employment.

7.3.9 Similarly the memorandum of settlement in The Anglo-French Drug Co. (Eastern) Ltd., states that "The provisions of this settlement are applicable to the permanent workmen."¹² In the case of Hoechst Pharmaceuticals Ltd., it can be seen that even the benefits for the workmen who are while in the company's service is restricted to the permanent ones only.*

* Next-of-kin-benefit :-

- a) All permanent confirmed workmen will continue to be covered under a Group Life Insurance Policy to afford a coverage of Rs.30,000/- in the event of death while in the employment of the Company.
- b) In the event of the death of a workman while in service, for any reason whatsoever, the Beneficiary will be paid Rs.30,000/- arising out of the claim under the said Group Life Insurance Policy. The procedure for payment will be as at Annexure VII.
- c) In the event of the death of a workman while in the employment of the Company, the Company shall pay a sum of Rs.1,000/- as Funeral Expenses to the nominee of the deceased workman which will not be recovered from the dues of the deceased workman.

Contd...

7.3.10 A close perusal of the memoranda of settlements seems to suggest that the TUs of permanent workers use the existing practice of deployment of non-permanent labour to strengthen their bargaining power against the employer. During the stage of formulation of their demands the TUs include such demands as making all the temporary and casual workers permanent, the abolition of contract labour and the stoppage of contracting out production or any part of work. But invariably at the time of settlement, such demands are either withdrawn or not pressed by the TUs. For example, in Roche Products Ltd. the demand of the TU that "every workman who has put in an aggregate number of 75 working days or six months service in spite of intervening breaks should be confirmed into permanent service and all the benefits and privileges extended to the permanent workman should be given to

f.n. contd.

- d) It is agreed that in the event of the death of any workman covered by this settlement, while in the employment of the Company, the Management of the Company shall deduct a sum of Rs.10/- from the salary/wage of the subsequent month of all workmen employed at Head Office, Bombay Branch (including Indore Office) and Factory and the aggregate amount so deducted shall be paid to the nominated Beneficiary under the Group Life Insurance Policy, through the Union." 13

such employee with immediate effect¹⁴ was not pressed at the time of settlement. Moreover, while arriving at settlements that have exclusive gains to the permanent workmen, the TUs also agree "that the provisions of this settlement shall not apply to temporary and casual employees"¹⁵ and "that the present practice of deployment contract labour will continue."¹⁶

7.3.11 The fact that the TUs are confining themselves only to the interests of the permanent workmen and not that of the workers as a whole including the non-permanent workmen is evident from another agreement as follows: "In principle, the Union is opposed to give any work to a contractor or a third party manufacturer. If the Company gives the work to a contractor or to a third party manufacturer, the Company assures because of such action, there shall not be any re-trenchment of permanent strength of employees as at the time of signing this settlement."¹⁷

7.3.12 Further investigation to indicates that the permanent workmen agree to such practices in view of the fringe benefits such as the employment of the members of the family of the permanent workmen etc. offered to them. Another agreement says:-

"It is understood that while implementing such measures to improve productivity and efficiency there shall be no adverse effect on the employment of existing employees and their promotional opportunities on that account."¹⁸

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7.3.13 Moreover, in the process of bargaining between the management and the permanent labour, the nonpermanent labour very often becomes a loser. The employment of dependents of permanent employees is an example of this. In the Bata Company (India) Ltd., the management and the Union after negotiations agreed that six months prior to the retirement of a permanent employee request can be made to the management, which will favourably consider the matter, regarding the appointment of his son or unmarried daughter - "It is further agreed that the Union shall enter into a suitable arrangement with the Management so as to enable the Management to give preference to such persons over temporary workmen."¹⁹

7.3.14 It is pointed out that several other measures are taken by the management to give the permanent employees that they are the favoured group. One such instance is indicated in the matter of sending personnel for higher training abroad. According to the official reports in the pharmaceutical industry about 100 persons of various skills are sent abroad every year to study the latest know-how in product development, manufacturing, quality control and administration.²⁰ On such occasions care is taken by the management to pluck the permanent workers; especially those who are consequential in TU activities.

7.3.15 Under such conditions of discriminatory treatment to the permanent workers, it is possible for the management to extract more work from the non-permanent workers. This is effected either by exploiting the insecurity of employment of the non-permanent employees, especially in the context of the large scale unemployment or by tantalising them with the privileges of the permanent employees. Thus the permanent workers avail of and enjoy better and greater facilities at the expense of the non-permanent workers.

7.3.16 As a result, the issues relating to controlling labour also are made easier to the management. The permanent workmen, who have the higher militancy and stamina for prolonged struggles are appeased by offering better conditions and the non-permanent ones are managed either by tantalising or by invoking their insecurity of job. Consequent to this policy of making classification or gradation among the employees the permanent workmen and the non-permanent ones are kept poles apart whereby any joint threat of a strike of work is averted.

7.3.17 The managements so manipulate the matter as to make the permanent and the non-permanent workmen feel that their interests are competitive rather than complementary.

FOOT-NOTES

1. Glaxo Laboratories Ltd. Vs Labour Court, Gustar 1977
Lab.I.C. 1533 (A.P.)
2. J.S. Majumdar, Multinationals in Drugs and Pharmaceuticals
Industry in India, (1979) Patna p.47.
3. Priser Employees' Union, Three Decades of Dedicated
SERVICE, Bombay 1979 p.1.
4. J.S. Majumdar, op. cit. p.44.
5. Ibid. p.45.
6. N.I. Joseph, "Medical Representatives on the March",
Social Scientist, No.38, 1976.
7. M.S., Sandes (India) Limited, 1976 p.7.
8. M.S., Sandes (India) Limited, 1976 p.25-6.
9. M.S., Sandes (India) Limited, 1976 p.14-35.
10. M.S., Sandes (India) Limited, 1976 p.31.
11. M.S., Hoechst Pharmaceuticals Ltd., 1981 p.4.
12. M.S., The Anglo-French Drug Company Limited, 1978 p.13
(mimeographed).
13. M.S., Hoechst Pharmaceuticals Ltd., 1981 p.12-3.
14. M.S., Roche Products Ltd., 1978 p.35.
15. M.S., Sandes (India) Ltd., 1976 p.7.
16. Id.
17. M.S., Sandes (India) Ltd., 1976 p.34.
18. M.S., The Boots Company (India) Ltd., 1976 p.3.

19. M.S., The Boots Company(India) Ltd., 1976 p.19.
 20. Development Council (Drugs and Pharmaceuticals), Directorate General of Technical Development, Government of India, Indian Pharmaceutical Industry (1973) New Delhi p.21.
- M.S. - Memorandum of Settlement.

CHAPTER VIII
CONCLUSION

CHAPTER VIII

C O N C L U S I O N

The study leads to the following conclusion.

8.1.1 The overseas investments of TNCs are motivated by a desire to participate in markets that could not be successfully served from their production facilities in the home country. If the overseas investment was not made, these potential or actual lucrative markets would have to be abandoned. Thus it ensures their position in the major markets of the world rather than to serve as platforms for production.

8.1.2 In making such investments, often the most compelling factors are governmental decisions which would mean losing a fruitful market or prevention of entry to a new one. Government decisions requiring domestic components in goods sold, or setting up high tariff barriers, or other such factors were frequently cited.

8.1.3 Many elements enter in the final decision on making a major capital investment overseas. Manpower considerations are important but not in any case the only factor. At any rate the availability of low wage labour appears to be one of the attractions for the TNCs to make investments in the LDCs.

8.1.4 The investments of the TNCs tend to be capital intensive, intended to be long-term ones built around convictions that the local markets will grow and justify the investment risk in the long term.

8.1.5 The locus of corporate decision making for activities of subsidiaries in the field varies from company to company. Some are more highly centralized than others with more of the major decision making being controlled at the company headquarters. The areas of financial reporting standards and financial control seem to be the most tightly held at headquarters, whilst the competence for labour matters was highly decentralized. Many unions hold that the influence of the parent company headquarters on labour matters could also be felt indirectly, as a consequence of centralized financial and investment decisions.

8.1.6 Host country governments generally accept subsidiaries of foreign-based TNCs as a normal component of their industrial community. The degree to which the activities of these subsidiaries are treated equally with domestic companies varies from one country to another. One major variant is the amount of equity that foreign corporations are allowed to own in a subsidiary in a host country. Generally the policy toward foreign subsidiaries is most liberal in developed countries and more restrictive in LDCs like India.

8.1.7 It is generally recognized that the subsidiaries play a valuable role in the international transfer of technology. The advantages and disadvantages of some aspects of technology transfer and its appropriateness are much in debate.

8.1.8 India does not have special provisions for TNCs in the fields of law covering employment, training, conditions of work or labour relations. Generally, in all of these areas the TNCs are treated as if they are local companies. As far as their operations in India are concerned, the existence of ILO Conventions and Recommendations in the social and labour practices fields do not seem to have any direct impact on the corporate policies of the TNCs except those that were already embodied in the legislation and practice of the host country.

8.1.9 This study specifically brings out that there is glaring disparity between law and practice in the matter of labour in TNCs. That the TNCs have global perspective and sophisticated technology, and that the managements of the TNCs are internationally trained and conditioned do not tend to alter the situation seriously.

8.2.1 The TNCs are not really concerned about the repercussions in the host country with regard to their labour

practices. Even in the midst of a social situation characterised by massive unemployment, they choose capital intensive production techniques and earnestly try to cut down labour requirements by mechanisation, automation and computerisation. This would certainly aggravate unemployment whereby exploitative labour practices can be employed without any significant resistance.

8.2.2 It can be noticed that even the bare minimum requirement of labour is planned in such a way that its permanent portion is reduced to the maximum extent by adjusting with the non-permanent workers. To achieve this purpose, regular requirements of labour are met by deploying temporary, casual and contract workers. Moreover, sometimes production, as a whole or in parts, is contracted out to further reduce the labour component as well as the labour cost. Thus, it can be seen on the whole that the labour absorption in TNCs is getting stagnated if not reduced, that the strength of permanent workers is decreasing while that of the non-permanent ones is on the increase, and that the practice of contracting out production is enlarging.

8.3.1 Coming to the wage structure, it is found that the permanent workers get a fairly high wage compared to that of the non-permanent ones. Nevertheless, this seemingly high

wages of the permanent dwindles into insignificance when compared to the high salaries of the executive and the managerial staff. Further when the wages are contrasted with the labour extracted from the workers, it can be seen that the rate of exploitation is higher than elsewhere.

8.3.2 It can also be observed that wages are brought down by imposing ceiling on dearness allowance. This makes a substantial saving on the wage cost of the TNCs.

8.3.3 The engagement of workers as over-time is another reason for a seemingly better economic condition of the workers in the TNCs. Here again, the TNCs make substantial gains by saving the deployment of regular workers, though the workers also have economic gains. However, considering the extent of unused labour reserves in the society as a whole and the necessity for the workers to develop their persons rather than working like a machine all the time to gain money, the higher wages do not appear to be that attractive.

8.3.4 Higher wages can appear to be much less appreciable if the wages due to the same type and extent of work in the units of the TNC in other countries are considered. Workers in the units in the developed capitalist countries for doing

the same work with more easiness and convenience get five to six times the wages their Indian counterparts get. This wage difference, in fact, is one of the reasons explaining the export of capital from the advanced capitalist countries to the LDCs.

8.4.1 The fringe benefits offered to the permanent workers may appear to be attractive. Here again, compared to the perquisites of the executive and the managerial staff such fringe benefits are insignificant. Likewise, seen against the marginal increase in the extraction of labour thanks to such concessions, these fringe benefits turn out to be less attractive. Moreover, a sizeable portion of the labour force namely the non-permanent workers are denied these benefits making these demonstration-oriented.

8.5.1 It is evident from the study that the TNCs do not generally import home-made solutions with regard to labour practices. They also do not conform to local values and practices fully. Thus the nationality of the TNC does not make serious impact upon the labour practices of its local unit. There does not appear to have much differences between the practices of domestic TNCs and foreign TNCs. The study reveals that in achieving their declared objective of maximisation of profits the TNCs use any approach convenient to them irrespective of the fact that they are in conformity

with the practices in the home or the host country.

8.6.1 In the matter of making the provisions of law ineffective the TNCs do not appear to be lagging behind. The claim that they obey the laws of the land faithfully does not appear to be true. In fact, the study points out instances regarding the skillful evasion of law by the TNCs.

8.6.2 Temporary and casual labour are employed against permanent requirements. This is in violation of the relevant provisions of law. Similarly the deployment of contract labour as well as the contracting out of production are not in conformity with the law.

8.6.3 Workers in the TNCs remain for several years as non-permanent workmen. They are unable to put in one year's continuous service and gain the privileges of permanent workers thanks to the deliberate manipulation on the part of the management. Such manipulations are obviously to flout or to make infructuous the provisions of law.

8.6.4 Only the permanent workers have TUs that are recognised by the management. The non-permanent workers have no recognised TUs. Office-bearers of TUs are frequently victimised by the TNCs. Leaders and activists of TUs are subjected to such unfair practices as termination, retrenchment, suspension etc. which are not in compliance with law very often.

8.6.5 The TUs of the permanent workers do not normally take up issues related to non-permanent workers. Though under certain situations, slogans such as permanency to non-permanent workmen, and abolition of contract labour are raised by the TUs, such issues are not pursued with any sincerity. These matters included in the charter of Demands and followed up to a certain level in the negotiations for settlement are very often omitted or left unpressed at the time of the final settlement between the management and the TUs.

8.6.6 The TUs are keen to project the image of an apparently smooth relationship with the permanent workmen, in turn. This is achieved by granting certain exclusive fringe benefits to the permanent workers who agree to increase production and productivity, to deploy non-permanent workers and to contract out production. The TUs also agree to exclude the non-permanent workers from enjoying certain special benefits or to restrict such benefits to the permanent workers alone. It can, even be argued that the existence of the non-permanent workers adds to the bargaining power of the TUs who use the opportunity to better the prospects of the permanent workers alone.

8.7.1 There are two different views with regard to the object of dichotomising labour force in TNCs. One such view

is the reduction of the aggregate labour cost while the other is the attainment of better control over the workers. This study, however, shows that both these objectives are achieved simultaneously by classifying labour into permanent and non-permanent ones.

8.7.2 There is the additional advantage that this practice provides for much flexibility with regard to labour deployment. To make it more explicit the same unskilled workmen belonging to the ranks of non-permanent workmen can be assigned the work of sweeper, messenger, gardener etc. Such workmen, invariably do more work than their permanent counterparts in order to ingratiate into the favour of their bosses. This leads to greater extraction of work from the non-permanent workers.

8.8.1 It follows from this study that the labour practices of TNCs can produce adverse impact on the industrial relations in India. Such adverse impacts will not be confined to the economic conditions of labour alone, but it can extend to other areas such as the consolidation and the expression of the class interests of the workers.

8.8.2 The classification of workmen into permanent and non-permanent in terms of both economic gains and job status can lead to a differentiation and polarisation among the workmen. In the event of such a development, the permanent workers who are better off and the favourites of the management

can turn out to be more status quo oriented and prestige-conscious and less concerned about the values and interests of the workers as a whole. On the other hand the less privileged non-permanent workers are made submissive by the insecurity of their jobs.

6.6.3 To put it in other words, in the existing Indian conditions of large scale unemployment and weak unionisation of labour, control over the workers is ensured by placating one group and holding out threat to the other. This may have far reaching repercussions on the healthy growth of working class movement and the consolidation of labour in the country.

APPENDIX

GLAXO LABORATORIES (INDIA) LTD.

Memorandum of Settlement

16th October 1980

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28. TEMPORARY WORKMEN

(i) Wages:-

With effect from 1st July, 1979, Temporary Workmen shall be paid wages only as follows:-

- (a) Basic salary at the minimum of the grade of corresponding group/category of the permanent workmen.**
- (b) Dearness Allowance shall be paid at the rates applicable at the minimum of the grade of corresponding group/category of the permanent workmen.**
- (c) At 50% of the House Rent Allowance applicable at the minimum of the grade of corresponding group/category of the permanent workmen.**

(ii) Sundry Allowances, etc. :-

The temporary workmen shall also be eligible for the following allowances only on the same terms, conditions and rates as applicable to the corresponding categories of the permanent workmen:-

**Cash Handling Allowance
Tea Allowance
Lunch/Dinner Allowance
Good Attendance Bonus
Shift Allowance
Heavy Vehicle Duty Allowance
Hardship Allowance
Extra-time/overtime/compensation for work on weekly off and paid holidays declared and observed by the Company.**

They shall not be entitled to Leave Travel Concession and any other allowances or monetary benefits of whatsoever nature applicable to permanent workmen.

(iii) Leave :-

They shall be entitled to only privilege leave in accordance with the provisions of the Factories Act, 1948. They shall not be entitled to any other type of leave with/without wages as applicable to permanent workmen.

(iv) Level of Temporary employment :-

It is agreed that the level of temporary employment in the establishment shall depend upon the requirement for work of a temporary nature and/or for temporary increase in the work of permanent nature and/or to cover seasonal/unforeseen/undue absenteeism.

The Union also agrees not to raise any demand on behalf of temporary workmen in respect of their terms and conditions of service, regarding their temporary status and that of the posts on which they are working, during the period of the settlement.

29. CASUAL WORKMEN

(1) Wages :-

With effect from 1st July, 1979, Casual workmen shall be paid wages (Basic + Dearness Allowance) and H.R.A. at the rates as applicable to the corresponding categories of Temporary workmen, for the number of hours actually worked by them.

(ii) Sundry Allowances, etc. :-

Excepting Tea/Lunch/Dinner Allowances and Shift Allowance, wherever applicable, they shall not be entitled to any other allowances, extra-time/compensation for work on holidays/weekly offs, applicable to permanent/temporary workmen or monetary benefits of whatsoever nature applicable to permanent/temporary workmen unless otherwise specified in this settlement. They shall however receive overtime as per provisions of the Factories Act, 1948.

(iii) Leave :-

They shall be entitled to leave as applicable to temporary workmen.

"ANNEXURE-B"

AGREED GUIDELINES ON THE KIND OF ENGINEERING JOBS THAT CAN BE GIVEN TO A CONTRACTOR

Outside factory premises:

Any work done outside the factory premises. (The Union representatives, while generally agreeing to this, stated that if they find instances where regular routine work is being indiscriminately contracted out, they will represent their objections, particularly when the Company's work force is rendered idle).

All work done inside the factory premises which is connected with the work contracted outside the factory, e.g. fabrication of parts, etc., may be done outside but their fitting is to be done inside the factory premises, subject to the condition that the same should not result in overhauling of the machines concerned.

It is clarified that if a particular work has been given outside, and the particular part of the machine is brought within the Company's premises, and at the time of fitting the part if it is found that it requires minor adjustments, the same may be done by the contractor in the Company's workshop by using the Company's equipment.

Inside factory premises :

Civil engineering work including repair and maintenance, sanitary plumbing, modification to buildings, both temporary and permanent in nature.

Fabrication and structural work with or without materials.

Maintenance and overhauling of equipment undertaken by suppliers or specialised bodies, e.g. airconditioning equipment, battery operated trucks, etc.

Sanitation jobs.

Modification of machines as distinct from repair, overhauling and removal of defects.

Painting of furniture, equipment, pipelines, etc.

Heat/cold insulation work.

Special nature of work, for instance, lining of tanks, boiler tube welding, etc.

Periodical work which is not directly related to manufacturing activities, e.g. fumigation, boiler cleaning, etc.

Overhauling and maintenance of special equipment, e.g. diesel engines, lifts, neon signs, amplifiers, etc.

Major repairs and modification of electrical equipment but not routine replacement of elements and busbars of ovens.

New jobs (civil, electrical and mechanical) and turn-key jobs.

Consultancy jobs.

Emergency work of essential nature, on rare occasions.

Repair and maintenance work connected with office equipment.

Repair and maintenance of fire fighting equipment and Canteen equipment as was given in the past.

Work connected with extensions, projects and development, including wiring new points, etc.

Such other work given on contract in the past which is not inconsistent with the above, and such other work as is covered by the Settlement.

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