

Trade Union Effort to Develop Labour Law in Nepal

by Bishnu Rimal

During the inception of labour movement in Nepal, due to the absence of clear-cut labour legislation and lack of proper knowledge on it, numerous problems occurred considering labour disputes. A Commission was then appointed in 1951 with a view to inquire into the then labour problems. It is obvious that the Commission formed in 1951, found that the root cause of all labour problems was the conspicuous absence of any law regulating labour management relations and suggested for the formulation of the labour law including the provisions of grievance, strikes and lockout provision of retrenchment and social security. The Commission also recommend the adoption of Indian Factory Act and Bengal Jute Awards to give guidance to industrial relations until the enactment of Nepalese labour law.

In order to develop private industry the need for an institution to provide economic and technical assistance was felt in the country. Therefore, in June 1959, Factory and Factory workers Act was enacted in the country with a view to maintain peace and tranquillity and ensure the economic welfare of the general public by making suitable arrangements concerning the proper management of factories, the safety and welfare of factory workers and settlement of disputes between factory employers and workers. This is the only Act to govern capital-labour relations and can be said a major landmark in the effort of protecting the interests of workers. But, this Act was enforced on December 1961 only with retrospective effect.

The first amendment of this Act was the result of the political changes on December 1960, which banned the political parties. In this amendment it has been defined the workers as adult, minor, and child. This amendment brought a big change in working hours by increasing it to 54 from 48 hours a week and 10 hours from 9 hours a day. The amendment gave no justification for the increase in the working hours.

The clauses concerning the workers right to form labour unions was dropped from this amendment and left no room for any kind of labour organisation at any level. The amendment also brought new provision for wages. These all were became possible due to weak union movement at the time.

In 1971 labour movement gained ground locally and a new insurgency had been launched in the country to oppose the tyranny of the absolute monarchism. To relax the situation, second amendment on Factory and Factory workers Act was initiated. In March 1973 second amendment had been taken place and this amendment reduced working hours from 54 to 33 hours a week and one and half days leave to the workers.

This amendment allowed the workers to strike if all the other legal means failed to achieve their justifiable demands. The amendment left limited room for the right to strike which came as a great solace for the workers.

Keeping in view the employers' dissatisfaction by this amendment, third amendment was made in 1977. This amendment increased working hours from 44 to 48 hours a week and instead of one and half days leave the workers now can get only one day's leave in a week. This amendment added a new provision about lockouts.

In the eve of popular movement of 1990 and then after GEFONT leads the movement to protect workers rights. By the time Nepal Factory and Factory Workers' Act has become not only uncontextual but was also as weapon of labour suppression. The Nepali Congress Party's government which came into the power by the first general election 1991, neither showed any sign of tabling a new labour bill nor try to reform the existing labour act, even in the first session of the Parliament. Therefore, GEFONT Chairperson and Parliament member Mr. Mukunda Neupane tabled in the House of Representative on August, 1991 three non governmental bills viz. **the Nepal Trade Union Bill-2048**, the **Nepal Industrial Relations Bill-2048** and the **Labour Bill -2048**.

In September 22, 1991 the speaker allowed Mr. Mukunda Neupane to seek permission of the session to present the bill. As soon after as Mr. Neupane had asked for the permission, an unscheduled Nepali Congress Party parliamentarian lodged a motion of protest. This divided the house into those who expressed it was objectionable and those who said it was

not objectionable. There was a long chaos due to the claim of the main opposition the Communist Party of Nepal (Unified Marxist -Leninist) that "we want the labour act, and that too passed by this very session" and the claim of the ruling party the "a serious bill like this should not brought in hurry, there could be many deficiencies".

At last there came a situation of using the *parliamentary formula* of "Yes" or "No". The entire opposition parliamentarians walk- out in protest. It was the first total walk - out of the house in session by the entire opposition.

The bills which tabled again on January 1992, the first day of parliament's winter session. GEFONT's claim, protest and foiling out in the first session and the re-tabling of the bills in the winter session pits a considerable pressure on the NC Government. The government therefore mixed two of GEFONT's bills--Labour & Industrial relations and tabled through the Labour Minister as Labour Act-2048. The bill with some objectionable provisions was proposed to be brought for deliberation on February 1992. Parliamentarian Neupane protested on behalf of GEFONT for not bringing the bill he had tabled for deliberation. The government was compelled to go along with an "understanding" when an amendment to the draft was tabled by Mr. Neupane. According to the "understanding " it was agreed that the bill would be brought to the house only after clause-wise discussion in the working committee and was adopted by the parliament as **Labour Act - 1992**.

There are number of provisions in *New Labour Act*. Under the clause of **Employment and security of service**, provision of classification of Job, appointment of worker and employee, engagement in work, computation of period of works, retrenchment and reinstatement, seasonal enterprise, job permanent and compulsory retirement has been included. Under the **working hours**, with a provision of *overtime pay*, it has been stated that 'no worker or employee shall be deployed in work for more than eight hours per day or forty eight hours per week and they shall be provided one day as weekly holiday for every week'. Besides, the new act has included provision of minimum remuneration fixation committee, prohibition on deduction of salary etc. A Provision Relating to Health and Safety has been specifically included. Several provisions like welfare fund, compensation, gratuity, provident fund and medical expenses, leave, provision of Quarters, relaxing room and Canteen

This Act has carried out some special provisions to be applicable to special type of enterprises like Tea Estate, Construction Business, business of Transportation, Hotel, Travel, Trekking, Adventure, Rafting, Jungle Safari etc. Instead, the Act, which has some 92 clauses, enclosed various provisions like conduct & punishment, tripartite committee, establishment of labour court and several provisions of settlement of labour disputes including CBA procedures.

Though this act has such provisions, still it was ambiguity and defective. Thus, new move to amend this act has been started. The GEFONT leads this and seek supports by the other social partners. Taking advantage when GEFONT Chair was the **Labour Minister**, first amendment in the Labour Act-1992 was made in early 1998. This amendment addressed the issues like provision of compulsory permanent, contract labour, clarification on determination of minimum wages, grade, wide coverage to transportation workers, clarity in conduct and punishment, work-permit to the migrant etc. This amendment has given right to the labour court to take an action itself on *contempt of court* to punish by imprisonment of 2 months and penalty up to Rs. 5000 or both to those blunt employers if they declined to implement labour court decision.

Concerning to the Labour Law, **Trade Union Act-1993** is another important landmark. This act has carried out some 31 Clauses to regularize trade unions in the country. This act is directly related to the Labour Act 1992 and has mentioned provision and process of registration of trade unions in enterprise as well as national level. It has also defines role and responsibility of trade unions and the process of recognition of the functioning unions.

Like the Labour Act -1992, this Act also had some defective clauses. Thus, the GEFONT initiated a move to amend this act with close co-operation of other concerned sectors.

The process of amendment had started from early 1997 and after tripartite discussion & consensus, it had been prepared in the form of Bill via the Ministry of Labour. From the summer session of the parliament in 1998, it was adopted and then sent to the Royal Palace for final seal. (*Date of royal seal is 31 March, 1999.*) This amendment has widened the paradigm of the trade unions where the entire mass of self-employed workers as well as the whole informal sector including agricultural workers can exercise the right of unionisation and form their

trade unions, special provision for agricultural wage-workers, position of small federations in non-enterprise trades and occupations clarifies, clarifies the process of the renewal of trade unions and amendment has made in representation of trade unions with far-reaching effect.

It is obvious that both of these acts are supplemented by Labour Regulation and Trade Union Regulation.

Labour law in Table

Working Hours	• 48 hrs in a week
Overtime	• pay - 150% per hour • limit - 20 hrs in a week
Annual Holidays	• public holidays 13 days • House leave 18 days
Maternity Leave	• 52 days (in Govt. service, it is 60 days)
Paternity Leave	• no provision in law, union movement has got in some place as a token holiday through CBA
Sick Leave	• 15 days
Others	• OSH matters yes in Law • Labour law is not so bad but there is a question of effective implementation

Besides these, there are numbers of Supplementary Laws in the field of labour. This can be listed as below:

- 1957 - Essential Services Maintenance Act
- 1974 - Bonus Act
- 1981 - Bonus Rules
- 1982 - Industrial Apprenticeship training Act
- 1986 - Foreign Employment Act
- 1992 - Industrial Enterprise Act
- 1993 - Labour regulation concerning tea estates
- 1994 - Privatisation Act
- 1995 - Children's Act

It is to be noted that the Foreign Employment Act-1986 has been amended in 1998 and its regulation has been just announced at 20th Sept. 1999 by the Government. According to the Foreign Employment Regulation 1999, the Government will establish a **labour attaché** in the countries that has over 5,000 Nepali labourers to look after their interest

and security. The regulation also sketches out the responsibilities of these businesses and the labourers themselves. According to the regulation, the agency will require to invest at least NRs. 2.5 millions in capital to set up business and should be able to provide employment to at least 50 aspirants in a year.

Failing to do so would automatically terminate their license. These agencies will also be required to find them employment that pays no less than US\$ 125 every month. Advertisements need to be published in national dailies that would have to specify the basis on the employment with deadline of at least seven days for application.

They will also need to update the government every six months on the state of these labourers and their operation and information on each of the labourers they have helped go jobs abroad. They will be allowed to take 25 per cent of the first month's salary from their clients who will be required to buy insurance policy worth at least NRs. 100,000.

In conclusion there are numbers of issues to be addressed yet, which can be listed out as following-

- There is provision of working hours, leaves and benefits but it varies with different business and the government services.
- Still there is unfair labour practices including bonded labour, which is not includes in the law.
- There is right to strike, but it has very long process- it needs some 66 days long legal process with 60% secret balloting system. But there is only 7 days notice enough for employers to lockout their business. There is no right to picketing.
- There is a not impressive measure to punish those employers who commits the mis-conduct mentioned in the law.
- Contract labour is a serous issue in this regard.
- There not proper coverage by law to protect the right and welfare of the agricultural labourers.
- It is mentioned in the law about equality between men and women; still it has to be implemented.
- There are 7 ILO conventions which have been ratified by Nepal. Four Conventions (No.29, 87, 105 &182) are in process of ratification. But still there are several cases of violations.

(Summarised from articles published in Workers News and AMRC, year book in association with Umesh Upadhyaya; 2002)