

SIDBI's assistance flows to the transport, health care and tourism sectors and also to the professional and self-employed persons setting up small-sized professional ventures.

Objectives

Four basic objectives are set out in the SIDBI Charter. They are:

- Financing
- Promotion
- Development
- Co-ordination

For orderly growth of industry in the small scale sector. The Charter has provided SIDBI considerable flexibility in adopting appropriate operational strategies to meet these objectives. The activities of SIDBI, as they have evolved over the period of time, now meet almost all the requirements of small scale industries which fall into a wide spectrum constituting modern and technologically superior units at one end and traditional units at the other.

Operational Emphasis

SIDBI, in its operational strategy, emphasises:

- Enhancement in the flow of financial assistance to SSIs.
- Enhancement in the capabilities of SSIs at all levels, with focus on adoption of improved and modern technology.

The small industries sector in India is dominated by a large number of small units. These micro-enterprises require special nurturing. SIDBI has been operating schemes like Single Window Scheme and Composite Loan Scheme.

To ensure that financial assistance is made available to such units on easy terms and with hassle-free procedures. It has been a matter of policy in SIDBI to identify the areas of gaps in credit delivery system and fill them through devising appropriate new schemes and implementing them.

Financial Assistance

SIDBI's assistance now covers:

- Equity
- Term loan (domestic and foreign currency)
- Working capital for inventory, for raw material, through finance against bills receivables and for intangibles.

The purposes for which SIDBI's assistance is provided include new projects, expansion, diversification, technology upgradation, modernisation, quality improvement, environmental management, marketing (domestic and international) and rehabilitation of sick SSIs.

Promotional Orientation

Besides financing, SIDBI provides developmental and support services to SSIs under its *Promotional and Developmental (P&D) schemes*. The focus of such assistance is to ensure:

- Enterprise Promotion
- Human Resource Development
- Technology Upgradation

- Environmental and quality management
- Information Dissemination and
- Market Promotion

The P&D initiatives of SIDBI have crystallised over the years and are now oriented to serve rural entrepreneurs and youth, particularly women through programmes to empower them and motivate them to undertake entrepreneurial ventures.

As an apex financial institution for promotion, financing and development of industry in the small scale sector, SIDBI meets the varied developmental needs of the Indian SSI sector by its wide-ranging Promotional and Developmental (P&D) activities.

P&D initiatives of the Bank aim at improving the inherent strength of small scale sector on one hand as also economic development of poor through promotion of micro-enterprises.

In pursuance of its multifaceted P&D activity, synergistic with its business activities aimed at development of the small industries, SIDBI looks forward to a partnership with NGOs, associate financial institutions, corporate bodies, R&D laboratories, marketing agencies, etc., for national level programmes.

SIDBI has identified the following thrust areas of P&D activities, which are being undertaken in partnership with various institutions, agencies, and NGOs.

SIDBI Foundation for Micro Credit: The SIDBI, an apex financial institution for promotion, financing and development of small scale industries in India, has launched a major project christened "SIDBI Foundation for Micro Credit" (SFMC) as a proactive step to facilitate accelerated and orderly growth of the micro finance sector in India. SFMC is envisaged to emerge as the apex wholesaler for micro finance in India providing a complete range of financial and non-financial services such as loan funds, grant support, equity and institution building support to the retailing Micro Finance Institutions (MFIs) so as to facilitate their development into financially sustainable entities, besides developing a network of service providers for the sector. SFMC is also poised to play a significant role in advocating appropriate policies and regulations and to act as a platform for exchange of information across the sector. Operations of SFMC in the next few years, are expected to contribute significantly towards development of a more formal, extensive and effective micro finance sector serving the poor in India.

Mahila Vikas Nidhi: A trained and skilled woman can earn her livelihood and effectively contribute to the national income. SIDBI operationalises this concept under its Mahila Vikas Nidhi (MVN) programme by assisting accredited NGOs to create training and marketing infrastructure.

Mahila Vikas Nidhi (MVN) is SIDBI's specially designed Fund for economic development of women, especially the rural poor, by providing them avenues for training and employment opportunities.

A judicious mix of loan and grant is extended to accredited NGOs for creation of training and other infrastructural facilities. The basic activity involves setting up of Training-cum-Production Centres (TPCs) by the assisted NGOs to ensure that women are provided with training and employment opportunities.

In addition, activities like vocational training, strengthening of marketing set up for the products of the beneficiary group, arrangements for supply of improved inputs, production and technology improvement are also covered under the MVN scheme. Assistance is given mainly towards capital expenditure and support of a recurring nature is discouraged.

NGOs that have been in existence for at least 5 years, should be registered with properly constituted bye-laws, memorandum and articles of association, governing body, broad-based management and properly maintained accounts and having good track records are eligible for this programme.

Rural Industries Programme: A unique approach for rural industrialisation where the emphasis is on stimulating and helping the potential entrepreneurs to set up small enterprises through consultancy outfit positioned by SIDBI.

Development of viable and self-sustaining enterprises in rural and semi-urban areas has been identified for an intensive thrust by the Bank with a view to addressing problems such as rural unemployment, urban migration, under-utilisation of physical resources and skills of rural areas.

The Rural Industries Programme (RIP) of the Bank provides a cohesive and integrated package of basic inputs like information, motivation, training and credit, backed by appropriate technology and market linkages for the purpose of enterprise promotion.

Implementing agencies such as NGOs, development professionals, Technical Consultancy Organisations etc. are identified and assigned the task of developing RIP. The implementing agency either by itself or by networking with the appropriate agencies, provides the following professional services: identification and motivation of potential entrepreneurs in the rural areas; identifying potential investment opportunities for these entrepreneurs; facilitating skill upgradation; assistance in securing finance from banks and other lending institutions; helping entrepreneurs in selection, sourcing, installation and operation of machinery; arranging market support wherever necessary; and guiding entrepreneurs till their units commence commercial production.

SIDBI is encouraging a sub-sectoral approach under RIP to provide necessary technology and marketing linkages as relevant to specific industrial segment and rural clusters.

SIDBI meets part of the manpower cost of the implementing agency, mainly in the form of a performance fee. The fee is linked to units actually grounded by the identified rural entrepreneurs. In deserving cases, the Bank even provides some start-up expenses to the implementing agencies apart from the performance fee.

Entrepreneurship Development Programmes: Entrepreneurship can be developed by training. Towards this end and also to make the Entrepreneurship Development Programmes (EDPs) result-oriented, SIDBI has been supporting suitable agencies to train and guide potential entrepreneurs to set up enterprises.

EDPs aim at training various target groups in entrepreneurial traits so that they obtain adequate information, motivation and guidance in setting up their own enterprises. In order to maintain a homogeneous nature of participating groups, EDPs focus on rural entrepreneurs, women and SC/ST.

The EDPs are normally of 6 weeks duration coupled with proper practical training inputs. Training Agencies specialising in conducting EDPs, Non-Governmental Organisations (NGOs) and specialised technical institutes are extended assistance for conduct of product specific EDPs.

In an effort to attract more professional and result oriented institutions into the EDP fold, the Bank has made the scheme more performance oriented by extending reasonable support towards training cost and encouraging the institutions to earn performance fee by grounding units.

ANNEXURE 26.1*

MERCHANT BANKING

“Merchant banks are issue houses rendering such services to industrial projects or corporate units as floatation of new ventures and new companies, preparation, planning and execution of new projects, consultancy and advice in technical, financial, managerial and organisational fields. A number of other functions such as restructuring, revaluation of assets, mergers, takeovers, acquisitions, etc. are also undertaken by them.

A major function of merchant banking is the issue management. The issue can be public issue through prospectus, offer of sale, or private placements, etc.”¹

According to a notification of the Ministry of Finance, a merchant banker is any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to the securities as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management”.

Merchant Banking Services

According to the SEBI Guidelines For Merchant Bankers, the authorised merchant banking activities are the following.

1. Issue management, which will *inter-alia* consist of preparation of prospectus and other information relating to the issues, determining financing structure, tie-up of financiers and final allotment and/or refund of subscription.
2. Corporate adviser services relating to the issue.
3. Underwriting.
4. Portfolio management services.
5. Managers, consultants or advisers in the issue.

The list of merchant banking services provided by the IDBI, given below, would give an idea of the services rendered by merchant banks.

Corporate Finance

- Project Advisory Services which include:
 - Review of feasibility, key contracts/structures
 - Advice on key project contracts
 - Identifying foreign partners/investors and assistance in evaluation and negotiations
 - Structuring financing plan and advise on financing options
 - Financial modelling and sensitivity analysis
 - Risk analysis and risk allocation
 - Preparation of project information memorandum
 - Documentation agency services
 - Structuring of credit enhancement mechanism

* This Annexure is intended only to explain / illustrate the meaning of *Merchant Banking, Mutual Funds* and *Venture Capital*. Those who are interested in the details are advised to refer other publications like *Manual of Indian Capital Market* by Sanjiv Agarwal.

- Policy formulation and evaluation of infrastructure projects
- Project appraisal
- Placement of equity with banks, FIs, high net worth investors, mutual funds, institutional investors and private equity funds.
- Placement of preference shares and debentures with domestic investors
- Structuring and syndication of bought-out-deals
- Co-ordinating the financial participation of multilateral agencies and international banks
- Arranging buyers' line of credit/suppliers' line of credit/guarantee assistance
- Loan syndication – Rupee & foreign currency from Indian Financial Institutions, banks, multilateral agencies, foreign commercial banks, export credit agencies
- Syndication of structured debt instruments, ECBs and Commercial Papers
- Advice on resolution of inter-creditor issues of offshore lenders (including ECA lenders) and domestic lenders
- Advice on commercial issues of loan/Guarantee documentation, Sponsor documentation, Security documentation

Issue Management

- Management of public/rights issues of equity, preference shares, convertible, partly convertible and non-convertible debentures including:
 - Structuring of instruments
 - Preparation of offer document
 - Obtaining statutory and other clearances required in connection with the issue
 - Tying up underwriting and placement through book-building process
 - Assistance in selection of bankers, brokers, registrars, printers, advertisement agency and other intermediaries
 - Marketing of the issue
 - Post-issue activities including finalisation of basis of allotment/refund and listing
 - Advice on the management of Euro issues
 - Advice on Buyback of securities and management of tender offer
 - Open Offer Management under SEBI Takeover Code

Corporate Advisory Services

- Equity and Business Valuation
- Advice on Mergers, Acquisition and Divestitures
- Advice on Business and financial Restructuring
- Privatisation advice
- Restructuring/rehabilitation advice for weak units
- Advice on Asset Sale and hive-offs

Merchant Banking in India

Merchant banking was introduced in India by foreign banks. It was only in the 1970s that Indian banks entered this field.

The following are some of the reasons why specialist merchant banks have a crucial role to play in India.²

1. Growing industrialisation and increase of technologically advanced industries.
2. Need for encouragement of small and medium industrialists, who require specialist services.
3. Growing complexity in rules and procedures of the Government.
4. Need to develop backward areas and states which require different criteria.

Institutions engaged in merchant banking, either by themselves or through subsidiaries, in India fall in to the following categories.

- Financial institutions like IDBI, IFCI and ICICI.
- Commercial banks – Foreign and Indian (public sector and Private)
- Private merchant bankers like DSP, Kotak etc.

Any person or body proposing to engage in the business of merchant banking would need authorisation by the (SEBI) in their prescribed format.

All merchant bankers are expected to perform with high standards of integrity and fairness in all their dealings. A code of conduct for merchant bankers will be prescribed by SEBI. Within this context, SEBI's authorisation criteria would take into account mainly the following: Professional competence; personnel, their adequacy and quality, and other infrastructure; capital adequacy; and past track record, experience, general reputation and fairness in all their transactions.

MUTUAL FUNDS

A Mutual fund is an agency that mobilizes investible resources of, mostly, individuals and invests them in a diversified portfolio of financial assets so as to balance maximization of returns and minimization of risks.

Small investors, particularly, may not have the knowledge, expertise and sufficiency of resources to make prudent, profitable and risk spreading investments. The mutual funds with their intimate knowledge of the investment opportunities and analytical and fund management expertise are therefore, expected to be of great service to the small investors. As James L Pierce observes, a mutual fund, thus, is "a non-depository, non banking financial intermediary which acts as an important vehicle for bringing wealth holders and deficit units together indirectly."

According to the SEBI Regulations of Mutual Funds brought out in 1993, a mutual fund is "a fund established in the form of a trust by a sponsor, to raise monies by the trustees by the sale of units to the public, under one or more schemes, for investing in securities in accordance with these regulations." In other words, a Mutual Fund (called Unit Trusts in the UK) collects money from the public by sale of units and invests them in financial assets like shares, bonds etc.

Traditionally, the *open ended* type of mutual fund has been very popular. In the case of the open ended fund, an investor can buy or redeem (i.e. sell back) units any time. Open ended schemes, thus, combine, theoretically, return on investment and almost perfect liquidity. In a *close ended* mutual fund, the corpus of the fund and the duration of the fund are pre-determined. An investor cannot redeem his investment directly from the Fund before the scheme matures. They, may however, be traded in the capital market.

The net asset value (NAV) of a fund indicates the worth of the investments made of the fund. The NAV per unit is computed by dividing the net assets of the fund by the number of units outstanding. A NAV more than the face value indicates capital appreciation and vice versa.

The public sector Unit Trust of India (UTI), established in 1964 is the first Mutual Fund in India. The main objective of the UTI is to mobilise the savings of the community and channelise them into

productive corporate investments so as to provide for growth and diversification of the economy. It is at the same time intended to provide the facility for an equity type of investment to the large and growing number of investors in the small and medium income groups. For small investors, the UTI has been expected to offer the advantages of (i) considerably reduced risk since funds are invested in a balanced and well distribute portfolio; (ii) the benefit of expert management; (iii) a steady income; and (iv) liquidity.

The UTI has grown substantially, launching attractive products suitable to different segments. Its first product, the US-64, an open ended scheme of the UTI, was very popular because of the fairly high returns and liquidity it offered. However, in 2000 it served a severe blow to the confidence of the small investors, particularly, not only in the UTI but also in the public sector financial institutions and the Government itself when it suspended for some time the repurchase of the Units due to financial crises and the fall in the NAV below the face value. Investments, allegedly, with vested interests and mismanagement led to such a flight.

The Amendment to the Banking Regulation Act in 1993, which empowered the Reserve Bank to permit banks to carry on non-banking businesses such as leasing, mutual funds etc. gave a fillip to the growth of Mutual Funds. Besides banks, a number of non-banking financial intermediaries (NBFIs), like Jardine Fleming, Birla Mutual Fund, Alliance Mutual Fund, Kothari Pioneer Mutual Fund etc. are also in the Mutual Fund business in India now.

Resources mobilised by mutual funds (UTI was the only mutual fund until 1987-88) grew at a steady rate until 1992-93; since then they showed some variations. Resources mobilised by mutual funds which was just 0.04 per cent of GDP during the period 1970-71 to 1974-75 increased to 1.59 per cent during 1990-91 to 1992-93. Total resources mobilised as proportion of GDP declined to 1.12 per cent by 1994-95 but nevertheless remained. This ratio stood at 1.13 per cent during 1999-2000.

VENTURE CAPITAL

Development of entrepreneurship demands combination of three vital factors:

- Innovative ideas
- Competency in project preparation and implementation
- Project financing

There may be a many people with good project ideas. These ideas, however, do not get translated in to commercially viable practical projects in the absence of the other two factors. Many young technocrats and others with innovative ideas suffer because of this. It is in this context that the Venture Capital can play a crucial role in the industrial development by providing the two missing links.

Venture Capital (VC) has played an important role in the industrial development of USA. The development of the Silicon Valley, in particular, owes a lot the VCs.

Innovative projects, albeit potentially very profitable, are often very risky and, therefore, financiers tend to shy away from such projects. As the VC firms venture into such risky projects, venture capital is also known as *risk capital*.

Venture capital activities have been pioneered in India by AIFIs like ICICI, IDBI and IFCI by setting up Venture Capital divisions or subsidiaries. Venture capital funds have been established by State level institutions, commercial banks and private forms also.

The details of the Venture Capital Fund of the IDBI given in Box 26.2 would give some exposure to the characteristics of VC.

The labour environment is an important determinant of business location and functioning. Factors such as the availability of labour of different skill levels, productivity and cost of labour, flexibility of labour, attitude and behaviour patterns of labour, nature of trade unionism, labour legislation and the effectiveness of their implementation etc. are important to business. Labour standards, which encompass issues such as child labour, working conditions and labour welfare, wage levels, labour legislation and their implementation, have emerged as an important concern in international business.

Labour legislation is a very important factor that shapes the labour environment. Protection of the interests of labour was long held as one of the important responsibilities of the State in the democratic countries. However, some recent developments indicate that the Government should intervene to prevent the legitimate rights of consumers, the general public, and employers from being denied by the militant might of organised labour. But many a time there is a tendency to ignore the latter aspect. In the global environment, the cost of such negligence could very high.

The *Directive Principles* in the Constitution of India places a lot responsibility on the State in respect of labour. The Constitution directs the State to provide work to every citizen who is willing and able to work. Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief. Article 43, which is described as the *Magna Carta* of the Indian worker, imposes upon the state the obligation, inter alia, to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, full enjoyment of leisure, and social and cultural opportunities.

Labour legislation is regarded as "a most dynamic institution. From a simple restraint on child labour in 1881, labour legislation in India has become an important agency of the State for the regulation of working and living conditions of workers, as indicated by the rising number and variety of labour Acts. This rapid development of labour legislation is an integral part of the modern social organisation."¹ "Like slave labour in ancient times, serf relics of all of which are still to be found in many backward countries, free labour is the direct result of growing industrialism and democracy, and labour legislation is the institution through which the State protects the interest, ameliorates the moral and material conditions, of the working classes."²

Labour is an item included in the Concurrent List in the Constitution, which implies that both Union and State governments can legislate on this matter. However, State legislature cannot enact

The important legislative provisions with a bearing on the employment of children relate to minimum age of employment, working hours, health certification, employment on dangerous machines and the like. The Factories Act, 1948; the Mines Act, 1952; the Plantation Labour Act, 1951; the Employment of Children Act, 1938; the Shops and Establishments Act of various States, etc. regulate the minimum age of employment. To ensure the physical fitness of children, the Factories Act provides that children up to the age of 18 will be employed on the production of a health certificate which will be valid for one year only. The Factories Act, the Mines Act, the Plantation Labour Act, the Shops and Establishments Acts, etc., prescribe the maximum hours of work allowed to be assigned to children.

The legislative provisions for the protection and welfare of women workers are largely inspired by the ILO Conventions on:

1. Maternity Protection, 1919
2. Night Work, 1919
3. Underground Work, 1935
4. Equal Remuneration, 1951
5. Discrimination (Employment and Occupation), 1958

However, the actual wording of the enactments in India in which the protection is written draws heavily on the Indian experience. Maternity benefits are provided under the Employees' State Insurance Act and the Maternity Benefit Act, 1961. The other legislative measure for women relates to certain restriction on the lifting of weight, employment in hazardous occupations, provision for separate toilet facilities, rest rooms, creches, etc.

Laws Relating to Specific Industries

Factories and Workshops: The Factories Act, 1948, which provides for the licensing, registration and inspection of factories, is meant to protect the interests of workmen, to ensure for them better conditions of work, and to prevent the employers from taking advantage of their weak bargaining power. It regulates the conditions of the employment of young persons and females, and provides for safe and healthy working conditions inside the factories.

The Industrial Employment (Standing) Orders Act, 1946, defines the rights and obligations of the employer and the workers in respect of recruitment, discharge, disciplinary action, holiday and leave, etc., with a view to reducing the friction between management and workers in industrial undertakings. The Act provides for the framing of standing orders in all industrial establishments (including factories, mines, railways, docks and plantations) employing 100 or more workers.

Mines and Minerals: According to the definition of the term "mine" under the Indian Mines (Amendment) Act, 1959, mine includes all borings, bore holes, oil wells, shafts, quarries, open cast workings, railways, aerial ropeways, conveyors, tramways, slidings, workshops, power stations; etc, or any premises connected with mining operations and near or in the mining area. The Mines Act prohibits the employment of persons in a mine when its owner fails to comply with the notice of the Mines Inspectorate for remedying any matter connected with a mine which is dangerous to human life, limb or safety.

The Coal Mines (Conservation and Safety) Act, 1952, authorises the Central Government to take such measures as it deems proper or necessary for the maintenance of safety in coal mines or for the conservation of coal.

Other important laws in the field of mines and minerals are the Iron Ore Mines Labour Welfare Cess Act, 1961, Coal Mines Labour Fund Act, 1947, and Coal Mines Provident Fund and Bonus Schemes Act, 1948.

Plantations: The Plantation Labour Act, 1951, regulates the conditions of work of plantation workers and provides for their welfare. The Act, which applies to tea, coffee, rubber and cinchona plantations, may be applied by State Governments to other plantations also. The Act, amended in 1981, provided for compulsory registration of plantations.

Transport: The working and service conditions of the employees of different transports are regulated by various laws, such as the Indian Railways Act, 1930; the Indian Merchant Shipping Act, 1973; the Indian Dock Labourers' Act, 1934; the Dock Workers (Regulation of Employment) Act, 1984; Marketing of Heavy Packages Act, 1951; Motor Vehicles Act, 1939; and Motor Transport Workers Act, 1961.

Shops and Commercial Establishments: State Acts on shops and establishments broadly cover wage earners employed in shops, commercial establishments (including insurance and banking firms), restaurants, theatres, cinemas, and other places of public amusement. These Acts contain provisions related to opening and closing hours, hours of work, rest intervals, spread over, overtime rates and weekly holidays.

Contract Labour: Contract labour is generally employed for casual, seasonal or irregular work. The Contract Labour (Regulations and Abolition) Act, 1970, seeks to abolish the contract labour system in perennial operations and regulates it where the system cannot be abolished. The Act is implemented both by the Centre and States. In the Central sphere, contract labour has been prohibited for certain specified operations in coal, iron ore, limestone, dolomite and manganese mines, and in buildings owned or occupied by establishments under the Central Government.

The Act applies to every establishment which employs 20 or more workmen, and to every contractor who employs not less than 20 workers.

In his Budget (2001-2002) speech, the Union Finance Minister observed that rigidities inherent in the existing legislation regarding Contract labour inhibit growth in employment in many service activities. Section 10 of the existing Act envisages prohibition of contract labour in work/process/operation if the conditions set therein like perennial nature of job etc. are fulfilled. Section 10 enables the contract labour engaged in prohibited jobs to become direct employees of the principal employer. To overcome this difficulty and at the same time to ensure the protection labour, it is proposed to bring an amendment to facilitate outsourcing of activities without any restrictions as well as to offer contract appointments. It would not differentiate between core and non-core activities, and provide protection to labour engaged in outsourcing activities in terms of their health, safety, welfare, social security, etc. It would also provide for larger compensation based on last drawn wages as retrenchment compensation for every year of service. This proposal raised a lot of opposition.

Construction Labour: To a limited extent, the Workmen's Compensation Act, 1923; the Minimum Wages Act 1948; the Employees State Insurance Act, 1948; the Contract Labour (Abolition and Regulation) Act, 1970, and Standing Instructions relating to casual labour applicable to the employing agencies apply to construction labour as well. It has, however, been noticed that these legislative enactments and standing orders do not cover safety at work and social security.

The importance of workers' education has been duly recognised by the Government. The Central Board for Workers' Education (CBWE), set up in 1958, is a tripartite body, consisting of representatives of Central and State Governments organizations of employers and workers and educationists. It is a registered society for the implementation of workers' education schemes with the following objectives.

1. To equip all sections of workers for their intelligent participation in the socio-economic development of the nation.
2. To promote among workers a greater understanding of the problems of their socio-economic environment, their responsibilities towards family and their rights and obligations as citizens, as workers in industry and as members and officials of their trade unions.
3. To develop leadership from among the rank and file of workers themselves.
4. To create strong, united and more responsible trade unions through enlightened members and better trained officials.
5. To strengthen democratic processes and traditions in the trade union movement.
6. To enable trade unions themselves to take over ultimately the functions of workers' education.

The CBWE, a tripartite society registered under the Societies Registration Act, 1860, implements the workers' education programmes at national, regional and unit/village levels. The focus of the education programmes is to create awareness among all sections of the working class about their rights and obligations for their effective participation in the socio-economic development of the country. The Board undertakes training programmes which cover workers from organised, unorganised, rural and informal sectors. Supervisory and managerial cadres are also covered through joint education programmes.

With headquarters at Nagpur, the Board has a network of regional and sub-regional centres spread throughout the country. It also has four zonal directorates at Delhi, Calcutta, Mumbai and Chennai monitor the activities of the regional centres. The Indian Institute of Workers Education at Mumbai was set up by the Board to conduct national level training programmes.

The V.V. Giri National Labour Institute (earlier known as National Labour Institute), an autonomous body under the Ministry of Labour, Government of India, is engaged in research pertaining to labour and training of labour administrators, trade unions, public-sector managers and other government functionaries concerned with labour. The Institute now pays attention on child labour also.

The National Safety Council was set up in March 1966. Its main function is to conduct seminars, organise film shows in factories, and distribute posters on the subject of safety.

Various schemes for the grant of National Safety Awards to factories, covered by the Factories Act, 1948, and ports have been instituted for good safety records. Each scheme consists of cash prizes and certificates of merit.

SOCIAL SECURITY

Modern Welfare States are expected to take care of the citizens from the "cradle to the grave". Resource constraints, however, do not permit many of them to completely accomplish this task. They, therefore, endeavour to look after the welfare of the individuals according to their capability. The Constitution of India, for instance, lays down that the State shall, within the limits of its economic

capacity and development, make effective provisions for securing public assistance in the event of unemployment, old age, sickness, and disablement.

As the International Labour Organisation (ILO) states, social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them. It covers, through an appropriate organisation, certain risks to which a person is exposed. These risks are such that an individual of small means cannot effectively provide for them by his own ability or foresight alone or even private combination with his colleagues.⁶

In the words of V.V. Giri, "social security measures have a two-fold significance for every developing country. They constitute an important step towards the goal of a Welfare State, by improving living and working conditions and affording the people protection against the uncertainties of the future. These measures are also important for every industrialisation plan, for not only do they enable workers to become more efficient but they also reduce the wastage arising from industrial disputes. The man-days lost on account of sickness and disability also constitute a heavy drain on the slender resources of the worker and on the industrial output of the country. Lack of social security impedes production and prevents the formation of a stable and efficient labour force. Social security is, therefore, not a burden, but a wise investment in the long run."⁷

Giri observes that "in modern times, the active participation of the State in social security has resulted in two distinct methods of solving the problem. The first method is that of social assistance, where the State or the local bodies step in to ameliorate the distress caused by these contingencies to the population in general. In this method, there are generally no contributory conditions. In concrete terms, social assistance includes non-contributory benefits towards the maintenance of children, mothers, invalids, the aged, the disabled and others. It also includes unemployment assistance. Social assistance can, therefore, be defined as a device for providing benefits, like exemption from taxation or general revenues, to persons of small means in amounts sufficient to meet a minimum standard of needs. The second method is that of social insurance, to which the persons concerned, their employers and the State, make contributions and mainly out of these contributions, benefits necessary to prevent want during unemployment, sickness, old age and other contingencies are given as a right, subject to certain qualifying conditions. In other words, social insurance can be defined as a device to provide benefits as of right for persons of small earnings, in amounts which combine the contributive efforts of the insured with subsidies from the employer and the State.

"The social insurance approach has grown from the system of friendly societies, which developed in Western countries and particularly in the United Kingdom during the last three centuries. The social assistance approach is the outcome of the Poor Laws, which also developed in these countries at the same time. In fact, in the United Kingdom, where social security is available to the entire population from the cradle to the grave, the main approach is that of social insurance, and persons are entitled to benefits by virtue of compulsory contributions. Those who are qualified or can no longer get such benefits, are looked after by measures of social assistance.

"Present-day developments show that social insurance and social assistance are moving closer to one another. In fact, they even meet and combine as, *for example*, in New Zealand and Denmark, where it is difficult to say whether social insurance or social assistance predominates. Such countries have adopted a national system of social securities.

"To be equitable, measures of social assistance should provide for the population as a whole. The extent to which this can be done will depend on the level of national income; and in a developing

To secure co-operation of all levels, regional boards and local committees have been set up, on which are representatives of labour, employers, State Governments and the Corporation. In order to settle disputes speedily, the Act provides for the setting up of Employees' Insurance Courts by State Governments.

Provident Fund

While provident fund schemes were common in some government employments and with enlightened employers, the first legislative measure to cover industrial workers was the Coal Mines Provident Fund and Bonus Schemes Act, 1948. Though in the initial years the Act ran into opposition, both from employers and workers, after some time the misgivings on both sides were dispelled, and the Act got off to a good start.

Encouraged by the success of the Coal Mines Provident Fund Scheme and faced with the persistent demand made to the Central Government for the extension of similar benefits to workers employed in other industries, the Employees' Provident Fund and Miscellaneous Provisions Act was passed in 1952. (Since 1971, it is known as the Provident Funds and Family Pension Fund Act).

The Act provides insurance against old age, retirement, discharge, retrenchment or death of the workers. It is against these risks that the schemes guarantee the necessary protection to workers and their dependants. The Act and the scheme extend to the whole of India. It applies to factories and establishments falling under any notified industry employing 20 or more persons.

To become eligible for membership of the Fund, a worker must have completed one year's continuous service, or worked for 240 days during a period of 12 months.

The employees have to contribute at the rate 6¼ per cent of the basic wage, dearness allowance and retaining allowances, if any, including the cash value of food concessions given to them. The employers too, have to contribute at the same rate. Workers, if they so desire, can contribute more, subject to a maximum of 8¼ percent. With effect from January 1, 1963, the statutory rate of provident fund contribution has been raised to 8 per cent in respect of certain industries/classes of establishments employing 50 or more persons in a few specified industries.

The scheme is administered by a Central Board of Trustees, consisting of the representatives of the Central and State Governments, employers and workers. There are a number of regional offices, each under a regional commissioner. There are also regional committees, whose function is to advise the Central Board.

Lay-off and Retrenchment Compensation

The Industrial Disputes Act of 1947 was amended several times, provide for the payment of compensation in the event of lay-off, retrenchment, closure and transfer of undertakings.

Workers, employed in any factory, mine or plantation having an average daily employment of 50 or more where the work done is not of an intermittent or seasonal character, are entitled to compensation for lay-off, provided that they have put in the prescribed qualifying service in the preceding twelve calendar months.

A workman laid off is entitled to get compensation according to the following rules:

1. A workman laid off will be paid compensation by the employer for all the days during which he is so laid off except for such weekly holidays as may intervene.

2. The rate of compensation shall be equal to fifty per cent of the total basic wages and dearness allowance that would have been payable to him had he not been so laid off.
3. A workman laid off shall be entitled to compensation only when he is not a badli workman or a casual workman, Badli workman means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment. A badli workman shall cease to be regarded as such on the completion of one year of continuous service in the establishment.

Unlike the lay-off provision, the benefits of retrenchment compensation are applicable to all the workmen covered by the Act. No workman, who has been in continuous service in any industry for not less than one year, can be retrenched by an employer until one month's notice (or wages in lieu thereof) has been given to him in writing, indicating the reasons for the retrenchment. If the establishment employs not less than one hundred workers, the notice period shall be three months or wages for the period of notice. Retrenchment compensation is payable at the rate of 15 days' average pay for every completed year of service or any part thereof in excess of six months. In the event of bonafide closures or transfer of undertakings, compensation shall be payable to workers who loose employment in consequence of such closure or transfer. In the event of a change of ownership, such workers as have been re-employed on the terms and conditions which are not less favourable to them shall not be entitled to compensation.

Gratuity Scheme

The Payment of Gratuity Act, 1972 is applicable to factories, mines, oil fields, plantations, ports, railways, motor transport undertakings, companies, shops and other establishments. The Act provides for payment of gratuity at the rate of 15 days' wages for each completed year of service subject to a maximum of Rs. 3,50,000. In the case of seasonal establishment, gratuity is payable at the rate of seven days' wages for each season. The Act does not affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

In case of misconduct of the employee, which involves financial loss to the management, an amount equal to the loss directly suffered by the employer by reason of such misconduct is liable to be forfeited from the gratuity due to the employee. The Act also provides for the punishment of the employer who fails to pay gratuity to an employee. Thus, gratuity has now become a statutory service condition, and its quantum has no bearing on the size of the profit of the organisation or similar extraneous consideration.

Employees' Pension Scheme

This scheme was introduced for the industrial workers with effect from 16 November 1995. Under the Scheme, pension at the rate of 50 per cent pay is payable to the employees on retirement/ super-annuation on completion of 33 years' contributory service. A minimum 10 years' service is required for entitlement to pension. Depending upon the salary and service of the employee at the time of death the scheme also provides for grant of family pension ranging from Rs. 450 per month to Rs. 2,500 per month. In addition, children-pension at the rate of 25 per cent of widow pension subject to a minimum of Rs. 115 per child is also payable up to two children.

The schemes are financed by diverting a portion of the employers' and employees' contribution to the Employees' Provident Funds with an additional contribution by the Central Government.

Board of Conciliation

The I.D. Act provides that the appropriate Government may, as occasion arises, constitute a Board of Conciliation to promote the settlement of an industrial dispute.

The Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute, and any person appointed to represent a party shall be appointed on the recommendation of that party. However, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

Where a dispute has been referred to a Board, it shall, without delay, investigate the dispute do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

If the settlement of a dispute or of any of the matters in dispute is arrived; the Board shall send a report thereof to the appropriate Government, together with a memorandum of the settlement signed by the parties to the dispute.

If no such settlement is arrived at, the Board shall report the reasons on account of which, in its opinion, settlement could not be arrived at its recommendations for the termination of the dispute. If, on the receipt of such a report, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal, it shall record and communicate the parties concerned its reasons thereof.

Courts of Inquiry

The I.D. Act provides that the appropriate Government may, as occasion arises, constitute a Court of Inquiry to inquire into any matter appearing to be connected with or relevant to an industrial dispute.

A court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

Labour Courts

The appropriate Government may constitute one or more Labour Courts to adjudicate industrial disputes relating to any matter specified in the Second Schedule and to perform such other functions as may be assigned to them under the Act. A Labour Court shall consist of one person only to be appointed by the appropriate Government. (The Second Schedule covers matters such as issues related to Standing Orders, discharge or dismissal of workers, illegality or otherwise of strikes and lockouts withdrawal of any customary benefit).

Tribunals

The appropriate Government may constitute one or more Industrial Tribunals to adjudicate an industrial dispute relating to any matter, whether specified in the Second Schedule or Third Schedule, and to perform such other functions as may be assigned to them under this Act.

A Tribunal shall consist of one person only to be appointed by the appropriate Government. (The Third Schedule covers matters such as wages, bonus, allowances and certain other benefits, certain working conditions, discipline, rationalization, retrenchment and closure of establishment).

National Tribunals

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals to adjudicate an industrial dispute which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. A National Tribunal shall consist of one person only to be appointed by the Central Government. The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceedings before it.

Duties of Labour Courts, Tribunals and National Tribunals: Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall within the period specified in the order referring such industrial dispute, or within the further period extended under the provisions of the Act, submit its award to the appropriate Government.

Reference and Awards

Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time refer the dispute or any matter appearing to be connected with it to the concerned authority.

Where an industrial dispute has been so referred to the concerned authority, the appropriate Government may prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the day of reference.

There is also a provision in the Act for voluntary reference of disputes to arbitration if the employer and the workman agree to that.

The award of the concerned authority on the dispute shall be in writing and shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. (*Award* "means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Courts Industrial Tribunal and National Industrial Tribunal and includes an arbitration award" made under this Act).

An award shall become enforceable on the expiry of thirty days from the date of its publication. However, the appropriate Government may declare that the award shall not become enforceable on the expiry of the said period of thirty days if it thinks that it will be expedient so to do on public grounds affecting national economy or social justice. Where such a declaration has been made, the appropriate Government may, within ninety days from the date of the publication of the award, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award, together with a copy of the order, before the State legislature or Parliament, as the case may be.

breach of settlement or award, disclosing confidential information, closure without notice and other offences.

The Act also lays down that no employer or workmen or a trade union shall commit any unfair labour practice.

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9. A.D. Butler, *Labour Economics and Labour Institutions* (Cited by Nagaraju, *ibid.*, p. 26).
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ANNEXURE 29.1**SCHEDULES TO THE INDUSTRIAL DISPUTES ACT, 1947****THE FIRST SCHEDULE****INDUSTRIES WHICH MAY BE DECLARED TO BE PUBLIC UTILITY SERVICES
UNDER SUB-CLAUSE (VI) OF CLAUSE (N) OF SECTION 2**

1. Transport (other than railways) for the carriage of passengers or goods, by land or water.
2. Banking.
3. Cement.
4. Coal.
5. Cotton textiles.
6. Foodstuffs.
7. Iron and Steel.
8. Defence establishments.
9. Service in hospitals and dispensaries.
10. Fire Brigade Service.
11. India Government Mints.
12. India Security Press.
13. Copper Mining.
14. Lead Mining.
15. Zinc Mining
16. Iron Ore Mining.
17. Service in any oilfield.
18. Service in the Uranium Industry.
19. Pyrites Mining Industry.
20. Security Paper Mill, Hoshangabad.
21. Service in the Bank Note Press, Dewas.
22. Phosphorite Mining.
23. Magnesite Mining.
24. Currency Note Press.
25. Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like.
26. Service in the International Airports Authority of India.
27. Industrial establishment, manufacturing or producing nuclear fuel and components, heavy water and allied chemicals, and atomic energy.

- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
 - (g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
 7. To transfer a workman mala fide from one place to another, under the guise of following management policy.
 8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
 9. To show favouritism or partiality to one set of workers regardless of merit.
 10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
 11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
 12. To recruit workman during a strike which is not an illegal strike.
 13. Failure to implement award, settlement or agreement.
 14. To indulge in acts of force or violence.
 15. To refuse to bargain collectively, in good faith with the recognised trade unions.
 16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II. On The Part Of Workmen And Trade Unions Of Workmen

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say—
 - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
 - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful, "go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
6. To stage demonstrations at the residence of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.



CHAPTER 30 TRADE UNIONS PART 3

Trade unions are very important, sometimes very critical, environment of business. While responsible trade unions would be beneficial to the workers, business and the society, irresponsible trade unions could be harmful to all.

Meaning

Under the Trade Unions Act, the expression trade union includes both employers' and workers' organisations.

According to the Indian Trade Unions Act, 1926, a "Trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers, 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." The Act does not, however, affect:

1. Any agreement between partners as to their own business.
2. Any agreement between an employer and those employed by him as to such employment.
3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

The term trade union, however, is commonly used to refer to the organisation of workers formed to protect their rights and enhance their welfare. In this chapter, the discussion is limited to the organisation of workers. According to V.V. Giri, "trade unions are voluntary organisations of workers formed to promote and protect their interests by collective action."¹ A trade union "must possess definite aims; its members must be welded together in a united front for the good of the whole group rather than for the promotion of any selfish individual interests; and it must, to be effective, take on a definite and permanent form of organisation through which it strives to accomplish its goal".²

Functions of Trade Unions

Trade unions are intended to protect the rights and enhance the welfare of the members in particular and of the working class in general. According to the National Commission on Labour (NCL), the important functions of the trade unions are:³

1. To secure for workers fair wages.
2. To safeguard security of tenure and improve conditions of service.
3. To improve opportunities for promotion and training.

4. To improve working and living conditions.
5. To provide for educational, cultural and recreational facilities.
6. To co-operate in and facilitate technological advance by broadening the understanding of workers of its underlying issues.
7. To promote identity of interests of the workers with their industry.
8. To offer responsive co-operation in improving levels of production and productivity, discipline and high standard of quality.
9. To promote individual and collective welfare.

Social Responsibilities of Trade Unions

It is not uncommon that the organised might of the trade unions holds public life to ransom as pressure tactics to serve their purpose, throwing civil rights and liberties to the winds. While the unions have the right to fight for their legitimate rights, it is high time they realised that they have no right to misuse their organised might to deny the unorganised innocent public their legitimate rights.

As the NCL observes, it is imperative that unions keep the well-being and progress of the community constantly before them even in the midst of their endeavours to help the working class. Unions have a stake in the success of the national plans for economic development, since these are formulated and implemented as much for maximising production as for distributing the product in an equitable manner. Unions have to adapt themselves to changing social needs, and rise above the divisive forces of caste, religion and language. In this context, some important social responsibilities of trade unions appear to be in the field of:⁴

1. Promotion of national integration;
2. Generally influencing the socio-economic policies of the community through active participation in their formulation at various levels; and
3. Instilling in their members a sense of responsibility towards industry and the community.

According to Giri, "the scope of trade unions should not be confined merely to the workers' demands, but should include the inculcation in the workers of a sense of discipline and responsibility, an appreciation of their moral responsibility to do a fair day's work for a fair day's wages. The unions should make every worker understand fully, first, his duties and responsibilities and then, his rights and privileges. This means that the objects of a trade union should be such as to instill in the individual worker a spirit of self-reliance, toleration and co-operation. In fact, in a society which is well set on the road to socialism and in which the workers' claim to proper wages and good working conditions receives constant attention, the worker has substantial responsibilities which he should fully understand and discharge. Socialism requires the establishment of an industrial democracy, which in turn calls for discipline on the one hand and sincere and efficient work on the other."⁵

TRADE UNION MOVEMENT IN INDIA

Though the trade union movement in India had its germination in the last quarter of the nineteenth century, it was only in the first quarter of the twentieth century that the trade union movement, as it is understood today, took its birth. N.M. Lokhande, who was a factory worker in Bombay, is regarded as the founder of the organised labour movement in India.