Chapter-VI

Conclusion
And
Suggestions
Conclusion and suggestions:

Today India has entered into twenty first century where the intensity of industrialization is dense and this industrialization creates a number of social and economic problems and there is severe need of dynamic and progressive jurisprudence with this legal system. Over a 30 years span, it is observed that the research on this particular subject appears to be some times repetitive, some times over lapping is unavoidable. Any how, after making a detailed study of the changing phase of Indian labour and industrial relations in the era of globalization, even though the summary is given for each chapter of this thesis, this chapter is an endeavor in the direction to present qualitative conclusions in an over all summary of the comprehensive view of this entire study.

According to the constitutional experts, the present market-driven industry and economy reflects a constitutional drift and a paradigm shift, wherein the entire gamut of industrial jurisprudence, which accommodates the concepts of Industrial jurisprudence and labour welfare is fading out gradually. It is no doubt a danger signal to the survival of the industrial fabric.

In this backdrop, the researcher has taken up the present study which is compartmentalized into conceptual frame work of social security measures and social justice which is embodied in the industrial jurisprudence as understood at global level, the philosophical foundation of the Indian constitutional vision of social justice and its uniqueness, its application in the industrial polices in India, and the response of legislature and approach of the judiciary towards industrial policy measures.
Pandit Jawahar Lal Nehru, the chief architect of the modern Indian Industry was very particular to incorporate the democratic socialist spirit into the industrial policy framework and innovated the pattern of the mixed economy. Mrs. Indira Gandhi further strengthened it, during her first phase of Prime Minister Ship. But unfortunately, Pandit Jawahar Lal Nehru’s vision of industrial India was shattered due to the implementation failures. Basically, the research revolves round the concept of the social security, social jurisprudence and the industrial jurisprudence and the actual part played in the Indian constitution and in the Five Year Planning. Industrial jurisprudence and the judiciary balancing the position of the worker in the industry. In this context, the researcher makes an endeavor to trace out the origin and growth of the ideology by taking a brief study on the judicial perspectives over the matter.

The Pre-reform Industrial Policies cover the Industrial Policy Resolutions of 1948, 1956, 1977 and 1980 mainly guided by ideology rather than by pragmatic growth considerations. Indeed and the post-reform Industrial Policy covers the New Industrial Policy Resolution of 1991 and aftermath and the research has to go beyond the year 1991 to demystify and explain the Globalization Process with respect to Indian industrial relations. In its attempt to find out the roots of the changing effects of the industrial relations in India due to globalization the researcher has undertaken a brief historical analysis of the globalization process with respect to the Indian industrial relations. To demystify the globalization process, the post independent period as well as the pre independent period of India is taken into consideration for the research process.

The process of liberalization of national economies, reducing the role of the governments in the disinvestments of public sector units and privatizations. Anyhow, the effect is felt in terms of all social aspects of life.
In fact, the present market driven industry and the present economy really reflects on the industrial democracy as well as the Labour welfare and under these present circumstances the Welfare State is forced to contract out its well framed constitutional commitments mandated under the Directive Principle of the State Policy which is really a danger signal to the foundations of the Indian Constitution. Keeping the scene in the mind the researcher made a bare attempt to study the same at the global level of the industrial vision of the Indian scenario. Heavy and large scale industries based on the modern science and technology, proved that evils do not emanate from industrialism or adoption of the big machines but by industrialization on the capitalist lines. The immediate challenge is labour redundancy. Changes in technology, especially in communications, transport, banking and finance, industry and information have contributed to the explosion of the process of globalization.

The Trade – Privatization – Liberalization begins with the limited domain of trade – theory and ends with the wide canvas of Globalization. Tracing the origins of free trade doctrine in the classical political economy and analyzing the international trade in services gives a kind of implication that it is a trade between unequal partners for development. Liberalization and the development start from an analysis of the differences between the economies of industrialized countries and developing countries.

It is well noticed in the present context that the labour as an important actor is loosing his significance in the era of globalization, which has brought major changes in the industrial relations.
After, 1980, as a measure of avoiding the evils and to ensure industrial growth, domestic liberalization process was started by Mrs. Indira Gandhi followed by Mr. Rajiv Gandhi. Opening of the economy, devaluation of public sector, economic federalism, liberalization of licenses, regulation of unauthorized extensions of industrial activities, automatic expansion, amendment to Monopolistic Restrictive Trade Practice Act, deleting the regulations on Merger, combination and expansion and other similar measures acted as testing doses for further industrial reforms. Mrs. Indira Gandhi of 1980s standing for liberalization was quite different from Mrs. Gandhi of 1960s, committed to nationalization.

In the changing phase of the industrial relations in the era of globalization, India is forced to change its philosophy of political economy and have to open the gates for the market dictated process of the privatization, liberalization leading to the globalization in the present times.

One of the chief reasons that may be given for the need for labour reforms is that many of the labour laws are somewhat irrelevant and do not reflect the requirements of the day. It must be admitted that there is much substance in this argument. The Industrial Disputes Act, the Trade Unions Act, among many others was authored in a time period when concepts like liberalization, globalization or privatization were not even fully understood, let alone practiced. A casual glance at the years in which these legislations came into existence, makes one wonder why there has been a complete neglect in updating these important legislations.

The onset of globalization that has given a set back to the social welfare values of the industries and giving rises to strengthening of capitalist organizational structures. These kind of international developments have their impact on the National operations of our country. Under the New Industrial
Policy, 1991, socialism as a constitutional value is glossed over. It came before judicial scan in a public interest litigation filed by the NGO organization to delete “socialism from the Preamble of the Indian Constitution on the ground that it has lost its relevance in the present day context of Globalization. However, the judiciary refused to do that on the ground that “Socialism” as vision by the Indian Constitution does not have a narrow connotation referring to an economic ideology and it has a wider meaning.

Globalization is not an endpoint to be discussed and then forgotten, it is a process of continuity. The researcher through his study observes that the effect of globalization of economies on industrial relation in different countries including our India indicates that it is undergoing a paradigm shift in every country including India. Reduction in legal protection to the workers or the employees, deregulation of law, liberalization of law on issues like dismissal of workers, retrenchment, closures of industries and their social security are some of its clear indications. In India there are changes taking place. The Government is indirectly indicating that it is reducing its role as a third actor. Trade unions have become weak and employers are finding the atmosphere highly favorable to them.

The researcher observes that during the first period of the economic reform there was a kind of growth in the economy in almost all the sectors. The industrial growth has slowed down since 1996-1997 and during 2001-2002, it has come down further. In this regard, the manufacturing sector was the worst effected sector. Industrial unrest is on waning path even at the background of sweeping changes of globalization. Industrial sickness, the most threatening part of worker in industrial relations, has gone up especially during 1990s. From a
The total no. of 24,550 in 1980 sick industries have gone up to 2,52,947 in the year 2001.

The Industrial Policies which are the handmaid of the State to progress through industrialization are certainly contributing for the mechanism of redistributive justice and labour justice, eradication of poverty, unemployment. They aim with the growth for justice. Keeping the industrial workers and industrial relations, socialist ideals were no doubt made through the Industrial Licensing Policy and Nationalization of industries and Banks, various enactments of the Industrial Legislations, promotion of the Small Scale industries, village industries through various infrastructural assistance, rehabilitation of the sick units and over and above all placing the Public Sector in the commanding heights of the economy.

In fact, ILO opposed the idea of trimming of labour legislations as they adversely affect the interest of labour economy. Most of the social security rights constituting the corner stone of the labour jurisprudence are on the verge of vanishes. It was really felt that privatization and disinvestment measures are anti labour and anti socialist principles. Viewing new industrial Policy vis-a-vis the Constitutional values it is feared that the New Industrial Policy has posed a great challenge to ‘sovereignty and socialistic texture of our society, which are the fundamental features of our Indian Constitution. Under the process of the Globalization, the State sovereignty is no more absolute when it comes to economic policies.

In the era of globalization, the State is forced to contract out of its constitutional commitments mandated in the Directive principles of the State Policy. Labour jurisprudence, enshrined in the Directive Principles of the State Policy is driven to a corner in the ongoing reform process, under which the
rights of the labour for safety of tenure and collective bargaining have been liquidated to a vanishing point. Job security has been replacing by the contract labour, **hire, and fire concepts**.

In the slow and steady process of the research work, **the researcher clearly observes that the trade unions have become weak everywhere**. The situation of employment patterns from the regular and permanent to part time and temporary or causal have weakened the movement of trade unionism.

The new industrial policies are not in consonance with the constitutional philosophy underlying part IV of the Indian Constitution. Under these circumstances, it is observed that the **social benefits are eclipsed by the profit motive**. The Social Security legislations, the cornerstone of the India Labour jurisprudence are diluted with the flexibilization and contractualization of the labour.

**Industrial unrest is increasing** even at the drastic changes brought about by the process of globalization. There is a fall in cases of industrial disputes from 2,856 in the year 1980 to 656 in the year 2000. During the period 1991 to 2000, the strikes have come down from 1278 to 350. In case of lock-outs the number have come down from 532 to 306. This clearly indicates that the unions were weakened. Improper implementation of the laws with regard to lockouts by the authorities and strengthening of the managements.

In cases of closures in the industrial sectors, the courts have been insisting adherence to the rule of law in seeking permission from the appropriate
Government. In the Orissa textile case the Supreme Court affirmed the adherence to rule of law, but the recommendations of the second National commission on Labour requiring permission from the appropriate Government only in case of industries with more than 300 workers. At this juncture, it is subjecting to think and re-think as how far the Supreme Court’s verdict is going to serve the purpose.

At present, the changes are reflected in the reduction in number of strikes, the trade union density, which can be measured in the form of union memberships of the employees, is reduced to a remarkable extent clearly indicates that during the process of the globalization the trade unionism has become very weak. More specifically, in cases of strikes, Bandhs and hartals, the Courts are on their way to discipline.  

Especially in the age of globalization, a noteworthy development in the law with regard to Special provisions of Factories Act, in case of women employment is stifling the rights of women employees where the jobs are mostly in the night time in the new sectors like Information Technology have been held to be discriminatory by the High courts.

The Public control of means of production through nationalization is replaced with the process of privatization through denationalization. The socialist fabric of the Indian industry is altered to the capitalist fabric wherein Hire and fire is the norm now. Frankly speaking, the concept of planned economy is

---

3. K.S. Triveni and others v. Union of India and others 2002 Lab IC 1714.
replaced with the concept of the market economy. The protection policy is replaced with concept of the competition policy.

The Foreign Exchange Regulation Act, 1973 is substituted with the Foreign Exchange Maintenance Act, 1999. Regulation of the Private sector industries through Industries (Development and Regulation) Act, 1951 is replaced with deregulation through delicensing. The Monopolistic Restrictive Trade Practice Act, whose objective is prevention of the concentration of the economic power, is given an official good bye by scrapping the legislation from the book of the statutes. Overall, the role of the State as regulator of the industry and economy is shrunken to the level of facilitator of globalization. Taking steps towards protecting employment is an immediate obligation, deliberate, concrete and targeted steps as expeditiously and effectively as possible, in similar ways as are being taken to support the economy and industry. Such steps might include adopting legislation or the administrative machinery, or establishing action programmed and appropriate oversight bodies to stop retrenchment and lay-offs. An understanding of the progressive uplift of the economy does not justify the government’s inaction on the immediate and massive sufferings of the labour.

The researcher observes that the concern for the worker’s rights includes worries in the international community over processes of globalization and the social consequences of the trade liberalization. Fundamental rights at work—elimination of forced and compulsory labour in all its forms, right to fair wages, safe and healthy working conditions, reasonable limitation on working hours, equal pay for the women and men for work of equal value, freedom of association, and a ban on the child labour, all these are missing. Prohibition of dismissal on dubious grounds and equality of treatment in employment, are less valued. We seriously lack the basic framework of protection of the labour rights.
All through the years, the legislature has shown the affirmative responsibility, in tune with socialist oriented policy measures. It has contributed a lot to build up a wide legal network of industrial relations. The regulations of the private sector, gaining public ownership of means of production, distribution and consumption, rehabilitation and revival of the sick industries, development of the small scale, village and cottage industries, promoting labour welfare and special provisions for the regulating child and women labour.

To the best of the knowledge of the researcher when the major drift in the Industrial Policy took place in the year 1991, the legislature too attuned itself to the changing circumstances and effected amendments in the existing legislations and through in the new enactments repealing the old.

A perusal of the judicial response gives a mixed and complex picture. The Judicial records on the cases relating to Nationalization and acquisition received different treatments at the hands of the apex court during different periods. The first phase runs through 1950-71, until the passing of the 26th Amendment Act, 1971, during which the period the judiciary expressed an attitude of deference to Nationalization measures. In between the years 1971-75 the judiciary was unique and bold, earning for it far reaching reputation. The judicial glory was at its lowest ebb during emergency from mid 1975-1977 and the last phase starts from post emergency era, during which period, the court has come forward to offer constructive partnership to the legislature and the executive in implementing the nationalization measures.

In the era of new industrial policy, the judicial response is that of the same towards denationalization, disinvestment and deregulation measures and it is manifested through its recent judgments in BALCO, HPCL, and NPCL cases.
Regarding the resolution of industrial disputes, the judicial response takes three dimensions. An attitude of judicial conservatism is reflected in the verdicts of the Supreme Court during the first decade of its working i.e. from 1950-1959. From 1960-1979, the trend was that of liberal in the sense beneficial construction of welfare legislations was made which were mostly pro-labour. The period from 1980 onwards, characterizes judicial activism, which reflects the consciousness on the part of the activist judges of the Supreme Court to protect the life and liberty of the people by devising a new remedy in the form of public interest litigation. The labour rights are interpreted in terms of Art 21 of the Indian Constitution. Indian judiciary has given up the role of mechanistic jurisprudence and became the court of the poor and struggling masses deeply sensitized to the needs of have and have nots to whom justice has always been a cry in the wilderness.

India became an industrial developed country in the eyes of the world, the industrial policies, which are the handmaid of the State to progress through industrialization is contributing for the above-mentioned ingredients of the Indian industry and the industrial labour. It is clear that the new Industrial Policies does not stress snatching from the rich to pay the poor but stresses to create opportunities for the poor to rise up to the level of the rich. Nationalization and land acquisition were undertaken on a large scale but redistribution of the same to the poor did not take place in its full spirit, which resulted in state capitalism. In this way, the idea of distributive justice remains unfulfilled. Raising the level of the poor to the level of the rich is left in the air.

During the globalization era, the faulty disinvestment strategy, privatization of the social sector sans safety nets and the resultant is high salary syndrome have aggravated the socio-economic inequilibrium and contributed for
the post reform failure. In an atmosphere where basic principles of freedom of association - the right to organize and the importance of collective bargaining – have been comprehensively cornered by employers and sectors in the past decades, the strength among the workers and their organizations to stop the downsizing or in protest against anti-union discrimination has diminished considerably.

The researcher strongly feels that there is no doubt in saying that the primary accountability rests with the governments in whose jurisdiction the violations were accruing. At the same time, the companies too must be answerable for the labour rights abuses on their premises. The government’s response to the impact of the global meltdown on the economy mainly comprises additional spending interest subvention and excise duty cuts, which would prevent large-scale job losses through growth the industry and production. There is no guarantee that the enterprise owners will use these benefits to save labour and employment and will not continue to pass their burden on to the employees.

Out of the above situation, there is no doubt that the economic infrastructure developed but the social infrastructure deteriorated. Now the ideology driven Industrial policy was replaced with crisis driven Industrial Policy. After 2002, there is a shift in gears of the Industrial economy towards development driven industrial reforms. Participatory democracy is the preaching of our Indian Constitution, which really requires that the courts have to work within reasonable minimalism and not to make value judgments over the legislator’s wisdom and the executive’s policy decision.
However, it indicates the legislatures have to listen to all those who are potentially affected by the laws that might limit their fundamental values. The executives should take democratic values and principles into account while framing and implementing policies.

Judges would not be acting undemocratically by intervening when there are indications of legislative lapses and executive malafides. All the three Constitutional organs may participate in a dialogue regarding the determination of a proper balance between Constitutional principles and public values. A dynamic interaction among the branches of the governance would go along way in strengthening democratic process. A conscious and creative judicial determination, a fair and committed policy making and a timely and intelligent legislative endeavor not only minimize constitutional friction but also promote and further the objectives of the constitution.

On the crucial question, who has a last say over Constitutional values, it may be said that the legislature has a last say over bringing in necessary legislations taking into consideration the need for participatory democracy, the executive as a last say over balancing the conflicting or diverse interests in the light of Constitutional philosophy. Fortunately in spite of the New Economic Reforms and New Industrial Policy Reforms, India still remains as a Socialist State, as long as the directive principles of the State Policy, reasonable restrictions on the Fundamental Rights and preamble remains as flesh and blood of the basic charter of the nation.

The State must be under the constitutional obligation to perform its effective role ensuring the directive principles of State Policy to work. Ultimately the State’s action should be to see that the benefits of industrial growth percolates
to the grass roots, and the socio-economic injustices are mitigated through effective and committed redistribution strategies. The role of the state is even more omni-present in the new industrial climate.

During the study, the researcher finds that the legislative response and judicial approach to the Industrial Policy measures are explored. The paradigm shifts in the industrial policies in 1990s were the results of global market economy is partially true and there are other internal factors contributing for the same.

It is observed by the researcher that the judicial decisions are concurring with globalization and there is a shift in the judicial opinions during and after 90s due to its inclination to offer constructive partnership is not appearing sound. Anyhow, it cannot be generalized that judicial decisions are concurring with globalization.

The researcher observes that there is a clear cut changing phases in the industrial relations from the yester years to the present globalization era. Previously, in the recent yester years the law governing the industrial relations was such that the status of an employee was not of much consequence in the employer and employee relationship. The employer could exercise his free will unrestrained by any rule or regulation. He could not only remove an employee he could even close down the enterprise. Harassment and victimization of employees were the order of the day. In case of any disputes arising between the employer and the employee, the remedies available to the employee were very few. The Public law had no effective role to play.
This situation however could not continue until long. The twentieth century witnessed the emergence of new principles according to which could be the intervention of the State authority concerning disputes arising between the employer and employee.

The conditions of service had to be well regulated by law and the freedom of contract was reduced in its scope. However, even in the twentieth century there was no end of arbitrary powers of the employers. The employer could exercise certain powers, which he could exercise earlier. An example for such powers was the power in regard to Lay-off and Retrenchment.

These two powers belonging to the employer under the rules of the labour laws are not absolute powers and these powers are subjected to various restrictions. Legislation on this subject was enacted for the first time in the year 1953 and then necessary changes were made in the law in the year 1957 and in the year 1983. Unfortunately, the enactments being vague, inconsistent and inadequate in certain respect, disputes have arisen between the employer and the employee because of which the judiciary has to intervene in most of the cases to give its interpretation of law.

In the later phase, there is change in the industrial landscape. In this particular phase, the employee who was totally at the mercy of the employer has some safeguards against arbitrary conditions of his service, unjust removal, and inadequate wages. Unlike in the previous past where the disputes between employers and employees were determined according to the will of the employer alone, now the disputes are subject to the industrial tribunal and courts.
Actually, the protection available to the industrial worker against the lay-off and retrenchment is based upon rigid rules, which appears to be irrational and requires a change, which is justified through the constitutional right of a person to his dignity. Under the chairmanship of Mr. P.B. Gajendragadkar, the Government of India appointed Labour Commission.

The second Labour Commission was appointed in the year 1988 under the chairmanship of Mr. Ravindra Verma. The report of the second Labour Commission in 1470 pages has not been furnished to the Central Trade Union and also to the concerned officials of the Labour department. The Commission appointed six study groups to make in depth studies on the subjects which includes Review of the laws, Globalization and its impacts, Social Development, Training, Women and Child labour, Social security, Umbrella Legislation for the workers in the unorganized sectors.

The global unemployment rate also increased from 5.7 % in 2007 to 6 % in the year 2008. In this era of globalization, it is more and more important to protect the interest of workers more effectively and this issue must be given prime importance in the present era.

In the era of the Globalization, worker’s rights are at stake. Especially in the industrial relations viewing from the worker’s side, the process of the Globalization has caused damage to the worker’s community subjecting them in an insecure situation. All the reforms in the labour laws now are fear based. The worker is subjected to the fear of closure, recession etc.

---

1 Published in Hindu daily news paper dt. 27-2-2009
A sample of about 3,000 units from the organized and unorganized sectors – mining, textiles, metals, gems, automobiles, construction, transport and IT/BPO was covered in New Delhi (Delhi and NCR towns), Punjab (Jalandhar and Ludhiana), Tamil Nadu (Chennai and Tirupur), Karnataka (Bangalore and Bellary), West Bengal (Kolkata and Howrah), Jharkhand (Ranchi and Jamshedpur), Gujarat (Ahmedabad and Surat) and Maharashtra (Mumbai and Pune). The total employment in all the sectors covered by the survey went down from 16.2 million in September, 2008 to 15.7 million in December, 2008, resulting in job losses for about half a million people. The exporting units have had a higher decline in the employment. It was 8.43% in Gems and Jewellery, followed by Metals (2.6%), textiles (1.29%), Automobiles (1.26%) and Mining (0.32%). The survey clearly reveals that the overall decline among the contract workers was higher.

Government’s own revelation at the 42nd Indian Labour Conference held at New Delhi on 20th and 21st of February, 2009 (the smaller units were not covered by the survey and also the Tourism, financial and construction sectors which have also been severely affected by the crises—these were also not included in the survey report here). Going by the various credible projections, the labour misery will certainly continue. The economic crisis is expected to lead to painful cuts in the wages of millions of workers worldwide in the coming years, which includes the Asian countries like India. It predicts that the slow or negative economic growth, combined with highly volatile food and energy prices, will erode the real wages of the world’s 1.5 billion wage earners, particularly the low-

---

1. According to the global wage report 2008-09 published by the International Labour Office (ILO)
wage and poorer ones. Between 1995-2007, for each one percent decline in GDP per capita, average wages fell even further by 1.55 percentage points.

The researcher observes that one of the impacts of the globalization is that it downsized the organized sector and pushed many into unorganized sector. The examination of various provisions of the Industrial Disputes Act with reference to the judicial decisions has shown that the Act is of great help to the industries than the employees, where the employer of the industry can exercise his power of Lay-off and retrenchment on various grounds and escape the liability before the law.

The researcher in his findings noted that there are various instances to show that the law is more useful for the owner rather than the worker. The provisions relating to Lay-off and retrenchment however are applicable to, factories as defined in the Factories Act, 1948, to Mines as defined in Mines Act, 1952 and the Plantations as defined in the Plantation Act, 1951. Moreover, these should have minimum of 50 workers employed therein and that such establishments are of piecemeal character performing work intermittently. The fact is that, under the Industrial Disputes Act, in order to get protection, the workmen must be in ‘continuous Service’ for a period of one year, or six months. This continuity may be interrupted on account of authorized leave, sickness, accidents, strikes or lock-outs. So naturally, this type of conditions will be beneficial to the employer.

Under the New Economic Policies, 1991 envisaged a fund (National Renewal Fund) to offset the effects of liberalization In case of loss of employment, alternative employment, training and skill development might be provided with help of the fund. Unfortunately, the fund is utilized up to an extent of 90% for VRS (Voluntary Retirement Schemes) to retire over lakhs of Public Sector Enterprise employees.
The definition of Lay-off in Sec 2 (KKK) reveals that the power of Lay-off refers to certain situations like shortage of power, coal, raw material or breakdown of machinery or natural calamity in which the employer fails to give employment or refuses to give employment to the worker.

The Lay-off compensation is not applicable to the Beedi-workmen or causal workers. This compensation is not extended to the employee who due to unavoidable circumstances or due to compelling circumstances accepts a kind of alternative employment in the same establishment.

The compensatory safe guards are not available when the lay-off is for more than 45 days or when the worker is not in a continuous period of service for one year or when the worker is terminated due to loss of confidence, voluntary abandonment of the service or continuous ill-health or incapacity to work in the industrial establishment.

The compensation provided to the workers laid-off is however not sufficient, some kind of enhancement is warranted in many cases. The constitutional philosophy of India always exhibits that it always wants to provide protection to the life and personal liberty of persons through just, fair and reasonable means.

The meaning of the word ‘life’ always gives the expression that it is not only a mere existence of the human being like that of an animal but the real means of real existence of life in the society in the manner by which it can be comfortably enjoyed in a reasonable manner or else the very safeguard guaranteed to the individual under the constitution of India under Article 21 is going to be affected. Article 14 of the Indian constitution includes the right to dignity and fair
treatment and any deprivation of the means of the employment affecting the
dignity and status of a person is nothing but the contravention of the Indian
Constitution. Even the law has imposed certain restrictions on the powers of the
employers in respect of lay-off and retrenchment but such were confined to some
specified situations. Conditions of continuous service, health records were certain
points to be remembered in this case. Under the Industrial law there are several
limitations hedged in on the fulfillment of which the worker is entitled to the
protection. The compensation can be paid to the worker in case of retrenchment
only when such retrenchment is made without any justification. In fact, there are
some categories of workers employed in certain establishment who by the orders
of the court are treated as workers but actually, they are not entitled to certain
benefits of the provisions of the Industrial Disputes Act, 1947 as they are
guaranteed to the certain industrial workers only.

Under the Industrial law, the law relating to lay-off and retrenchment
confines to the number of employees working in the establishment and the
number of the days for which a worker should work in the industrial unit and this
is the determining factor by which the worker is going to be benefited or not
under the law.

Adding to this situation, in the globalization era, there are vast changes in
the manufacturing sectors of the industries. The growth of the manufacturing was
at 11.5 % in the year 1993-1994, 13.2 % in the year 1994-1995, 15.5 % in the
year 1995-1996. But this has fallen down to 8.1 % in the year 1996-1997, 3.4 %
in the year 1997-1998 and 3.9 % in the year 1998-1999. Computerization has
brought a sea change, and the latest changes in the employment pattern like out

1 Table 4.14 at p.223 of 2nd NLC, 2002.
sourcing has given strong support and strength to the employer thereby making the industrial worker weak with regards to his existence in the industry.

The Special Economic Zones are no doubt focused as future growth engines. However, in terms of jobs and investments, it has shown a wide gap between what was projected and what had been achieved so far.

Of the projected employment of twenty-five lakh persons in the State, so far 61,905 persons got jobs in 40 of the 58 notified SEZs that have become operational (2.47%). Of the projected break up of 8.9 lakh and 16.82 lakh direct and indirect employment respectively, those who actually got jobs were 33,933 directly (1.3%) and 27,972 indirectly (1.1%).

As per the investment point of view, the projected amount is Rs. 40,000 crore. But the SEZs in A.P could attract Rs. 5,470 crore (13%). All the SEZs are in the very close to the towns and ports having real estate activities around them. Likewise, there were inconsistencies in land acquisition also. According to the Andhra Pradesh Industrial Infrastructure Corporation (APIIC) the State has acquired 33,296 acres for 100 SEZs but the field study shows that the land acquired was more than 34,000 acres for 15 SEZs only. The land acquired could be 4 to 5 times higher than the official figure. In the official records, the Government land acquired was shown as 6,100 acres for 58 SEZs and the field study shows the acquisition of 17,500 acres for 15 SEZs. The large extent of the acquired land was not wasteland but single and two crop agricultural land assigned to the weaker sections, small and marginal farmers as well as patta land. In these 8 districts, land of 20,700 acres were acquired out of which 12,779 acres was patta land (dry land), 1,823 acres was patta wet land, 2078 acres assigned land and 4,020 acres government land. It has been stated that there were
forcible acquisition of agricultural lands in the name of public purpose. There were cases of undemocratic means of acquisitions like seizures, attachments through courts.¹

Analyzing the situation, the impact of the illegal lockout is much higher than the illegal strike. It is clear that there is double punishment for the workers community by imposing three days wages cut for every day of such illegal strike and adding to this the worker’s union which leads the illegal strike must be derecognized and debarred for two or three years is a heavy burden of penalty for the worker’s side.

Where as, in case of the illegal lock-out, the management should pay three days wages per each day of such illegal lock-out is the singular punishment imposed. Moreover, the Chief Executive Officer may take shelter that there was a note of belief (apparent/ real / imaginary sometimes) of physical threat to the management.

In these circumstances the decision of the Bombay High Court saying that, “a strike or lock-out which has commenced before the expiry of 14 days notice period, shall be illegal only for unexpired period of notice and thereafter shall be legal.” Therefore, as per this decision of the Bombay High Court it is clear that

¹ From the field study of Usha Sitalakshmi, a social activist, who had completed the study on SEZs in the State of A.P. The field study was done in 8 districts where these SEZs have been located. She obtained details from various departments, corporations, Union Ministry of Commerce and Industry, A.P. Industrial Infrastructure Corporation (APIIC) and Revenue. The field study data published in Hindu daily newspaper dated 3-3-2009.
the commission recommendation in this matter is very narrow and not serving its purpose.\textsuperscript{1}

The Commission itself has categorically stated that during the period 1991 – 2000, the number of man days lost is 210 millions where as it was 402.1 million during the period 1981-90. This situation of industrial relations clarifies that more man-days were lost in the lock-outs than in strikes.\textsuperscript{2}

Therefore, the individual intensification of the lock-outs amounted to 3 to 4 times when compared to the strikes. Lock-outs amounted for 60 % whereas strikes, 40% or less.

The above situation reveals that the recommendations of the commission with regard to illegal strikes and illegal lock-outs were not made in an effective manner, it is made without striking a balance between the two, about the nature and effect of the losses over the industry and also no justification has been done to distinguish the side effects between the two over the industrial relations.

Even though the Commission has recommended a kind of more rationalized system by granting higher compensation in case of running concerns than in the case of sick units in cases of Lay-offs and retrenchments, it requires clarity.

In case of establishments consisting of 300 workers or more and the lay-off exceeds more than one month, approval of the appropriate Government is


\textsuperscript{2} National Commission on Labour’s Report Vol. II p.27.
required. The commission analysis is misleading in this aspect as it thinks that it is automatic one.

In Case of Closures, the commission is not particular to observe that the closure is intended for retrenchments or for a reducing liability of the employer. A bona fide closure for adequate reasons is always for the reasons of unavoidable circumstances like financial or commercial compulsions or some serious management problems\(^1\).

**Summary and Suggestions:**

We seriously lack a basic framework for the protection of the labour and the labour rights. The large scale downsizing lay-offs, wage cuts and job losses should serve as a wake up call for all those who care about the rights of the majority of the Indians especially in the industrial labour. The right to work and right at work has been heavily curtailed in India in the recent past. The blame for the denial of these rights frequently lies with not only Governments but also the enterprises. Defending and promoting jobs, employment and work, worker’s rights and security should be an urgent priority.

The law as we have seen earlier provided a lot of labour welfare legislation. But in effect, there were many drawbacks in the implementation. Both the employer and employee had experienced a kind of dissatisfaction. It was thought that the law has so far been over protective to the worker’s community. The State should evolve a National Policy on Industrial Employment.

---

\(^1\) Associated Cement Companies and another Vs. Union of India and Others, 1989 ILLJ 559 Guj.
In the changed economic scenario, one could realize that unless both employer and the employee change their mind set and their attitude towards each other the industrial relations cannot be smooth. The State shall create an atmosphere of security, social, economic and political justice and decent conditions of work. The State must find out the means and ways to create a congenial atmosphere, legal as well as economic, to preserve the quality of work, job security, and to meet the satisfaction of the worker for the smooth and harmonious industrial relations. The most important failure of the economic growth is that, it did not create sufficient employment opportunities.

The legislature should give urgent priority to the basic rights of the industrial worker. Those basic rights of the industrial worker may be summarized as here under:

A. Right to work and
B. Rights at work.

Right to work is known to any one. Rights at work involves many things like —

1. Right to just and human conditions of work.
2. Right to equal remuneration for equal work.
3. Right to safe and healthy conditions of work.
4. Right to fair remuneration.
5. Right against discrimination.
6. Right to have reasonable working hours, leaves, holidays, rest, etc.

The researcher observes that in the “Changing phase of Indian Labour and Industrial Relations in the Era of Globalization”, demands a kind of greater role
of the State in making the country for a competitive world. India’s persisting poverty and the social indicators are termed causes for the concern.

Basically, from the community point of view, the interest is on cost and quality of the goods and the services without any interruption. The community, without the knowledge of the problems of the employees in the industrial relations, is irritated when employees go on strike. They are least bothered or unaware of the fatal issues of the employee’s job security, wages, working and health conditions in the industry.

The researcher feels that before they show their irritation in the way of filing a Public Interest Litigation against the employees of any industry for the sake of their own demand of uninterrupted supply of the goods and services they also must look forward to take up the responsibility to look into the matters of the employees and dedicate themselves to solve the problems of the industrial worker.

In India the legislation relating to unfair labour practices appear to be so weak. It appears that the penal provisions relating to the unfair labour practices are not so strong to deter the employers and trade unions from such practices. Steps must be taken to rectify the weakness of the legislature and to have an effective law on the subject.

Nothing can take precedence over the right to work and live with dignity. The first priority of the Government should be to create more jobs, which are of mainly permanent nature. There must be clear lengthy contract for their employment to their security.
The definition of ‘worker’ and ‘the industrial establishment’ as interpreted by the decisions of courts must be applied to the workers in the industrial establishments under the Act. They must be applied to the process of lay-off and retrenchment under the Industrial Disputes Act.

The limit of workers in the cases of lay-off and retrenchment must be removed. Not only that, the amount of compensation is to be raised to suit the situation depending on the circumstance and the case.

The restrictions subject to which the law of lay-off and retrenchment operates must be minimized and the protection to the industrial worker must be increased to the maximum level and the protection to his service must be given importance.

The system of the remedial machinery under the Industrial Disputes Act, 1947 must necessarily be changed to make it stronger to give adequate protection to the industrial worker, as there are various differences of opinions, leading to number of controversies in the judicial opinions in the cases so far on the record.

In India, the industrial laws have moved in the direction to extend help to the employers than to give adequate security to the worker. The laws and the judgments had created a kind of equilibrium between the rights of the industrial worker and the employer. But unfortunately the striking balance is not proper and the process of this maintaining the equilibrium is almost in favour of the employer as they were given much opportunity to handle the worker.

Under the Industrial Disputes Act, 1947, one could notice that the intention of the chapter V-B is certainly to discourage closures. When an industry
is closed, the entire society is going to be affected in turn the entire nation in one way. Therefore, it is not the worker or workers to undergo suffering but the society as well as State is going to be affected. Keeping this view, the legislature is framed such that the Government is to make a scrutiny in to unnecessary or unwarranted closures. Mala fide retrenchments and lay-offs.

Chapter V-B provides that permission is to be sought from the appropriate government in cases of lay-off, retrenchment and closures in the establishments employing more than 100 workers.

There is no doubt that the Act provides that the Workers are to be protected well in the event of unavoidable closures and retrenchment by way of necessary, adequate compensation and also reemployment. But unfortunately the industrialists (or the employer or the management) by showing that they claim that for the sake of meeting the present exigencies which are created by the economic conditions or to suit the changing needs of the industry, they are adjusting the labour force to a reduced levels from time to time. This downsizing the limit some times continues to the extent of even below 100 by which the employer can escape from the burden of liability and from the purview of the law where the limitation is imposed to 100 and more workers as per the Act.

In this connection, the researcher strongly believes and contends that the limitation of law applicable to only 100 workers or more must be removed. Alternatively, the Chapter V-B must be altered with such progressive attitudes. The applicability of the Chapter V-B should be extended to all the industries for not only the factories, mines and plantations etc. Closure of the industry due to industrial sickness is a dangerous threat to the industrial relations. The Reserve
Bank of India in its study on industrial sickness indicated that only very less percent of industrial sickness is attributable to the workers. (Approximately 2 %).

When the notice of closure is given by the employer for no strong reasons, the employees or their unions may be given an opportunity to make a proposal to take over the management or the ownership and in such case the employer must consider the same in the best interest of the industrial workers, economy of the country and world at large.

The researcher observes that even though the Act is providing the penal provisions for the employers contravening the provisions of the Act, like one-year imprisonment for such acts (Under Section 25 (Q) of the Act.), there are fewer employers punished under the Act so far.

The laws on lay-off and retrenchment appear to be for the protection of the worker but they are not adequate to suit the requirements of the service conditions and their lives of the worker. The present labour legislations are no doubt in need of reforms to suit the status of the worker and to give adequate protection to the worker and to his service as well as to his life.

In the industrial world, strikes are the real instruments in the hands of the industrial labour. At present the law is restraining the strikes in its purview unfortunately certain State instruments are evoked, like ESMA under which the strikes are treated to be illegal. It is always suggested that directly such coercive instruments should not be used without analyzing the situation. If needed modern principles with the consultation of the public representatives or legal or administrative forums, may be given priority to solve the issues before opting for ESMA. Under the judicial understanding is appears that there is no absolute right
to strike. In this regard, the courts may not be in a position to strike its idea to recognize whether such strike is justified or unjustified; the matter may be kept under the purview of the appropriate Industrial Relations machinery to take up the issue.

The policy of socialism has been traced out form the Indian Constitution as the ownership of the material resources of the State have to be used for the common good and that there should be no concentration of the wealth in the hands of a few persons. This clearly indicates that if any of the owners of the industrial establishments are allowed to close down their industries at their will, then the entire concept of the socialistic philosophy that our Indian Constitution is adapting is going to be a total failure and the roots of the Indian constitution is being removed. The imperative change in the global governance mechanisms, for example, the veto clause and restricted membership of the U.N. Security Council, as also the Bretton Woods institution, to enable the developing countries to have appropriate influence in such multilateral institutions.

The World Bank needs to redefine its role. The World Trade Organization (WTO) needs to develop a more democratic and more effective decision-making system. There is need for the creation of an international system of governance for transnational corporations and for migrant workers some equivalent of the WTO concept of national treatment.

The researcher observes that the concept of globalization in the present economy is a kind of borrowing abroad, which only postpones the day of reckoning and lead to an unmanageable external debt. Economic growth through the rapid industrialization though necessary, is not suitable and sufficient to improve the living conditions of people and it is noted that the quality of the fiscal
adjustment is very poor. The economics of liberalization and the politics of empowerment imply an unstable, mix fraught with risk.

The researcher always feels that the first precaution to be taken by the employer is to have a healthy respect for the workers. It is the primary need for the employer to change the mind set of the labour by educating them and finally must invest in the future mainly for their welfare and next to the benefit of the employer.

In the light of the above, the researcher strongly believes that the following steps must be taken for overcoming the present difficulties and adverse affects of the globalization over the labour and their welfare.
1. Model employee-employer relationships must be created in the industrial sectors.
2. Organizing the functioning of labour employment exchanges for the employment opportunities.
3. More funds to be allocated for the worker for the better productivity.
4. Special Joint committees of labour department and industries department to study and incorporate the changes in the labour and other laws and rules relating to the industrial worker to meet the globalization.
5. Establishment of vital industries and Industrial Relation Committees in more sectors for the benefit of the worker’s employment opportunities and for their welfare.
6. For the streamlining of the industrial relations immediate, required Statutory Amendments must be there.
7. Modern medical facilities and Rehabilitation packages for workers must be announced from time to time.

8. To meet the globalization, good labour law reforms, Amendments from time to time to the relevant Acts, like Industrial Disputes Act, Trade Union Act etc. are necessary.

9. Complete abolition of the child labour is an urgent need.

10. Efficient functioning of the Labour Department and intervention of the State as and when required is necessary.

**Suggestions:**

After analyzing the entire thesis and its theme along with the conclusions arrived at thereon, the researcher humbly suggests the following --

1. Labour laws should be applied universally
2. Instead of having too many labour laws, these should be rationalized in 5-6 groups.
3. There are so many definitions in the labour laws and all are different for different laws. Definitions should be one and applied to all laws Uniformly. There should be codification of Labour Laws.
4. The enforcement machinery is inadequate for implementing labour laws.
5. The definition of ‘workmen’, as provided in the Industrial Disputes Act, 1947 should be applicable to all labour laws.
6. The implementation machinery for the labour laws, i.e. the Labour Department should be provided more teeth and it must have stringent Penal powers for non-compliance of labour laws
7. The recommendation of the Second Labour Commission
for clubbing of 18 laws into a single law to be applicable for small industries as Small Industries Regulation Act (SIRA), should be implemented.

8. The “decent work” should be fundamental agenda of the Ministry of Labour to start with:

9. Records should be maintained in electronic format.

10. Definitions in labour laws may be simplified.

11. There is no adequate law governing the migrant labours.

12. Judiciary is overburdened and not able to deliver in time.

13. The Second National Commission on Labour had suggested clubbing of various laws and this can be done in phases.

14. The Labour Department should be strengthened to enforce the labour Regulations and the Planning Commission should make financial Provision for employing adequate number of Labour Enforcement Officers (LEO) in States.

15. There should be a provision for compounding of offences under labour laws as this will make the enforcement much quicker and effective.

16. The fines imposed under labour laws are not sufficiently deterrent as the quantum of fines has not been revised over time. Sometimes it becomes more profitable to violate the labour laws rather than to implement it.

17. Codification of labour laws, a uniform labour policy is a desirable long-term goal.
The researcher after going through the Second NLC expresses some of the views and intends to invite some modification, which will certainly, to his knowledge, be beneficial to the worker in the Industry.

1. There is a need to arrive at a specific definition of the term “worker”
2. A settlement entered into with the negotiating agent must be made binding on all the workers as the commission has an intention to bring the industrial dispute to a close but it does not make the agreement binding on the management also.
3. The commission recommends for the applicability of the process of worker’s participation for the establishments employing 300 or more workers. However, the fact is that, the worker’s participation is meant for the productivity, which always needs a kind of enhancement and then what is the case of the establishments where there are workers between the ranges of 100 to 290? Which happened to be even joint stock companies in some cases and in that sense around 60% is going to be deprived of the privilege of the Participation in the management for their welfare and productivity. So the recommendations may be made applicable to the others also.
4. The Check off system to be limited to establishments employing 300 or more workers is an inconsistent theory going against the objective of harmonious industrial relationships. It is always desirable to make the check off system applicable to all the establishments irrespective of the employment size so that the employer knows the negotiating agent and by a process of bilateral dialogue resolves the industrial disputes.
5. In case of illegal strikes and illegal lock-outs, the commission has recommended derecognizing and debarring of such unions and three days wages per day of such illegal strike or illegal lock-out whatever the case may be. In this regard, it seems the Commission has not aiming to achieve better industrial relations. The commission must try for this.
6. In case of lay-off and retrenchments, the Commission has not prescribed any rates for establishments in the employment range 100-300. This needs to be rectified for more clarity and applicability.

7. In case of lay-offs which exceeds more than a month in case of establishments having 300 or more workers is not perfectly fixed, as the Government’s approval is not a routine one as it was thought by the commission. The commission failed to look after the situation where the appropriate Government denies the approval, the commission also could not show the way for this situation.

8. The commission must find out the genuinity of the closures whether they are for retrenching worker and reducing the liability of the employer or not.

Labour is one of the basic resources of any industry and has an important bearing on the performance and goals of the organization. In India we have a plethora of Laws which deals with issues concerning Labour administration, labour welfare, regulation of industrial relations between the management and the workers. In spite of labour laws been widely studied for almost a decade or two and various recommendations to make changes in the labour laws, the issues pertaining to welfare of labour and flexibility for better industrial relations, persists even today. Reforms will make them relevant to the times. Government has to take in to account the next 30 years keeping in view our demographic position and urge to become global super power.

No doubt labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment. Even then, labour reforms in India, in the context of economic
liberalization and globalization, are much desired, but also some times feared of its misinterpretation. Every reform envisioned should aim at inclusive growth. That is the need of the hour for a resurgent and resilient Indian economy.

Globalization and Industrialization have posed a challenge. The more glaring mistake is in not understanding the differences in socio economic conditions that prevail in India and the other ‘model countries’.

After liberalization, the rate of growth of the gross domestic product (GDP) of India has increased significantly presently making the country one of the fastest growing economies of the world. The need to enact labour reforms to compete with other countries arises because human effort is the principal determinant of economic well being and pre condition of India becoming a super power by 2050. India, which is now the fourth largest economy in terms of purchasing power parity, may overtake Japan and become third major economic power within 10 years.