In the era of trade liberalization, concerns about the exploitation of workers’ rights are inevitable where labour is considered as part of trade. In developing countries there is a need to enact and enforce a particular set of workers’ rights and to avoid unwarranted intrusion into the internal affairs of these countries. What are the appropriate rights in this context? It is argued that there is no universal set of workers’ rights, rather those are rights guaranteed in a context-specific manner. But free trade in goods and services surely will undermine repressive political regimes that make exploitation possible. Along with free trade, free

1. Jose M. Salazar-Xirinachs, The Trade and Labor Nexus: Developing Countries’ Perspectives 3 J. Int’l Econ.L. 377 (2000). The author observes: “It is common sense and a matter of fact that close links do exist in the real world between trade and labor issues…”
information as to labour condition and practices in other countries is made known to workers of developing countries.

7.1 The Trade-Labour Nexus

The International Trade Commission Study in 1995 while answering to the question whether developing countries are suppressing labour rights in order to reduce production costs and provoke exports mentioned that ‘their labour standards, foreign direct investment flows and wage trends indicated that the export success is not based on unfair advantages due to the lack of core labour standards.’

The Havana Charter specified that ‘the members recognize that … all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity and thus in the improvement of wages and working conditions as productivity may permit. The members also recognize that unfair labour conditions particular in production for export, create difficulties in international trade and accordingly each member shall take whatever action may be appropriate and feasible to eliminate such conditions within the territory.’

4. Ibid.


The United Nations World Summit for Social Development\textsuperscript{7} in 1995 at Copenhagen recognized the significance of social development and human well being for all and to give these goals the highest priority in 21\textsuperscript{st} century.\textsuperscript{8} It is declared that economic development and mutually reinforcing components of sustainable development is the framework for the efforts to achieve higher quality of life for all people.\textsuperscript{9} The summit finds that globalization which is a consequence of increased human mobility, enhanced communications, greatly increased trade and capital flows, and technological developments open new opportunities for sustained economic growth and development of world economy, particularly in developing countries.\textsuperscript{10} At the same time it is feared that rapid process of change and adjustment have been accompanied by intensified poverty and social disintegration which often result in to isolation, marginalization and violence.\textsuperscript{11} The centre of the declaration is the decision as to place people at the centre of development and direct the economies to meet human needs more effectively.

As far as the workers are concerned, the Declaration specifically deals with their rights in its goals stated in the commitment 3 in detail. The goals are set to attain and secure a sustainable livelihood with adequately remunerated employment. The summit pursues the goal of ensuring quality jobs and safeguard the basic rights and interests of workers and to this end, promotes respect for ILO Conventions including

\textsuperscript{7} UN World Summit for Social Development 1995, March 6-12, Copenhagen.
\textsuperscript{8} Copenhagen Declaration, 1995, para.1.
\textsuperscript{9} \textit{Id.} at para 6.
\textsuperscript{10} \textit{Id.} at para 14.
\textsuperscript{11} \textit{Id.} at para 16.
those on the prohibition of forced and child labour, the freedom of association, the right to organize and bargain collectively and the principle of non discrimination. These are later became the basis for Core Labour Standards of ILO which are discussed later in detail.

In review of existing trade and labour provisions, ILO found that virtually all trade liberalizing agreements lack a labour or social dimension particularly areas covered by the ILO Conventions. This can be revealed by analyzing the World Trade agreements.

### 7.2 WTO and Labour

With the establishment of World Trade Organization the world trade has been organized mainly on three pillars such as General Agreement on Trade and Tariff (GATT), General Agreement on Trade in Services (GATS) and Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS).

The GATT protocols and at present WTO contains very little language that has direct bearing on the issue of labour standards.

There are only two provisions in GATT touching on the link between

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12. *Supra* n. 1 at 170

13. After the second World War there was an attempt to to construct a new global institutional architecture. Part of this new world financial and trade institutions were proposed an International Monetary Fund (IMF), Internal Trade Organisations and World Bank. ITO failed to come into existence instead GATT was set up and later replaced by WTO. See, John H. Jackson, *The World Trading System* (2nd edn, 1997) at p. 78.


international trade and workers’ rights. The preamble says that countries joining GATT do so recognizing that their relations in the field of trade should be conducted with a view to raising standards of living. The other one is Article XX (e) which provides authority to bar imports of prison labour products. On analysis, it is revealed that these provisions are not carefully drafted for articulation of the importance of workers’ rights.

The Director General of GATT, Arthur Dunkel’s efforts were central to the Development and successful conclusion of the most massive international trade negotiation called the Uruguay Round but not obtained an agreement to place workers’ rights on the WTO work agenda. They failed to place the agenda at the 18th WTO Ministerial Conference in Singapore in December, 1996. WTO Ministerial Declaration sets forth 5 points about trade and labour issues but passes the responsibility to ILO. It declares that:

(i) We renew our commitment to the observance of internationally recognized labour standards;

(ii) ILO is the competent body to set and deal with these standards and we affirm our support for the work in promoting them;

(iii) We believe that economic growth and development fostered by increased trade and further trade liberalisation contribute to the promotion of these standards;

18. Ibid.
(iv) We reject the use of labour standards for protection purposes, and agree that the comparative advantage of countries, particularly low wage developing countries, must in no way be put into question; and

(v) In this regard we note that the WTO and ILO secretariats will continue their existing collaboration. The developing countries fear that the trade-labour link at WTO level will raise the cost of production (as the developed countries are having high-minded labour principle as it seems).

Thus, in net result, labour issues are ousted from GATT-WTO regime. ILO is made the responsible body to take care of workers’ rights. The Director General proposed two strategies to increase the effective enforcement of labour standards. First proposal was that ILO should identify a set of core labour rights to which members of ILO should be regarded as being committed by virtue of their membership in the organisation. Second strategy involved is a scheme for increasing the effectiveness for consumer choice by labelling goods as having been produced in conditions that conformed to these core labour standards.

ILO has declared a lot of rights of workers, some of them are the most fundamental. Formally four worker rights are identified, recognized and endorsed by a large number of countries. These core worker rights are:

19. Ibid.
21. The four core worker’s rights are:1. The freedom of association, including the right to organize and bargain collectively; 2. The freedom from forced or compulsory labour; 3. A minimum age for the employment of children and 4. Minimum standards for working condition.
drawn from ILO Conventions\textsuperscript{22}, (2) OECD study\textsuperscript{23} and (3) The EU Social charter\textsuperscript{24}.

Another Agreement which is connected to labour rights is GATS. General Agreement on Trade in Services is an agreement which requires WTO members to give specific commitments on market-access in various service sectors. Among trade, services are the fastest growing sector. Nearly one forth of the world trade is accounted for by services\textsuperscript{25} and as it is always a key sector in the world economy, they were brought within the ambit of multilateral trading system by GATS in 1994.

The GATS is a comprehensive legal frame work of rules and disciplines covering 161 services activities across 12 classified sectors except those services which are supplied in the exercise of governmental authority\textsuperscript{26}. The main objectives of GATS are the expansion of trade in services, progressive liberalization of such trade through negotiations, transparency of rules and regulations and

\begin{itemize}
  \item Mainly from 6 conventions on freedom of Association and Protection of the Right to organize (No. 87), Right to organize and Bargain Collectively (No. 98) Forced or Compulsory Labour (No. 29) Abolition of forced Labour (No. 105) Discrimination in Respect of Employment and Occupation (No. 111) Minimum Age for Employment (No. 138).
\end{itemize}
increasing participation of developing countries. GATS\textsuperscript{27} contains three basic elements. They are: a basic element applicable to all members, specific commitments undertaken by various countries and recognition of special needs of the specific sectors of the member countries. GATS present a set of voluntary commitments by member countries with their undertaking for further opening of the services which have been left for future negotiations and commitments.

Recognizing that human capital continues to play a pivotal role in development and economic growth, economic planners have been paying considerable attention to human resource planning and the movement of people is vital in determining the forces of demand and supply of labour service\textsuperscript{28} including demand and supply of labour. GATS defines service trade\textsuperscript{29} as occurring through four possible modes of supply, both skilled and unskilled. The possible modes are:

Mode-1: Cross border supply in which services trade takes place across boarders (cross-border supply);

Mode-2: Consumption abroad in which services trade is affected by movement of consumers to the home country of the service supplier (consumption abroad);

\textsuperscript{27} The scope of service transactions induced under the GATS through introduction of additional concepts like nationality, territorial location and ownership or control than international transactions in services defined in the IMF’s Balance of Payment Manual (BPMS) 1993. See Rajesh Chandra, “Services Issues and Liberalisation in the Doha Development Agenda Negotiations: A Case Study of India” in Aditya Mattoo and Robert M.Stern (Eds.) World Bank, Oxford University Press, Oxford (203), p.67 at p.68.

\textsuperscript{28} Sieh Lee Mei Ling and Org Fon Sim, The Economies and Politics of People Movement in East Asia and Pacific Region, www.pecc.org/labor/ accessed on 10\textsuperscript{th} September 2009.

\textsuperscript{29} \textit{Id.} at p.68.
Mode-3: Commercial presence in which services trade occurs when the service exporting firm establishes itself in the importing country after with capital investment and commercial presence and

Mode-4 Movement of personnel which involves a natural person who supplies services moving temporarily to another WTO member country for the purpose of supplying a service. (Movement of natural persons);

The important aspect to be noted in this context is in essence mode 4 of GATS in relation to:

(i) “Persons providing services where a foreign service supplying firm or juridical person obtains a contract to supply services to a host or importing country, company and sends its employees to provide the services;

(ii) Non-independent service providers abroad where an individual markets and promote services to a host country company or to an individual; and

(iii) Persons employed abroad by foreign companies in the host country”

This provision relates to the migration of employees but does not match with the conventional migration. But the other provisions of GATS are to be examined as those are covering the workers in trade services.

The main restrictions on movement of natural persons originate in immigration and labour market policies of individual countries.

30 Julia Nielson, “Current Regimes for Temporary Movement of Service Providers- Labour Mobility in Regional Trade Agreements”, paper presented at Joint WTO-World Bank symposium on movement of natural persons (mode 4) under the GATS(2002, OECD)
Temporary movement of persons is not distinguished from permanent movement of labour and falls under the purview of immigration legislation and labour market conditions in nearly every country\textsuperscript{31}.

Another restriction emerges from the issue of eligibility which includes the problem of wages. Wages paid to foreign workers must be at par with that of locals thus negating the purpose of cross country labour movement based on the principle of cost differentials\textsuperscript{32}.

Yet another set of obstacles for services trade through people movement originate from barriers to recognition of qualifications, certification and licensing. Issues of qualification and certifications are the most fundamental requirements, without which no service can be provided\textsuperscript{33}.

But now the increasing number of workers who moved across national borders has given rise to the emergence of a service industry that serves as intermediaries in both the sending and receiving countries. In parallel, the increase in the flow of labour has resulted in the emergence of agents facilitating the flow illegally, circumventing the rigid immigration rules and regulations\textsuperscript{34}. The employers in specified industrial establishments must obtain prior sanction or approval of the appropriate government for lay off retrenchment and closure. They also have to follow prescribed procedures under the Act. These provisions must be changed as these are hurdles to the growth of

\textsuperscript{31} Id at para 1.4
\textsuperscript{32} Ibid.
\textsuperscript{33} Because visa can be rejected on the basis of non recognition of qualifications.
\textsuperscript{34} Supra n. 16 at 2.1
economy. For example, an employer is not allowed to close down his industry even though it is running at a loss. This will lead to prevent restructuring of several nonviable sick industries and thus cause slow growth of industrial investment and employment.

Before examining the impact of laws and regulations applicable to the labour force, it is inevitable to examine the provisions in GATS which affect the labour.

7.3 Provisions in GATS Relating to Labour

The preamble to the General Agreements on Trade in Services states that the general goal of participants is to establish a multilateral framework of principles and rules for trade in services with a view to expanding such trade under conditions of transparency and progressive liberalization. This would promote the economic growth and development of all trading partners. The agreement expresses the desire to facilitate the increasing participation of developing countries in trade in services and the developed countries.

The central theme of the GATS is the Most Favoured Nation (MFN) treatment. Other main provisions are transparency, domestic regulation, monopolies and exclusive service suppliers, emergency safeguard measures, balance of payment safeguards, government procurement, exception and subsidies.

35. Art. II
36. Art. III
37. Art VI
38. Art VIII
39. Art. X
Under the MFN treatment countries are required to accord equal treatment i.e., not to discriminate among member counties of the WTO in terms of their treatment of foreign suppliers and service suppliers. If it is so, the member countries have to provide all beneficial provisions to migrant workers also without any discrimination. Moreover there is a provision to take exemption for a period of 10 years (subject to conditions). Under the transparency provision the countries are required to provide information on all relevant rules and measures with bearing on the agreement and on their commitments under the GATS.

Several of other GATS provisions are not really general, as their applicability is conditional up on the commitments filed by member countries. For example the article on domestic regulation is applicable only to sectors where specific commitments have been taken. These types of exemptions are in order to protect public order, human, animal or plant life or natural security or to secure compliance with laws or regulation consistent with the agreement etc.

Another ambiguity is found with regard to interpretation of foreign natural persons, “employed by a service supplier of a member”, also include foreigners employed by host country companies. Article 1:2 (d) of the Agreement seems to cover foreigners appointed by foreign
owned companies. If they are employed by locally owned firm they will not be covered by the Agreement. Most of other GATS provisions are also loosely defined and broad in terminology so that the nature and extent of their applicability is subject to discretionary interpretation. In the provisions on domestic regulation, there are many ambiguities concerning what constitutes a “reasonable, objective and impartial” manner of administering domestic regulations.

Another element of GATS is the process by which countries commit themselves to liberalising services. The countries are free to decide which service sectors they wish to open, subject to market access and national treatment disciplines. If the countries are unwilling or unprepared to open up a particular service sector, they have the discretion to do so. Countries have made use of this flexibility provision by limiting their commitments in sensitive and heavily government regulated and monopoly type service sectors.

If this is the status of GATS provision there is nothing wrong to say that appropriate policies are needed in order that workers, especially the unskilled are to be protected in the host country. The policies should be in accordance with or complying with the core labour standards. As far as developing countries are concerned it may be highly burdensome and expensive.

But the regulatory mechanism is still in the hands of independent countries and provisions in GATS remain flexible, the member countries are free to take policy decision in this matter. While making the policy certain factors are to be looked into viz., (1) temporary nature
of movement (limited duration of stay), (2) specificity of tasks to be performed and (3) the discreteness of the transaction involved i.e., specific employment for a definite period of time\textsuperscript{44}. It includes all types of workers viz., highly skilled, semi skilled and low skilled\textsuperscript{45}.

Such a pressure on developing countries in the area of employment has often been seen as an attempt to reduce their competitiveness by imposition of regulation which would in turn result in increase of production costs. Economic efficiency is not the only measure of the labour market. Social policy is also at the centre of the regulatory function. But in reality, developing countries fail to protect the interests of workers in order to facilitate the development of industry including foreign investments\textsuperscript{46}. They are adopting a de-regulatory policy. Positive legislative standards are not widely adopted partly because they were not extensive and partly because left to themselves without updating they will become ineffective.

In this context, it is highly necessary to examine the efforts of ILO in the protection of workers’ rights. In the context of ILO, the voluntarism has formalized in 1998 as Declaration on Fundamental Principles and Right at Work.

\textsuperscript{44} United Nations Convention on Protection of all Migrant Workers and Members of their Families, 1990-Though it does not specifically deals with trade related labour mobility but it defines a worker on temporary and specific employment.

\textsuperscript{45} This view is taken by developing countries. But developed country view that the provision excludes low skilled workers from the GATS category of service providers.

7.4 ILO, Trade and Labour: An Outline

After the First World War, fair competition was one of the main slogans which found its place in international trade.47 Some of the international regulatory endeavors contained trade as well as labour standards48 and there itself began some form of nexus between trade and labour. But the international trade regulations remained in embryonic stage for quite a long period. Later the Philadelphia Declaration recognized the broader outlook to a working peace system along with social and economic policy. In 1960s and 1970s, the social and economic policies and discussions were on its peak and the developments in the area of labour rights are commonly called as international labour code. But during 1980s the whole international scenario started to change. Fall of Berlin wall, communism and Russia were some of the instances which made a threat on international labour rights. The emphasize on freedom of association and on non-discrimination which are characterized as main features of ILO became less important due to the neo liberal reforms of labour market. At the starting of the era of globalization, the employer groups and the countries in transition began to identify that they have little time to protect labour rights. They feared that such type of protection may raise risks and may work against the general current to diminish state protection and state regulations and to encourage individual initiative. The same trend reflected in national arena also by de-regulation, outsourcing and offshore jobs. The process of de-constitutionalising rights were occurring at national level. But at the

48. Ibid.
same time a renaissance of interest in soft law or promotional approaches to labour rights at international level began to occur. In 1990s, rather than in 1970s and in 1980s the labour rights issues are learning more frequently on international agendas of multilateral and regional institutions, governments and NGOs. Though they are having divergent interest, they include the accelerating liberalization of trade and financial markets the anti globalization movements, the sustained exposure of the role of transnational involvements in exploitative labour practices and the resulting growth of consumer demands of fair labour and the concerns and demands for fair labour. Moreover, employers are turning into international community through multinational trade and they have to promote even at national level a sort of voluntary code enabling to consider them reputable and legitimate rather than rogue exploitaters.

**ILO Declaration, 1998**

The ILO Declaration on Fundamental Principle and Right and Work aims to ensure that social progress should go hand in hand with economic progress and development. According ILO, the declaration is a promotional instrument. The declaration commits member state to respect and promote principles and rights in five categories i.e.,

(i) freedom of association and the recognition of the right to collective bargaining;

(ii) elimination of forced or compulsory labour;

(iii) abolition of child labour; and

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(iv) the elimination in respect of discrimination in respect of employment and occupation.

ILO clarifies that the member state can adopt these principles irrespective of the fact that they have ratified the relevant conventions. The declaration makes it clear that these rights are universal and they apply to all people in all states. ILO is confirming the need for strong social policies, justice and democratic institutions. ILO again ascertains its role in standard settings especially in areas of employment in the context of global strategy for economic and social development so as to create broad base sustainable development. As ILO is the constitutionally mandated international organization and competent body to deal with international labour standards and to promote fundamental rights at work it declares the above mentioned principles as fundamental and universal. By this declaration, it recognizes that economic growth alone is not enough to ensure equity, social progress and eradication poverty. The commitment is supported by follow up procedure so as to technical assistance and reviewing reports.

The declaration and follow up provides three ways\textsuperscript{50} to help countries, employers and workers to achieve full realization of its objective. Firstly, there is an Annual Review composed of reports from countries that have not yet ratified one or more of the ILO conventions that directly relate to the specific principles and rights stated in the declaration. The reporting process provides governments with an opportunity to state what measures they have taken towards achieving in respect of the

\textsuperscript{50} Programme for Promotion of Declaration, available in\url{http://www.ilo.org/declaration/follow-up/annualreview/countrybaselines} accessed on 18\textsuperscript{th} September 2009.
declaration. It also provides organizations of employers and workers choice to express their views on progress made and actions taken.

Secondly the global report each year provides a dynamic global picture of the current situation of the principles and rights expressed in the declaration. The global report is an objective view of the global and regional trends on the issues relevant to the Declaration and serves to highlight those areas that require greater attention. It serves as a basis for determining priorities for technical co-operation. Technical co-operation projects, the third way to give effect to Declaration, are designed to address identifiable needs in relation to the Declaration and to strengthen local capacities theory translating principles into practice.

The Declaration principles and rights are gaining wider recognition among organizations, communities and enterprises. These fundamental principles and rights provide benchmarks for responsible business conduct, and are incorporate into ILO’s own Tripartite Declaration of Principles concerning Multilateral enterprises and social policy. The OECD’s guidelines for multinational enterprises emphasise the principles and rights found in the ILO Declaration and the UN global compact promotes them as universal values to be achieved in business dealings around the world. A growing number of private sector codes of conduct and similar initiatives also refer to the fundamental principles and rights at work.

Actually the process of transformation began in 1995 at Copenhagen World Summit for Social Development. Then the International Labour Organization responded to the pressures exerted on labour rights by
international trade liberalisation by adopting the Declaration on Fundamental Principles and Rights at Work. The Declaration provided for universally recognized labour standards. These rights consist of a standardized hierarchy instead of heterogeneous and wide ranging set of labour rights. According to Philip Altson the ‘previously unknown concept of Core Labour Standards is now ubiquitous’ and he explains five reasons for this. The first reason is that the core standards constituted a departure from the insistence within the international human rights regime on the equal importance of all human rights. This mainly focuses on a small and manageable set of standards which are well accepted with priority attention. Secondly the Declaration laid down the ground for a decentralized system of labour standards implementation. In other words the sole governmental responsibility is divided among different agencies ranging from MNCs to consumers. These responsibilities extend to defining, promoting and even enforcing core labour standards.

The third reason is that the CLS approach is more flexible so as to cope up with particular situations and liberated from ‘legalism of ILO Conventions. Thus these standards have become applicable in wide range of contexts.

53. Ibid.
54. Id. at p.460.
55. Ibid.
56. Ibid.
Fourthly, Core Labour Standards provide an effective via media for resolving highly controversial debate even trade and labour standards. It places ILO at centre and thus helps ILO to overcome the criticism on its incapability in responding effectively to the growing demands in the context of the rapidly evolving international trading regime.

Finally, Core Labour Standards put forward a vision of labour standards emphasizing the role of promotional techniques and thus breaks the sanctions under ‘social clause’ proposals. It is more palatable to many governments and most employers in a world of ever increasing capital mobility.

Right at Work: Rights or Principles?

The Declaration on Fundamental Principles and Right at Work raises some immediate questions like what they actually mean, rights or principles? If there is difference, conceptually how does it make an impact on declaration. In common parlance, rights are in a higher footing than principle. In the international sphere the term ‘principles’ is used in the context of ‘general principle of law’. This is a neutral term with no real legal significance. It also conveys a meaning as a description of normative proposition rather than a signified right. ‘Principles’ are also like principles in UN charter where the purposes are listed as principles. Though these

57. Ibid.
58. Ibid.
59. The term principles rights have used in the Declaration because it had been adopted from the North American Agreement on Labour Corporation (NAALC) http://www.org/eng/agreement.html.
are referred as principles, the provisions are actually dealing with rights per se. Just like that the principles in the Declarations are having the status of rights than mere leading proposition covering certain rights.

During the debate at International Labour Conference, 1998 leading to adoption of the Declaration, the ILO Legal Adviser was asked to explain difference between values, principles and rights. He answered that values referred to widely shared conceptions of moral order, principles translated those values into concrete context and rights constituted an acknowledgement in law of the principles.\(^{60}\) Hence it can be presumed that the term ‘principle’ used in the Declaration, 1998 is relatively close to the category of usage in international legal instruments like UN Charter.

In a nutshell, the Declaration emphasizes on the notions of principles in par with ILO constitutional principles.\(^{61}\) In other words the Declaration proclaims as principles a range of values which has already been recognized as rights.

**Origin of Core and Criteria for Choosing Core**

From the very beginning ILO began to make use of classification according to which there were three different categories of labour standards.\(^{62}\) These are: (1) that protect certain basic human rights; (2) those establishing certain basic labour standards; and (3) those requiring the maintenance of certain instrumentalities of social policy. It was after


\(^{61}\) See *supra* n.2 at p.483.

the fall of Berlin Wall that the idea of seeking to identify small set of core standards began life within ILO as part of an attempt to refine and sharpen the original system of classifying international labour standards.\footnote{Bartolomei de la Cruz, “International Labour Law: Renewal or Decline?” 10 International Journal of Comp. Labour Law and Industrial Relations 201 (1994)} The initial efforts started in 1990s by ILO officials and moved to 194 proposals of the Director General and to the events in Copenhagen.\footnote{See supra n.2} The ILO Director Generals’ Report in 1994 clearly says that rights would be designated as fundamental or core as decided in Copenhagen with a principal focus on social development. These values were selected in tune with the context of ILO’s minimum core.\footnote{Ballace, “The ILO Declaration of Fundamental Principles and Rights at Work”, 17 International Journal of Comp. Labour Law and Ind. Rels., 269 at p.271 (2001).}

**The Relationship between ILO Convention Standards and the Core Labour Standards**

Core Labour Standards are linked to the standards contained in eight ILO conventions and the human rights law generally. The further understanding of the meaning of the four rights comes from the underlying ILO conventions. The Conventions constitute reference points for examining the content of core labour standards. For example the content of Rights to Freedom of Association has been even derived from jurisprudential clarifications by the relevant ILO supervisory bodies, body of law and core laws relating to the same.

But the ILO Conventions are declared as a recognition to the human rights. The core labour standards are something related to economic law where an effort is put to recognize the workers right all
over the world. This may arise a conflict between established conventional jurisprudence and the magnitude of revolution led to the Declaration. The ILO’s Legal Adviser clarifies the point as the Declaration should be based on the principles of Constitution of ILO, reflected in Convention but not on specific provisions of Conventions.66 Hence it can be said that the detailed legal requirements of the conventions are not invoked by the Declaration and States do not need to be in compliance with the specific provisions of the conventions in order to satisfy the requirements of the Declaration.

7.5 The Impact of CLS on the Existing Labour Rights Regime

The reason for devoting so much space to an analysis of developments relating to bilateral and regional free trade agreements67 is to demonstrate that while the WTO remains largely impervious to labour right claims the broader emerging trade law regime contains very consistent references to labour rights. The old assumptions that once applied to the ILO, its standards, procedures and monitoring mechanisms are no longer viable in a globalised world and new decentralized systems are become better options. In many ways 1998 Declaration has given an initiative to the trend towards decentralisation. The Declaration standards are considered as complementary to the standards of ILO where it is unworkable mainly in developing countries.

66. See supra n.6
67. Eg., NAFTA, NAALC.
On the basis of developments in the six years since the adoption of the 1998 Declaration, it can be concluded that CLS system is not clear on the following aspects:

(i) to the extent to which the content of the core standards is defined by reference to the specific normative profile which the relevant rights have been given in the appropriate ILO conventions

(ii) to the promotion of this limited range of core standards does not serve to undermine the status of other labour rights which have long been recognized as human rights.

(iii) to the arrangements of implementation which attach to the core standards are meaningful and just not promotional in a soft or tokenistic sense and

(iv) those arrangements neither undermine ILO’s existing supervisory arrangements nor discourage the serious reforms which the supervisory system requires.68

However, this result can be avoided if a determined effort is made in the years ahead to remedy the specific defects of both the CLS system and the much broader international labour standards supervisory system.

The Policy Integration Department of ILO has published a Report on ILO Activities in the Social Dimension of Globalisation.69 The

68. Supra n. 51

69. Published in July, 2002.
paper expresses ILO’s concern about the difficulties of many people and countries experiencing the difficulties created by globalization.

The Report finds four areas of consensus concerning the social dimension of globalization in the context of international labour over the last decade. They are firstly the adoption of Declaration of Fundamental Principle and Right at Work in 1998, secondly the consensus of international community reaffirmed the role of ILO in settling and dealing with standards of labour concerned. World Summit for Social Development in 1995 and WTO Singapore Ministerial Declaration 1996 are best examples which declares ILO as the competent body to set and deal with labour standards.

Thirdly, in respect of social clause debate both WTO Singapore Ministerial Declaration and Declaration on Fundamental Principles and Right at Work affirm that labour standards should not be used for protectionist trade purposes and that the comparative advantage of any country should not be called in question. Lastly, the work of the working party on social elimination of the liberalization of the international trade was reappraised in March 2000. The governing body decided to broaden the scope of the working party and change its title to the ‘Working Party on the Social Dimension on Globalisation’. The social dimension concerns all aspects of globalisation including investment, technology and migration, as well as trade.

7.6 ILO’s Decent Work Agenda

The ILO’s Decent Work Agenda provides the basis for an integrated approach to the economic, social and political dimensions of
public policy. The concept of Decent Work was launched in the terms in 1999, in the Report of the Director General, to the International Labour Conference in the 87th Session. The idea conveys the broad and varied dimensions associated with work today and encapsulates them in an expression that every one can appreciate. It has four strategic objective i.e., rights at work, employment, social protection and social dialogue. Employment here covers work of all kinds and has both quantitative and qualitative dimensions. It also refers to adequate opportunities of work remuneration, safety at work, healthy working conditions and social security. The ILO is providing support to member states to ensure that the objectives of decent work are addressed as an integral part of the development process, so that growth and development ultimately leads to reduction of poverty. Though integration into the global economy is today a major source of economic growth, it is not sufficient in achieving poverty reduction. The pattern and source of growth as well as the manner in which its benefits are distributed are extremely important from the point of view of poverty reduction. The report finds that furthering the ILO’s Decent

70. Id. at p.4. See also Amartya Sen, “Work and Rights”, 139 International Labour Review, (2000) www.ilo.org/public/english/support/pub/rew/articles/index.htm accessed on 18th September 2009. He explains “the first important feature in the new ILO vision is the articulation of its goal: the promotion of opportunities for women and men to obtain a decent and productive work, in conditions of freedom, equity, security and human dignity. The reach of this objective is in indeed momentously large: it include all workers, wherever and in whatever sector they work; not just workers in the organized sector, nor only wage workers, but also unregulated wage workers, the self employed, and the home workers. The ILO aims to respond to the terrible fact that the world is full of overworked and unemployed people”.


72. Dharam Ghai, “Decent Work Concept and Indicators” 142 Int’l Lab. Rev. 113
Work Agenda as an integrated development strategy in a global context also requires an enabling international policy environment and the ILO is conducting research analysis to develop policy approaches for the same.

The approach adopted by ILO is something beyond national policies but slightly different from so called “globalised”\textsuperscript{73} approach and “international”\textsuperscript{74} approach. The approach adopted by ILO provides a more promising understanding of the needs of the institutions and policies in pursuit of the rights and interests of the working people.

7.7 Conclusion

It is a fact that globalization with free trade, made free information available to workers of the developing countries. Thus they come to know about the labour conditions and practices in developed countries than ever before. They are well aware of the exploitation in the name of reduction of production cost and promotion of exports. But they are ousted from the GATT, GATS and WTO regime. They are marginalized by saying they are not “part of trade”. ILO’s Fundamental Principles and Right to Work agenda aim to provide social protection to workers. But many of the aspects of these agenda are not clear. But they give a globalised perspective which can influence the national policies

\textsuperscript{73} Global approach need not see human beings only as citizens of particular countries, nor accepts that the interactions between citizens of different countries must be inevitably intermediated through the relations between distinct nations. International approach works through the intermediary of distinct countries and nations. Amartya Sen, “Global Justice: Beyond International Equity” in Inge Kaul, Isabelle Grunberg and Marc A. Stern (Eds.), \textit{Global Public Goods: International Corporation in the 21st Century}, Oxford University Press, New York (1999) p.321,at p.325

\textsuperscript{74} \textit{Ibid.}
of developing countries. The national policy should reflect that the need of a worker in developing countries like India is to attain and secure a sustainable livelihood with adequately remunerated employment.