Chapter 8

SOCIAL SECURITY OF INDIAN LABOUR AND CHALLENGES OF GLOBALIZATION

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Globalization has become a new term for signifying dramatic changes in the nature of international relations in the latter part of 20th century and dawning of 21st century. Globalization conveys many meanings and things emphasizing a global rather than a national context. It is something like a process by which it redefines the world affairs especially in relations

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between states. In other words it is the process of increasing interconnectedness between societies such that events in one part of the world have effects on peoples and societies far away.2

8.1 Dynamics of Change and their Economic Dimensions

Globalization denotes expanding scale, growing magnitude, speeding up and deepening impact of transcontinental flows and patterns of social interaction.3 It refers a shift or transformation in the scale of human organization that keeps links among distant communities and expands the reach of power relations across the world’s regions and continents. But it does not pose as a universal process of global integration, in which there is growing convergence of cultures and civilization4.

As an economic term5, it denotes the acceleration of the international connections in the global economy in the last few decades and the emergence of global corporations and relatively open international financial markets6. The word also invokes themes of cultural union as a result of media and electronic interconnections from satellite broadcast, television, fax machines, cyber space etc.

5. Thomas L. Friedman, The Lexus and the Olive Tree (Understanding Globalisation) Farrar, Straus & Girouse, U.S.(1999), p.9. The author observes: “[T]he driving idea behind globalization is free market capitalism -the more you let market forces rule the more you open your economy to free trade and composition…”
Sociologists use this term to denote cultural changes in discussion of economics and business. According to Ronald Robertson, it includes some sense of comprehension of global politics and the emergence of a subjective identity of living in a single, relatively small planet. There are powerful reasons for seeing globalization as a new stage in the world politics, with a view that it is progressive and it improves lives of people. In the era of globalization, states are not remained as closed units and world economy has become more and more interdependent with expanding trade and finances. The main arguments in favour of globalization include that the world is becoming more homogenous, time and space seem to be collapsing and a cosmopolitan culture is developing. There are arguments that suggest the opposite also. The main argument is that this ends up paralysing governmental attempts to subject global economic forces to control regulation. Another argument is that globalization is very uneven in its effects. Some argue that the globalization is nothing but old modernization theory because the forces

7. Supra n. 1 at p. 36. See also, Anthony Smith, “Towards a Global Culture”, in Michael Featherstone (Ed.) Global Culture: Nationalism, Global Culture and Modernity, Sage Publishers Ltd.U.K.(1990), p.171
9. Supra n. 2 at pp.10-11.
10. Differences between people are diminishing.
11. This is due to spread of modern communications. Old ideas of geographical space and chronological time are undermined.
12. People are beginning to think globally and locally.
14. It is reachable to a few class of people and majority of world population are ousted from its benefits though they bear the impacts. Since substantial proportion of the world population is largely excluded from benefits of globalization, it is a divisive process.
that are being globalised are conveniently those found in the western world. The most discussed question is that to whom the transnational social movements are responsible and democratically accountable\textsuperscript{15}.

8.2 Political Dimensions of Globalization: A Question of Governance

Globalization is frequently portrayed as a technological and economic process with limited attention to its political dimension. The state system remains the central organizing device in the international system but the conceptual change has resulted in diminishing autonomy for all states\textsuperscript{16}. States have become more constrained by the market forces and through the delegation of some functions of State to global organizations\textsuperscript{17}. The process of economic globalization\textsuperscript{18} has resulted in a shift from a world of singular or separate natural economies, exercising a large control of their economies to one in which open market forces and economic interdependence are increased. These changes are mainly because of the result of technological changes, developments in capitalistic accumulation and political decisions.

\textsuperscript{15} Supra n. 2 at p.12.


\textsuperscript{17} The global institutions include WTO, TRIPS Council, World Bank..etc. The functions delegated include governance functions also. Prabhat Patnaik calls them “Bretton Woods Institutions” See Prabhat Patnaik, “Ten Years of Economic Liberalisation”THE MARXIST, Vol.17, No.02, April-June,2001 available on www.cpim.org/marxist/200102, accessed on 22nd February, 2009

\textsuperscript{18} This term reflects the popular feeling that an unjust world order being imposed on the people of India, and more generally on the Third World, by powerful social forces and international institutions. B.S. Chimni, “Alternative Visions of Just World Order: Six Tales from India”, 46 Harv. L.J. 389 (2005) at p. 401
The State is a leading player in these processes.\textsuperscript{19} The shift in policies by States is either voluntary or involuntary. The voluntary shift takes place through implementation of liberalization and de-regulation policies. It may happen involuntarily through structural adjustment programmes in the developing world\textsuperscript{20}.

This type of economic restructuring has fundamental impact on the interests of State. However, to achieve their economic goals and to enhance international competitiveness, the States are forced to adapt their domestic economies with the realities of the global economy by understanding that they exists within a changing global market. The opening up of national economies to world markets, deregulation and the removal of many protectionist policies throws the firms to an increasing global competition.\textsuperscript{21} It is believed that the removal of most capital controls have led to an unprecedented increase in the expansion and integration of financial markets around the world. Then the character and interests of a State has become changed\textsuperscript{22} and transformed

\textsuperscript{19} Role of the state in the context is limited. As it is rightly observed: “…globalization began to be represented as a finality, as the logical and inevitable culminations of the powerful tendencies of the market at work. The dominance of the economic forces was regarded as both necessary and beneficial. States and the interstate system would serve mainly to ensure the working of market logic.” Robert W. Cox, “A Perspective on Globalisation” in James H. Mittleman (Ed.), \textit{Globalisation: Critical Perspective}, Lynne Rienner Publishers (1996) p.21 at p. 22


\textsuperscript{21} \textit{Supra} n. 5

\textsuperscript{22} The change of state in a globalised context is explained by Prof. Chimni in the following words: “Today in the era of globalisation, international law and institutions are increasingly playing a more significant and intrusive role than ever in the past, in particular \textit{viz-a-viz} third world states. The latter are compelled to cede sovereign, economic, social and political space to international institutions. \textit{Supra} n.20 avalible at www.iilj.org/publications/documents, accessed on 30th April 2009.
into a competition state to compete with other states for a large share of world output.

If it is so, it is necessary to analyse the position of the State in the era of globalisation. Is it a capitalist state under a WTO regime or a welfare state as it generally is in many countries or does it assume a role of both?

8.3 Welfare State and its Essential Characteristics

The idea of ‘welfare state’\(^{23}\) conveys not only the meaning of providing welfare services by the State but also by assuming primary responsibility for the welfare of its citizens\(^{24}\). Here the responsibility of state is comprehensive. When all aspects of welfare are considered, a “safety net”\(^{25}\) is not enough. Sometimes the welfare is not actually provided by the State, but what is provided is a combination of independent, voluntary, mutualist and government services. The provider

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An early version of the welfare state appeared in China during the Song Dynasty in the 11th century. Prime Minister Wang Anshi believed that the state was responsible for providing its citizens the essentials for a decent living standard. Accordingly, under his direction the state initiated agricultural loans to relieve the farming peasants. He appointed boards to regulate wages and plan pensions for the aged and unemployed. These reforms were known as the "new laws," http://www.bbc.co.uk/history/british/modern/field_01.shtml, accessed on 12th October, 2009.


25. It is a term coined in the era of globalization for identifying those who are in need of state protection. The ‘social safety net’ is a term used to describe a collection of services provided by the state, such as welfare, unemployment benefit, universal healthcare, homeless shelters, the minimum wage.
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may be the State, government sponsored company or agency or even a private corporation.26

Modern welfare states are evolved through a gradual process beginning in the late 19th century and continuing through the 20th century27. Welfare state is an integral concept arising from the merger of various traditions of thought and practice. The idea of welfare state arose from different sources28. Its actual ideas of liberty, equality and fraternity came from the French Revolution, the idea of greatest happiness of greatest number from Bentham, the concept of social insurance and social security from Bismark and Beveridge, the principles of public ownership of basic industries and essential services from Fabian socialists, and principles of political economy from John Stuart Mill and so on29.

The welfare state uses public policies as the means for promoting and realizing its goals. These public policies include policies in general or sectoral policies like developmental, social, economic and cultural policies in particular.

It is also viewed the welfare state as a structure of thought and practice founded on market economy, the principles of individual liberty, rule of law and limited government. Jermy Bentham gives a conceptual formulation of welfare state12 that the basic principle of determining human behaviour is the maximisation of utility as the

27. www.history.ox.ac.uk/ecoist/synopses/1b_social/history accessed on 12th October, 2009.
greatest happiness principle. According to Bentham the business of government is to promote the happiness of the society, by punishing and rewarding.

According to Professor Marshall\(^{30}\), the essential characteristics of the welfare state are its intense individualism and collectivism. The former confers on the individual an absolute right to receive welfare and the latter imposes a duty on the state to promote and safeguard the whole community which may transcend the aggregation of individual claims.\(^{31}\) It is considered that welfare state has not rejected the capitalist economy but gives it only qualified approval since there are some elements in civilised life of greater importance which can be attained only by restricting markets. In other words welfare state accepts a modified form of capitalism\(^{32}\) i.e., by retaining two basic elements--private property and the profit motive.

### 8.4 Social Protection and Development: Emerging Challenges and Doctrinal Contradictions

Welfare state and development are closely related as means and ends respectively. In other words, when the end of social organization is welfare of whole people of the state that state is a welfare state and the end is development. However, after the introduction of globalization the new development has become a challenge to welfare. In recent years, the relative insulation or the national embeddedness of welfare state has


\(^{31}\) *Id.* at p. 35

been increasingly challenged by a set of developments under the globalization. The impacts of globalization on states are alarming. Globalization, is a process through which nation state is becoming more open to influences that are supra national. These may be economic, cultural, technological or political in nature. As far as the welfare state is concerned the focus has been economic globalization which has been seen as curtailing the policy making autonomy of nations and putting pressure on social protection and social standards. The system of social protection which enjoyed was a part of old orders of state socialism with its ideological commitment to economic security and collective consumption\textsuperscript{33}. The states use coercive instrumentalities of state power to provide for the welfare of the population within the territorial domain of nation state. The basic assumption underlying a welfare state has been that of substantial policy autonomy on the part of nation state in respect of economic management and determination of monetary fiscal and social policies.

Now, the globalization and development invite two crucial aspects of their relationship. They are : (1) the destabilizing effect of financial openness on national economies and its implication on national economies and of social protection, and (2) the influence of international financial institutions\textsuperscript{34} on socialist policy of nations. During transformation of economy, the state role is that of organizing, financing and providing particular services or activities. The size of public sector cannot be a criterion for judging the extent of public involvement by a

\textsuperscript{33} Id. at p.41

\textsuperscript{34} Like IMF, World Bank.
state as it is done in national accounts. When markets are opened, states are more integrated, the debate has centered on the possibilities of financing welfare state activities collectively in the integrated economies.\textsuperscript{35} One view is that the challenges faced by welfare state due to international integration do not arise from outside political pressure, but are caused by changes in the way in which economies work. But the development will not display abrupt changes calling for sudden and drastic changes in welfare policies. But the integration enhances the exposure to risk. The basic source of risk is its shocks to domestic market and to foreign markets. The enlarged exposure to risk can be mitigated by state contingencies in public consumption transfers and taxes. How far these affect the labour force when the markets are concentrating on product transfer is the relevant question in this context.

\textbf{8.5 External Forces: Internal Integration in Domestic Markets}

WTO, GATT and their off shot of technological advances promote international integration of countries through political decisions and technological changes reducing trade costs and exhausting dissemination among countries.\textsuperscript{36} This process extends the market in size and scope and even changes the preferences. The instantaneous flow of information and less costly flow of knowledge also affect market interdependences. This type of interdependence leads to international integration of markets. Since


labour market issues are essential to the welfare state, and mobility across countries is small, the labour market consequences are high. In many countries large part of welfare state activities is financed by taxes or social security contribution levied on labour in a higher labour taxation via wages. This leads to deterioration of the competitive position of the country. When integration of markets occurs that leads to more inequality in the labour markets\(^{37}\). Foreign firms capture the domestic market i.e., threat of imports and possibility of entering foreign markets via exports are two immediate impacts of such integration. Entering into foreign markets will also give new opportunities, good wages and employment. But this will affect the high income group and low income group differently i.e., the distribution of wages for employed workers becomes more unequal.\(^{38}\) Those facing the import threat will leave to accept lower wages to maintain their jobs while those having an export possibility will face an improvement in their trade.

This raises the question of choosing of policy. The main need is for a wage floor to achieve social objectives. Apart from this, another point of consideration is the difference between the short run and long run strategy to achieve social objectives in the labour market. The short run is that it will be costly to maintain social standards and this has to be financed some how. The long run perspective is that it becomes increasingly costly to maintain a qualification structure which does not match social ambitions with respect to the wage structure.


\(^{38}\) ILO finds that these changes are mainly in developing countries other than industrial countries. See http://ilo.org/public/English/standards/relm/gb/docs/gh282, accessed on 12th October, 2009.
8.6 Product Market versus Labour Market: Labour in World Economy

The way in which, labour market functions depends critically on product market structure. This is because of the simple reason that the latter shape labour demand. The trade in products can be a substitute for factor mobility between countries. The main effects on product market are firstly, the intensive competition where in foreign products can compete for market shares in domestic market and vice versa. Secondly, more integrated market enhances the mobility of firms. The mobility is in terms of Foreign Direct Investment and Outsourcing. Both these have effect on labour markets and they tend to make labour demand move sensitive to the wage rate.\(^\text{39}\) This is potentially important since this elasticity is critical for distortions arising from taxation of labour income i.e., cost of financing welfare state arrangements can be critically affected even though labour is not having the mobility across countries.

The effect on the employment level is in general ambiguous since although more integrated markets offer opportunities for export which tend to improve labour market conditions, they also face a threat from imports with opposite. The opportunities are not necessarily equally distributed across countries and different groups in the labour market and this brings forth the need for welfare state activities.

The larger part of the welfare state activities is financed by taxes on social security contributions levied on labour (i.e., tax burden on labour). With integration it follows that the competition for jobs

becomes more intensive due to the effects discussed above and therefore the effect of labour taxation changes.

Another main issue affecting economic development and welfare is what is known popularly as “brain drain”\textsuperscript{40} in developing nations.\textsuperscript{41} Some developed nations have been pursuing the policy of encouraging the immigration of trained and experienced professionals from developing countries. Such skilled production of manpower trained at a heavy cost from public exchequer in developing countries are required to serve and provide welfare to the people and contribute to economic development in developed countries. If a person undertakes a period of work in another national labour market, he acquires new skills, resulting in a higher level of human capital on return to home country. This should be entered into a human capital account.

In such circumstances, non state employment related insurance schemes might reflect the interests of the state, unions, employers, employees and companies. It is important to point out that a public insurance scheme does not have to be put under formal private administration in order to be privatized. An alternative to keep a scheme public but change its character into a more private-like scheme, either by introducing flexibility and consumer choice or by replacing taxes with insurance premiums and thereby achieving an informal

\textsuperscript{40} It is otherwise known as ‘human capital flight’. Douglas S. Massey and Edward Taylor(Eds.), \textit{International Migration: Prospects and Policies in Global Market}, Oxford University Press(2003), p.36. See also Binod Khadria, \textit{The Migration of Knowledge Workers: Second Generation Effects of India’s Brain Drain}, Sage Publications (1999), at p.4

\textsuperscript{41} Peter stalker, \textit{Workers Without Frontiers}, ILO, Geneva, p.104
privatisation. From an individual citizen’s point of view informal and formal privatisation may in many cases serve some purposes. This gives individuals substantial flexibility in the pension and health care costs and choice of investments.

In short, several studies indicate that occupational and private welfare can be a substitute for or supplement to social welfare. These welfare accounts promise a number of significant advantages over the traditional welfare systems. In particular by permitting the government to focus on interpersonal redistribution and social insurance against economic circumstances with significant life time income implications, the reform may allow substantial reductions in taxes and thereby improve people’s incentives to work, save and invest. Further more by helping people internalise the social cost of the welfare expenditures, welfare accounts discourage people from making excessive welfare claims. In doing so, welfare accounts also improve people’s incentive to work.

But technological developments tend to be skill-based shifting labour demands towards skilled groups. The international integration will reinforce the ‘competition’ across countries in human capital and skills and therefore add to the effects of the skill bias. It is important that this effect arises even in the absence of labour mobility through channels like trade, FDI etc.

The following question arises in this context: is it possible to reform the welfare state without jeopardizing key objectives? A number

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of measures can be adopted aiming at reducing public expenditure based on increased private involvement in the public sector in financing, supply, or at consumption stage. The general aim is to attain a better balance between costs and benefits of activities that are organized by the public sector. When user fees are introduced, part of the financing role is shifted to the user. This will improve resource allocation and force producers to adapt to the preferences of the public\textsuperscript{43}. Another alternative is to substitute private provisions for public in order to reduce costs. This can be implemented either by contracting out or by letting private producers compete within a publically managed system, with or without public producers\textsuperscript{44}.

8.7 Social Protection and Security: Role of ILO in the Globalised Regime

As pointed out in earlier Chapters, International Labour Organisation also finds that insecurity has raised in recent years as people all over the world are affected by developments linked to globalization\textsuperscript{45} and emphasize the need for new ways of promoting socio-economic security and thus it constitute a basis of social justice and economically dynamic societies.

The ILO has been seeking to raise awareness of the different forms and causes of socio-economic insecurity, so that policy makers are better able to formulate policies to combat the adverse effect of

\textsuperscript{43} \textit{Id. at} p.23

\textsuperscript{44} \textit{Ibid.}

\textsuperscript{45} Such as emergence of more flexible labour markets, increased informalisation, rapid technological change and social policy reform.
insecurity and promote decent work security, particularly so as to improve the position of the most insecure groups in society.  

While discussing ILO’s role in globalization regime, it is evident that ILO promotes participatory processes and within which those who work and those who are affected by policy decisions have voice in formulation and implementation of policies at any level. ILO again declares that social dialogue is also an integral part of Decent Work Agenda. The ILO finds the issues of dialogue diverse and include industrial relations, wages and incomes, working conditions, social security, safety and health, employment, vocational training, poverty reduction and monitory and fiscal policies.

Analysing the new world trade law, it reveals the fact that the pre-Uruguay Round GATT framework applies only to trade in goods, reflecting traditional assumptions that services are not easily tradable. However because of technological developments, service transactions can be effected without physical proximity between service provider and consumer. Moreover the deregulation reforms affected the countries which maintain state monopoly during 1980s and renewed the limits of domestic competition. Apart from these, the traditional view of services,

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46. According to ILO, the concept of socio-economic insecurity can be of seven kinds, which are linked to work and labour. They are income security, employment, job, labour market work skill development and representation security.

47. See Report of Policy Integration Department of ILO published in July 2002, para 2.2

48. Id. at para 2.3. Social Dialogue is defined by ILO as all types of negotiations, consultations, or simply exchange of information about reports of governments and workers on issues of common interest relating to economic and social policy.

as part of the production of goods, is shifted and includes international intrafirm trade in service inputs into production either of goods or of other services. In the light of these developments, ‘the reduction or elimination of barriers to services trade became a major priority of a number of developed countries in the Uruguay Round of GATT Negotiations.

### 8.8 Trade and Services

It is highly necessary to differentiate between trade and services at least in principle in order to understand why trade negotiations exclude services from discussions.

Depending up on the nature of services, they include mainly two categories i.e., knowledge and technology-intensive services and labour intensive services. Generally the first category services are final products and where in services are inputs. But in latter category, goods are final products wherein services are also inputs along with other goods i.e., goods are medium of services. When goods are outputs, the goods inputs are also governed by trade laws with the situation where trade law exempts services from its purview. But world trade laws in the present tries to reduce barriers on trade. The other side of the coin is that the law relating to services remains the same domestic law which contains more restrictions when foreign markets are developed and countries allow foreign investments, the home country regulations must be in tune with the trade laws for reaching targets i.e., removal of trade barriers.

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50. *Id.* at p.272.
It is necessary to analyse International Agreement on Trade in Services in this context. The schedules attached to the agreement contain wide range of services covered by the Agreement. The only services excluded altogether from coverage are services those associated with energy, basic petrochemical goods and air services.

The OECD members are bound to eliminate ‘restrictions on current invisible operations’\(^{51}\). The current invisible operation refers to a wide variety of trans-boundary service transactions including technical assistance to business and training, market research and provisions for markets and blue prints construction and maintenance services. The members are permitted for reservations to remove restrictions on current invisible operation on strong reasons.

In this regime of world trade law what exactly is its implication on labour force especially in developing countries?

### 8.9 Impact of Globalization on Social Security of Indian Labour

The Government of India has adopted policies of globalization, liberalization and market economy in the wake of the serious economic crisis that enveloped the country by the middle of 1991\(^{52}\). It came after more than 6 months negotiations with the World Bank starting in January 1991. The package of reforms was announced by Narasimha Rao

\(^{51}\) Article 1.

\(^{52}\) According to National Commission on Labour, “during 1980s India had a fairly good economic performance. But towards last years of decade, and particularly in 1990-91, Indian economy entered an unprecedented economic crisis. India found difficult to raise fundsin the international markets. India was in the verge of default on external payment liabilities. Under these circumstances, it was felt that there was no alternative but to undertake drastic economic reforms”. National Commission on Labour II, Chapter 4 para 29.
Government in July 1991 which consists of two separate economic policies\textsuperscript{53}: (1) IMF inspired programme based on balance of payment; (2) World Bank inspired programme for structural change of economy in the fields of trade, industry, foreign investments, public sector and the financial sector among others\textsuperscript{54}. Globalization and liberalization come to India as a booster\textsuperscript{55} through the economic reforms. The sanctity of economic reforms has been derived from it. Globalization is expected to provide a useful means to develop technologies necessary for the production of goods and services that improve the well-being and flow of finance capital which will bring prosperity in India\textsuperscript{56}.

The post 1991 economic reforms adopting market oriented and globally competitive restructuring policies helped Indian economy to grow faster and become more self-reliant in managing its balance of payments, reduce the level of poverty, contributing to human security including health care, home and employment.

8.10 The New Industrial Policy

New Industrial Policy was spelt out on 24 July, 1991 by starting with the process of liberalization. It is stated that foreign investment and technology collaboration were welcomed to obtain higher technology and to increase experts and to expand the production. The


\textsuperscript{54} Ibid


\textsuperscript{56} Ibid
number of industries reserved for the public sector was reduced to only eight and compulsory industrial licensing was made strict for 18 industries only. Fifty one percentage of foreign investment in high priority industries was made smooth. For free foreign exchange\textsuperscript{57}, a liberalized Exchange Rate Management System was framed. The industrial policy stated that large part of public sector operations other than for welfare of poorest in society, the main operating principle should be that of the market economy.

During the transition period, the complementary social measures were also taken to ensure equitable distribution of both gains and costs of economic reforms like, subsidized food supplies through a Public Distribution System (PDS), concessional loan schemes for marginal farmers and agricultural labourers, employment oriented programmes sponsoring different employment schemes like Jawahar Rozgar Yojana (JRY), Nehru Rozgar Yojana (NRY). After introduction of the new policy, government was committed to employment creation and human capital development in Rural India through Poverty Alleviation Programmes and social services such as primary health care elementary education, rural water supply and sanitation.

In February 1992, the National Renewal Fund (NRF) was introduced to provide assistance to workers who would become redundant as a result of adjustment programme. NRF along with rural and social sector improvement programmes were intended to constitute

\textsuperscript{57} On 30th December 2001, India’s foreign exchange reserves touched a figure of 48.11 billion dollars. By 1st march 2002, the reserves have jumped by as much as $ 299 million and they stood at $50.744 billion. See Report of National Commission on Labour, Chapter 4, para 62.
a comprehensive and permanent social safety net. This is expected to provide adequate security to those who were affected by the reform policy.

Indian experience of globalization clearly indicates that there is a dynamism in the industrial fund and improvement in the quality of life. The Economic Survey (1995-96)\textsuperscript{58} clearly indicates that the trends in improving the quality of life, increasing employment content of growth and reducing the incidence of poverty is reassuring. Again in 1999, the Presidential Address in Parliament\textsuperscript{59} spelt out government’s new strategy and policy approach to employment generation and social development through bold strategy of economic reforms. The elements of social policy include: (1) creation of more employment opportunity per year; (2) primary education and female literacy; (3) primary health services to all citizens; (4) strengthening of welfare and child health services; (5) greater attention to welfare of the disabled and aged; (6) provision for clear drinking water and (7) rural connectivity through all weather roads.\textsuperscript{60}

Being a welfare state, the government was committed to provide all types of welfare security measures. But the public concern with enormous public expenditures on social welfare programmes forced the government to impose cuts in these areas or privatize them to raise the additional resources.


\textsuperscript{59} October 25th, 1999.

The analysis of impact of these globalization, liberalization and privatization on worker’s right with special reference to social security is the crux of the study. One argument is that the present labour laws provide over-protection to the existing employees but hinder the growth of employment for those who are outside the system. The reformists demand for removal of Section 10 of the Contract Labour (Regulation & Abolition) Act which prohibits contract labour and removal of Chapter V B of Industrial Disputes Act. According to Chapter V B of Industrial Dispute Act, employers in specified industrial establishment can affect, lay off, retrenchment and closure only with prior approval of appropriate government. In the opinion of RBI such labour protection measures have contributed to the slow growth of industrial investment and employment.61

Section 10 of the Contract Labour Act envisages prohibition of contract labour on certain conditions. Section 10 also enables the contract labour engaged in prohibited jobs to become direct employees of the principal employer. Now, in the changed circumstances, when jobs are of temporary nature, contract labour becomes necessary. The Economic Survey 2000-01 says:

“The Contract Labour Law, as it exists today makes it impossible for genuine small scale entrepreneurs to provide services to the industry. A modern contract labour law Act should encourage outsourcing of services so that new employment is generated.”62

61. Reserve Bank of India, Report on Currency & Finance, 2001-02, Ch.VIII.
Worker’s Rights in Free Trade Policy

Government of India has assigned highest priority in economic policy and planning with a determined drive to improve productivity especially in public enterprises. This is in fact advanced as the rationale for enlarging the role of private enterprises, especially foreign capital which is supposed to be more efficient and productive than public enterprises. The new economic policy adopted in India fascinated towards friendly market approach is based on the pillars of economic liberalization, privatizations and globalization. Unfortunately, the new economic policy measures do not contain any specific reform proposals to integrate the labour in the overall framework of policy changes. Labour policies do not form a part of the adjustment programme under the imprint of economic liberalization. Hence liberalization, modernization and globalization may bypass the working class. The wave of liberalization is free to create its impact on employment and earning of the work force.

The argument that workers’ rights should be included in the trade agreement is because of two reasons: (a) worker’s rights would help to address the disparity of wealth in developing countries and (b) as a result, political stability could be attained which in turn will stimulate investment, economic growth and free trade. If the disparity of wealth is not addressed, any economic benefit, that a new trade agreement may generate all likely to be distributed “very unevenly among different

63. This happened from 1991, after adopting New Economic Policy.
social classes. One argument is that as a tool to encourage adopting and enforcing worker’s rights provisions such as freedom of association and the right to organize and bargain collectively such provisions would help to expand the role of unions and may help to promote political stability by expanding the middle class. Unions have the ability to promote political development by organizing workers to become a significant pressure group for positive social change. Once organized, unions get the ability to negotiate with employers to improve worker’s rights, to collect and disseminate information to workers and raise worker morale.

The opponents for including workers’ rights provisions in the free trade agreement put forth many arguments to support their position. The major arguments include: (1) improvements in social welfare will automatically follow economic growth and can only occur if costs are kept low to attract foreign investment; (2) forcing nations to adopt worker’s rights provision infringes on the sovereignty of those nations; (3) worker’s rights are social welfare issues and trade law is not an appropriate forum for social legislation; (4) including workers rights provisions in trade agreement will unnecessarily slow down the trade liberalization process and (5) including worker’s right is burdensome and costly as there is always a tension between the goals of free trade.

68. Id, at p.72.
global market efficiency on one hand and competition and worker’s rights and social welfare on the other.

**The MNCs**

Multinational corporations are huge business organizations which are headquartered in one country and operate across national boundaries. They are always trying to take advantage of the opportunities available due to liberalization of free international trade. Free trade would allow MNCs to move their manufacturing operations to nations where the business conditions are the most favourable viz., cheapest labour, permissive health, safety and environmental standards. They can assemble their products as cheaply as possible, then ship the products to consumers in her nations without having to pay trade prohibiting tariffs.

**Free Trade and Export Processing Zone and Industrial Parks**

Export Processing Zones and Industrial Parks are another example which represents global sourcing as an integral component of economic restructuring in the world economy. These can be managed by a host government willing to enter into a long term contract with MNCs. The original EPZ was established in Ireland in 1959 as a tariff-free, integrated stopover for the storage repacking and labeling of manufactured goods for final shipment to product markets. Weak host governments compete with one another to attract DFI and MNCs, not only with direct subsidies,

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but also by prohibiting strikes and unions in EPZs\(^{71}\) and by subordinating
worker rights. The host countries hope to benefit from imports of capital
and technology, but the social costs of these benefits are huge. MNCs
representing international capital who are world-class profit maximisers
are interested in maximizing global return on capital. Hence EPZs
represent the most modern application of tools in economic growth. Using
the technologies and management techniques EPZs may indeed maximize
value added.\(^{72}\)

But one cannot ignore the fact that globalization and liberalization
provide job and thereby increasing income levels. The MNCs bring
opportunities and wealth to developing countries. Growing number of
MNCs gives evidence that they are voluntarily subscribing to global
human rights codes of conduct and policies. The existence of MNCs
provides a win-win outcome for workers i.e., the workers are provided
with contemporary skill training.

In spite of all these, India is also continuing with economic reform
ignoring the depressing effects on the growth of healthy working force.
The Planning Commission expects that 8 to 9 million additional

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71. Errol P. Merides and Ani K. Lalonde-Roussy (Eds.), *Bridging Global Divide on Human
Rights—A Canada-China Dialogue*.

72. *Id.* at p. 346. For eg. In Maquiladoras in U.S. Mexico burden and some EPZs in South
and South East Asia, the MCVCS and the institutions which are managing these
industrial estates exact rents from the impressive value added that is generated, the
condition of labour is generally pitiful. The labour are not covered by any labour codes
and social security. Workers live in virtual slavery or bondage and women workers in
particular are exploited often being dismissed for uniform reasons as marriage
pregnancy or refusal to submit to virginity tests. Like this in Butane which is one of the
largest EPZs with all major MNCs of the World present located in Indonesia. The
workers here even do not have employment contracts with the companies, wages and
terms are fixed unilaterally. And government actually guarantees a policy of no strikes
and disturbances.
employment opportunity will be generated per year in Eighth Plan and about 9.5 million per year in Ninth Plan.\textsuperscript{73} It is true that due to the reform measures, there is a change in the size structure in favour of small and medium industries which in turn have contributed positively to employment expansion. In such a situation i.e., labour issues and trade are inter-dependent and worker’s rights are sufficiently trade related to warrant their inclusion in trade agreements because they influence a competitive position of products in the global market place. The question is no longer whether there is a linkage between worker’s rights and trade but rather how to effectively link the two without creating unrealistic burden on trade.

The main issue involved in this matter is whether worker’s rights provisions will affect the sovereignty of independent nations. The rights are assured by the states according to its culture, political leadership and the nature of its own economic philosophy, resources etc. The argument is that it will be affected when International Trade Agreement include worker’s right provisions. It is not true because of the following reasons: (1) the parties that sign international trade agreements are not ‘forced’ to do anything and the parties involved have choice as to whether or not to participate and if they choose to participate, they are doing so with their consent; (2) it is the inherent nature of international trade agreement that the parties to the agreement have to compromise on certain sovereign rights; and (3) as nations become more and more interconnected and economically benefited, the sovereignty concept must be changed to

accept flexibility in international agreements. Hence the argument against sovereignty can be excluded.

Secondly, there is nothing new in incorporating worker’s rights in trade agreement between or among nations. For example, the generalized system of preferences (GSP)\textsuperscript{74} authorizes United States to grant duty free treatment to eligible products which meet certain criteria. The GSP requires that for the eligibility the countries must take steps to “afford internationally recognized worker rights” including the right of association, prohibition of forced labour, minimum age for employment of children, the right to organize and bargain collectively, condition of work with respect to minimum wages, hours of work and occupational health and safety.

Thirdly, International Trade Agreements which include worker’s rights provisions can have impact on improving conditions of the working class. These can promote worker’s rights across the globe and has a positive influence on the improvement of labour standards in the developing countries.

Next is the question of enforcement of these basic standards. The question becomes relevant, because the non-enforcement will end in probable failure of labour standards.

While prescribing the labour standards itself, it should be followed by strict enforcement mechanisms. That will help workers to play meaningful role in economic development of their country. In case of

persistent violations, strict monetary sanctions must be implemented. These types of monetary sanctions against violators will provide an incentive to encourage compliance.

Along with sanctions, technical assistance should be made available to those countries which do not have resources to comply with the standards. This is because of the fact that primary objective is not to impose sanctions or not to put barriers to free trade but to raise labour standards. Thus the assistance can help the non-complying state to achieve guarantee for complying the standards as per agreement.

Another method is monitoring. An independent, multilateral organization which is well-suited for monitoring can be framed under the agreement or any other efficient existing agency can be assigned the same.

Thus, a balanced approach to conceive the goals of free trade efficient global market and competition on the one hand and worker’s rights and social welfare on the other, can be adopted to release the tension effectively.

When entering into such type of International Trade Agreements, the countries especially the developing countries must understand or take a realistic approach towards impact of new information technologies in the global labour market. The term global labour market itself conveys a meaning that of a shift from the old concept to that labour is a commodity which takes part in the trading process. The basic transformations of the

global labour market which deserve particular attention while making standards are:76

(i) flexibilisation of working time and in growing importance of part-time employment;

(ii) the expansion of ‘informal’ labour market, particularly the “service and black economies”;

(iii) new forms of segmenting and decentralizing the labour process telecommuting world wide subcontracting, global networks of satellite design centers;

(iv) new methods of employing the productive potential of women’s labour by means of integrating the homework economy and of industrializing the family;

(v) new forms of automating scientific, technical and managerial tasks, for instance new approaches to design and engineering automation (CAD & CAL) to computer aided production planning and scheduling (CAP) and to computer-integrated manufacturing system; and

(vi) new forms of world wide sourcing for all types of labour, from unskilled to scientific technical and managerial duties.

8.11 The Recommendations of National Commission on Labour, 2002

The Government of India identified that globalization, liberalization, privatization and consequential technological developments are the main

Chapter - 8

Social Security of Indian Labour and Challenges of Globalization

factors which affect the labour in order to assure international competitiveness.

In 2001-02, budget speech, Finance Minister, proposed certain amendment to law (a) to facilitate outsourcing of activities without any restriction and; (b) to offer contract appointment. Thus the Government of India appointed a National Commission to (1) suggest rationalization of existing laws relating to labour in the organized sector; and (2) suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganized sector\textsuperscript{77}. The Commission took into account the need to ensure a minimum level of protection and welfare to labour, to improve the effectiveness of measures relating to social security, safety at places of work and occupational health hazards; to pay special attention to the problems of women workers, minimum wages, evolving a healthy relation between wages and productivity and to improve the efficiency of the basic institutional framework to ensure the protection and welfare of labour.

The chapter 8 of the Report deals with social security. The Commission found that ‘the crucial link between productivity and industrial efficiency cannot be denied. The level of wages depends on the economic efficiency of the undertaking or industry. Workers have to be as interested in productivity as the management is’\textsuperscript{78}.

The Commission acknowledged that a scheme of protection and welfare has to include assistance to meet exigencies as a result of

\textsuperscript{77} Report of National Commission of Labour II, Chapter 1.
\textsuperscript{78} Id. Chapter 1.21.
unemployment, temporary unemployment, and accidents at places of work, insurance against accidents and occupational health hazards, care in old age, constant upgradation of skills necessary for continued employment. The Commission mentioned that it was needful to attain and retain the degree of international competitiveness that an economy needs in the era of globalization. The Commission continued that competitiveness depends not merely on technology, credit, inputs and managerial skills, but also on the contribution that labour makes. The commitment of the work force to quality and productivity must be high. This commitment and new work culture that calls for competitiveness can be created only when workers feel that they are receiving fair wages, a fair share of profits and incentives.

**Favouring Globalisation: A Paradigm Shift**

The Commission elaborately discussed the impact of globalization on Indian labour. Adoption of policies favouring globalization has brought a paradigm shift in the economic and commercial field in India. According to the Commission, the broad features of the economic reforms were:

1. The government opened major sectors of the economy to private sector;
2. Foreign investment was invited in all these sectors;

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79. *Id.* at Chapter 1.14.
80. *Id.* at Chapter 1.19.
81. *Id.* at Chapter 1.20.
82. *Id.* at Chapter 4.31.
(iii) All restrictions on the entry of the private sector into the field of infrastructure and strategic industries were removed;

(iv) There are more freedom for financial institutions;

(v) By the cuts in CRR and SLR over a period of years, more funds have been made available by the RBI to the banks. Banks can also approach capital markets for raising funds;

(vi) Private capital and foreign investments have been allowed in such areas as construction of roads, ports, airports, telephone services etc.;

(vii) The government wants to reduce its investments in the public sector enterprises;

(viii) Import restrictions have been reduced;

(ix) Subsidies are being cut, tax rates are being reduced and the entire fiscal system is being streamlined; and

(x) The Controller of Capital Issues stands abolished.

All these efforts aim at improving our international competitiveness. But in fact, the new economic policy seems to be resulting in the closure or disappearance of many Indian companies\(^{83}\), especially those engaged in consumer goods industry\(^{84}\), apart from mergers and acquisitions of wholly owned subsidiaries\(^{13}\) of foreign

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\(^{83}\) The commission observes that the Indian entrepreneurs find it is difficult to survive against multinationals whose resources cannot be matched. NCL II Chapter 4 para 91.

\(^{84}\) The main reason is that the competition is with cheap imported good or goods produced locally by MNCs in India.
companies. During such type of reforms, the main apprehension affecting labour are identified as:

(i) Conflicts due to one line development i.e., development of non-public sector alone discarding public sector;

(ii) Illegally hiring workers without signing contracts in India;

(iii) Forcing workers to work extreme hours;

(iv) Non-payment of salaries on stipulated scale and date;

(v) Refusal of employers of their worker’s insurance for industrial accidents, unemployment etc.;

(vi) Failure by enterprises to offer working protection facilities;

(vii) Harassment of women workers in factories;

(viii) Violation of labour laws and even preventing workers from joining trade unions; and

(ix) Reduction of opportunities for employment as most of the entrepreneurs wants to reduce their cost.

The Commission found that it was true that a large number of workers lost their jobs as a result of VRS, retrenchment and closures (both in organized and unorganized sectors). There are indirect compulsions, pressure tactics, innovative forms of mental harassment, compelling employees to resign by seeking to terminate them.

85. Report, National Comission on Labour II Chapter 4 Para.208.
The following observations were made by the Commission:\(^{15}\):

(i) Trade unions did not give a call for strike, because they were afraid that a strike may lead to the closure of the unit;

(ii) Service sector workers are becoming dis-interested in trade union activities;

(iii) Nature of industrial dispute and the demands are changing and settlement is tried to be resolved in bipartite level;

(iv) Government attitude is also changing towards workers and employers and permission for closure or retrenchment are easily granted;

(v) Recovery proceedings against employers who make heavy dues of workers are not seriously pursued;

(vi) Labour adjudication machinery is more willing to entertain the concerns of industry; and

(vii) Migration of workers across boundaries is desirable.

The basic characteristic of labour flowing from India to the industrialized countries is of permanent migration\(^{86}\). They are generally persons with professional expertise, technical qualification or other skills. Apart from these, there are other types of migration especially to middle East even by unskilled or clerical labour\(^{87}\). In case of developed

\(^{86}\) Id. Chapter 4 para.315.

\(^{87}\) According to National Commission, since independence, two distinct types of labour migration have been taking place from India. One is movement of persons with technical skills and professional expertise and second is flow of unskilled or semiskilled workers in manual or clerical occupations.
countries, they have well-established social security system and they can easily take care of their workers. Whereas, in developing countries, the situation is different particularly when they face contingencies like closure of industrial units.

With respect to these changes, the Commission suggested certain modifications in the existing labour laws. They include:

(i) Usage of gender neutral expression ‘worker’ instead of commonly used ‘workman’ in labour legislations88;

(ii) The law will apply uniformly to all establishments,89 irrespective of its size and nature of its activity in case of maternity benefits, child care, workmen’s compensation and medical benefits;

(iii) Dispute settlements are preferred through a recognized negotiating agent which can be made binding on all workers without governmental intervention90;

(iv) Inclusion of provisions of law for determining negotiating agents, particularly on behalf of workers91;

(v) Provision for authorities to identify the negotiating agent, to adjudicate and so on92;

88. Id. at Chapter VI para 31.
89. Id. at Chapter VI, para 16.
90. Id. at para 34.
91. Id. at Chapter III, para 35.
92. Id. at para 34.
(vi) The changes in labour laws must be accompanied by a well-defined social security package that will benefit all workers irrespective of organized or unorganized sector, administrative, managerial or other categories.  

The Commission also recommended for repeal of chapter V A of Industrial Disputes Act and to give adequate compensation to workers and on dispute, redressal through arbitration and adjudication.

Under chapter VIII, the Commission recommended a security system in which the state should bear the responsibility for providing and ensuring an elementary or basic level of security, partly or wholly contributory. In such a system, state has a minimum responsibility and it maximizes the role and share of individual and group responsibility.

The Commission appointed a task force and it recommended that wage ceiling and employment threshold can and should be uniform with a provision for raising the wage ceiling and its eventual removal and lowering employment threshold and its ultimate removal.

Another suggestion is to use the word ‘employee’ as a comprehensive term inclusive of all categories of employees.

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93. *Id.* at para 37.

94. *Id.* at para 85. This provision is approached by the commission on the point of view of society as a whole. The reason is stated as industrial efficiency is essential for social progress and the protection and generation of employment also imperative for social justice and social progress.

95. *Id.* at para 87.

96. This is based on ILO’s Minimum Standard Convention.
employed in any employment.\textsuperscript{97} The Commission suggested a change from an employer’s liability scheme to a social insurance scheme.\textsuperscript{98} The National Health Policy assigns a minor role to health insurance to supplement the public services. The Commission suggested delinking the employment injury and maternity.

With regard to ESI Act also the study group on social security\textsuperscript{99} urged that the benefit structure on the ESI Scheme should be unpacked, and provision should be made for extension of the scheme for one or more benefits separately or in groups. The study group further suggested that immediate steps to be taken to extend the scope of the Act for purposes of employment injury benefit and maternity benefit throughout the country.

The Commission also called for a law to place all provident funds under a common regime.\textsuperscript{100} The Commission suggested that EPFO should organize an inquiry into the working of all exempted funds by an independent agency and review the entire scheme of granting exemptions from the provisions of this Act.\textsuperscript{101}

It was also suggested that an integrated insurance scheme providing for gratuity, unemployment benefits, lay off and retrenchment compensation be evolved and be entrusted to the EPFO for its implementation.

\textsuperscript{97} Supra n.63, Chapter 8.96.
\textsuperscript{98} Id., Chapter 8.97.
\textsuperscript{99} Id. at Chapter VIII, para 10.6.
\textsuperscript{100} Id. at Chapter VIII, 115.
\textsuperscript{101} Id. at para 126.
The National Renewal Fund (NRF) was established in 1992 to provide a form of wage guarantor which had to be used for re-training, re-deployment, counseling etc. It is also observed that the present welfare funds can be transformed into instruments of social security by expanding the coverage of the funds; broadening the range of benefits, modifying the financial arrangements for providing benefits and decentralizing the administration of the funds.

The Commission appreciated the working of National Social Assistance Programme (NSAP) as it served the long felt need for uniform material minimum standards for providing social assistance to weaker sections of society. It should also be designed for the payment of children’s allowance on a universal basis, subject to a means test to persons below poverty line.

The Commission suggested that the social security system can be of three kinds: (1) Social insurance type of contributory schemes; (2) subsidized insurance/welfare fund type of partly contributory and partly socially assisted schemes and (3) social assistance schemes which will be wholly non-contributory. The mechanism for delivery should be based on two key principles: (a) It should be as decentralized and as close to the beneficiaries as possible; and (b) it should be tripartite or multipartite involving workers, employers, governments and other stakeholders.

102. *Id.* at para 160.
103. *Id.* at Chapter VIII para. 434.
104. *Id.* at para 418.
The Commission recommended for establishment of a comprehensive social security system coercing various departments. It was also recommended for a Department of Social Security within Ministry of Labour to co-ordinate monitor and review specific programmes among various ministries and the states. The Commission recommended to create Social Security Fund of India and a Social Security Fund of each state may be set up. On analysis of the report of the Commission, it is very clear that the Commission accepted and supported the new economic reforms.

8.12 Conclusion

Today in India, only about 8% of workers actually get the benefits available under these Acts. The rest 92%—over 30 crores—work in the unorganized sector, and either are not eligible for coverage, or these Acts are just not implemented for them, with the result that these workers have insecure employments and low incomes. They have no coverage of social security, and have to spend out of their meager incomes for all contingencies such as illness and children’s education and in their old age they become helpless. This is in spite of the fact that they contribute over 60% of the country’s GDP.

Hence apart from a small segment, the large mass of labour force in India who are also contributing to the development of this country is on streets with out any type of social security coverage. An innovative and revolutionary transformation of the social security system, considering the new challenges and existing social order in India, is need of the hour.