CHAPTER-II

LABOUR LEGISLATION IN INDIA-A HISTORICAL ANALYSIS OF ITS UTILITY IN THE CONTEXT OF PRESENT DAY NEEDS
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In this chapter a historical study of labour legislations in India is undertaken in order to know the circumstances in which the law was enacted and the attitude of the government at various phases of history. The chapter focuses its attention on the industrial dispute legislation in India, its relevance and utility in the context of present day needs. The shift of government policy from one that of laissez-faire to welfare state marks a distinctive change in the theme of labour legislations in India. The process of globalisation and liberalization of the economy initiated in the year 1991 has had its impact on the labour laws in India. Therefore, the development and growth of labour legislation would be traced from the British colonial government to independent India phase as a first step towards understanding the issues involved in labour legislation.
Every society passes through various stages of development. All the countries undertake developmental activities for the material well being of their people. Industrialization is one of the stages of development. Industrialization is a process of transformation of pre-industrial economy into an economy geared to utilization of resources of the country through modern science technology and equipment. At the beginning of the process of industrialization, the State was a silent observer; the society did not show any interest in social science as it showed in natural and physical sciences. Consequently, the economy was guided by the principle of laissez fair. However, industrial revolution brought certain harsh realities before the State. The society was now organized into capitalists and labourers, which gave birth to the concept of haves and have-nots. The State very soon realized that industrialization envelops the whole society and it would not be advisable to alienate its purpose from mass good or social interest.

Since the time it was realized, that industrialization must be directed towards mass good and welfare (socialism), legislative process of intervention in

industrial relations has become the norm world over. The secret behind state intervention in industrialization is the balance of forces on the industrial scene. The Indian labour scene is dominated by a variety of labour legislations. The enormous amount of labour law that we have is indicative of the labour and social system that we inherited at the dawn of independence. In order to ensure good relations between labour and management the government of India since independence has taken active interest to remedy injustice to labour. The government of India has taken both legislative and administrative action to further the aims and aspirations of labour.

1. India and its quest for industrialization

India began its journey into industrial relations at a time when the country was semi-feudal in character and lassie-faire was the running engine of the economy. One of the first destinations in labour legislation ironically began by passing anti-labour legislation. The British govt. of India enacted legislation such as

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Assam labour Act, Workmen’s Breach of Contract Act of 1859 and the Employers and Workmen’s (Disputes) Act of 1860, which rendered workmen liable to criminal penalties for breach of contract.\(^5\) The first of the Factories Act was enacted at the instance of British Cotton manufacturers. They were worried over the unfair advantage taken by the Bombay cotton mill owners because of the absence of any restriction on the employment of children and hours of work. The pressure applied by the British manufacturers on the Secretary of State in India resulted in the appointment of a Factory Commission to look into the conditions of workers in 1875.\(^6\) Some of the social workers on the Indian side were opposed to the exploitation of children. These social workers supported the British manufacturers in their cry for restrictions on employing children in factories. The Government of India in the end had to enact the Factories Act of 1881. The Factories Act of 1881 was the first legislation directly affecting industrial labourers in the country. It applied to all manufacturing establishments using power driven machinery, employing 100 or more labourers and working for more than 120


\(^6\) Supra n 4 at p 232
days in a year. It ruled that no children below the age of 7 could be employed in a factory and nobody before attaining the age of 12 could be made to work for more than 9 hours a day. There was provision of one-hour rest daily and 4 holidays per month. Fencing of dangerous machine was also made mandatory in order to reduce accidents. Accidents in factories had to be reported and in case it was required, factory inspectors could be appointed to look into the working of factories.\(^7\)

The Factories Act, 1881, did not satisfy either British manufacturers or Indian social workers. The reports of Factory Inspectors also painted a grim picture of the conditions of workers. A fresh enquiry was held in the conditions of Bombay cotton mills and there was a memorandum submitted by N.M. Lokhanday, after being signed by more than 5000 people.\(^8\) In 1887, an English Inspector of factories visited Indian factories and wrote a report. In 1890 an international labour conference, held in Berlin adopted resolutions, asking for the regulations of working hours of women and children in member countries. The same year, there was

\(^7\) Supra n 4

\(^8\) Ibid
another enquiry into the conditions in Indian factories. Consequently, legislation the Factories Act of 1891 was adopted. It was made applicable to establishments using power and working with 50 or more people. It was however provided that the provisional government could extend it even to the establishments employing 20 persons. It revised up their age of employment of child labourers to 9 and reduced the working hours for children below 14 to 7 per day. In the case of female workers, the working hours were fixed at 11 with one 4 hours break in between. Both the children and female workers could not be made to work after 8 p.m. and before 5 a.m. A provision was made for one-day weekly rest and half an hour lunch per day. The legislation made it obligatory for the management to provide drinking water and make suitable arrangements for ventilation and sanitation. As a result of the recommendation of a committee headed by Sir H.P Frere Smith, the Factories Act of 1911 came into existence. The Factory Act of 1911 provided the nucleus around which all subsequent Acts have been built. It extended the scope by encompassing within its purview the

10 The Government of India in the year 1906 appointed a committee consisting of Commander Sir H.P.Frere-Smith and two medical officers for making an enquiry into the questions of limiting adult workers working hours, allowing children to work in factories on producing certificate of fitness etc., as discussed by K.N. Subramanian, supra n 3
Factories that worked even less than 120 days in a year and reduced the working hours for children to 6 per day. Children and women could not be made to work between 7 p.m. and 5.30 a.m. For adult male workers in textile factories, the number of hours was fixed at 12 per day with half an hour break in between. Safety and health measures were made tighter. Full time factory inspectors were appointed to see whether the provisions were being enforced. The Factories Act of 1922 was adopted in the background of ending of the First World War, formation of the International Labour Organization and the formation of All India Trade Union Congress. The Act raised the lower age limit of children to 12. For adult workers the working hours were fixed at 11 per day or 60 per week. A weekly day of rest was provided and the lunch duration was raised to one hour. The standard of ventilation and sanitation was to be prescribed. Factory inspection was made more effective.

The Government of India appointed the Royal Commission on Labour, headed by J.H. Whitley to look into the conditions of industrial workers and suggest steps to ameliorate them so that reforms could be carried out and the rising tide of labour unrest stemmed. The report of the Commission was submitted in 1931 and a
series of legislation ensued during the 1930s. The Factories Act of 1931 was brought into existence. It distinguished between seasonal and perennial factories. In the former, working hours were fixed at 11 per day and 60 per week. In the latter they were limited to 10 per day and 54 per week. Children could not be made to work for more than 5 hours a day. Overtime work came to be regulated and higher payments were prescribed for it. In no case an adult worker could be made to work for more than 13 hours and child for more than seven \( \frac{1}{2} \) hours at a stretch. Employers were instructed to have suitable arrangements for first aid and crèches for the children of women workers. Ventilation and sanitation facilities were to be improved and safety regulations tightened. The powers of factory inspectors were increased.

Another important development that took place in the year 1923 was the bringing of a law to compensate workers for their loss while being employed. The Workmen's Compensation Act of 1923 made the employers responsible for compensating workmen for all injuries sustained in the course of their work. The scales of compensation varied according to the wages of the workmen and the kind of disability suffered. A
Commissioner was to be appointed in each province to administer this legislation. All accidents were to be compulsorily reported to him and he was responsible for settling all claims for compensation. The employers were also made liable to compensate the workmen for occupational diseases contracted by the latter.

The law relating to trade unions was not easy to come by in India. Long after the trade union law in England was enacted, the courts in India still considered the activities of the trade union as illegal. The fact that the trade union activities in India lacked legal basis was discovered by the trade unionists when Messrs. Binny & Co., a powerful employer, took it to court. The Madras Labour Union for Textile workers which was the first organised trade union in the country led by B.P. Wadia was charged for "interfering with the workpeople and dissuading them from working and thereby causing loss to the company", by Messrs. Binny & Co. The court granted an injunction against the trade union leaders, which made it impossible for the trade union leaders to continue their activities.\(^{11}\)

\(^{11}\) *Supra n 3 at pp 122,123*
It is difficult to point out the precise reasons for the growth of trade union movement in India. As Dr. V.B. Coutinho states,

"It may be noted that the growth of the trade union movement coincided with the building up of the tempo for freedom and independence of India. Hence, the events during 1917 to 1947 are so interlinked that it is difficult to distinguish between a purely economic struggle and a purely political struggle."\(^{12}\)

Activities for legalising trade union activities intensified after the Messrs. Binny & Co case. A Bill was introduced on 2\(^{nd}\) January 1925 in the Legislative Assembly. The passing of the Trade Unions Act in the year 1926 marked a significant development in the history of trade union movement in the country. Many of the provisions included in the Indian enactment had been lifted almost bodily from the corresponding British law.\(^{13}\) The Trade Unions Act, 1926 is a permissive legislation wherein any seven or more members of a trade union may apply for registration of a trade union. Registration is not compulsory and


\(^{13}\) *Supra* n 3 at 126
unregistered trade unions would not in any way, be illegal. Benefits such as immunity from criminal and civil liability as are conferred by the law on registered unions will not be available to unregistered unions. In its essentials the Trade Unions Act, 1926, remains unchanged since its first enactment.

The Government enacted the Tea Districts Emigrant Act of 1932 to protect the interest of garden workers who received very low wages and were treated badly by planters. Indian Mines Act was passed on the recommendation of Royal Commission in the year 1935 which banned the employment of children below 15 and put the maximum hours of work at 54 per week. The health and safety provision were made stricter.

Some major labour enactments during the period were as follows:

(i) The Tea Districts Emigrants Labour Act, 1932 (to control migration into Assam for work on plantations)

(ii) The Workmen's Compensation Act, 1923

(iii) Indian Dock Labourers Act, 1934

(iv) Factories Act, 1934
(v) The Mines Amendment Act, 1935

(vi) The Payment of Wages Act, 1936

(vii) The Industrial Disputes Act, 1947

The recommendations and conventions of International Labour Organization had its impact on labour legislation in India. There were series of amendment to Factories Act, the Industrial Employment (standing orders) Act, 1946, the Industrial disputes Act, 1947 were also passed, which laid down the path for governing of industrial relations in India. The independence from British rule and the new Constitution of India gave the Indian policy makers an opportunity to lay down the future road for labour reforms in India. The concept of social justice embossed in the Indian constitution empowered the post-independence labour laws to tackle the problems of industrial relations.

A glance at the existing labour laws reveal that it was enacted at varying economics viz., feudal, capitalistic, mixed, and socialistic ones actuated by varying motives and based on varying philosophies and jurisprudence have rolled into a co-mixture.
The principal labour laws in India can be classified into four broad headings:

First: The law relating to minimum conditions of employment can be said to consist of:

1. The Factories Act, 1948
2. The Mines Act, 1953
3. Beedi and Cigar workers (Conditions of employment) Act, 1966
4. The Dock Workers (Regulation) Act, 1948
5. The Motor Transport Workers Act, 1961
6. The Plantation Labour Act, 1951
8. The Contract Labour (Regulation and Abolition) Act, 1970
9. The Bonded Labour system (Abolition) Act, 1976
10. The Inter-State Migrant Workmen Act, 1974.

Second: The law relating to wages and other monetary benefits consists of:

10. The Payment of Wages Act, 1936
11. The Minimum Wages Act, 1948
12. The Payment of Bonus Act, 1965
13. The Equal Remuneration Act, 1976
Third: The law of social security:

14. Workmen's Compensation Act, 1923
15. Employees State Insurance Act, 1946
16. Employees Provident Fund Act, 1952
17. Maternity Benefit Act, 1961
18. The Payment of gratuity Act, 1972

Fourth: The industrial relations law

21. The Trade Unions Act, 1926.

2. The Regulation of Industrial Relation and changes in the Political & Economic field

There have been far-reaching changes in the political & economical field since 1980's. Communism & capitalism have undergone changes. Socialism as way of governance is slowly losing its identity. These changes have had their impact on industrialization. In India, the labour law system has remained the same, and is as it was when it become independent. It is time to measure the
utility of some of the labour legislations, since they have existed for more than 50 years. Deregulation, decentralization, and disinvestments are forcing the government to withdraw itself from some social and economic sectors. The government's role is changing from being regulators to controllers. Legal reform (Labour reform) is in progress in many countries including India. There is a great challenge before the government throughout the world. The changes in the system of government and economic management, with emphasis on pluralism and economic liberalization, have thrust employers and their organizations into the centre stage of economic development debate and action. The role of the private sector as an engine of development has gained credibility.

State intervention in labour relations is marked with variety and bulk of labour laws. It is very natural for anyone to cry for the simplification and consolidation of labour laws to reduce proliferating variety. Some of the labour laws like Trade Unions Act 1926, Industrial Disputes Act, 1947, Industrial employment (Standing Orders) Act, 1946, Payment of Wages Act, 1936, Workmen's Compensation Act, 1923 are pre-independence legislations and have been continued even after the
adoption of the Constitution of India. The labour laws, which have been continued enacted in the post-independence era, find their roots in Part IV of the Constitution, i.e., Directive Principles of the State Policies. Legislations like Employees State Insurance Act, 1948, Minimum Wages Act, 1948, Employees Provident Fund & Miscellaneous Provisions Act, 1952, Factories Act, 1948, Payment of Wages Act, 1972, Contract Labour (Regulation & Abolition) Act, 1970, Mines Act, 1952, Maternity Benefit Act, 1961, Plantation Labour Act, Beedi & Cigar Workers (Conditions of Employment) Act, 1966 are some of those post-independence labour laws which have been enacted in pursuance of the Constitutional mandate and goals. These legislations have to be seen as an inevitable outcome of the historical necessities of a period, dominated by unscrupulous economic exploitation of labour. Weak and unorganised labour was pitted against mighty and organized employers. Therefore, labour had to fight for legislations to protect their interest. Each labour law was enacted to serve a particular object in a particular context. Therefore we find host of labour laws in this country. Despite some of these laws being existent for more than 50-years, it appears that they
have not succeeded in providing a satisfactory basis for the regulation of industrial relations and that a total new look ought to be given to these laws.

The primary law regulating industrial relations in India is the Industrial Disputes Act 1947. The Act has been in existence for more than 50 years. The basic objective of the Act is to provide machinery for investigation and settlement of Industrial Disputes in India. According to Justice V.R. Krishna Iyer,

"The Industrial Disputes Act, 1947 is a benign measure which seeks to preempt industrial tensions, provide the mechanism of dispute resolution and set up the necessary infrastructure. So that the energies of partner in production may not be dissipated in counter productive battles, and assurance of industrial justice may create a climate of good will."\(^{14}\)

The idea of having such legislation was with the aim of stepping into industrial progress with minimum hurdles. The Act is one single legislation, which provides for various rights to the workmen, while in service and out of service. The Act is overwhelmingly

\(^{14}\text{LIC of India v. D.G.Bahadur, 1980 Lab. IC 1218 (1226) (SC)}\)
loaded with State intervention in labour matters, which emanates from its constitutional obligation to safeguard the interest of the working class, but with the economy taking the route of liberalization, privatisation and globalisation, there is a feeling that the Act has out lived its purposes.15

Commenting on the labour policy of the government T.R. Subramanian writes as follows:

"The labour policy of Government since the passing of the Industrial Disputes Act, 1947, was one that inevitable, though unintentionally, encouraged litigation. Compulsory adjudication became the sheet anchor of that policy."16

The demand of the New Economic Policy has to be met with changes in the Act. The law has to ensure to the community, the availability of a product, or a service at a reasonable price & the adaptability to change by the workmen.

16 Supra n 3 at 73
Some of the provisions in the Act do not fit into the present day environment. Section 9 A of the Act, provides for notice of change and stipulates no employer who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the IVth schedule shall effect such change without serving a notice in the prescribed manner or within 21 days of giving such notice, etc., this particular provision has the tenacity to obstruct significant changes in jobs. New means of production and technological innovations requires that changes in production method should be done without wasting any time on procedural requirements. This provision binds the management and ties up its hand and feet by placing legal obligations. There is nothing in this section, which provides that where the management and the union have reached an agreement on procedure, etc., its provisions could be transcended.

17 9 A—No employer, who proposes to effect any change in the conditions of services applicable to any workman in respect of any matter specified in the fourth schedule, shall effect such change—
(a) Without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
(b) Within twenty-one days of giving such notice:
Provided that no notice shall be required for effecting any such change—
(a) Where the change is effected in pursuance of any settlement or award; or
(b) Where the workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules. apply
Further section 9 B of the Act, gives the power to the government to exempt any industrial establishment, the application of sec.9 A under normal circumstances. If section 9 B is not invoked the management which want to introduce rationalization in work has to serve the notice of change if on this occasion a proceeding is pending before a tribunal, then section 33 will also be attracted. Any management which wants to tune the production system in a manner suitable for modern day productions to achieve higher productivity and profit will find that the Act prescribes a bundle of obstacles and prolonged procedure before the management can introduce any change in production system. This provision gives a sort of quasi-property right on their jobs, which cannot be changed to their determinant at all.

The only course available under the present law for the management is that it should take all the right decisions at the beginning of the business and grow with the same structure till the end. Any change in between would attract the provision of law and the court’s judgment.
The Act has a tedious and a time consuming procedure for removal of surplus labour, which also acts as a hindrance for the success of the business establishment. There is no doubt that government should control removal of labour on the ground of surplus with malafide intentions in order to protect the innocent worker. Bonafide retrenchment should be certified by the government at the earliest to prevent wastage of means of production. The New Economic Policy demands that the changes in the system should take place to help the cause of the growth of economy. However, the appropriate government in the Act is often the State government and they may not share the purpose of the New Economic Policy or find it politically in expending to do so.

Closure of industries faces greater difficulties under the present law. The employer in the place of lockouts may misuse closure provision. The government however will be justified in preventing all closures other than that of chronically sick establishment, which cannot be revived with more funds, new machines and may be new management. The system of paying compensation for lay off and retrenchment closure does not full fill the demands of livelihood in the modern day. The present
decade is witnessing revolutionary changes in the methods of production. The duration of the product cycle is considerably short. The trade and business is competitive, nationally and internationally and the quality of the product will crucially determine the success in this competition. In this sense a business establishment may not only be short lived, but also require fluctuating number of employees.\textsuperscript{18}

The present Act provides for easy entry of business, but difficult exit from business. The existing provisions of the Act have rendered both work reorganization or sustained technological renewal and the resulting de manning and re manning of organization too costly in money and time, if not altogether are impossible.

The Government of India appointed the Second National Commission on Labour to investigate the whole question of rationalization of the existing labour laws in the organised sector so as to make them more relevant in the changing economic conditions under the impact of

\textsuperscript{18} Supra n 15 at 224
globalisation. The Second National Commission on Labour was set up for the following reasons:\(^1\):

i) During the period of three decades since the First National Commission on Labour was set up, there has been an increase in the pace of industrialization and urbanization, coupled with as significant change in the size and composition of the total labour force.

ii) After the implementation of new economic policy in 1991, changes have taken place in both the global and Indian economic environment, which have in turn brought about radical changes both in the domestic industrial climate and in the labour market in India.

iii) Changes have occurred at the work places; changes have also taken place in industry and character of employment; changes in hours of work and overall change in the scenario of industrial relations are also significant. These changes have resulted in uncertainties in the labour market requiring a new look at the labour laws.

The Second National Commission on Labour submitted its report in June 2002 to the Central Government i.e.

\(^1\) Report of the Second National Commission on Labour
http://www.labour.nic.in/comm2/organised.html
after 2 and ½ years of its inception. The report has become the subject matter of wide-spread discussions in the concerned circles of employers, trade unions, economists and the Central/State Governments. The Commission has recommended for consolidation of all exiting laws (with amendments suggested by it) into a single law called the Labour -Managements Relations Law or the Law on Labour management Relations. It recommends a special law for small units employing 19 or less workers and an umbrella legislation for unorganised workers. The main demands of the liberalization process have met the approval of the Commission. It has inter alia recommended that,

(a) The Contract labour shall not be engaged for core production/services activities. However, for sporadic seasonal demand, the employer may engage temporary labour for core production/service activities. The employer be permitted to hire contract labour for non-core services like canteen, Watch & Ward, cleaning etc.,

(b) Chapter V-B provisions of the Industrial Dispute Act be removed in so far as it relates to lay-

20 Report on the Second National Commission on Labour, Conclusion and Recommendations, as analysed by Muralidhar, Advocate Secy, AITUC, Karnataka State Committee (2003)
off and retrenchment. No prior permission is required to be taken by the employers in respect of lay-off and retrenchment in an establishment of any size.

(c) Chapter V-B provision relating to Sec.25-0 be amended so that establishment with workforce under 300 need not take prior permission to close down undertakings.

(d) Notice of Change issued by an employer as per provisions of Sec.9-A should not operate as a stay under Sec.33 though such a decision of the Management will be judiciable under Sec.33-A.

(e) Term "retrenchment" should be defined precisely to cover only termination of employment arising out of surplus workers in an establishment, such surplus having arisen out of one or more of several reasons.

(f) Sec 11-A of the Industrial Disputes Act, 1947 may be amended to the effect that where a worker has been dismissed or removed from service after a proper and fair enquiry on charges of violence, sabotage, theft and /or assault and if the Labour court comes to the conclusion that the grave charges have been proved, then the Court will not have the power to order reinstatement of the delinquent worker.
(g) The Government may lay down a list of highly paid jobs who are presently deemed as "workman" to be taken out of the purview or to fix a cut-off limit of remuneration to exclude them from the purview of the Industrial Disputes Act.

(h) An umbrella legislation for workers in the unorganised sector to ensure generation and protection of jobs, protection against exploitation of their poverty and lack of organization, protection against arbitrary or whimsical dismissals, denials of minimum wages etc. A welfare scheme to provide for compensation for employment injuries, Provident Fund medical care, pensionary benefits. Maternity benefits etc.

(i) Strike could be called only by the recognized negotiating agent and that too after it had conducted a strike ballot amongst all the workers of whom at least 51 percent support the strike. Correspondingly an employer will not be allowed to declare a lock out except with the approval at the highest level of Management. A Management must pay the worker three days wages per day of the duration of an illegal lock out. The Union which leads an illegal strike must be derecognised and debarred from applying for registration or recognition for a period two or three
years. In case of socially essential services, if the strike ballot shows that 51 percent workers are in favour of strike, the dispute must be referred to compulsory arbitration.

(j) The attitude to hours of work should not be rigid, but hours of work put in beyond nine hours a say and 48 hours a week must be compensated by payment of wages.

3. The Context of Globalisation and the need for change in Labour Laws

'Globalisation' is a word, which has come into common use in recent years and is not an easy concept for the purpose of analysing. Government policy makers, political party leaders, business people, academicians, labour union leaders and the mass media all refer to the effects of globalisation and how it is changing our lives. Globalisation seems to imply the integration of an economy with the rest of the world markets by way of free trade, free capital movements removal of restrictions on foreign ownership of industry and other assets, and floating currency to determine exchange
rates. However, globalisation has different meaning to different people. Most people see globalisation as a process of change, which many have been persuaded to believe as natural and inevitable. It indicates that globalisation has the following main points:

- The process of change involves international trade and investment. So clearly the role of business corporations and their overseas activities are a key part of this change.
- Based on this international trade and investment, national economies are tied together in a global economy.
- Changes in the global economy are much faster now.
- Globalisation has taken place in the last 20 years.

Whatever is the meaning and understanding of globalisation, the following influence on national labour market governance can be pointed out:

1. Trade liberalization enhances export opportunities but also imports, implying tough competition in markets

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for tradable products and increased pressures on unit costs, taxation, and wages;

2. Technological innovation, reduces costs of communication and transport, reinforcing the competitive impact of more open markets;

3. Enhanced capital mobility strengthens the bargaining power of business and multinational companies producing tradable goods;

4. Growing foreign direct investment flows may reinforce 'regime competition' between regions and states as regards provision of the most attractive environment for mobile producers.

The debate on globalisation, employment and labour standards involves a whole range of broad issues. However for the purpose of present study, two main sets of themes can be identified; - the first thing concerns the implications of globalisation for labour markets in the advanced industrialized countries and the second concerns the implications of globalisation for labour in the developing countries. It is believed that free trade and global competition, especially from low cost economies, is a threat to employment in the developed countries, particularly for low-skilled labour, and poses downward pressures on wages and labour standards.
The fear of rising outgoing FDI flows is expected to shift the power in favour of capital and undermine existing regulations and intuitions of labour relations- leading to flexibility and inequalities.

The implications of globalisation for labour in the developing countries are much more complex. It is felt that the current mode of globalisation chiefly is about exploitation of cheap labour and natural resources in the South, and that political liberalization of trade and investment prevents the developing countries from developing their economies according to their own needs, aims and preconditions. In the process some workers may benefit, however the overall effect is to transfer resources from the poor countries to the rich and to the Multi National Corporations in particular and thus, preserve and reinforce the vicious circle of underdevelopment, dependence and poverty. In terms of employment, this means continued marginalization of vast masses into the informal subsistence economy with inferior standards of work and living. There is some optimistic interpretation as well, that is the export opportunities provided by trade liberalization stimulate growth, employment and income, in turn fostering domestic markets and demand, while attracting
inward investment that brings competence, technology and further dynamics of economic and social modernization.\textsuperscript{24}

4. Globalisation and liberalization in India

Prime Minister Indira Gandhi gave the first hint of liberalization of the economy in the year 1975. A number of industries were opened up for participation by large business houses and companies covered under MRTP and FERA. The process of liberalization was further extended in a half-hearted manner in the year 1980 by the Industrial Policy of 1980. Import quotas were replaced by tariffs, personal income tax rates were substantially reduced, and licensing for private investment was partially deregulated. The year 1985 saw a more intensified phase of liberalization when Mr. Rajiv Gandhi assumed the charge of Prime Minister. A systematic and serious process of globalisation of the Indian economy began in the year 1991 under the leadership of Prime Minister Mr. Narasimha Rao. Some of the principal measures taken were:\textsuperscript{25}

\textsuperscript{24} \textit{Supra} n 22

\textsuperscript{25} \textit{Ruddar Datt, Economic Reforms In India – A Critique}, (1997) p 84 - 85
(a) Opening up the economy to the private sector in areas hitherto reserved for the public sector;

(b) Facilitating foreign investment and import of FERA technology;

(c) Abolition of the ceiling on assets for MRTP companies, thus facilitating expansion of MRTP companies and dominant undertakings:

(d) Reviewing the policy with respect to public sector undertakings, thus, (i) limiting public sector to strategic, high tech and essential infrastructure; (ii) referring sick Public sector undertakings (PSU's) to BIFR; (iii) disinvesting a part of the shareholding of the PSU's; (iv) to develop a safety net for workers who are likely to be retrenched as a result of measures to close down sick units or rationalization of the staffing pattern of PSU's.

As part of the liberalization process, certain measures of industrial reforms were of course introduced. The Industrial policy announced in July 1991 aimed to free the industrial sector from barriers to entry and from other restrictions to expansion, diversification and modernization. The industrial licensing system was
dismantled, and areas once closed to the private sector were opened up: electricity generation, some of the oil industry, heavy industry, air transport, road and some telecommunications. The economic reforms in India have the objective of replacing a protectionist economic regime with a competitive environment in which free market forces would ensure efficient allocation and use of resources, thereby improving the capacity of Indian industry to become globally competitive. At present, the Indian labour market is characterized by dualism. First, there is the huge unorganised sector employing nearly 270-300 million people and secondly, there is the organized sector, representing less than 10 percent of the labour market. The Central and State governments have sought to influence wages in unorganised sectors through the instruments of statutory minimum wages for different industries. But a recent ILO study shows that statutory minimum wages have been largely ineffective in influencing actual wages. Moreover the ILO study shows that no conceptually sound and operationally meaningful basis for fixing minimum wages for unorganised sectors was really defined.

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In the organized sector, on the other hand, minimum wages have normally been higher than statutory minimum wages. Moreover, wages in the organized sector are generally not determined by collective bargaining. In the organized sector, the awards of Pay Commissions, Wage Boards, bonus payment rules etc actually exogenously determine wages. Indeed, wage adjustments in the organized sector are not actually linked to productivity, or profitability of industry, or the need for technological changes. Therefore the process of wage determination in India lacks the kind of flexibility that is needed to facilitate cost adjustments by enterprises in the face of price competition.

The net effect regarding wages has been the incorporation of dualism in labour market: a situation in which workers in unorganised sectors have been left way behind the more fortunate workers in the organized sector, especially those in public sector employment. Even in the organized sector of the labour market, there is a serious problem of disguised unemployment. According to the ILO study:

"The organised sector accumulated surplus labour over the years"
partly because the public sector regarded employment generation as social responsibility and partly because the government undertook to subsidize non-viable enterprise in order to prevent job losses. It is estimated that more than 16 percent of the employees in the organized sector are actually redundant. Moreover, only a quarter of this redundant labour appears to be in the industrial sector; the rest are in the services, mostly controlled by the government.".28

One of the effects of liberalization programme of the Indian economy has been the reduction in capacity of public sector enterprises to carry the large stock of surplus labour. The need for financial discipline has also made it necessary to get rid of surplus workers in government offices. As a result, the so-called disguised unemployment is likely to become open unemployment over the next few years. To be able to face the problem of labour retrenchment in the future, the Government of India established a National Renewal Fund (NRF), which is intended to fund the costs of voluntary early retirement and also to fund area

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regeneration schemes fund areas with high incidences of job losses. There is no doubt that there has to be an urgent reform in the labour market. However, the task is not easy because of the plethora of labour laws that exist to regulate the market. The multiplicity of labour legislation to regulate the labour market introduces an element of confusion in the area of the labour market reform.

A summing up

The colonial history has generated a feeling that the industrial workers were victims of exploitation and therefore the State needed to support them. Several laws were enacted with a view to provide this oppressed class a minimum of support. The post-colonial period created large industries with a high degree of employment security law. A high degree of employment security also seemed quite consistent with the protectionist, import-substitutive industrialization strategy, which India adopted. Employment security, moreover, was viewed as an instrument of guaranteeing
income security to workers in an economy where no State-sponsored social security existed.29

Employment security has its own effect of accumulation of surplus labour in the organized sector and has turned industrial disputes into political issues. The recent economic reforms have both undermined the basis of the implicit contacts on which the employment security system rested and brought into sharp focus the need for labour adjustment. De-licensing and trade liberalization have stimulated price competition thus making it difficult to pass on the costs of employment security to consumers. Costs adjustment of which labour adjustment is a part, has thus assumed importance. However in the context of Market Economy, unfettered freedom to the employers in the guise of flexibility would mean destruction of level playing field for labour, impairing the collective bargaining process, elimination of trade unions of workers and undermining industrial democracy. Flexibility, like globalisation, would become one-way traffic.