CHAPTER 2
EVOLUTION OF GLOBALIZATION, LIBERALIZATION AND PRIVATIZATION

2.1 Introduction

State is defined as a definite population in a definite territory with government to enforce its sovereignty. There are various theories surrounding the origin of State. Western thinkers rely on the “social contract theory.” Rousseau, Locke and Montesquieu are the proponents of this theory. According to them State emerged as a result of a contract between people on one hand and ruler on the other. People surrendered their inherent right to the ruler in return ruler promised to protect them. The subject matter was the protection of the rights of the subjects. In course of time the ruler flouted his promise and it necessitated people to get their rights in written form i.e. Constitution.\(^1\) Even in the Indian Constitutional philosophy “We the people” in the Preamble confirms the concept of people’s consensus in the origin of the State.\(^2\)

Constitution is that document which \textit{inter alia} sets out the rights and liberties of the people, it regulates the relationship between State and the individual but ultimately it is the form of government which determines how much of human life should be assigned to individuality and how much to society.\(^3\) In the liberal philosophy of the moderns, the most rational form of social organization was the one which gave priority to individual freedom.\(^4\) They believed on the principle that “\textit{that government is the best which governs the least.}”\(^5\) This idea was deeply intertwined in the United States Constitution which had adopted “\textit{laissez faire}” form of Government. In United States (U.S.) the role of the State was based on the

\(^1\) (‘Justice is not derived from the King, as from his free gift; but he is the steward of the public, to dispense it to which it is due. He is not the spring, but he is the reservoir; from whence right and equity are conducted by a thousand channels, to every individual’) Jurisprudence, Lect. XXVIII, I Comm. 266 as cited in C.K. ALLEN, LAW IN THE MAKING, 3 (1964).
\(^3\) JOHN STUART MILL, ON LIBERTY 89 (1859).
\(^4\) M. LAUGHLIN, SWORD AND SCALES: AN EXAMINATION OF THE RELATIONSHIP BETWEEN LAW AND POLITICS, 137 (2000); GAVIN W. ANDERSON, CONSTITUTIONAL RIGHTS AFTER GLOBALIZATION, 5 (2005) (In practice this was to be delivered through the modern State which was seen as the exclusive location of both political sovereignty, this was where the political sovereignty actually resided, and legal sovereignty, as the State alone had the right to exercise that political power).
\(^5\) HENRY DAVID THOREAU, CIVIL DISOBEEDIENCE 1 (1849).
principles of Classical liberalism or “laissez faire” but due to the Great Depression of 1930’s the necessity for government intervention was felt in the economic policies and thereafter the politico-economic theory underlying the state transformed into Positive Liberalism. But later during 1980’s when the economy was revitalized the state again went back to the theory of classical liberalism, but this time in a new form called neo-liberalism.\(^6\) Unlike U.S., U.S S.R (erstwhile), China etc. the so-called communist countries were influenced by Marxism and Socialism, but both governments' had failed to succeed against economic globalization and as a result U.S.S.R. (erstwhile) collapsed marking the end of Cold War.

With neo-economic policies under Thatcher and Reagan era Capitalism became stronger in United Kingdom (UK), U.S.A. and subsequently Russia, China and India followed the suit. The governments of all these States aimed at establishing a free market economy. But ever since the emergence of globalization the welfare principles of the constitution seems to be at peril. As remarked by S.H. Kapadia "the Constitution had mandated that the government to..... strive for economic democracy," and without it "political democracy will be at peril."\(^7\) The government is thriving for economic democracy and consequently the notion of representative and welfare democracy, socialism, sovereignty has lost its significance because of the undercurrents of Neo-liberalism. In a democracy the State is supposed to pursue policies that benefit the people who are sovereign and on the basis of whose electoral verdict the government is formed. But if the Government elected by the people must follow policies that are not in the interests of the people but in the interests of finance capital, then there is a negation of democracy\(^8\) and that is what we are facing today with the failure of Welfare Constitutional principles.

It can be said that globalization is Capitalism in its new form which is regulated by the State. As prophesied by Karl Marx in Communist Manifesto "All established national industries have been destroyed or are being destroyed. They are dislodged by new industries whose introduction become life and death

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\(^7\) J. Venkatesan, *Loss is a matter of fact and profit, of opinion*, THE HINDU, September 22, 2012.

question for all civilized nations…the bourgeoisie... draws all, even the most barbarian nations into civilization, production; it compels them to introduce what it calls civilization into their midst, i.e., to become bourgeois themselves. In one world it creates a world after its own image. The gross conditions which inspired Marx in the 19th century critique of capitalism are seen to be flourishing again with the coming of globalization, liberalization and privatization. Karl Marx and Fredrik Engels prophesied years back that Capitalism would eventually develop into a world system and now there is a revival of Capitalism in the form of neo-liberalism.

With globalization there are now public and private international actors, such as the WTO and Multi-National Corporations (MNC) which are having increased influence on public policy and legislation of nation States; however these international entities are not accountable towards constitutional rights, which could indicate that Constitutional Rights are in a crisis situation. The traditional liberal concept of constitutional rights is no longer totally valid today because of the influence of globalization. With the emergence of globalization we are witnessing emergence of significant forms of political authority outside the traditional focus on the State, and the actors and institutions of global economy are increasingly setting the terms for the conditions of social life. In the context of globalization there is a need to configure the traditional understanding of constitutional law and constitutional rights according to the paradigm of legal

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9 According to Joseph Stglitz, one of the leading architects of the Post-Washington Consensus policy “the dictum of liberalization, stabilization and privatization…were evidently not enough. An economy needs institutional infrastructure.” To him growth in Growth Domestic Product from more comprehensive reform was not enough…to attain enhancement in the quality of life… he called for reform to promote democratic, equitable and sustainable development”) 2 E Stanford & Dick K. Danto, IMF and World Bank Activities in Russia and Asia: Some Conflicting Perspectives in RUSSIA IN TRANSITION 26 (Frank H. Columbus, 2003).


11 (According to this theory, constitutional rights apply in the relationship between the State and its citizens, on the presumption that the Government holds the sovereign power over the Nation-State.) Dadi Arnar Sigmarsson, Globalization vs. State Sovereignty: Constitutional Rights in a Crisis?, UNIVERSITY OF AKUREYRI, (September 24, 2015) http://skemman.is/stream/get/1964/1617/5238/1/Globalization_vs_State_Sovereignty- Constitutional_Rights_in_a_Crisis.pdf.

12 (For some, globalization, and its accompanying reconfiguration of political power, amounts to nothing less than the demise of the paradigm of modernity, making untenable the idea of nation State as the main organizing principle of society) U Beck, What is Globalization, 20 (2000) in GAVIN W ANDERSON, supra note 4 at 1.
pluralism\textsuperscript{13} which will enable us to understand better and respond to the challenges facing constitutionalism in the age of globalization.

In this context the core theme of this chapter is to analyze the growth and development of liberalization, privatization and globalization, to analyze the impact of changing role of State and transformation in its functions upon the fundamental rights of the individual and also to introspect into the political philosophy underlying the same.

\textbf{2.2 Meaning and Definition of Globalization}

Globalization as an ideology is of recent origin.\textsuperscript{14} Though the term ‘global’ was in vogue during the 16\textsuperscript{th} century, etymology of the word ‘globalization’ can be traced back to early 1960’s in French and American writings.\textsuperscript{15} Adding suffix to the adjective ‘global’ signifies the process comprising of the changes and transformations that affect all the relations in the world.\textsuperscript{16} The term globalization defies a definition. Like clay in the hands of potter, so is the definition of globalization in the perception of the author. It is a multifaceted phenomenon besieged by cultural, ethical, political, economic, legal etc. factors.

Many authors see globalization as a means of exploitation of weaker nations and the poor i.e. a new form of Colonization\textsuperscript{17} wherein big corporations move their money, factories and products around the planet at rapid rates of speed in search of cheaper labour and raw materials and governments are willing to ignore or abandon

\textsuperscript{13} (“Legal Pluralism presents three challenges to the dominant knowledge of law first to the centralist notion that law only emanates from the state secondly, to monist idea of the systematic coherence and singularity of law and thirdly, to the positivist view that we can trace a legal order as something ‘out there’ apart from the agents who created it. These challenges set the terms for the paradigmatic debate of modern law in the wake of globalization.”) \textit{Id.} at 39.

\textsuperscript{14} (According to R. Ganguly globalization as a process has a long past but as a concept it has a short history) RAMANUJAN GANGULY, \textit{GLOBALIZATION IN INDIA: NEW FRONTIERS AND EMERGING CHALLENGES} 45 (2010).


\textsuperscript{16} RAMANUJAN GANGULY, \textit{GLOBALIZATION IN INDIA: NEW FRONTIERS AND EMERGING CHALLENGES} 36 (2010).

\textsuperscript{17} (As defined by Martin Khor “Globalization is what we in the Third World have for several centuries called colonization) S. BAYLIS & S. SMITH (EDS.), \textit{THE GLOBALIZATION OF WORLD POLITICS. AN INTRODUCTION TO INTERNATIONAL RELATIONS} 15 (1999).
consumer, labour and environmental protection laws. As an ideology, it is largely unfettered by ethical or moral considerations." Globalization has aggravated many of the region's most chronic problems such as economic exploitation and social inequality that has characterized Latin America since it came under European colonial domination in the sixteenth century.

There are also authors who see globalization as the resurgence or triumph of Capitalism over Marxism and Communism and the spread of free market capitalism to virtually every country in the world. To them global markets are dominant and they face no threat from any viable contrary political project, for it is held that Western social democracy and socialism of the Soviet bloc are both finished. Globalization is also referred as the direct consequence of the expansion of European culture across the planet via settlement, colonization and cultural replication. However, it does not imply that every corner of the planet must become westernized and capitalist but rather that every set of social arrangements must establish its position in relation to the capitalist West.

There is another view which see globalization as weakening of the State sovereignty and state structures and in terms of technological advancement it is

19 (Similarly to C. Walck and D. Bilimoria “…globalization is not an output of the 'real' farces of markets and technologies, but is rather an input in the form of rhetorical and discursive constructs, practices and ideologies which some groups are imposing on others for political and economic gain.”) Walck and D. Bilimoria, *Editorial: Challenging 'Globalization' Discourses*, 8 J. ORGAN. CHANGE MANAG. 3-5 (1995).
considered as the latest stage in a long accumulation of technological advance which has given human beings the ability to conduct their affairs across the world without reference to nationality, government authority, time of day or physical environment.\textsuperscript{26}

Globalization is also interlinked with different concepts which are equally important to be explained to have a better idea about the concept of globalization. It is called as ‘Fragmentation’\textsuperscript{27} ‘Glocalization’\textsuperscript{28} - a term which includes the new linkages — global-to-local and local-to-local across international boundaries and also the revolution in the media and Information Technology.\textsuperscript{29} Globalization theory is also identified with three key issues \textit{viz;} Capitalism, McDonaldization\textsuperscript{30} and Americanization\textsuperscript{31} which are considered to be the driving forces of globalization.

\section*{2.3 Origin of Globalization}

The historical origins of globalization are the subject of on-going debate. The historical sequence of evolution of globalization does not necessarily unfold in a linear and evolutionary fashion.\textsuperscript{32} Some authors characterize the origin of globalization in the modern era, whereas some regard it as a phenomenon with a long history. There are enough evidences to believe that globalization of a certain

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\textsuperscript{26} ALAN SCOTT (ED), THE LIMITS OF GLOBALIZATION: CASES AND ARGUMENTS 272 (1997); \textit{(A well-known and well accepted definition is the one given by Anthony Giddens. He defines globalization as \textquote{the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring miles away and vice versa. Further he considers globalization as an extension of the modernity project of the West. To him there are four dimensions of globalization: the nation state system, the world capitalist economy, the world military order and the multinational corporations.} Each of these four, according to him is an extension of societal modernity and an off-shoot of its basic institutional features); ANTHONY GIDDENS, THE CONSEQUENCES OF MODERNITY 64 (1990).}

\textsuperscript{27} \textit{(The term Fragmentation is a part of another term coined by him Fragmegration which involves both Fragmentation and Integration and the interactive dynamics between the two. According to this theory the world politics can be viewed in a macro and micro economic way.) James Rosenau, \textit{Fairness and Globalization in FAIRNESS, GLOBALIZATION AND PUBLIC INSTITUTIONS: EAST ASIA AND BEYOND} 64 (Richard Pratt ed 2006).}

\textsuperscript{28} \textit{\{Glocalization\} is defined as the interpenetration of the global and local resulting in unique outcomes in different geographical areas. Also theorists link glocalization to postmodern social theories and its emphasis on diversity, hybridity and independence) GEORGE RITZER, THE GLOBALIZATION OF NOTHING 75 (2004).}

\textsuperscript{29} \textit{Id.} at 73-74.

\textsuperscript{30} This is the process by which the principles of fast food restaurant are coming to dominate more and more sectors of the American society and an increasing number of other societies throughout the world.

\textsuperscript{31} It can be defined as a powerful unidirectional process which involves prorogation of American ideas, customs, social patterns, industries and capital around the world.

\textsuperscript{32} RAMANUJAN GANGULY, SWAPAN KUMAR, ET. AL., GLOBALIZATION IN INDIA: NEW FRONTIERS AND EMERGING CHALLENGES 49 (2010).}
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kind existed long back during Indus Valley civilization, Hellenistic age, Islamic Golden age, Mongol empire etc. The early phase of Globalization is referred as ‘archaic globalization’ it refers to the older networks and dominances created by geographical expansion of ideas and social forces from the local and regional level to the inter-regional and intercontinental level.

Followed by archaic globalization is ‘proto-globalization’ or ‘proto-capitalist globalization’ which is the next stage in the development of globalization, period covering 1600-1800. This period is developed by filling out and becoming parasitic on the earlier links created by archaic globalization. It was characterized by the rise of maritime European empires though slave trade across the sea. Modern globalization period commenced from around 1800 A.D. and it is marked by two fundamental transformations viz; institutionalization of state and spread of industrialization. The new globalizing entities in the modern globalization tried to subordinate and redistribute labour on a vast scale and tried to link together and exploit the regional reorientations of production and consumption through 'industrial revolution.'

The revolutionary factors behind the emergence of present globalization, which can be called as ‘contemporary globalization’, with market at the centre-stage can be traced back to the post Second World War. During 18th century the prevailing market policy was ‘Laissez faire’ nourished by the Capitalist class. ‘Laissez faire’ policy stood for maximum freedom to the individual and minimum State intervention and Industrialization and Mercantilisation nurtured class divisions in the society and the State was considered as a necessary evil.

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36 (Modern globalization witnessed an acceleration of global networks and cultural flows, dominated by European powers especially the British and the great migration of European people to other parts of the world) Supra note 33.
37 C.A. BAYLY, supra note 34 at 25.
38 (Contemporary globalization is a term used by Anthony Giddens to denote the phase of globalization post world war II, a world-wide system of nation-States, overlaid by a combination of regional and global forms of regulation and governance) ANTHONY GIDDENS, GLOBAL TRANSFORMATIONS 45 (1999).
Class division which emerged as a result of industrialization resulted in resentment among capitalist working class and culminated in spreading Communist ideologies codified by Karl Marx and Engels through *Communist Manifesto*. As a result, a bipolar power structure came into being, consisting of Communist and Socialist nations with western countries like USA, UK and Soviet Union in the lead. When Russians embraced the concept of Socialism driven by Communist ideologist they found to be at the safe side when the capitalist nations were doomed by the Great Depression of 1930’s. With the Great Depression Capitalist countries also felt intervention of State reasonable and it was instilled into the economy by a new theory put forth by John Meynard Keynes. Following that was the ‘Golden Era of Capitalism’ in USA. Classical Liberalism was converted to Welfare Capitalism and at that stage of economic development and welfare measures were adopted through New Deal Program and it was the era of Modernization. Subsequently other capitalist nations followed the suit and soon the concept of free market economy began.

Meanwhile, with the collapse of ‘Socialist States’ due to lack of openness to the world market and their State interventionist policies resulted in the diminution of the power blocs created after the Second World War and it also created hegemony of the United States. The end of Cold War can be traced as the last phase of globalization and with that took place the trajectory of Liberal Welfare State and Keynesian Welfare economics which resulted in the resurgence of Capitalism with neo-liberal policies at its base. It also led to the emergence of neo liberal policies through Washington Consensus of 1991 with the auspices

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40 JOHN MEYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY, (Sep. 30, 2015), available at http://cas.umkc.edu/economics/people/facultypages/kregel/courses/econ645/winter2011/generaltheory.pdf (According to the Keynesian theory of Economics private sector decisions sometimes lead to inefficient macroeconomic outcomes which require active policy responses by the public sector in particular monetary policy actions by the Central Bank, fiscal policy actions by the Government in order to stabilize output over business cycle).

41 (New Deal Programme was a set of experimental projects and programmes undertaken by President Roosevelt to save US economy from the clutches of Depression. It introduced reforms like unemployment insurance, social security, agricultural subsidies etc. The programme ended in 1941 with US entering the 2nd World War) FIONA VENN, THE NEW DEAL, 1-6 (2013); (It was on 2nd July 1932, that the Franklin D. Roosevelt stated during his Presidential campaign “I pledge you, I pledge myself, to new deal for the American people”) ALAN BRINLEY, THE END OF REFORM: NEW DEAL LIBERALISM IN RECESSION AND WAR 40-47 (1995).

42 (This period is also called as Age of Keynes and the period experienced high sustained growth with full employment) STEPHEN A. MARGLIN & JULIET B. SCHOR, THE GOLDEN AGE OF CAPITALISM: REINTERPRETING THE POST WAR EXPERIENCE 37 (2010).
of IMF.\textsuperscript{43} Washington Consensus sowed the seeds of LPG across the globe and took globalization to a higher level.\textsuperscript{44} The development finally achieved a regulatory framework with the formation of WTO during the Uruguay Round Tariff Negotiations.\textsuperscript{45} It had also put an end to the earlier institution i.e. General Agreement on Tariff and Trade (GATT).\textsuperscript{46}

Since defining globalization is complex there are attempts made by many in defining the term. In the present study importance is attached to the political and economic aspects of the globalization concept.\textsuperscript{47}

(a) Economic Globalization

‘Economic globalization’ is a historical process which is the result of human innovation and technological progress. It refers to the increasing integration of economies around the world, particularly through trade and financial flows. The term sometimes also refers to the movement of people (labour) and knowledge (technology) across international borders.” It is one of the most important dimensions of globalization which represents the sharper and continuing integration of the world economy.\textsuperscript{48} It is said to have originated in the development of a regional international market in Europe as foreign trade increased following the commercialization of agricultural and national specialization in agricultural activities after the Middle Ages.\textsuperscript{49}


\textsuperscript{44} GAVIN W. ANDERSON, \textit{supra} note 4 (The result of neo-liberal policies’ have been ‘a global economy, characterized by global production and global markets for goods, services and finance). J Jenson & B. de Sousa Santos, \textit{Introduction: Case Studies and Common Trends in Globalization} in \textit{GLOBALIZING INSTITUTIONS: CASE STUDIES IN SOCIAL REGULATION AND INNOVATION} 9-16 (J. Jenson, B de Santos ed. 2000).

\textsuperscript{45} (In this round there was a national interest versus international legal controls in the areas of access to markets, tariffs, non-tariff measures, natural resource based products) RAKESH MOHAN, \textit{THE FACETS OF INDIAN ECONOMY} 45, 44-69 (2002).

\textsuperscript{46} (GATT was a multilateral trade agreement which aimed at substantial reduction in tariff and trade barriers. It was negotiated during United Nations Convention on Trade and Development and was the outcome of the failure to create International Trade Organization. It failed due to the disagreements regarding GATT rules and degree of liberalization in agriculture, safeguard measures, and textiles were recognized as a threat to the stability of international trading system) Ministerial Declaration adopted on 29th Nov. 1982, GATT Doc. B. No. 1/5424; BISD 29th Sep. at 9 (1983).

\textsuperscript{47} VIKAS SHARMA, \textit{GLOBALIZATION OF INDIAN ECONOMY} 2 (2011) (Broadly speaking globalization means integration of economies and societies through cross country flows of information, ideas, technologies, goods, services, capital, finance and people).

\textsuperscript{48} BAL DEV RAJ NAYAR, \textit{THE MYTH OF SHRINKING STATE IN INDIA} 1 (2009).

\textsuperscript{49} \textit{Id.} at 16.
Economic globalization can be viewed as the economic activities of individuals/States/non-State organizations being embedded on an intercontinental basis characterized by two parallel phenomena of heightened economic interdependence and trans-nationalism. Economic globalization involves the production and distribution of products and services of a homogenous type and quality on a worldwide basis. This involves economic agents like business enterprises, banks, and finance companies working in different countries and serving the world market without a prevailing national base. These agents change their location between national territories on the basis of opportunities for growth and profit, and they grow not because they are supported or protected by the nation-State but through their own effort as if the boundaries which define the Nation-State do not exist.

The driving reasons for economic globalization are post-war dominance by the US through shaping IMF and WB and the global trade agreements like Trade Related Intellectual Property Rights (TRIPS), Trade Related Investment Measures (TRIMS) etc., which was made in the form they found it suitable to the detriment of developed and developing nations. Another reason is the modern day transport and communications technology which has reduced the cost of moving goods and capital. The influence of the IMF, WB and WTO has increasingly pushed the boundaries of trade globalization through harsh rulings and their influence are rampant in new areas such as patents, investment and service trade that are included in the Uruguay Round (UR) and Doha Rounds (DR)

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51 (Economic Independence refers to the interconnectedness of the world economy such that a change in the economic conditions of one country would bring about changes in the economy of the others; moreover, a disruption of normal economic relations imposes costs upon multiple States) NORRIN RIPSMAN, *GLOBALIZATION AND THE NATIONAL SECURITY STATE, 5-7* (2010).
52 (In the same sense Michael Brodo defines it as "the increasingly close international integration of markets for goods, services and factors of production, labour and capital"). KARL MOORE & DAVID CHARLES LEWIS, *supra note 22, at 1* (2009).
54 *Id.*
globalization was also triggered due to the emergence of Trans National Corporations (TNC) which controls more than 70 percent of global trade, currency speculators and global investors etc.\(^{57}\)

As a concept economic globalization and neo liberalism are linked together. The discovery of economic globalization was also predicted by Marx’s in a different way when he stated that “the political-territorial boundaries of the nation-State remain intact and will only disappear under a future proletarian supremacy.”\(^{58}\)

This view is in fact supported by many 20\(^{th}\) century theories of change and in each of the theories logic of the economy such as capitalist accumulation, adaptive upgrading, technological imperatives etc. drives globalization, but only subjected to de-territorialization of the economic system.\(^{59}\)

(b) Political Globalization

Political globalization is interpreted as “the shifting reach of political power, authority and forms of rule.” The discovery that globalization has a political dimension was first surfaced in the work of Burton, Keohane and Nye and Rosenau. Each of these political scientists noticed that political action was decreasingly confined to the sphere of Nation-State and that an elaborated web of trans-national connections was emerging alongside it. Political definitions of globalization emphasize the actions which the States have taken to adapt to the new global economic environment and, in particular, the decline of the welfare provisions and income redistribution components of the State. It also refers to the spread of the liberal democratic system along with free markets throughout much of the globe as the most acceptable form of political governance.\(^{60}\)

In Political globalization political relations between nations become closely and deeply linked and it presents a challenge to the domestic/international distinctions of politics. Also there will be international organizations and regimes, Non-State actors, transnational bodies or national pressure groups, whose activities


\(^{58}\) Li Xing, Capitalism and Globalization in the Light of the Communist Manifesto, 33 ECO. & POL. WEEKLY., 2225, 2223-2227 (1998).

\(^{59}\) MALCOLM WATERS, supra note 15, at 10-11; (The supporting theories include not only Marxian dependency theory and world systems theory but also functionalist modernization theory and convergence theory) Arun Qhosh, Socialism, Modern Capitalism and Democracy, 28 ECON. POLIT. WKLY. 551-554 (1993).

\(^{60}\) MALCOLM WATERS, supra note 15.
spill over into the international arena. The present era of global politics also involves the emergence of regional and global law which challenges ‘State Sovereignty.’ Contemporary scientists call this interface between Nation-State and transnational actors as dualism or duality according to which the State is argued to retain its sovereignty even while losing some of its effectiveness. Sometimes the existence of two worlds creates turbulence. It is also stressed that the expansion of the global market is driven largely by its own internal dynamics but affirms simultaneously that it is 'profoundly affected' by the operations of the State.

2.4 What is Liberalization and Privatization?

Liberalization and privatization are the economic rules set by globalization to amplify the goal of achieving a free market economy. The theoretical foundations for the policy of liberalization including privatization are provided by several interrelated strands of literature mainly contributed by New Right Schools of Thought. New Right School of Thought maintain that State involvement leads to increasing, budget and suppressing entrepreneurial behavior, limiting choice, over production of unwanted services and encouragement to waste and inefficiency. In view of this the New Right theory has forcefully argued retrieval of the State as a regulator and producer. Therefore, deregulation, liberalization and privatization are amongst the six point reforms of the New Right theory.

Fiscal austerity, privatization and market liberalization were the three pillars of Washington Consensus advice throughout the 1980's and 1990's. Privatization,
because it was felt that most countries would be better off with governments focusing on providing essential public services rather than running enterprises that would arguably perform better in private sector. Also it was sensed that when trade liberalization - the lowering of tariffs and elimination of other protectionist measures - is done in the right way and at the right pace, inefficient jobs are destroyed and new jobs are created and that there can be significant efficiency gains. But the problem is that many of these policies became ends in themselves, rather than means to more equitable and sustainable growth. The IMF vigorously pushed privatization and liberalization, at a pace and in a manner that often imposed very real costs on countries which are ill-equipped to incur them and the results have been far from those intended.  

The concept of liberalization is deeply rooted in the evolution of economic theory. According to Adam Smith it is always safe to leave the economy to be propelled by an ‘invisible hand’ i.e.; the forces of competition motivated by individual self-interest. Liberalization in strict sense implies removal of restrictions in terms of policy and procedure that were perceived to have outlived their utility. “Globalization as liberalization” is the process of removing government imposed restriction on movements between countries in order to create an open, borderless world economy. Those who have argued with some success for the abolition of regulatory trade barriers and capital controls sometime clothe their rhetoric in the mantle of globalization.

Privatization is the general process of involving the private sector in the ownership or operation of a state owned enterprise. As compared to 1960's or 1970's, it is not an isolated phenomenon now; rather it is part of the larger framework of neo-liberalization agenda designed by Western countries, IMF, World Bank etc. The advance of privatization is located within the global strategy of empire building during the period of counter revolution in the Third World and the collapse of Communism in the East. It emerged in order as a response of the failures and crises of State intervention on economy. But, in effect rather than

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70 Id.
'correcting the evils of state intervention,' privatization has deepened them by producing an economic structure unresponsive to domestic users and the lower echelons of ‘civil society.’ Privatization undermines democratic and welfare role of State and non-governmental organizations’ fostered by imperial regimes and financial institutions counter and weaken the civic and social movements that confront with the activities of MNC's, multinational banks, export sectors etc.

Authors have categorically remarked on the origin of privatization as a political phenomenon. According to them privatization is part of a global strategy directed towards eliminating political-economic alternatives, part of the democratic strategy to re-concentrate wealth, power and finally a mechanism for lining up economic resources for imperial accumulation. Thus privatization is seen more as a move towards establishing world capitalism rather than correcting the evils of State intervention. It can be perceived that while privatization rhetoric was decidedly Anti-statist, in practice the privatizing regimens merely shifted State intervention from financing public welfare to funding private elites. Succinctly the ideology of anti-statist became the banner for a new kind of Statist movement in which privatization was financed and organized by the State for the benefit of private sector.

The private firms were not ready to undertake the social costs associated with privatization due to unemployment. Given minimum job protections, employers can dismiss the workers with little or no costs, including at best minimal surveillance pay. Thus privatization destroys jobs rather than creating new ones.

Privatization is not ever based on public consultation or on the basis of demonstrated economic efficiency of the private sector. Rather, it is founded on policies deduced from doctrine by economists on the basis of their economic truths. It is evident from the implementation of privatization policies which is done through executive decrees and sparsely with people's support. The end result of privatization is weakening of democracy and the loss of legislative supervision of

\(^{72}\) (It is so because privatization is part of a global strategy directed towards eliminating political-economic alternatives, part of a domestic strategy to re-concentrate wealth and power, and finally a mechanism for imperial accumulation) JAMES PETRAS, HENRY VELTMeyer, GLOBALIZATION UNMASKED, 94, 92-103 (2001).

\(^{73}\) Id. (Privatization is also seen as a denationalization of the economy, part of the general process of reversing social welfare and re-concentrating income. It involves the transfer of publicly owned and tax-payer finance enterprises to private corporations).
essential economic sectors. Another serious impact of privatization is on the political system. The strong ties between private monopolies and executive branch have left judicial and legislative branches as big losers in the shift to a free market economy.

2.5 The Uruguay Round Trade Negotiations

The eighth round of Multi-lateral Trade Negotiations is popularly known as Uruguay Round (UR). In lines with UR India promised to reduce the basic tariff duty by 30 percent and to relax anti-dumping policies. The TRIPS left wide ramifications as it introduced patent rights over product and process patent and also to micro-organisms, non-biological and micro-biological processes. Products imported or locally produced were also subjected to patent protection without discrimination and it resulted in manufacturing and import monopoly.

One of the aims of UR was to take initiative of bringing service sector into trade negotiations. TRIMS were introduced for this purpose in the UR. The principal objective was to benefit the MNC’s so that they could undertake investment in financial services, telecommunications, and marketing so as to boost world trade. The main provision in the TRIMS was to ensure that the Governments’ shall not discriminate against foreign capital. Another peculiar feature of UR was the Social Clause and Environmental Protection Clause. As per US social cost was motivated on humanitarian concerns. It imposed a countervailing duty on imports from developing nations aimed at neutralizing the cost advantage incurred due to cheap labour. The latter clause proposed developing countries to pay for the alleged destruction of the environment.

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74 (Uruguay Round started in Punts del Este in Uruguay in September 1986 at a Special session of GATT contracting parties at Ministerial level. It covered areas like tariff, non-tariff measures, tropical products, natural resource based products, textiles and clothing, agriculture, GATT Articles, Safeguards, Multi-lateral trade Negotiations, subsidies and countervailing measures, dispute settlement, Trade Related Aspects of Intellectual Property Rights, Trade Related Investment Measures, Functioning of the GATT systems) SUNDAR & DUTT, INDIAN ECONOMY 200 (2012).

75 Id. (Thus patent holder would resort to imports only and the national Government would not be able to exercise any price control on the imported products).

76 S.K. MISRA & V.K. PURI, INDIAN ECONOMY 665 (2006) (The main features of the TRIMs were to remove all restrictions on foreign capital, investors, companies and on areas of investment. It wanted to lift limitations on the extent of foreign investment even to 100 percent. It aimed at allowing raw materials and components freely and put no obligation on part of foreign investors to use local products and materials. Under TRIMs there shall not be a complete exclusion of provisions like phased manufacturing programme which is intended to increase the indigenous content in manufacture).

77 SUNDAR & DUTTA, supra note 74, at 200.
The trade negotiations were expected to conclude in four years, but on account of differences the demands of the participating countries on areas like agriculture, textiles, TRIPs, anti-dumping measures etc. the agreement could not be reached. To resolve this Deputy General of GATT compiled Dunkel Proposal and it provided an arbitrated solutions to the problems where negotiations failed. The Draft was accepted by member nations and became the foundation for World Trade Organization.78

2.6 World Trade Organization

The WTO charter establishes the WTO as an international organization and defines its functions and structure. Its four annexes covers GATT, GATS and TRIPS. The GATT has brought within its ambit agriculture, textile and clothing for the first time. Liberalization of trade in service has begun under GATS.79 TRIPS have established multilateral disciplines governing Intellectual Property Rights (IPRs). Annex 2 and 3 covers Dispute Settlement and trade policy mechanism respectively. Noteworthy features of 1 to 3 are part of a single undertaking approach and this is binding on all members. Annex 4 contains plurilateral agreements that apply only to members who signed them.80

The fundamental principles which are the foundations of the multilateral trading system are (a) most favoured nation theory (MFN); treating all countries equally (b) national treatment; treating foreigners and locals equally (c) freer trade: tariff reduction and removal of non-tariff barriers (NTBs). WTO also consists of Ministerial Conference at the higher level in terms of its structure. At the second level it has General Council, Dispute Settlement Body and the Trade Policy Review

79 (The need for bringing trade in services was felt because services account for about 60% of the world GDP, while the share of services in the world export is about 20%) U. Sankar, Globalization and Indian Economy: Issues and Concerns in INDIAN ECONOMY IN TRANSITION: ESSAYS IN HONOUR OF C.T. KURIEN 19-21 (S. Janakarajan, L. Venkatachalam, 2015); (GATS provides a framework for negotiation in liberalization of trade in services with two exceptions which includes services supplied in the exercise of governmental authority-supplied neither on a commercial basis nor in competition with other suppliers, it also excludes air transportation services. Services are classified into 12 mutually exclusive sectors like business services, communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services, health-related social services, tourism and related services, recreational, cultural and sporting services, transport services and other services).
Body, which consists of all WTO members. The other bodies in WTO are Goods Council, Service’s Council and TRIPS Council at the third level. At the fourth level there are many committees. A unique feature of WTO is its democratic structure; all major decisions are made by the members collectively on the basis of ‘one country one vote.’ Its form and structure provide a platform for different countries to articulate their views and concerns.  

Though the global regime established by WTO provides an opportunity for developing countries to globalize and achieve growth rates, it poses challenges as well. All the member countries are required to establish a WTO consistent economic policy regime which necessitates legal, institutional and administrative reforms and this constrains the policy space of the government. The ‘Special and Differential Treatment’ (S&DT) have not been implemented effectively. Many countries could not seize the trading opportunities because of the high cost of compliance with tighter environment standards, labour standards and conformity required with process and production methods put by the developed countries.

India also gained due to liberalization. After adopting liberalization we achieved second highest GDP growth rate and has become an attractive destination for liberalization. A few large Indian firms have become multi nationals. India is one of the leading countries in Information Communication and Technology (ITC) and exploited the outsourcing opportunities. Despite the gains, it can be seen that trade liberalization has affected Indian industry; it has enabled the developed countries to push their exports but did not facilitate the process of access to international markets. Small scale industry has suffered due to the policy of dumping especially in consumer goods.

Financial globalization, particularly FDI is associated with an increase in inequality. The main drivers of FDI are availability of human skills and well-developed physical infrastructure which are available only in developed regions. Thus the immediate benefits of globalization will be for those who are in the urban areas, resulting in regional imbalances.

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81 _Supra_ note 79, at 25.
2.7 Role of State in the Era of Globalization

There are two diametrically opposite viewpoints about the economic role of government. One is the laissez-faire view as propounded by Adam Smith and the other is the Welfare role of the Government posited by John Meynard Keynes. Economic globalization speaks through the language of Individualism or laissez-faire theory.

There are various views on the role of the State after the emergence of globalization. According to Anthony McGrew and David Held there are three contending positions on the status of nation-State in a globalizing world. Firstly, there are hyper globalists who hold that autonomy and sovereignty of nation States have been eclipsed by contemporary process of economic globalization. This theory is called as ‘End of Nation Theory’ characterized by the idea of the retreat of the State.

Secondly, there are Skeptics who assert that the market is moving inexorably and unidirectional to assure its triumph over the State. According to this understanding, there is a ‘double movement’ in the historical process. This double movement activated the State to cope with the adverse social consequences of a socially constructed liberal market economy and in the process augmented the

82 ISHWARMODI, MODERNIZATION, GLOBALIZATION AND SOCIAL TRANSFORMATION 131-132 (2012); DAVID HELD & ANTHONY MCGREW, GLOBAL TRANSFORMATIONS, POLITICS, ECONOMICS AND CULTURE 3-10 (1999).
83 (Hyper-globalists include Wriston, Ohmae, Gill, Susan Strange, Cox, Gray. They believe that the transnational networks of production, trade and finance are giving rise to new forms of social and economic organization that are already supplanting, and in course of time, will supplant the traditional nation-States and that the role of nation-States will be reduced to that of managing the consequences of globalization). Id. at p 3-5.
84 FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN (1992); (The theory was advanced mainly for three reasons; firstly, because of the weakening of the economic autonomy of the State due to globalization of trade and capital secondly due to the replacement of world of States by a world of societies viz: international organizations, NGO’s and other non-State actors. Thirdly, due to the undermining of political modernity by new forms of economic modernity modeled after transnational firms, detached from territorial forms of order and representing an open system without borders) Herbert Dittigen, World without Borders, Reflection on the Future of the Nation State in GOVERNMENT AND OPPOSITION (1998).
85 (Skeptics include Gilpin, Gordon, Callinicos, Hirst and Thompson. They consider that economic globalization is a new form of economic interdependence, by no means historically unprecedented. They hold that globalization is another phase of western imperialism, which is leading to further marginalization of the South, and playing on the deeply rooted patterns of inequality and hierarchy, pushing the world towards regressive fundamentalism and aggressive nationalism, threatening clash of civilizations). As cited in id.
Power of the State. As held by Gilpin one of the supporters of globalization "the supremacy of market over State and of economics over politics means the end of the human institution [the State] and of the political struggles responsible for war, domination and other ills.

Thirdly, there are transformationalists who strike middle course and emphasize on a more ‘activist State’ rather than on the concept of ‘end of the State’ and on the way in which globalization has brought about the spatial reorganization and rearticulating of economic, military and cultural power. To them a new ‘sovereignty regime’ is replacing the traditional conceptions of Statehood as it negotiate with the emergence of powerful, non-territorial forms of economic and political organizations. According to transformationalists even economic policy reforms that aim to reduce the role of the State may mean strengthening of the State in order to facilitate a greater role for the State.

World Bank has also laid down fundamental tasks of the governments without which sustainable development is impossible in the era of globalization. Those tasks include establishing a foundation of law, maintaining a non-distortion of policy environment, including macroeconomic stability, investing in the basic social services and infrastructure, protecting the vulnerable, protecting the environment etc. About the impact of globalization, the World Development Report (WDR) says, “joining the global economy, like devolving power from the centre, carries risks as well as opportunities, for example, it can make countries more vulnerable to external price shocks or to large, destabilizing shifts in capital flows. This makes the

86 (This more comprehensive view of the historical process finds support in the cross-empirical analysis by DaniRodrik which showed that Government expenditures in more open, thus more vulnerable, economies form a higher percentage of their GDP compared to more closed or less open economies). DaniRodrik, Understanding Economic Reform, 32 JOURNAL OF ECONOMIC LITERATURE, 9-41 (1996).
87 (Also, according to him, externally, globalization is considered to have eroded the sovereignty and independence of nation-State and internally, globalization has resulted in the dismantling of the economic and ……role of the State and undermining of democracy). Gilpin, The Challenge of Global Capitalism: The World Economy in the 21st Century, 18-19 (2000) as cited in BAL DEV RAJ, supra note 48, at 2-3.
88 Id. (Transformationalists include Giddens, Scholte, Ruggie, Rosenau, Keohane. To them globalization n its contemporary phase is in the process of reconstituting the power, functions and authority of national Governments, as national economies no longer coincide with national territorial borders).
90 ROOP SINGH, DAMYANTI GUPTA, STATE AND GLOBALIZATION 228-229 (2010).
States' role all the more critical both in handling such and in helping people and firms grasp the opportunities of the global marketplace.”

This ‘effective State intervention’ has been interpreted as rejection of market fundamentalism in many circles. But in reality it is only a cosmetic change. It is not a general ‘retreat of the State’ but a retreat from the welfare responsibilities and production. The State has not stopped intervening in the economy; it now intervenes in a more explicit manner in the interests of a narrow segment, namely global capital and its local allies. Thus the State is rolling back from its basic responsibilities in terms of providing its citizens access to minimum food, housing, health and education.

While analyzing the theories on the role of State after globalization one can see that globalization has dismantled the economic role of the State. But yet some of the powers lie with the State and that is to facilitate the interest of market forces or for putting in place appropriate institutional foundations for markets. It is explicit from the WDR 1996, according to which State intervention is justified only in areas where market fails such as defence, primary education, rural roads, and some social insurance etc. According to the Report providing social protection is a key function of government in all economies but in a market economy, it should in principle at least be mainly targeted at those vulnerable groups who need it most. But how far the governments will be able to realize this goal is a challenge which is also posed by globalization itself.

In sum, there are four major consequences of globalization for the State, as particularly viewed by the critics; firstly, The dismantling of the earlier substantial economic role of the State in favour of the market and equally dismantling of the welfare functions of the State in line with general shift in


92 BAL DEV RAJ NAYAR, supra note 48.

93 (Public provision must become the exception rather than rule. Further Government must stop restricting and directly controlling private commercial activity and extricate itself from intimate involvement in the financial sector focusing on macroeconomic stability and providing legal and institutional environment that supports private sector competition and development) World Development Report, id.
favour of market economy, \(^9^4\) *secondly*, the rise in social instability and social turmoil as a result of the marginalization of the masses and the polarization of the classes, consequently, economic stagnation and increase in poverty and social inequality, *thirdly*, the rise in political instability and the erosion or attenuation of democracy, rise of regional inequalities and the consequent Fracturing of the economy as a result of the changes ensuing from the dismantling of the earlier economic and welfare role of the State, *lastly*, externally, the loss of economic and political autonomy of the nation-State because of the erosion in the capacity of the State to perform traditional functions in the face of the advance of world markets and foreign MNC’s.\(^9^5\)

There are various reasons why there happened to be an assumption on the “Retreat of the State. “Reasons mostly are surrounded by the factors underlying economic globalization *viz:* resurgence of Capitalism, emergence of Corporate State or MNC's or TNC's, Free market Economy, deregulation etc. All these factors are interconnected and interlinked yet some of them are explained as follows:

**(a) Birth of Neo-liberalism**

Neo-liberalism or New-right movement gives a theoretical foundation for the concept of contemporary globalization. It is on the basis of neo-liberalization dogmas that Washington consensus germinated. Neo-liberalization can be described as the latest stop in a journey going back in time to 'pure' or 'classical liberalism'.\(^9^6\) The concept of neo-liberalism is supposed to have born with Washington Consensus but originally neo-liberalism originated in the late 1940's after the First World War. It emerged as a reverend symbol of anti-socialism and powerful voice of liberal hopes at that time when faith in the ability of *laissez faire*

\(^9^4\) (Including divesting its responsibilities in the areas of (i) determining the overall direction and management of the economy and (ii) directly owning and operating economic enterprises-and dismantling the welfare function of the State in line with the general shift in favour of the market) BAL DEV RAJ NAYAR, *supra* note 48, at 6.

\(^9^5\) *Id.*

\(^9^6\) ANDREW GAMBLE, *THE FREE ECONOMY AND THE STRONG STATE: THE POLITICS OF THATCHERISM* 27-60 (1988) (The concept of ‘New Right’ is closely related to and part of Neo-liberal thinking. New Right was a version of Neoliberalism as it emerged in the UK under its Conservative Prime Minister Margaret Thatcher. Although the origin of New Right thought can be traced back to the 18\(^{th}\) and 19\(^{th}\) century it is the trinity of Hayek, Nozik and Friedman that is mostly associated with the New Right).
liberalism or market system of liberalism was failing to cope with the economic problems of twentieth century.

It was during this time that J.M. Keynes signalled the paradigm shift from the liberal world of 19th century to the managed world of the 20th century. He went on to show in his economic theory, how economic slumps and inflationary booms could be avoided if governments controlled and manipulated the economy. Keynes economic theories led to sharp criticism from old liberal think tanks like Hayek, Milton Friedman, Alexander Rustow etc. In 1930, the American writer Walter Lippman made an eloquent liberal defence of personal, political and economic freedom against the rising tide of market regulation and socialist planning. Lippman's pessimistic stance caught the attention of liberals in Europe and there was something of an exile culture building up among the liberal thinkers throughout Europe.

In 1938, attempts were made to develop a ‘new’, revitalized interpretation of liberalism that both moved beyond the outmoded 19th century conception of laissez-faire liberalism that would involve the combination of a working competition not only with the corresponding legal and institutional framework but also with a re-integrated society of freely co-operating and vitally satisfied men as the only alternative to laissez-faire and totalitarianism. It was through this effort that ‘neo-liberalism’ evolved as a constructive alternative to find a ‘third way’ between laissez-faire liberalism and collectivism. Neo-liberalism theory further

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98 (As mentioned by him in his book General Theory of Employment, Interest and Money there was no going back to the classical liberal, world — liberal collectivism was the future. Keynes, in an epoch making phrase advocated 'capitalism by the agency of collective action' this meant encouraging the experimental use of State apparatus to use social and economic ends) RACHEL S. TURNER, NEO-LIBERAL IDEOLOGY: HISTORY, CONCEPTS, POLICIES 51 (2008).
99 Id. (They identified Nazism, fascism; Soviet Communism, New Deal Social Reform and Keynesianism as part of a larger collectivist impulse, which was threatening to devour the philosophy of individual freedom).
100 Id. (In his work “The Good Society” he however proclaimed that, in the face of the growing threat of fascism and communism, it was unlikely that there could be a return to the previous liberal era).
101 Id. (An international conference was organized in Paris which represented a drawing together of the disparate threads of Western Economic liberal thinking, and those united by their opposition not just to totalitarian collectivism but more specifically also by their opposition to Keynesianism).
102 A. NICHOLS, FREEDOM WITH RESPONSIBILITY: THE SOCIAL MARKET ECONOMY 1918-1963 96-97 (1994) (The term was coined by the German economist Alexander Rustow. However neo-liberalism was never popular with those whom it described).
flourished with Mont Pelerin Society\textsuperscript{103} and in the second half of 20\textsuperscript{th} century with the writings of Milton Friedman, Robert Nozik etc.\textsuperscript{104} Neoliberal ideologies oppose principles of social justice,\textsuperscript{105} social democracy, planning, and they attach primacy to a market driven economy with less State intervention with 'maximization of individual freedom and liberty through the rolling back of the State from the economy'. Market discrimination is thus a dominant feature of the free market economy.\textsuperscript{106} The Constitution is a fundamental political concept for neo-liberals as it represents a means through which the powers of government and other State officials can be curtailed. In order to have a functioning market order, according to neo-liberals, it is vital to have a corresponding political order, wherein emphasis must be given to free society from polities.\textsuperscript{107}

(b) Rise of Global Capitalism

The rise of ‘Global Capitalism’ is an imperialist project.\textsuperscript{108} In the old days capitalist imperialism was based on a division of labour between capitalist and no-capitalist world, but today's imperialism in the form of 'global capitalism' has more to do with the relations within a global capitalist system. Imperialism today is taking place within the context of ‘globalization of capital’. It is not a matter of controlling of territories like in the past; rather, it is a matter of controlling the whole world economy and global markets everywhere and all the time.\textsuperscript{109} This

\textsuperscript{103}Id 71-74 (Founded in the year 1947 under Hayek's guidance, the MPS represented an attempt to promote liberal values throughout the world. It was part of an ideological movement to regain a belief in the power of liberal ideas and to refute those of socialism).

\textsuperscript{104} Supra note 95.

\textsuperscript{105}The neo-liberal view of the State perceives social justice carried out by the State to be inherently unfair because it permits individuals to enjoy rewards they do not deserve, while others have rewards removed that they should be entitled to.

\textsuperscript{106} (That is why private sector is not bound by the principles of affirmative action but reducing economic discrimination is likely to increase economic growth by reducing the inequality between groups and minimizes potential for conflicts) Sukhadeo Thorat, Aryama, Prashant Negi, Debate on Reservation in Private Sector in RESERVATION AND PRIVATE SECTOR: QUEST FOR EQUAL OPPORTUNITY AND GROWTH 9-12 (Sukhadeo Thorat, Aryama ed.2005).

\textsuperscript{107} (To them Constitution prevents the Government from stultifying individual incentives in their pursuit of individual ends or desires and is therefore essential in neo-liberalism for the preservation of market order) NICHOLS, supra note 102.

\textsuperscript{108} (Capitalism has become global because decolonization has largely ended the segmentation of the world economy into separate imperial zones, and, also, because of the collapse of Soviet Union which has opened up most of Eurasia to Capitalist penetration) Ninan Koshy, Political Dimensions of Globalization, 36 ECON. POLIT. WKLY..1514, 1513-1517 (2001).

new imperialism planned by US has the main objective to promote dynamic open free markets for globalization through Bretton Woods’s institutions such as IMF, WB, International Trade Organization (ITO), IBRD. These Bretton Woods institutions were established in the year 1947 and were half way houses as the ITO died a premature death and were replaced by GATT 1947. The US has been using these agencies and regional development banks to further and support its foreign policy.

This increasing influence of US can be drawn out from the developments at the international level like “venue shifting,” in the World Social Development -a process to redefine and restructure the United Nations (UN) to suit to the interest of West for globalization by devising new global constitutions imposed through GATT, TRIPS, TRIMS agreement that operate under the umbrella of the WTO. \(^{110}\) Though WTO is based on the principle of sovereign equality of all States, its economic activities are dominated by the capitalist class.

The rise of global capitalism is identified as a major threat to nation-state because of the impact of globalization on the institution of state through limitation of democratic politics, declining of economic sovereignty etc. \(^{111}\) With the transition from monopoly capitalism to global capitalism there is a shift in the balance of class forces toward capital and it results in the decline in the relative autonomy of the State. \(^{112}\) The retreat of the State is mainly from the realm of welfare and social entitlement combined with very aggressive interventions in favour of capital. \(^{113}\) The role of the government is progressively shifting towards providing an appropriate enabling environment for private enterprise. This has

\(^{110}\) Jan Aart Scholte, Global Capitalism and the State, 73 INTERNATIONAL AFFAIRS 427-452 (1997).

\(^{111}\) (To him there are four supposed 'threats' to nation-states - global capitalism, environmental danger, identity politics and post-nuclear geopolitics). Michael Mann, Has Globalization Ended the Rise and Rise of the Nation-State?, 4 REVIEW OF INTERNATIONAL POLITICAL ECONOMY 472-496 (1997).

\(^{112}\) Id. (Capitalism, which has now become global, transnational, post-industrial, informational, consumerist, neoliberal and 'restructured,' is undermining the nation-state - its macroeconomic planning, its collectivist welfare State, its citizens’ sense of collective identity, its general caging the decline of State autonomy of social life. And, new ‘global limits,’ especially environmental and population threats, producing perhaps a new ‘risk society,’ have become too broad and too menacing to be handled by the nation-state alone).

\(^{113}\) Presently the State intervention is mainly to bring about three important consequences; first a weakening of the working class vis-a-vis the capitalist, second a considerable centralization of capital and strengthening of financial interests within the capitalist class them-selves”) PATNAIK, PRABHAT, WHATEVER HAPPENED TO IMPERIALISM AND OTHER ESSAYS (1995).
created situations in which States have to voluntarily relinquish their sovereignty, especially developing States over control of the national currency, financial markets etc. Sovereignty has also disappeared under globalizing capitalism due to the incapacity of State for unilateral exercise of comprehensive macroeconomic policy because of sharing macroeconomic tasks among States, regional and worldwide State agencies etc.

By dissolving sovereign statehood, globalizing capitalism has made the traditional model of democracy impracticable. Trans-border production, markets, monies and business associations readily evade most democratic controls that might be attempted through a State. Moreover no mechanism has been devised thus far to guarantee transparency, open debate and accountability in relationships between States and their supra territorial constituencies. Economic policies like planning, LPG reforms are not put to vote though it affects the people enormously. Thus people do not have a say in matters affecting their lives, employment, education, health etc. Thus the growth of global capitalism has put downward pressures on welfare activities.

(c) Influence of Independent Actors on State

Globalization has created a new balance of power between states and non-governmental organizations, multi-national corporations, and other independent actors. The submission and loyalty of individuals and groups to the authority of the State is diminishing, the competence of national governments has been eroded by the proliferation of transnational groups. With the emergence of globalization the influence of and demands made by global governance institutions like WTO, IMF is enormous and it often results in marginalization of democratic process. Governments can no longer choose their economy freely without consulting them. Another problem which is faced by developing nations is because of the “venue shifting” which happened after Washington Consensus because of which, relatively more democratic international institutions are deprived of resources and decision

114 Supra note 110. With ‘venue-shifting’ responsibility for education, environment and healthcare are shifted from the UNESCO and WHO to the World Bank.
making powers in favour of those where the rich countries are decidedly more powerful.\textsuperscript{115}

(d) Foray of Corporate State

The Corporate State is an immensely powerful machine, ordered, legalistic, rational, utterly out of human control, wholly and perfectly indifferent to any human values.\textsuperscript{116} The emergence of a Corporate State first took place in U.S.A. and even there it was marked as a complete reversal of the original American ideal and plan.\textsuperscript{117} The emergence of corporations has limited the importance of State to providing infrastructure, transforming the conditions under wealth should be created, distributed and it simultaneously transforms the context in which and the instruments through which State power and authority is exercised. The principal corollary of a reconfigured State is the elevation of multinational companies as major political actors on the global stage.\textsuperscript{118}

Multi-National corporations are regarded by many as the driving force behind the global economy.\textsuperscript{119} The word MNC is denoted as any business and industrial corporate entity in which ownership management; production and marketing extend to several national boundaries. In a way MNC may be termed as \textit{global corporate}.\textsuperscript{120} Globalization has given enormous power to transnational corporations due to increase in the production of goods and service and foreign financial, investments\textsuperscript{121}

\begin{itemize}
\item \textsuperscript{115} (As W. K. Tabb said “the way this works is that policies are first discussed by corporate leaders in groups such as Business Roundtable in the United States and its counterparts in Europe and Japan. There are meetings of the working groups of such organizations as the Trans-Atlantic Business Dialogue, making detailed proposals that they pass on to their national negotiators and monitoring them to be sure they get what they ask for.”) W. K. Tabb, \textit{Du Boi v. Neo-liberalism}, 55 ANALYTICAL MONTHLY REVIEW 33-40 (2003).
\item \textsuperscript{117} Id. (As Reich remarked “Government has become only a part of the State, coordinating it and providing it with needed services.”).
\item \textsuperscript{118} (It is manifested in three ways: through influencing State political processes, taking over the role of State and through the institutional framework of the global economy) GAVIN W. ANDERSON, \textit{supra} note 4, at 22.
\item \textsuperscript{119} BIPLAB DASGUPTA, \textit{GLOBALIZATION: INDIA’S ADJUSTMENT EXPERIENCE} 60 (2005).
\item \textsuperscript{120} H. N. Agarwal, \textit{Multinationals in India-Indispensable Global Corporate: An Expositionin P.P. ARYA, B.B. TANDON, MULTINATIONALS V. SWADESHI TODAY: POLICY FRAMEWORK FOR ECONOMIC NATIONALISM} 77 (1999).
\item \textsuperscript{121} Studies show that 51 of the world's largest economies are corporations. UNDP, Human Development Report 32 (1992).
\end{itemize}
2.8 Origin of Privatization and Liberalization in India

The pre-independence era was a period of stagnation for Indian economy. Our economy was caught up in the vicious circle of poverty with lowest per capita consumption and income among the countries of the world. Impact of Industrial Revolution was lightly felt in India but not as a blessing but as a curse to the traditional industries existing in India. The British had adopted a policy of ‘de-industrialization’ and thereby they put restrictions on Indian exports to abroad especially of craft items and it badly affected our economy resulting in underemployment and less productivity. Also there was absence of capital goods and machine industries. It was completely an agrarian and underdeveloped economy.\(^{122}\)

Due to the prevalence of these conditions the Industrial Policy Resolution of 1948\(^{123}\) marked a departure from the policy of pre-independence \textit{laissez-faire} and emphasized more on the role of government as the regulator and developer of the economy.\(^{124}\) There was also a widespread belief that without increasing the role of the state, it was not possible either to accelerate the process of growth or to create an industrial base for sustained economic development of the country.\(^{125}\) Thus, a socialistic pattern of society was crafted out through planning and the creation of a mixed economy through Industrial Policy and Five Year plans.

\textbf{(a) Industrial Policy of 1948}

Industrial Policy refers to the principles or philosophy of industrial development framework visualized by the society and covers all procedures, rules and regulations which control the industrial undertaking in a country. Through this policy government of a country expresses its national priority and the ways and means to achieve those priorities. It indicates the respective rule of private, public, joint and co-operative sector in the industrial development of the country.\(^{126}\)

\(^{122}\) MISRA \& PURI, \textit{supra} note 77, at 53-64.

\(^{123}\) The policy was the result of a tripartite conference of Indian labour, industrialist and the government under the leadership of Dr. Shyama Prasad Mukherjee the then Minister for Industries. GAURAV DATT \& ASHWANI MAHAJAN, DUTT \& SUNDARAM \textit{INDIAN ECONOMY} 666-678 (2014).

\(^{124}\) \textit{Id.} (\textit{As remarked by Jawaharlal Nehru in his speech before the National Development Council “the means of production should be socially owned and controlled for the benefit of the society as a whole”}).

\(^{125}\) GAURAV \& MAHAJAN, \textit{supra} note 125, at 238.

The Industrial Policy Resolution, 1948 was in accordance with the goal of socialistic pattern of society and thus scope of private, foreign capital was allowed to support industrialization but in a controlled manner. The policy aimed at achieving a Mixed Economy by reserving a sphere for the public sector and another for private sector. The industries were divided into four categories. First category was for the exclusive monopoly of the Central Government; second sector was for Central as well as for State Government, third sector of industries was for Central Government which requires planning and regulation and the fourth category which comprises of remainder of the industrial field which was left open to private enterprise, individual as well as co-operative.

Under the Policy, industries were classified with enough room for private sector and a principle of fair and non-discriminatory treatment was offered for the private sector. It also tried to retain the traditional enterprises, remove regional disparities and as far as foreign capital is concerned the government insisted upon the progressive Indianisation of foreign concerns.

(b) Industrial Policy of 1956

The Industrial Policy of 1948 lasted till 1956. Between 1948 and 1956 there took place major developments in the country such as enactment of the Constitution which guaranteed Fundamental Rights and DPSP, adoption of Democratic, Socialistic Republic and the Five Year Plans. These changes necessitated revision of the existing Industrial Policy. It aimed at accelerating the growth of economy and industrialization, expanding public sector, developing heavy industries and machine making industries, to build up large and growing cooperative sector to prevent private monopolies and the concentration of wealth

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127 Id. (It included manufacture of arms and ammunitions, control of atomic energy and ownership and management of railway industries).
128 Id. (It covered coal, iron and steel, aircraft manufacture, ship-building, manufacture of telephone, telegraph and wireless apparatus etc. New undertakings in these could be undertaken by the State Government).
129 DATT & MAHAJAN, supra note 128.
130 The industries were classified into Schedule A, B and C industries. Schedule C was preserved for the private sector but the State reserved the right to enter into the Category when in need of planning or for other important reasons but mainly to fit into the framework of social and economic policy of the State but subject to control in terms of the Industries (Development and Regulation) Act and other relevant legislations). Supra note 128, at 101, 102.
and income.\textsuperscript{132} The objective of both Resolutions was the strengthening of mixed economy structure of the country.

As against the four categories in the Policy of 1948, the industries were divided into three categories. In the first category A were included industries which were the exclusive responsibility of the State. Under the mixed sector of public and private enterprise twelve industries were listed in Schedule B wherein state would increasingly establish new units and increase its participation but would not deny the private sector opportunities to set up new units or expand existing units. All industries not listed in Schedule A or B were included in the Third category and were left open for private sector. The main role of the state in this category was to provide facilities to the private sector to develop by itself.\textsuperscript{133}

Thus the Policy of 1956 aimed at mutual development of public and private sectors. The government could assist expansion and development of private sector through participation in its risk capital and share capital and by providing necessary services. It also aimed at the reduction or regional imbalances and inequalities. For this purpose transport facilities, power and other facilities was provided in the backward regions of the State. The Policy enlarged the area of state from 6 to 17 in Schedule A and increased the participation of state in Schedule B industries. But with the failure of the initial five year plans except the first five year plan, and the death of Nehru in the year 1964 the economic strategy built on Mixed Economy broke down and the subsequent government party headed for economic liberalization through various means.\textsuperscript{134}

Though for some time the government attempted for a come back to the Nehruvian ideology, complete reversal became practically impossible due to foreign exchange crisis.\textsuperscript{135} But the foreign exchange crisis of 1957-58 led to

\textsuperscript{132} K.S. THAKUR, supra note 126, at 129.
\textsuperscript{133} Id. (Seventeen industries were included under this category falling under Schedule A. Those industries fell under defence, heavy industries, minerals, transport and communications and power).
\textsuperscript{134} Government under the leadership of Lal Bahadur Shastri initiated economic liberalization through relaxation of licensing and economic controls, employment of economic incentives rather than State controls for advancing food production, and reliance on market forces rather than State ownership in view of the weak capacity of the State. BAL DEV RAJ, supra note 48.
\textsuperscript{135} (It was materialized by Mrs. Indira Gandhi through restrictions on big business, constraints on foreign business and a spate of acts of nationalization. It envisaged a substantial expansion of the scope of public sector over and above the fields allocated to in the earlier policies, there had been restrictions on big business and foreign business in public interest. Socialism was ascendant and found expression in
liberalization of foreign capital and a host of incentive and concessions were given for attracting foreign investment. From 1972 government began approving the expansion plans of those companies with majority foreign equity subject to certain conditions. In 1973 Foreign Exchange Regulation Act (FERA) was enacted, it influenced the operation of foreign firms more than any other policy instrument. FERA was considered to be the cornerstone of regulatory framework for 'License-Raj' era in India. With these reforms there took place ‘domestic liberalization’ in India.\(^\text{136}\)

But starting from 1975 policies favouring economic liberalization was inducted stealthily due to enormous economic and political crisis\(^\text{137}\) and the government slowed down the radical economic course that had pursued until then and instituted measures of economic reform in order to reintegrate India into the world economy. There had been reversal of policies in respect of liberalization, deregulation, and competition. Government showed a tougher attitude towards performance in the public sector and resisted taking over sick firms in the private sector.

(c) New Industrial Policy of 1980

In December 1977 a New Industrial Policy was introduced in Parliament by way of a Statement. It was marked as ‘economic pragmatism’ and dilution of dogma and with it domestic liberalization gathered momentum in India.\(^\text{138}\) The policy freed large business houses from licensing under MRTP and FERA. The policy aimed at integrating the industrial development in private sector by promoting the concept of economic federalism and \textit{inter alia} regularized the unauthorized excess capacity instilled in private sector. Sick units were to merge with healthy units and management of sick units was allowed only in exceptional cases. Government assigned a greater role to multinational enterprises in various sectors.

\(^\text{136}\) K.S. THAKUR, supra note 126, at 135.

\(^\text{137}\) There are certain factors responsible for this viz; the international crisis relating to Bangladesh threatening the national security and the outbreak of hostilities, discontinuance of economic aid form US, low per capita income because of economic stagnation during 1970's, rise in oil prices which added pressure on country's balance of payments, restrictive State policies and poor performance of public sector.

\(^\text{138}\) K.S. THAKUR, supra note 126.
In order to facilitate the flow of superior technology the Cabinet Committee on Economic Affairs permitted foreign equity even in Indian companies. It also aimed at the development of small scale and medium industries over large business houses, expansion of the role of private sector, protection of sick industrial units and restriction in foreign collaboration.

(d) Industrial Policy, 1991

The main aim of the Policy of 1991 was to introduce liberalization with a view to integrate the Indian economy with the world economy by taking away bureaucratic control in the Indian Industrial economy and removing restrictions on direct foreign investment. New sectors such as mining, banking, telecommunications, highways construction and management have been thrown open to private, including foreign owned companies. This was also because of Washington Consensus and the Structural Adjustment Programmes (SAP) followed by it. During 1991 FERA was amended in order to lift the restrictions on foreign companies and multinational enterprises and under the amended Foreign Exchange Management Act, 1999 (FEMA) companies with a required percent of foreign equity are treated on par with fully Indian owned companies.

Also domestic, small scale industries suffered as a result of unrestricted entry by Multinational companies through FDI. Labour reforms were also pressed to pave the way for private investments. Capital Issues (Control) Act, 1947 was repealed and it ended all controls relating to rising of funds from the market. The government also adopted large scale disinvestment in order to promote privatization. Government decided to rely on the private sector as the growth mechanism for future. According to the new policy changes, the public sector was expected to run as a complementary but subsidiary role to the private sector. The changes were manifest mainly in taxation, industrial licensing and trade policy. These economic reforms were welcomed by the upper and middle class but opposed by trade unions and communist parties. Liberalization made the

139 UPENDRA KUMAR SINGH, SOCIAL JUSTICE IN INDIA 204-257 (2011).
140 The result of all these reforms was the isolation of the ruling party and adoption of policies which did not relate of the problems of the Indian economy. Following Mrs. Gandhi, Rajiv Gandhi made liberalization the entire piece of his political programme. He sought to reinterpret the concept of ‘self-reliance’ which was to mean not autarky, but development of a strong, independent, national economy dealing exclusively with the world, but dealing with it on equal terms) BAL DEV RAJ NAYAR, supra note 48.
government politically vulnerable and constituted the overthrow of established national policies and surrender to capitalism.

2.9 The Emergence of Globalization in India

The Indian Constitution was modelled on a socialist pattern. The concept of socialism was rooted in Indian Constitutional philosophy and this ideology was manifested in the economic strategy of post independent era especially in the Five Year Plans.\(^\text{141}\) In the Indian context globalization which includes liberalization and privatization has come to mean the overall programme of reforms introduced in 1991, and still being carried out in discrete steps.\(^\text{142}\)

(A) Economic Reforms 1991-1996

The collapse of the Soviet Block as a result of failure in the economic front while China progressed as it integrated with the global economy by taking path of the market, held little future for Socialist model that India followed. So it was not the compulsion of the Indian economy to adopt Capitalism based market economy system, rather, it had been an imposition which our leaders had to accept under reluctance. Thus a major policy shift took place in the year 1991, and while launching the reforms reformers chose cautious and gradualist course because of India's political system of democracy which required a consensus between economic logic with political and economic acceptability.

(a) New Economic Policy of 1991

It was PV Narasirnha Rao who introduced the agenda of market economy system through his New Economic Policy of 1991. He welcomed liberalization privatization and globalization by opening the economy through liberalizations of trade, investment and financial policies. The main aim has been improving the

\(^{141}\) (Planning in India was introduced in 1951. Planning in India was “to promote a rapid rise in the standard of living of the people by efficient exploitation of the resource of the country, increasing production and offering opportunities to all for employment in the services of the community.”). Government of India Resolution, March 1951.
\(^{142}\) (It can be broadly being said to include two sets of measures, aimed at structural adjustment and stabilization. Structural Adjustment includes relaxation or removal of restrictions on economic transactions which involves (i) procedural changes such as changing the procedures of licensing of imports, foreign investment or domestic investment (ii) legislative changes such as repeal of outdated legislations like FERA and ULCRA or putting in place legislation for bringing into existence various regulatory authorities such as SEBI, TRAI etc.) V. S. JAFA, LIBERALIZATION IN INDIA- THE ROAD AHEAD 2-5 (2001).
productivity and efficiency of the system.\footnote{G. Ganesh, Privatization in India 128 (2001).} Till that time India was one of the most heavily regulated economies in the world and thus India represented a strong case of economic nationalism.\footnote{Bal Dev Raj Nayar, supra note 48.} This was achieved by removing industrial licensing for investment, encouraging technology transfers, proactive foreign policies etc. Foreign Direct Policy was also liberalized.

Public Sector reform remained in darkness in 1991. The private sector was given larger space to operate in as much as some of the areas, reserved exclusively for the public sector were now to be opened to the private sector. In these areas public sector were to compete with the private sector. Performing PSU’s were given freedom to access capital markets on the strength of their own performance but non-performing PSU languished for want of budgetary support. Privatization was not pursued as an option rather it was devised to finance fiscal deficits through selective disinvestment.\footnote{G. Ganesh, supra note 143.} The National Telecommunications Policy of 1994 envisaged liberalization of the Telecom sector.\footnote{Nand Dhameja, K.S. Shastry, Public Sector Undertaking and Privatization 163 (2002).}

In the insurance sector a separate regulatory and development authority, Insurance Regulatory and Development Authority (IRDA) was set up on the recommendations of R.N. Malhotra. Further insurance sector was open to private participation thereby ending the monopoly of Life Insurance Corporation of India. Agricultural sector was not given priority under NEP, 1991 an important reason for this was huge budgetary allocation required for subsidies, power, irrigation projects etc. Thus agricultural sector was left for privatization and decentralization.\footnote{G. Ganesh, supra note 143.}

The catchword of NEP was ‘Economic Reforms’ which was given to it to justify the opposite ideology than the erstwhile accepted ideology of Socialism. The acceptance of the new ideology unleashed issues redefining the role of the State and the market. The concept of ‘Welfare State’ was replaced by ‘Competition State’ and there was a shift from State centralism to market centralism. It was followed

\footnote{Some of the developments in agricultural Sector include creation of Rural Infrastructure Development Fund, relaxation of restriction under Essential Commodities Act, partial decontrol of fertilizer prices, removal of bottlenecks in agricultural marketing etc.) Chandra Shekhar Prasad, supra note 135.}
by the Structural Adjustment Programme (SAP)\textsuperscript{148} of WB and IMF which had put conditions for granting financial assistance. Large scale deregulation, disinvestment etc. resulted in the overhaul of socialist pattern of the society.\textsuperscript{149}

The NEP, 1991 also started a new wave of Public Private Partnership (PPP) in India thorough opening up allowing generation to private participation and it set up a structure of independent power producers. In 1994, through competitive bidding process licenses were granted to eight cellular mobile telephone operator services operators. In 1995, The National Highways Act, 1956 was amended to encourage private participation.\textsuperscript{150}

\textbf{(B) Economic Reforms 1996-1998}

The economic reforms after NEP were influenced mostly by economic liberalization and privatization. In 1996, port sector was opened for private participation following which ports were allowed to be established under Indian Companies Act, 1956, which is called landlord port.\textsuperscript{151} As an economic measure towards liberalization the Government de-licensed industries and coal and lignite mining to private sector. Telecom Regulatory Authority was set up as an independent agency to regulate all private and government telecommunications operators. One of the major reforms during that period was the establishment of Disinvestment Commission.

\textbf{Disinvestment Commission}

The term ‘disinvestment’ is used to denote the process of privatization. India’s Disinvestment Programme was based on Rangarajan Committee Report.\textsuperscript{152} It considered 31 companies for disinvestment. The Government classified Public

\textsuperscript{148} SAP drastically reduced Government social spending in areas like health, education etc thus creating spaces for the expansion of private, transnational capital through corporate activity. Thus the economies become closely tied to international markets tied to international markets controlled by corporate powers from the traditional North. SAP killed the diverse economic, social, legal and administrative systems which are hindrances to the free play of markets and economic integration that characterize globalization. Thus SAP laid the foundations of neo-liberal economies ruled by neo-liberal States in developing countries) Shalmali Gutta, \textit{Globalization}, 17 DEVELOPMENT IN PRACTICE 523-531 (2007).

\textsuperscript{149} Id.


\textsuperscript{151} \url{http://pppinindia.com/sector-ports.php}, (last visited on Oct 12, 2015).

\textsuperscript{152} Committee on Disinvestment of Shares in Public Enterprises (1993) available at \url{http://www.divest.nic.in/chap5.asp} (last visited on 03/10/2015).
Sector Enterprise into strategic and non-strategic areas for the purpose of disinvestment. It was decided that except in non-strategic enterprises there would be reduction of 26% government stake. Public sector undertakings including some of the profit making undertakings have also underwent disinvestment.\(^{153}\) The holding of fifty one or more equity was recommended for only six industries such as coal and lignite, mineral oils, arms, ammunitions and defense equipment, atomic energy, radioactive minerals and railway transport.

**(C) Economic Reforms 1998-2004**

There is ‘No Alternative to the New Economic Policy’ was the assertion behind the economic Reforms during 1998 and it was proved as right by the reform policies taken by the subsequent government. The economic policy of that time was called Swadeshi Liberalism, which means India has to develop on its own. But this ideology of economic nationalism proved insufficient to find economic austerity. Consequently, the government vowed to deepen, broaden and accelerate reforms. They took the extraordinary step to pass Insurance Regulatory Bill, which was prevented by the then ruling party while in opposition and also the Patent Bill. The initial unwillingness of the government to adopt liberalization policies and the later change in the attitude shows the vulnerability of Indian economic plans to foreign aid and assistance and also that, the economic reforms favoring LPG is not followed as an option rather as a last resort.

**(D) Economic Reforms 2004-2014**

The government which came to power riding on the frustrations and disenchantments of the poor with the neoliberal policies since the beginning of the new economic reforms has done little to the succeeding trends.\(^{154}\) In the year 2004-2005 government showed noticeable improvement in the priority accorded to the social sector by introducing various programmes like National Common Minimum Programme, Bharath Nirman Programme, Mahatma Gandhi National Rural

\(^{153}\) For example Videsh Sanchar Nigam Limited, oil giants like HPCL, BPCL, National Aluminium Co. Ltd etc. Though UPA promised that it would not go for disinvestment of profit making PSU it couldn’t keep up with the promise).

Employment Guarantee Act (MGNREGA) etc.\textsuperscript{155} The money for these schemes were generated through disinvestment of PUSU’s.

During 2006 the Ministry of Disinvestment was revived and converted into a Department under the Ministry of Finance. Initially it did not allow disinvestment of profit making PSU’s but subsequently it was allowed at 49 percent but only through public offer. It aimed at revival of sick industries and to ensure autonomy to PSU’s. But later the economic trend of the government reveals that a sense of urgency for addressing the deep rooted problems in the country's social sector was missing in the agenda of the government mainly due to the neglecting of areas like education, health, water and sanitation, nutrition etc.\textsuperscript{156} The major economic reforms during the UPA government were allowing 51% of FDI in multi-brand retail sector\textsuperscript{157} 49% of FDI in Indian domestic airlines. The Insurance, Pension and Baking Amendment Bill, 2012 approved a hike in the FDI in insurance sector at 49%. Besides, in 2012 Indian Railway sector was opened for PPP.


The present Government is leaning for a more liberalized and privatized economy and it is evident from his economic reforms. FDI was allowed in railway, defense sector. A spate of reforms in labour laws, land acquisitions, coal sector etc. is also planned through executive orders. The present government is planning for a complete deregulation of diesel prices, relaxing of FDI rules in construction, increasing FDI cap in insurance sector from 26 to 49 percentages through introduction of Insurance Laws Amendment Bill, 2015.\textsuperscript{158} The government also removed environment clearances made by the previous government for large industries, schools, colleges etc.,\textsuperscript{159} another reform is Goods and Service Taxes Bill, 2015 which will take away tax barriers between states and ensure free flow of goods\textsuperscript{160}

\textsuperscript{155} Id.
\textsuperscript{157} PTI, UPA endorses Governments economic reform measures, THE HINDU, Sep. 2012, at 27.
\textsuperscript{158} Manoj, Pradeep Kaushal, Insurance Bill enters Lok Sabha, faces hurdle in Rajya Sabha, TIMES OF INDIA March 4, 2015.
\textsuperscript{159} Vikas Dhoote, Make in India: Government removes arbitrary environmental clearances to facilitate industry, ECONOMIC TIMES Jan 6, 2015.
\textsuperscript{160} Anita Joshua, New GST Bill elements need scrutiny: Congress, THE HINDU, May 10, 2015; (The government allowed disinvestment of NPC, Coal India and ONGC profit making PSU’s of India).
2.10 LPG and its Impact on India

Globalization, economic liberalization and privatization have put constitutional principles in a State of dilemma. Principles of democracy, concept of welfare State, social and economic justice embodied under Part IV of the Constitution, concept of federalism etc. is undergoing a constant process of reshaping in order to match with the developmental activities from time to time. The judicial, executive and legislature has become anti-poor and connive at the plight of the marginalized and vulnerable sections of the society. The policies taken by the government are seldom tested in the anvil of constitutional principles; rather they try to infuse market rationalities into the structures and practices of the State. There are now multiple actors at the realm of State affairs who are considered to be the part and parcel of the State and the differentiation between State and society, public and private spheres which are of central importance are reinterpreted in terms of political values which Neo-liberalism embodies.161

i. Dilution of the Sovereignty of the State

The interest of the Government and corporate sector is now one and the same bereft of any public interest and these non-state actors are neither socially nor politically accountable to the public at large. They also reject the social, democratic view that citizens are entitled to the entire political, social and economic rights which enable them to live with dignity. The liberal concepts of sovereignty and autonomy are replaced by terms like ‘embedded autonomy.’162 Thus the ‘Westphalia’ system of governance comprising of the principles of sovereignty 163 and Statehood 164 are under attack.165 It is because economic globalization has transformed the conditions under which the State power is

162 PETER EVANS, STATES AND INDUSTRIAL TRANSFORMATION 66-70 (1995) (According to Evans, successful state action in the era of economic liberalization requires its understanding of its own limits and a realistic relationship to the global economy and this combination is called ‘embedded autonomy.’).
163 Id. (Sovereignty has two dimensions: internal and external. Internal sovereignty is where the sovereign or Government exercises absolute authority over a particular society. Externally, there is no absolute authority above and beyond the State. Thus, States should determine their own direction and policies).
164 (Statehood meant that the world divided into territorial parcels, each of which was ruled by a separate Government). Nilüfer Karacasulu Goksel, Globalization and the State, DOKUZ EYLUL U., (Oct 5, 2015) http://sam.gov.tr/wp-content/uploads/2012/02/1.-NiluferKaracasuluGoksel.pdf.
165 Id. (The Westphalia State was moreover sovereign, that is, it exercised comprehensive, supreme, unqualified and exclusive control over its designated territorial domain).
exercised. The State is unable to control phenomena such as global companies, global production etc.

There are five gaps with regard to the concept of sovereignty in the global context: the world economy, hegemonic powers and power blocs, international organizations, international law and the end of domestic policy. The present form of sovereignty which the State has is referred as ‘pooled sovereignty’ the idea that the States would be weak and ineffective and acting independently could acquire greater influence by working together with other States through the vehicle of international or regional institutions. Now the State cannot perform its functions single handed. The functions of the State are growing but the laws which the State enforces for economic management are the result of its sovereign will but most a part of global compulsion.

In India the sovereignty of the State is largely affected by the interference of WB and IMF in the economic policy of the government. The economic slavery imposed by them is no less than the slavery of olden times. It is under the dictate of WTO that the issues of health, education etc. is taken up and the power are now transferred from the political class to the multinationals or the business class. Also there is lack of public participation in government policies. Public action is necessary to restore Sovereignty. Bilateral treaties have also affected the judicial sovereignty of India and it is evident from the arbitration award granted in the case of White Industries Australia Ltd. v. The Republic of India, UNCITRAL. In

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167 ROOP SINGH & DARNYANTI GUPTA, supra note 90, at 184. Pooled sovereignty or limited sovereignty is a concept associated with European Union. Europe adopted pooled sovereignty from unitary sovereignty for co-operation under minimal threat to security. Robert O. Keohane, Ironies of Sovereignty: The European Union and United States, 40 J. COMMON MARKET STUDS. 743-765 (2002).
169 According to Amartya Sen “public action can play a central role in economic development and bringing social opportunities within the reach of the people as a whole.”) Ravi Kiran Jain, Loss of Economic and Political Sovereignty of “We the people of India” by Globalization, PUCL BULLETIN http://www.pucl.org/Topics/Industries-envirn-resettlement/2002/globalization2.htm(last visited on Oct 12, 2015).
170 In this case, an Australian company called White Industries entered into a contract with Coal India for the supply of equipment’s to and the development of a coal mine at Piparwar in Uttar Pradesh in the year 1989. Later some dispute arose between both parties and the matter was given for arbitration in a Tribunal in London. It passed an order for monetary compensation against Coal India. Against the order Coal India filed petition in Delhi High Court, White Industries objected on the basis of maintainability of the petition. When the matter was pending the Australian company approached the
the instant case the arbitral award passed by the arbitral tribunal in Singapore has vehemently criticized the Supreme Court for its delay in handling the cases and directed the Government of India to compensate the investor from Australia for the delay.\textsuperscript{171} The award against Indian Government was made on the basis of an enabling clause under the bilateral treaty between both the Governments.\textsuperscript{172} The question involved is if the executive had made such an agreement will it not amount to the surrender of ‘judicial sovereignty?’

\textbf{ii. Fundamental Rights and LPG}

Globalization is a challenge to the concept of social justice enshrined in our Constitution. As held by the Supreme Court “Social justice, equality and dignity of person are corner stone of social democracy.”\textsuperscript{173} The Preamble of the Constitution of India declares India as a “socialist” country, and this term itself gives a substantial proof of the existence of social welfare responsibilities of the State. It was declared by the Supreme Court of India that “the principal aim of a socialist State is to eliminate inequality in income and status, and standard of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave.”\textsuperscript{174} Being a socialist state, the state is required to take steps to ensure that the minimum facilities of life are provided to every person, and there are equalities of income and material resources as far as democratically possible.\textsuperscript{175}


\textsuperscript{173} Education and Research Centre v. Union of India 1995 (3) SCC 42.

\textsuperscript{174} D. S. Nakara v. Union of India 2 SCR 165 (1983).

\textsuperscript{175} This will realize the goals of economic and social justice mentioned in Article 38 and 39 of Directive Principles of State Policy. CONSTITUTION OF INDIA art. 38 (1) (“The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”). CONSTITUTION OF INDIA art. 39 (“ Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing (a) that the citizens, men and women equally, have the right to an adequate means to livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and
Also the State has the responsibility to ensure economic justice. By economic justice is meant minimizing economic inequalities and enhancing economic opportunities. Under economic justice it is contemplated that the State would not make any distinction among its citizens on the basis of their possession of economic resources. Economic justice also requires the state to try to narrow down the gap of resourceful and poor by distributive justice in terms of income and wealth.

In sharp contrast to the concept of Welfare State, globalization ignores the inequalities existing in the society which requires enforcement of social and economic justice. Justice in the free market economic regime is equated with the freedom to trade and market is conceived as an ideal ground for competition between buyers seeking to maximize utilities and seller maximizing profits. The main fallacy of this assumption is that it is not associated with economic classes and categories. Market caters to the needs of only those who have purchasing power. As remarked by Rawls in his book ‘Theory of Justice,’ social and economic inequalities “must be to the greatest benefit of the least advantaged members of the society.” 176 The principles of Welfare State which are enshrined in the Constitution are thus replaced by concentration of economic power, resources, wealth in the hands of few multinational companies acquired through merger, acquisition etc. There is no social security to the labour, instead, there is labour market flexibility’ 177

(a) Right to Education

WTO regime has recognized educational services as a separate sector of industry under GATS. The entry of private educational institutions in the field of higher education is paved with the advent of globalization. National Policy on Education, 1986 is marked the onset of neo-liberal framework in education in India. 178 In 1990 India signed World Declaration on Education For All and

women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”). 176 As cited in M. A. OOMAN, ECONOMIC JUSTICE, GLOBALIZATION AND QUESTIONS FOR ALTERNATIVES 194 (2004).
178 (The policy of 1986 introduced non-formal education along with the establishment of NavodayaVidyalayas meant for a handful of children. If we compare the Kothari Commission
Framework for Action to Meet Basic Learning Needs\textsuperscript{179} adopted at World Conference on Education for All: Meeting Basic Learning Needs held at Jomtien, Thailand under the Joint sponsorship of UNDP, UNESCO, UNICEF and World Bank. The Convention indirectly laid down the foundation for World Bank intervention in educational policies of India and with that started the World Bank providing assistance for implementing educational policies of India. Multilateral trading system in service sector was also one of the main agenda of the UR realized through General Agreement on Trade in Services. It covers educational sector of countries whose educational sector is not exclusively provided by the public sector.\textsuperscript{180}

With the result of liberalization in service sector budgetary allocation towards education was considerably reduced. Education had been one important sector in which the role of the State had been recognized widely. But with neo-liberal policies the role of the government is being ‘reinvented’ and the traditional functions of production and dissemination of knowledge are under attack.\textsuperscript{181} It is evident from the Right to Education Act, 2008 which have been passed in order to realize the goal of Right to Education under Article 21 A.\textsuperscript{182}

But there is also positive response from the judiciary as regards right to education. In India until 2002 right to education was given emphasis only in the Directive Principles of State Policy under Article 45.\textsuperscript{183} After forty three years the

\begin{itemize}
\item Report 1968 and National Policy on Education 1986 we can see that when Kothari Commission tried to narrow down the wide discrepancy between the children of rich and privileged groups, the latter policy widened the gap by creating parallel layers of education. In 1985-86, the Ministry of Education was renamed as Ministry of Human Resource Development. Further in 1990 the concept of Minimum Levels of Learning was introduced and in 1993 Government introduced DPEP and SSA) Sanu Rani Paul, \textit{Right to Education as a Fundamental Right: Challenges Ahead}, 6 LEGAL OPUS 42 (2011).
\item CONSTITUTION OF INDIA art. 21A (“The State shall provide free and compulsory education of the age of 6 to 14 years in such manner as the State may by law determine.”).
\item CONSTITUTION OF INDIA art. 45 (“Provision for free and compulsory education for children The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”)(The Constitution Eighty Sixth Amendment Act substituted this Article in this manner: “Provision for early childhood care and education to children below the age of six years. Article 45:
\end{itemize}
Supreme Court in its verdict in the case of *J.P. Unnikrishnan v. State of Andhra Pradesh* declared that “the right to education up to the age of 14 years is a fundamental right within the meaning of Article 21 of our constitution.” This judgment was much in consonance with the spirit of the constitution makers. Later right to free and compulsory education was elevated as a fundamental right under the Constitution through the 86th Amendment Act of 2002.

**Education at the Higher Level**

Privatization is being pursued in higher education as a very effective measure of improving efficiency and as an important measure of easing financial crisis. This philosophy entered the education sector as well, more strongly the higher education sector. Correspondingly, a reduced role of the state in education, more explicitly higher education, is promoted as an economically and educationally efficient proposal and it is argued that the role of the government should be confined broadly to the formulation of a coherent policy framework. With the emergence of globalization Supreme Court also recognized the role of private educational institutions in the field of higher education. The entry of private educational institutions in the field of higher education made higher education costly and it is not within the reach of the common man. One has to purchase higher education by paying higher price.

Technically speaking, market fails in higher education because of information asymmetry and the huge externalities that it generates. While the former needs regulation, the latter calls for public support. Since market fails to ensure equal distribution of resources, the role of government has to remain proactive in the provision of social goods like education. Further, the application of market principles questions the very basic objective of education: is it for the market or for society? Marketisation is synonymous with commodification and the more we treat education as any other consumption good like chocolate, we rob

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The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

184 AIR 1993 SC 2178(The case thus reiterated the principle held in the prior decision of the Court in Mohini Jain v. State of Karnataka 1992 (2) SCC 666).

education of its vital role in building up of a democratic, humane and inclusive society.\textsuperscript{186}

**(b) Affirmative Action**

One of the prominent features of Indian Constitution is Protective Discrimination favouring discrimination of socially and economically backward classes of citizens in public employment, public educational institutions etc. These provisions are also part of the basic structure of Indian Constitution as enshrined in the Preamble through concepts like 'socialist State' and 'social justice' etc. Under the concept of social justice the state is required to ensure that the dignity of socially excluded groups is not violated by the powerful, and they are considered on equal footing with others. This policy however is confined to tiny government and public sector and vast private sector comprising agriculture, industry, service sector is out of the purview of reservation policy when other nations like Malaysia,\textsuperscript{187} USA,\textsuperscript{188} Northern Ireland\textsuperscript{189} extends their reservation policies to private sector as well.

There is a need to relook into the reservation policy as there is narrowing down of already tiny public sector, due to privatization and selective withdrawal of the State under the policy of liberalization.\textsuperscript{190} Further the insights of mainstream economic theory of discrimination indicate that economic discrimination, do hamper economic growth, bring unequal income distribution and deprivation for

\textsuperscript{186} (Access to higher education may suffer as privatization raises the cost of education and merit is bypassed as a new class of consumer students emerge with money power, who can now choose their product and providers even across borders. Competition, in case of education market, has limited significance as the market tends to remain hierarchical. As we compromise with the true meaning of education, quality suffers and it strikes at the very foundation of our society) Saumen Chattopadhyay, *The Market in Higher Education: Concern for Equity and Quality*, 34 ECON. POLIT. WKLY.53-61 (2009).

\textsuperscript{187} In Malaysia affirmative action covers labour markets, agriculture, land and capital markets and also for social needs like education and housing. Sukhadeo Thorat, Aryama, Prashant Negi, *Debate on Reservation in Private Sector* RESERVATION AND PRIVATE SECTOR 35-38 (Sukhadeo Thorat, Aryama ed. 1999).

\textsuperscript{188} Id. (In USA focus is mainly on affirmative action policies for labour market both in private and public sector and also apart from that legal and affirmative action measures also cover education, housing and Government contracts for construction and purchase of goods from business owned by minority groups).

\textsuperscript{189} Id. (Similarly to the case in USA in Northern Ireland there is affirmative action in labour markets, through Fair Employment Act and there is Fair Employment Agency as enforcement machinery to monitor, goals and time frame of affirmative policies of the Government).

\textsuperscript{190} (According to 1948 Industrial Policy 18 sectors were reserved as public sector enterprises. Over the years, these have been converted into private sector and now only half dozen of these remain as public sector. This inclusion will result in lack of access of discriminated group of resources, education, civil, political, cultural rights which are necessary for the growth of human being)\textsuperscript{10th Five Year Plan}, Planning Commission, Government of India 201 (2001).
discriminated groups and create potential situation for inter group conflicts.\textsuperscript{191} Studies shows that the unemployment rate among the SCs are two times higher than non-Scheduled Castes incidental to this is the higher incidence of wage labour associated with high rate of under employment and greater level of poverty. The fruits of globalization are also not much enjoyed by SC/STs as the recruitment method followed by private sector is exclusionary and discriminatory in terms of consequence and outcome.\textsuperscript{192} There is also no representation of socially deprived in Capital market, business ventures, product and consumer goods market, private and government purchase and construction contracts etc.\textsuperscript{193}

The demand for reservation in private sector is that the government provides safeguards to the private sector to promote their business and trade. Foreign investors are investing in the private sector \textit{via} purchasing their share; this is possible because of the policies of the government. Private sectors uses public money \textit{via} public financial institutions, even then there is no reservation to SCs, STs and OBCs in the private sector. Since uplifting of weaker sections is a stated objective of our country reservation in private sector is part of the social responsibility of the government as well as the private sector.

\textbf{(c) Right to Healthcare}

With the foray of globalization, privatization, deregulation etc., healthcare facilities became expensive and thus inaccessible for the poor. Public healthcare facilities expenditures have been declining over years, the government has discarded the concept of 'free of cost' health services. Under the Ninth Five year plan, user charges can be levied in addition to evolving mechanisms under collecting funds and their utilization for hospitalization and other services.\textsuperscript{194} With the advanced budgetary controls, there has been a substantial increase in commercialization, marketisation and corporatization of healthcare products, equipment, technology and services. Consequently, the pharmaceutical MNC’s assumed an important role in shaping national policies in defining healthcare sector priorities.

\textsuperscript{193} THORAT, NEGI, ARYAMA, \textit{RESERVATION AND PRIVATE SECTOR} 149 (2010).
Apart from the above global governance institutions like IMF, WTO also assumed greater role in shaping healthcare sector. WTO agreement on TRIPS is a good example. It is supposed ensure compliance to IPR, but unfortunately it cannot provide for the healthcare needs of the poorest people, countries by transfer of health technology, R&D or innovations.\textsuperscript{195} Though Right to Health as a Fundamental Right was one of the elections propaganda of the present government, he has put a recent cut back on the universal healthcare plan.\textsuperscript{196}

**(d) Right to Livelihood**

Right to livelihood is a fundamental right under Indian Constitution. Globalization has negative impact on the right to livelihood of tribal’s agricultural farmers, adivasis due to large scale displacement. It results in violation of Article 39 (a), 39 (b),\textsuperscript{197} 46\textsuperscript{198} and 48 A\textsuperscript{199} of the Constitution. Studies shows that there are about ten million adivasis have been displaced from their lands and deprived of their livelihood due to developmental projects that have made use of Land Acquisition Act in the name of the greater common good.\textsuperscript{200} The Land Acquisition Act, 1894 denies the existence of customary rights on the land by Adivasi communities. Governments collude with each other in order to facilitate acquisition of land for big business houses.\textsuperscript{201} Inhabitants of the places where minerals are found are forcefully displaced and they are deprived of their traditional livelihoods. This transformation of the social means of sustenance and of production into capital prepares grounds for the creation of the reserve army of displaced cheap labour. When they are forced to substitute one kind of labour (agricultural labour) for another kind of labour (enterprise

\textsuperscript{196} Archis Choudhary, *Like UPA, Modi Government ignoring healthcare*: Amartya Sen, Jan 7, 2015.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
\textsuperscript{199} CONSTITUTION OF INDIA art. 46 (“The State shall promote with special care the educational and economic interests of the weaker sections or the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”).
\textsuperscript{200} CONSTITUTION OF INDIA art. 48A (“The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.”).
\textsuperscript{201} MADHURESH KUMAR, *FOREST RIGHTS ACT IN SUSTAINABILITY OF RIGHTS AFTER GLOBALIZATION*, 37, 42-43 (2nd edn. 2012).
\textsuperscript{202} (Legal norms providing for acquisition of lands do not require consent of indigenous people but only consultation, for this reason acquisition is done easily by the industrial enterprises despite the legal restriction on the transfer of indigenous peoples’ land to non-indigenous people)Dev Nathan, *Social Security, Compensation and Reconstruction of Livelihoods*, 34 ECON. POLIT. WKLY. (2009).
labour) their productivity varies. The usual approach to involuntary displacement has been to offer compensation to displaced people. The compensation amount may not be sufficient to buy any other land because of lack of skill and due to lack of education they fail to get any job.

(e) Globalization and Labour Laws

Right to work is protected under Indian Constitution through various provisions. Right to work and livelihood are corollary to each other. Equal pay for equal work, maternity relief, prohibition of contract labour and child labour, right to decent conditions of work, social security etc. are some of the protections available for the workers in India. These protections are made available through various statutes.\footnote{For e.g., Factories Act, 1948, Payment Of Wages Act, 1936, Employees State Insurance Act, 1948, Payment of Bonus Act, 1965, Child Labour (Prohibition and Regulation) Act, 1986, Minimum Wages Act, 1948, Workmen's Compensation Act, 1923, Employees State Insurance Act, 1948 etc.} With the emergence of economic liberalization, globalization etc. these statutes have been pushed into insignificance mainly because they stand as stumbling blocks in the path of economic growth.

Most of the labour legislations are amended to cater to the needs of corporate capital investors in the name of ensuring efficiency in production. The policy of disinvestment resulted in lack of social security to public sector employees, redundancy of reservation provisions, their bargaining power etc. Unionization shrunk due to disinvestment since it was largely confined to the organized sector. Trade unionization was further weakened due to ascendency of managerial right; out-sourcing etc. several state governments have also exempted inspection of firms. Unable to initiate legislative action because of constraints imposed by parliamentary democracy, the state has resorted to executive action and judicial activism for reinterpreting legal rights of labour in the light of the prevalent values.

The acts of disinvestment and creation of SEZ bear testimony to the above fact. India initiated the process of disinvestment with the New Economic Policy of 1991. Due to disinvestment the workmen have lost their rights and protection under Articles 14 and 16 of the Constitution and substantive rights that flow from it like right to equality, equal pay for equal work, right to pension including the
principle that there can be no discrimination in the matter of granting or withholding of pension, right to inquiry and reasons before dismissal etc.\textsuperscript{203}

SEZ is given the status of ‘Industrial Township’ under Article 243 (Q)\textsuperscript{204} and therefore it is exempted from the purview of Part IX of the Constitution and it is also equal to a municipal body in terms of its powers and bodies. Apart from that the Development Officer who controls the police, judicial, public services, local government or regulation of the SEZ is a person who is nominated by the developer. The central SEZ policy and the state amendments completely negate the power of the local governance bodies like the municipalities and panchayats, in the case of a SEZ area. Thus, the laws have been amended to create ‘special enclaves’ with ‘special’ political measures to secure economic growth. The ‘special’ political measures include complete absence of democratically elected governments to control SEZ which may be of various sizes.\textsuperscript{205} This is a clear violation of constitutional principles.

The SEZ Act 2005 negates the application of Contract Labour (Prohibition and Regulation) Act, 1970. Workers are absorbed on a contract basis with ‘no work, no pay’ regime which relieves the employer from accountable towards the basic rights of the workers. Trade union activities are also very much limited and the right to abstain from work or protest is curbed through the Act by declaring services rendered in SEZ as ‘Public Utility Services.’ Amendments have also been made in the statutes which give protection to workers in order to evade its application. Another prominent feature of SEZ is the

\textsuperscript{203} In BALCO Employees Union v Union of India & ors. AIR 2002 SC 350 Court held that “unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State.”It was also held that “merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government.”).

\textsuperscript{204} CONSTITUTION OF INDIA art. 243Q (2) (“In this article, “a transitional area,” “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”).

\textsuperscript{205} Ishita Dey, Negotiating Rights: The Case of a Special Economic Zone in., SUSTAINABILITY OF RIGHTS AFTER GLOBALIZATION 185, 177-205 (Sabyasachi Basu, Ishita Deyed. 2012).
feminization of labour. The reasons for employment of women are mainly because of cheap labour, high productivity, docility and lack of organizational capacity.\textsuperscript{206}

The foray of globalization also poses serious concerns about the protection of unorganized sector that form more than 90% of the labour force in India. In 2008, Unorganized Sector Workers Act was passed to provide welfare and social security to the workers in the unorganized sector. But in reality, the Act goes no further than accepting in principle that social security should be provided to unorganized sector workers. The Act does not mention about the migrant workers and leaves it for the state governments and subsequent union governments the task of formulating social security schemes.\textsuperscript{207}

iii. Challenges towards Directive Principles of State Policy (DPSP)

Another violation of the Constitution is evident from the fact that the public policies like planning; liberalization etc. is unlegislated and is implemented without undergoing any constitutional amendments. These policies have greater impact on the DPSP concepts embodied in the Preamble like concepts like socialism, social and economic justice etc. The Constitution of India expressly rules out the enforceability of DPSP but, nevertheless, declares them to be “fundamental in the governance of the country” and some of the principles are elevated to the position of fundamental rights through judicial activism and constitutional amendments.\textsuperscript{208} The Indian judiciary has also on many occasions washed its hands while deciding on the correctness of executive decisions violating principles of economic, social justice in the name of separation of powers. Thus the executive is enjoying enormous powers in comparison with other organs of the government.

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\textsuperscript{206} Dr. Sunil Yadav, \textit{Unorganised Workers in India with special Reference to the Unorganised Workers Social Security Act, 2008: Some Reflections}, 43 L&I Cases (2010); S. Sakthivel, Pinaki Joddar, \textit{Unorganised Sector Workforce in India- Trends, Patterns and Social Security Coverage}, 41 ECON. POLIT. WKLY.2107 (2006).

\textsuperscript{207} \textit{Id.}

\textsuperscript{208} THE CONSTITUTION OF INDIA art.37 (“The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”).
Under the Constitution the state has the responsibility to see that there is no regional imbalance. After independence the economic plans was mainly concentrated on this aspect but after trade liberalization the government is not paying attention to this factor the main reason is that the IMF and other institution have set their attention towards the income generating states and not on less resourceful states in terms of industrial production.

iv. Privatization and Right to Property

Privatization has affected the principle of distributive justice especially regarding right to property. Right to property of the individual and right to acquire land lies on two notions one is found on the natural right of the person and other is on the sovereign power of the State. Under Indian Constitution the right to property is a constitutional right as per Article 300 A. Prior to the 44th Amendment Act of 1978 there had been two protections given to right to property viz; Article 19(1)(f) which guaranteed right to property as a fundamental right and under Article 31. The main purpose of the amendment was to convert right to property a legal right in order to enable land reforms through acquisition of property for socio-economic reforms. Immediately after independence the power of eminent domain was only of a statutory character, operationalized through land reforms legislation under Land Acquisition Act, 1984 and mostly lands were taken from zamindars, in order to equitably distribute the property to landless peasants. But afterwards the amendment was used in order to seize land for the purpose of developmental plans from the poor mainly for building SEZ, airports etc., rather than for any redistributive purposes.

The approach of the Court towards the ‘eminent domain’ has considerably changed and it was welcomed and recognized as a ‘progressive approach’ by the judiciary. The concept of ‘public purpose’ under which the government can take

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209 For instance equal pay for equal work, right to minimum wages, right to speedy trial, right to free legal aid, right to healthcare etc.
210 CONSTITUTION OF INDIA art. 300A (“No person shall be deprived of his property save by authority of law”).
211 CONSTITUTION OF INDIA art 31 (repealed) (“No law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate.”).
212 Land reform laws enacted from the 1950’s to break the concentration of land with zamindars and to strengthen the rights of landless (title-less) tillers and tenants.
213 Namita Wahi, State, Private Property and the Supreme Court, FRONTLINE, October 5, 2012.
over private property expanded over time so as to include acquisition for SEZ, reaction project, residential purpose etc., but yet the higher Courts has never found a law unconstitutional for violating the requirement of 'public purpose'. According to Supreme Court "the government is the best judge", has "the sole and absolute discretion in the matter" relating to land acquisition and payment of compensation. Subsequent trends show a revival in the attitude of the judiciary. But the latest verdict of Supreme Court in Noida Land Acquisitions case again made the situation of farmers murky.

With the enactment of SEZ Act, 2005 the acquisition of land by the Government for handing it over to private industry was legalized. With the enactment of SEZ Act, 2005, the acquisition of land by the government to hand it over to private industry was legalized. The proposed Land Acquisition Amendment Bill, 2007 and Land Acquisition and Resettlement Bill, 2015 also contained provisions which makes it much easier for the government to acquire land for any private entity. The consequences of abridging the compensation requirement under Article 31 is largely felt when private corporations took over land for various purposes. The state has adopted the role of facilitator in land acquisition processes to assist and encourage the rapid expansion of mining by private companies. Such a ‘land broker’ state is different from the old developmental state. Such neo-liberal developmentalism raises the question of social justice, and questions the very legitimacy of the State.

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214 The case of Narmada Dam construction is an example wherein Supreme Court favored the Government’s policy of land acquisition, displacement and environmental sustainability. Narmada Bachao Andolan v. Union of India and Others, (2000) 10 SSC 664.
215 (The complete hands off attitude of the Courts in acquisition proceedings over time violate the doctrine of separation of powers ensuring judicial review, and have created a unitary centre of power with the State) Preeti Sampat, Limits to Absolute Power, Eminent Domain and the right to land in India, 38 ECON. POLIT. WKLY.49 (2013).
216 (The Supreme Court quashed the plea of farmers by upholding the land acquisitions by Greater Noida Development Authority between 2006 and 2009 by overruling the earlier decision of Allahabad High Court. Surendra Kumar & ors. v. Greater Noida Industrial Development Authority &ors. Civil Appeal 4916 of 2015).
217 In these cases Supreme Court has quashed the acquisition of lands and reminded Government of the constitutional principles on the right to property.
219 As is evident from the official Industrial Policy of Jharkhand 2001 The ability of corporate bodies to acquire and control land has been facilitated by a series of strategic amendments to the CNTA of 1908 and the Bihar Tenancy Act.
reinstatement of right to property is the need of the hour as the Courts are also turning a blind eye to the cries of the displaced people.

v. Challenges towards the democratic principle

The liberal democracy is undergoing a stress due to LGP. 221 With the emergence of globalization Indian democratic State stands at crossroads because the logic of global capitalism has been allowed to operate, wherein all principles enshrined in the liberal democratic constitution of India have been abandoned under the weight of superior state systems of advanced capitalism. 222 In a vibrant democracy political parties and elected bodies are expected to play a central role in safeguarding the rights and interests of all members of the population. But now a day's elections are often less a choice between alternate political programmes and a means of enforcing political accountability on the Government. They are increasingly taking on the character of referenda on personalities and slogans with professional fund-raisers and public-relations consultants sometimes playing a greater role than citizens in selecting the issues used for mobilizing voters. In India, where the attempt may be to build a strategic alliance of groups which can help a party to win votes, political platforms would be chosen with the aim of winning maximum votes rather than for ideological considerations. 223

The increasing role of MNC's led to faster rate of growth and development of the country but at the same time there are some hard facts about the entry of MNCs in India. The MNCs through WTO are influencing government policies in our country and requires it to make amendments in various Indian laws. 224 Despite the fact that they hold a large share of the economy, they are not bound by

221 COLIN HINES, GLOBALIZATION: A GLOBAL MANIFESTO 119-121 (2000).
222 BAL DEV RAJ NAYAR, supra note 48, at 4.
223 Sarah Joseph, Neoliberal Reforms and Democracy in India, ECON. POLIT. WKLY. 3217 (2007).
224 A few of them are as follows; (i) availability of Indian forests for industries to MNCs (ii) use to minerals and mines to MNC's (iii) giving land to them for farming and processing of agricultural produce (iv) permission to use foreign trademark (v) creation of Dispute Settlement Body etc. The creation of Dispute Settlement Body and requiring the country to appear before it for non-compliance may result into loss of political sovereignty and economic freedom. It is because the entire functioning of the WTO is in the hands of WTO only. MNCs' are also being criticized on the ground of remitting huge sums of money to their parent countries by way of huge dividends, excessive fees and royalties on their tangible assets; high charges for their turn-key projects; and thereby resulting into major outflow of foreign exchange reserves. N. AGARWAL, Multinationals in India-Indispensable Global Corporates: An Exposition in, MULTINATIONALS V. SWADESHI TODAY: POLICY FRAMEWORK FOR ECONOMIC NATIONALISM 84 (P.P. Arya, B.B. Tandon ed. 1999).
any of the social obligations enshrined under the Constitution. The functioning of MNC also vitiated the overall economic, social and political environment in the country. Their demands also strike through the political sovereignty and economic freedom of the nation to the exclusion of national priorities and the current situation needs a proper government regulatory framework in order to avoid victimization of the host nations.  

vi. LPG as a Threat to Federalism

Another challenge which globalization has posed to the constitutional set up is against the federal nature. Indian federal constitutional arrangement is undergoing a sea change under the impact of LPG. The impacts are basically with regard to skewed economic development of some states over the other leading to regional imbalance in growth and development of the economy. It is a challenge to co-operative fiscal federalism in India. Secondly, under globalization the state has lost control over economic sovereignty, in order to enhance its domestic sovereignty the state is compelled to create local democratic structures, resulting in the decentralization of federal structure. For e.g. creation of local self- governments which is a part of the main agenda of globalization ‘think globally, act locally. Third challenge is the rapid rise of civil society organizations. Though these civil societies have the potential to create strong reservoirs of social capital they do not facilitate and in fact inhibit the creation of a more responsive democratic government.

Although at one level, globalization has given some functional autonomy for efficiency gain and competition to attract private capital, it has restricted the scope for independent sub-state level fiscal policy, especially with the NEP, 1991 which pushed economic reforms with liberalization. The reforms brought some immediate results but the deficits which were persistent in the union budgets escalated in the

225 Id. at 86.
228 Id.
229 As defined by Michael Walzer, civil society name the space of unforced human associations and also the set of relational networks-formed for the sake of faith, interest, ideology-that fill this space. Michael Walzer, The Civil Society Argument in THEORIZING CITIZENSHIP 153 (Roland Beiner & Albany ed. 1995).
State budgets, and consequently, took place the “fiscal restructuring” which had the impact on the autonomy of the States in running the public sector. World Bank conditionality's were imposed on central transfers to the States, even a part of the grants-in-aid under Article 275 of the Constitution were made conditional on fulfilling fiscal reform targets. A severe compression on expenditures of the States in order to reduce the State fiscal deficits affected developmental expenditures comprising essential public services like health and education in several poor States.

LPG policies have boosted capital flows simultaneously, it has also amplified economic asymmetries by fortifying the economy of some States, leaving many other States behind, which is derogatory of the mandate under

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231 Economic reforms cannot progress without a radical shift in the manner in which States have been functioning now. Prior to globalization there was economic management under centralized federalism and it required to be changed towards the 1970 and this yielded some positive results but in 1991 Union budget deficits which were persistent before adoption LPG policies sharply escalated to State budgets.

232 CONSTITUTION OF INDIA art. 275 (“Grants from the Union to certain States

(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants in aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States: Provided that there shall be paid out of the Consolidated Fund of India as grants in aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State: Provided further that there shall be paid out of the Consolidated Fund of India as grants in aid of the revenues of the State of Assam sums, capital and recurring, equivalent to (a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(1)(A) On and from the formation of the autonomous State under Article 244 A, (i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify; (ii) there shall be paid out of the Consolidated Fund of India as grants in aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.”).

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament: Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

Article 38 (2), wherein the word 'areas' being capable of being interpreted as States, raising the question will the LPG policies help or hinder the DPSP mandate to ensure minimization of inequalities amongst the different States? LPG seldom gives relevance for a 'balanced regional development' which was the model development plan in the initial years after independence. The redistributive role of the centre assumes greater urgency in federations like India, where regional disparities tend to accentuate as the economy gets market oriented.

There is also an argument stating that LPG has strengthened the subnations, but that is impractical in the case of India because Article 293 of the Indian Constitution requires the centre's consent for a State to borrow as long as it remains in debt to Union government. Moreover due to the emergence of LPG the rights of the State governments' to determine policy in areas that fall under States' sphere as per the Constitution have been curtailed. In this respect particular concerns are the ceiling imposed by WTO on domestic and export subsidies and issue of market access in agriculture. Further increased exposure to trade and the resulting volatility in prices have not been conducive to domestic sovereignty of their respective governments either. Besides, the Central Governments lack of interest in protecting States' is evident in many ways like Patent Amendment Act, 2005 which has doomed many of the domestic pharmaceutical companies;

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234 CONSTITUTION OF INDIA art. 38 (2) (“The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”).


236 CONSTITUTION OF INDIA art. 293 (2) (“The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.”).


238 (It is therefore not surprising that globalization is accompanied by the transfer of the task of supplying goods and services which were hitherto the responsibility of the public sector to the private sector. Those lacking the requisite purchasing power — the poor — are largely left out) Basu, Kaushik, India's Dilemmas: The Political Economy of Policymaking in a Globalized World, 43 ECON. POLIT. WKLY., 53-62 (2008).

239 (The Act had repealed Section 5 of the Patent Act paving way for product patent in pharmaceutical and chemical substances. In those substances only patents relating to the methods or manufacturing can be claimed. Also Sec 3 (d) was amended to the effect that mere discovery of a new form of known substance which does not result in the enhancement of the known efficacy of eh substance is not an invention and therefore not patentable. This provision had put restriction on the produce of generic
Regarding tariff policies, even at the height of crisis, the centre did not raise tariff rates, even though it could have done without violating WTO commitments. Thus the State of federalism is crushed to insignificance due to union autonomy in policy measures.\textsuperscript{240}

\textbf{2.11 Conclusion}

In today’s world, the government is running on the principle ‘less government’ and ‘more governance.’ Globalization has resulted in the reduction of the economic role of the State and the retrenchment of the concept of Welfare State, resulting in the impoverishment and marginalization of the masses. The Welfare state obligations which were at the heart of the economic and political democracy are now given least priority. The government is opening its door for liberalization and privatization in an unprecedented manner. There is a vacuum to be filled by intergovernmental institutions or by hegemonic power centres exercising leadership for common interest.\textsuperscript{241}Unlike other countries what is found to be a hurdle in implementing policies of economic liberalization in India were the democratic set up, and the Constitution which is deeply embedded in the concept of economic and social justice. State, which plays pivotal role in economic policy reform has the duty to protect the poor and marginal sections of the society against the ill effects of globalization and to uphold the Constitutional principles.

The Judiciary as the protector of the fundamental rights has a potent role in upholding the rights of the people against the undercurrents of liberalization, privatization etc. Indian Judiciary is known for its judicial activism in order to protect the fundamental rights of the people. It can implement various measures to prevent private actors from unreasonable interference on fundamental rights and state inaction to support the cause of rights of the masses. One such means is through interpretation of Article 12 of the Constitution which defines ‘State’ for the purpose of Fundamental Rights. While interpreting Article 12, the Court has devised various tests to put the ‘body/authority’ in question to know whether it answers the description of State through various tests developed by it. In the era of LPG the main issue regarding Article 12 is adequacy of

drugs in India. But later High Court of Madras in Novartis A.G. V. Union of India 2007 (4) MLJ 1153 held this provision in violation of Article 14 of the Constitution).

\textsuperscript{240} Supra note 226.

\textsuperscript{241} DAVID HELD & ANTHONY MCGREW. THE GLOBAL TRANSFORMATIONS READER: AN INTRODUCTION TO THE GLOBALIZATION DEBATE 155 (2000).
those tests to protect the fundamental rights of the people when the violator is a private body. Following chapter gives introspection into the tests adopted by the judiciary to determine the legal status of a body, public/private, as ‘State’ under Article 12 of the Constitution.