CHAPTER III
IMPACT OF GLOBALIZATION ON
INDUSTRIAL LABOUR

• In Industrial Policy of Second National Commission on Labour and its implications.
• Review of changes in Labour Practice of Industrial employers.
• Selected recent judgments on labour disputes
Introduction:

In the previous chapter we have taken an overview of the sector wise performance of GDP in India and other countries, trends in foreign Direct Investment (FDI) and the nature of labour laws in India. After 1991 Government of India changed its industrial policy and accepted Liberalization, Privatization, Globalization (LPG) policy. This policy aims at opening of the economy to the world, leading to completion of industrial change. Because of competition employers try to cut down in labour cost. Government has appointed Second National Commission on Labour to recommend ‘Required changes in labour laws’. However there have been no major changes in labour laws up till the present. But practices of industrial employers have changed. In this chapter we try to outline the important changes in the situation of industrial labour in India. We see in this chapter what impact globalization has had on industrial labour in India. This chapter is divided in three parts: we see in the first part Second National Commission on Labour and its recommendations. Secondly we take a review of changes in labour practices of industrial employers and lastly we outline some selected recent judgments on labour disputes.

Second National Commission on Labour :-

On 15th October 1999, the government of India decided to set up the National Commission on Labour (NCL) with Mr. Ravindra Varma as the chairperson. The following were its terms of reference.

a. To suggest rationalization of existing laws relating to labour in the organized sector.
b. To suggest and Umbrella legislation or ensuring a minimum as protection to workers in the unorganized sector.

The commission took in to account the need to ensure a minimum level of protection and welfare to labour, to improve the effectiveness of measures relating to social security, safety at places of work, occupational health hazards, to pay special attention to the problems of women workers, minimum wages, evolving a healthy relation between wages and productivity and to improve the protection. But all social partners, entrepreneurs, workers and the state and central Governments have complained that the laws are unsatisfactory. All wanted a comprehensive reviews the administrative framework and the institutional structure in the field of social security.

The years beginning with 1980 saw a number of changes in economic policy. There was considerable growth in the economy, but fall in employment generation. Employers began the policy of ‘out sourcing’ their production to the unorganized sector. The period form 1980 to 1991 saw two major strikes that were both significant to the trade unknown movement in different ways. The first strike that we refer to is that of all public undertakings in Bangalore during 1980-81. This involved industrial relations in public sector undertaking. This was massive strike that losted for many days. The second strike that was of considerable significance to the trade union movement was the Bombay Textile strike of 1982 which lasted for about two years. The strike was perhaps the most massive strike that Indian industry has seen. It is estimated that between 75,000 to 1,00,000 workers were dismissed; or simply never taken back. The strike seemed to have largely strengthened the hands of the mill owners.
The Trade Union Movement in India has now come to be characterized by multiplicity of unions, fragmentation, politiciaisation and reaction that shows a desire to stay away from politically oriented central federations to trade unions and struggle for co-operation and joint action. One sees an increase in the number of registered unions in the years from 1983 to 1994. But one also sees a reduction in the average membership per union and in the number of unions submitting returns.

**The broad features of the economic reforms:**

a. The government opened major sectors of the economy to the private sector.

b. Foreign investment was invited in all these sectors.

c. All restrictions on the entry of the private sector into the field of infrastructure and strategic industries were removed.

d. There is more freedom for financial institutions.

e. Private capital and foreign investment have been allowed in such areas as construction of roads, ports, airports, telephone services etc.

f. Import restrictions have been reduced.

The list of industries affected by globalization is much longer because of duty free project imports, industrial units like Bharat Heavy Electrical are affected, as their products are costlier compared to
imported ones. The machine tool industry in India is affected because of cheap imports of second hand machine tools.

The commission observed that government does not want to give quick decisions, even though they know delay in taking decisions only adds to the burdens that such enterprises are forced to carry. Permission for closure are kept pending for months and years and employers kept waiting. Sometimes managements try to seek some such excuses close the enterprise and disappear from the scene without paying compensations or dues etc. to workers. In these circumstances the commission came to the conclusion that provide for adequate compensation to workers and in the event of an appeal, leave it to the labour relations commission to find always of redressal through arbitration.

Permission is not necessary in respect of lay off and retrenchment in an establishment of any employment size. However workers will be entitled to be given one month’s notice. We are of the view that the scale of compensation may vary for sick units and profit making units, even in case of retrenchment. However it would, recommend that in the case of establishments employing 300 or more workers where lay off is to be greater than a period of one month.

The commission would like to recommend the compensation per completed year of service at the rate of 30 days on account of closure in case of sick industry which has continuously run into losses for the last 3 financial years or winding up. The rate of 45 days for retrenchment by such sick industry where retrenchment is done with a view to becoming viable, while the lay off compensation could be 50
percent of the wages at present, in the case of retrenchment. In case of
closure of such establishment which is employing 300 or more
workers, employer will an application for permission to the
appropriate government 90 days before the intended closure and also
serve a copy of the same on the recognized negotiating agent. If
permission is not granted by the appropriate government within 60
days of receipt of application, the permission will be deemed to have
been granted.

The government will have the authority to prohibit a strike. The
general provisions apply, like giving of notice of not less than 14 days,
not declaring a strike. In this context the commission also recommends
that illegal lock-out should attract similar penalties A worker who
goes on an illegal strike may be dismissed and the management must
pay the workers wages equivalent to three day’s wages per day of the
duration of an illegal lock-out. The union which leads an illegal, strike
must be derecognized and debarred from applying for registration for a
period of two or three years.

Management should specify the maximum number of working
hours in a day and payment of overtime at double the rates of wages.
The limitation on employing workers on overtime needs to be relaxed
commission recommends that the present ceilings be increased to
double to enable greater flexibility in meeting the challenges of the
market. It also recommends that the workers right to wages for
overtime work at the prescribed rate of overtime wages if they are
asked to work beyond 9 hours a day and 48 hours a week should be
ensured.
On the question of night work for women there need not be any restriction on this, if the number of women workers in a shift in an establishment is not less than five, the management is able to provide satisfactory arrangements for their transport, safety and rest after shift hours. This change in law has become important after 2000, when the numbers of workers working in call centres has increased fast. At the same time, the Commission is not in favour of any exemptions being granted in respect of establishments in export promotion zone or special economic zones from labour laws.

There should be provision for holidays, earned leave, sick leave and casual leave at an appropriate scale to the workers, a part from maternity benefits for women workers.

The commission recommends on ‘equal pay for equal work’ and also important provisions of the equal remuneration act other than on wages so that is prohibition of discrimination against female workers in matters of recruitment, training, transfers and promotions should be incorporated either in the employer-employee relations law.

IN 1998, the ILO adopted the declaration on the ‘fundamental principles and rights at work our constitution’ the ILO conventions that we have reatified and the existing laws together guarantee. Some rights to the workers, the Indian constitution declaration that every one has the right to work, to free choice of employment and favorable conditions of work.
Present laws provide some limited social security for workers. ESI scheme is a contributory scheme. The Second National Commission recommends that the rates of contribution should be fixed on an actual basis and be free from collective bargaining. The ESI scheme has provision for payment for funeral expenses. It is suggested that it should be substituted by the term emergency expenses so as to include are of the sick and the elderly members casual and contract workers may be covered for limited benefits at reduced rates of contribution as recommended by various committees and the ILO.

The study group has recommended setting up of a competency based continuing training system covering all sectors of the economy. The training system will have a well-defined certification system for the competencies acquired during the program. It will help in providing learning, training, retraining and accreditation opportunities. This would help to achieve higher skill standards and performance at the workplace. The competency based training system is applicable to the labour force both in the organized and the unorganized sectors. This system can be effectively used to develop competencies in any job in all sectors of economy, such as manufacturing, trade and service.

**Summary:**

This is one of the most important recommendations of the Second National Commission on Labour. But it has not been implemented properly anywhere in India. In our study we also observe that the low skill level of workers is a major obstacle to expansion of industry and industrial employment. In industrial areas there is an increasing demand for skilled labour, but the demand for skilled
workers is not fulfilled in industry. After globalization, there have been changes in technologies as well as work processes. Countries like India, which have opened their economy in the last decade need to invest in the skill development, training and education of their workforce.

Indian labour is facing the challenge of globalization and our labour competitiveness vis-a-vis China and other nations is poor. In India there is a mismatch in the demand and supply relation in the labour market and poor quality of training facilities as well as training staff.

- In the second section we see review of changes in labour practice of industrial employers. Supreme Court has given some adverse judgments from the point of view of labour. We see some such judgments below.

In the last few years the Supreme Court gave some important judgments. T.K. Rangrajan vs. Government of Tamil Nadu on the date 24 July 2003 and syndicate Bank vs. K. Umesh Nayak on the date 19 March 1994 in these two judgment of the Supreme Court have serious adverse implications for workers had discussed the issue of ‘no work no wages’. In the second judgment, the employer had challenged directly in the Supreme Court the order of the Industrial court of Maharashtra, holding that the non payment of fall wages to the workmen was an act of unfair labour practice. To rejecting the contention of the employer that he was entitled to deduct wages pro
rated as the workmen had not given fall production as they had resorted to go-slow tactics.

The Supreme Court accepted the principle of ‘No work, no wages’ and upheld the right of employers to deduct wages in the strike period. It is significant that the Supreme Court has held that no disciplinary proceeding is either necessary where misconduct was committed all together by employees strike is recognized, as a legitimate weapon in the hands of workers.

The Supreme Court observes that when misconduct is not disputed, on other hand admitted and make use of on a mass scale, such as when employees go an strike, legal or illegal, there is no need to hold and enquiry. The Supreme Court also adds, as a strike, it is not possible to hold and enquiry against other employees, not is it necessary to do so unless, and employee struggle that although he did not want to go on strike and he wanted to resume his duty. He has prevented from doing so by the other employees or that employer did not give proper assistance to resume his duty through he had asked for it.

Lastly the Supreme Court has concluded that it is not a mere presence of the work men at the place of work, but the work that they do according to the terms of the contract, which contributes the fulfillment of the contract, of employment for which they are entitled to be paid.

After referring to certain case-law cited before it, the Supreme Court has clearly laid down the law that whether the strike is legal or
illegal, the workers are liable to lose wages does not either make the strike illegal as a weapon the workers of it.

The judges have further observed that during the period of strike, the contract of employment continues, but the workers are withhold their labour and consequently according to the Supreme Court, they cannot expect to be paid, in short the supreme court has accepted the principle of ‘no work, no wages’.

It means that when workers resort to even a legal strike, according to this decision, they must lose their wages for the entire period of the strike, whether legal or illegal, whether justified or unjustified. Applying the same tests to the case of go-slow, the supreme court has come to the some conclusions that’s are: once the go slow and loss of production is proved, the employer is entitled to deduct wages and also make a use of disciplinary action against those who are guilty of this misconduct.

The Supreme Court has termed go-slow as ‘dishonest’ on the ground that the workers reduce the output and claim full wages by remaining in employment. Earlier view, it is unfortunate that some judgments delivered by the Supreme Court itself taking an opposite view appear not to have been brought to the notice of the judges who delivered judgment. It these judgments remain as good law, the working class will have to bury deep its valuable and effective weapon to deal with the employer, that is the right to strike. It would always be suicidal for the workers to resort to a strike, even a legal strike, since they themselves would be losing their wages and employers would not
be required to pay any wages for the strike period whether it is legal or justified.

A bench of three judges of the Supreme Court in the case of India Marine services Pvt. vs their workmen laid down the law on the point in question in very clear terms as under.

In a case it is clear that where a strike is unjustified or a lock out justified, the workmen would not be entitled to any wages at all.

In one case a bench of three judges of the Supreme Court laid down unequivocally the law on the question whether the workmen were entitled to wages for the strike period, the strike must be held to be neither illegal nor unjustified and in consequence it must be further held that the factory workers entitled to wages for that day.

The Supreme Court has thus been following owing the principle that workers are entitled to wages during the strike period if the strikes is legal and justified. They are not entitled to wages if the strike is unjustified. Supreme court concluded that if the strike was legal or justified, the employees are entitled to the payment of wages for the period of strike.

It is clear that when the employees resort to their inherent weapon of strike against exploitation, and strike is legal or justified. Then the doctrine of ‘no work no wages cannot be applied by any judicial declaration. If the principle of ‘no work’ no wages’ is to be applied. When the workers are at war with the employers for their
justified demands at that time it would have very unfortunate results. The employers always create a situation that the workmen would inevitably resort to a strike and get the benefits of such a strike. At that time workmen’s financial position are low level and how to fight with their employers in an agitation. Is it lawful or justified?

The principle of ‘no work no wages’ it applied in the context of right to strike, it would almost reduce this weapon to ineffectiveness and would make the working class is powerless. It principle applied in other situations, such as an individual workman remaining absent without leave, he would not get any wages, as he has not worked, this is a important principle. however, when the work men fight for their rights and start legitimate and peaceful agitations, including a legal and justified strike. At that time he give some concessions.

As far back as 30 years, three judge of the Supreme Court in the case between Swadeshi Industries Ltd and its workmen laid down as a under: No enquiry was held, no enquiry was held, no charge –sheet was framed, and none of the 230 workmen had the opportunity to show that he was not guilty of any violence.

It is thus clear that the Supreme Court did expect and contemplate an individual enquiry even though the workmen were involved in the agitation of strike before they could be penalised.

The view taken in the above judgments of the Supreme Court is opposite to the earlier judgments of the court which appear not to have been brought to the notice of the judges. Therefore, a review of
the judgments is very necessary in the interest of justice and also to remove the misgivings created by the judgments. The Supreme Court must clearly pronounce which law is a good law, the earlier one or the letter.

**Summary:**

In this section Supreme Court accepted the principle of ‘No work no wages’. Supreme Court clearly mention that whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. So district and high court also refer to Supreme Court judgments and given adverse results to labour at this stage worker how can survive?

In second section we have seen that the Supreme Court has given judgments adverse to labour. In this third section we see some cases that have restricted the rights of contract workers. The following judgments are important in this context.

The most important judgments in the field of contract labour. The significant judgment of the waterfront workers and ors (2001) III CLK 349 (The SAIL case) and the famous case of Maharashtra General Kamgar union vs. Cipla Ltd. In this both cases tended to shorten the right of contract workers. The judgment of the Supreme Court in the SAIL case changed the law laid down by the Supreme Court. It was held that if the appropriate government abolished contract labour in a particular work in any establishment, business, industry, etc. then the workers who had been employed to do that particular work in that establishment, industry etc. would automatically become
the workers of the principal employer from the date of the notification of such abolition.

The SAIL judgment, said that the contract workers would have no right to automatic absorption upon abolition. They would only have a right to a preference in employment if permanent workers were to be employed to fill in the vacancies created by the removal of the contract workers upon abolition. It went further to strike down the notification issued by the central government in 1976 abolishing the use of contract labour for sweeping, cleaning and watching of buildings

The Cipla judgment laid down that the industrial and labour courts under the Maharashtra recognition of Trade Unions and prevention of unfair labour practices Act, 1971 (MRTU and PULP Act) had no jurisdiction to decide claims of contract workers without proof that the contractor was a sham. It has also severely affected the cases of thousands of contract workers pending before the industrial courts. Workers preferred to file under the MRTU and PULP Act. Since the court under this Act had the power to grant interim reliefs.

It is not coincidental that both these judgments demolished what little protection the law had so far afforded contract workers. They have come at a time when multinational companies, various global financial agencies and the Indian government have all been buying for the blood of the workers. The official policy is that the workers will have to sacrifice if the country’s economy is to survive.
Two years ago a judge bench of the Supreme Court had clearly mentioned that the judgment in the Bangalore water works case had conclusively determined the law in regard to the question of ‘Industry’. This was in response to a reference made by a two-judge bench of this question to a constitution Bench. Some time ago the Supreme Court had held that the department of Telecommunications was not an ‘Industry’ since it performed supreme functions. However it is disturbing that there still seem to be doubts about that judgment.

This means more contract labour, more casual labour, less rights for unionization etc. One can venture to say that the trends that are evident from the labour judgments of the supreme court are not a mere fortunate dovetailing but rather, they bring in stark contrast the fact that all the courts, including the Supreme Court are not immune to the social pressures created by the prevailing needs of the classes that rule. The government has aimed for a number of years to create a more flexible labour market in which employers could ‘hire and fire’ employees at will, and easily hire workers on contracts.

Among the changes proposed were amendments to the contract Labour regulation and abolition Act, 1970 which would open up huge swathes of the economy to contract labour arrangements by expanding exclusions to the Act for work of a year-round nature. It is also recommended that export oriented activities including those in special economic zones and support services should be on the list, which would make contract labour available for these sectors.
Government can prohibit employment of contract labour in any process, operation or work ion any establishment by issuing and notification such order can be issued after consultation with advisory board Government will consider aspects of condition of work and benefits provided to contract labour, whether work is necessary for the industry, trade and business whether it is done ordinarily through regular workmen in other similar establishment.

It was held that central government can issue notification abolishing contract labour only after following prescribed procedure regarding consultation etc. It was also held that the employees with contractor will not be automatically absorbed in the employment of the company. However, if the contract was not genuine but mere camouflage, the so called contract labour will have to be treated as employees of principal employers.

Summary:

After 1991 we accepted a policy of but there is an adverse impact of globalization on industrial labour in this system. Workers have virtually have no rights in this system. In industrial area the ‘hire and fire’ system has spread all over. Cases are pending in industrial court and some recent judgment court gives adverse decision to labour. No major change in labour laws have been made but there have been significant changes in practices. Thus overall Courts, judgments, appointments, strikes are opposed to labour and climate also changed and tended to favour the industrialist.
Reference


