

## COMMENTS

# GLOBAL POLICY CONVERGENCE AND LABOUR RELATIONS IN INDIA

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### Abstract

*The process of economic globalization has over the years accelerated the pace of labour policy convergence. In the Indian context, labour law since 1991 has witnessed a paradigm shift embracing a policy of global integration. The ambit of labour relations is now being related with private practice or the informal settings leading to multiple concerns over labour justice and security. In compliance with global standards, the continuous emphasis upon labour flexibility characterized by flexible labour employment, performance based remuneration, variation in intensity of work according to market, increasing portion of casual labour, has raised several concerns. This paper is an attempt to highlight the attempted and achieved labour law policy convergence in India, coupled with the suggestions for balance in global and national commitments towards labour welfare.*

**Key Words:** Globalization, Labour, Security.

### I INTRODUCTION

The process of economic globalization today has resulted in the proliferation of new activity coupled with an attempted convergence in local policy and issues.<sup>1</sup> The convergence among legal systems<sup>2</sup> is expressed in the “near

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<sup>1</sup> According to Linda, as the “global sphere becomes more traversed, the dimensions of the global system become all the more important to understand, particularly in the face of evolution of international economic law and growing economic integration.” See Linda Yieu (Ed.), *The Law and Economics of Globalization: New Challenges for a World in a Flux*, Edward Elgar Publishing Ltd. UK 1 (2009). There are six distinct economic processes underlying what is called the globalization of the world economy. These are (i) the expansion of international trade in goods and services (ii) free flow of technology (iii) Expansion in foreign direct investment (iv) freer movement of other capital flows (v) freer movement of persons across boundaries, and (vi) the development of international institutions of governance suited to the globalized world. See Montak Singh Ahluwalia, “Policies for Development in a Globalizing World”, in K.R. Gupta (Ed.), *Liberalization and Globalization of Indian Economy 1*, Atlantic Publishers (2008).

universal trend towards liberalization and greater openness to foreign investment...ingredients of programmes of structural adjustment and economic reform being implemented all over the developing world.”<sup>3</sup> The rigorous trans-nationalization of policy or transfer of policy has involved processes by which ‘knowledge about how policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies administrative arrangements, institutions and ideas in another political setting.’<sup>4</sup> Policy convergence is the tendency of policies to grow more alike in the form of increasing similarity in structures, processes and performances.<sup>5</sup>

The skeptics or opponents to such expansion/convergence speak about the “globalization blues”<sup>6</sup> and propose for the alteration or “replacement of the national and international legal institutions underpinning hegemonic, neoliberal globalization”.<sup>7</sup>

Amidst the several claims in favour of or against the attempts at convergence, the domestic challenges to welfare/ social security in the areas of labour, environment, agriculture, trade etc. are increasing and well exhibited.

As often debated and accepted, the neo-liberal structure has led to “misfortune”<sup>8</sup> and vulnerability of the labour class. The vulnerability is traced back to the 1990’s referred to as the period of easy globalisation

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<sup>2</sup> Peter Gahan, Richard Mitchell, Sean Cooney, Andrew Stewart and Brian Cooper, *Economic Globalization and Convergence in Labor Market Regulation: An Empirical Assessment*, Vol. 60 *The American Journal of Comparative Law* 704 (2012).

<sup>3</sup> The convergence was greatly influenced by a shift in intellectual opinion in the following areas; (i) The Retreat from Structuralism; which expressed rigidities in the developing countries which had undermined the role of price and market signals. (ii) The Fund/Bank Role; wherein the International Monetary Fund and the World Bank have been principal advocates of structural reforms in developing countries. (iii) Policy Makers in the Developing Countries; a process of re-thinking on the economic policies. See Montak Singh Ahluwalia, “Policies for Development in a Globalizing World”, in K.R. Gupta (Ed.), *Liberalization and Globalization of Indian Economy 57-59*, Atlantic Publishers (2008).

<sup>4</sup> Diane Stone, *Transfer Agents and Global Networks in the Transnationalization of Policy*, 11:3 *Journal of European Public Policy* 545 (June 2004).

<sup>5</sup> Daniel Drezner, *Globalization and Policy Convergence*, 53, *International Studies Association*, Blackwell Publishers U.S.A, (2001). Available at <http://danieldrezner.com/research/policyconvergence.pdf> (Last visited on December 19, 2012)

<sup>6</sup> Ronaldo Munck, *Labour Globalization: Results and Prospects*, Liverpool University Press 1 (2004).

<sup>7</sup> Boaventura Santos, Cesar Garavito, *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge University Press. New York,1 (2005).

<sup>8</sup> Bill Dunn, *The New Economy and Labour's Decline: Questioning their Association* in Melisa Serrano, Edlira Xhafa and Michael Fichter (Eds.), *Trade Unions and the Global Crisis: Labour's Visions, Strategies, Responses*’63, The International Labour Office, Geneva (2011).



wherein the corporations, the international economic organisations and the dominant nation-states paved the way for a new 'market-friendly' order.<sup>9</sup> In 2004, the World Congress of Confederation of Free Trade Unions (ICFTU) recognized globalization as the greatest challenge currently facing labour across the world.<sup>10</sup> According to Maria Luz, from the year 2000 there was a reflection and reinforcement of two concomitant trends; the emergence of new vulnerabilities in the labour market as a result of employment fragmentation and instability, second, the adverse consequences in terms of workers' income of the erosion or enduring absence of social citizenship rights.<sup>11</sup> Also stated as- "all the hitherto devoted work of thousands of social democratic reformers, social workers, industrial psychologists, labour leaders, and even economists, engineers, efficiency experts and businessman of goodwill to improve the labour situation has gone down the drain in these neo-liberal times of intensified competition among the lead industrial firms..."<sup>12</sup> To add, the increasing vulnerability of the labour market has also been seen as a resultant of the international regulatory agencies such as the Organization for Economic Co-operation and Development (OECD), the World Bank and the International Monetary Fund promoting various reforms based on labour market deregulation.<sup>13</sup>

## II. DEALING WITH THE INSECURITY

Aiming at a fairer globalization, the International Labour Organization in the year 2010 and 2012 formulated the Decent Work Programme (in context of India) and the Social Security Principles respectively. The Decent Work Agenda of ILO in February 2010 was signed by the Government of India by agreeing to a five-year 'Decent Work Country Programme' with the ILO.<sup>14</sup> The decent work agenda is the ILO umbrella strategy for improving the conditions of the working poor and those in vulnerable employment and, more broadly, for a 'fairer globalization'. The strategy includes categories such as "informal employment", "the working poor", "vulnerable employment". Instead of seeking to establish new legally binding

<sup>9</sup> Ronaldo Munck, *Labour Globalization: Results and Prospects 1*, Liverpool University Press (2004).

<sup>10</sup> *Id.*

<sup>11</sup> Maria Luz Ruiz, *Labour Reform in Latin America* in Jim Baker (Ed.) *Labour Law: Its Role, Trends and Potential* Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_111442.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_111442.pdf) (Last visited on December 19, 2012)

<sup>12</sup> Annavajhula, Surendra Pratap, *Workers Voices in an Auto Production Chain: Notes from the Pits of the Low Road-II*, Vol. XLVII No. 34 *The Economic and Political Weekly* 49 (August 2012).

<sup>13</sup> *Supra* note 3 at 707.

<sup>14</sup> Press Release, The International Labour Organization, "India Adopts Decent Work Country Programme", Available at [http://www.ilo.org/asia/info/public/pr/WCMS\\_122349/lang--en/index.htm](http://www.ilo.org/asia/info/public/pr/WCMS_122349/lang--en/index.htm) (Last visited on December 19, 2012)

conventions this agenda focused on eight core conventions within a broad, non-binding framework concerned with 'fairness', 'decency' and other value-laden but imprecise descriptors. The four strategic objectives of the ILO 'decent work for all' agenda have remained constant since they were launched in the 1998- ILO 'Declaration on Fundamental Principles and Rights at Work': 1) Rights at work, grounded in fundamental principles of work and international labour standards 2) Employment and income opportunities 3) Social protection and social security 4) Social dialogue and tripartism (ILO 1998).

The Decent Work Programme is aligned to the present Indian Five Year Plan (2007-2012). The program focuses on a) employment creation through skills development; b) continued extension of social protection for groups in the informal economy; and c) continued elimination of 'unacceptable forms of work'. No specific new government initiatives or activities are promised, but the ILO is to fund studies, technical support and capacity building and assist policy formulation in all the above areas – a good deal of which is already ongoing.<sup>15</sup>

The Decent Work Programme in context of developing countries with large unemployment and informal economy has been subject to innumerable views and criticisms. For many, it is simply a null strategy, a "deficit" agenda, of "inherent vagueness", a "Eurocentric concept" designed to protect jobs in the North. The way decent work has been used by the ILO leadership has reflected an overwhelming desire to reassert the Organization's relevance in what is euphemistically called 'the international community'. It was intended to connect with debates both within and outside the UN on poverty, globalization and the Millennium Development Goals.<sup>16</sup>

In response to such averments, the ILO states that the Agenda encompasses both economic and social objectives; rights, social dialogue and social protection on the one hand, and employment and enterprise efficiency on the other (ILO 2001).

The ILO New International Labour Standard (2012) was formulated to provide for social security, which has been referred to as a powerful anti-crisis measure. It protects and empowers people, and contributes to boosting economic demand and accelerating recovery. It is also a foundation for sustainable and inclusive economic growth. The new recommendation explicitly states that people employed in the informal, as well as the formal

<sup>15</sup> Jens Lerche, *Labour Regulations and Labour Standards in India: Decent Work?*, Vol 3 Issue 1 Global Labour Journal 16-39 (2012).

<sup>16</sup> Guy Standing, *An Agency for Globalization*, in Institute of Social Studies, Development and Change 370, Blackwell Publishing, USA (2008)



economy, should benefit from social security. As such, it should support the growth of formal employment coupled with the reduction of informality. The new labour standard sends a strong message to the world that social protection systems need to be extended in spite of the ongoing economic crisis. This necessitates the introduction of higher levels of social security guaranteed by national laws to as many people as possible - as soon as conditions in each country allow it.<sup>17</sup>

The unequal distribution of access to material resources means that the vast majority of citizens are obliged by material necessity to work for a living. The legal prerogatives of employers mean that, in order to stay in work, citizens are obliged to comply with their employers' commands. Thus economic necessity means that most citizens are obliged to accept subordination to employers, regardless of whether in so doing they put themselves in opposition to their own well-being or that of their families and communities. The public interest would therefore seem to demand a resolution of the apparent conflict between employer authority and the individual and collective liberty of employees.<sup>18</sup>

### III. FEELING THE CHANGE IN INDIA

The provision for social security, collective action and welfare of the labour has been time and again accepted as a fundamental dimension of the Indian democracy. The right of workers to social security is recognized under the Indian Constitution and various welfare legislations like the Payment of Wages Act, 1936, The Minimum Wages Act 1948, Equal Remuneration Act 1976, Employees Compensation Act (Amendment) 2009, The Contract Labour Act 1970, The Maternity Benefit Act 1961 etc.

In the presence of economic globalization, the discipline of labour law in India, addressed traditionally as a domestic concern has over the years been related with private practice or more so the informal settings. The conditions inside borders have changed drastically, wherein safeguards for the labour in light of global regulation mannerism, do not functional absolutely as legal norms.<sup>19</sup>

<sup>17</sup> See <http://www.ilo.org/global/topics/social-security/lang--en/index.htm> (Last visited on December 19, 2012)

<sup>18</sup> Conor Cradden, "Understanding the Past to Change the Present: The Social Compromise, The Corporate Theory of Society and the Future Shape of Industrial Relations" in Melisa Serrano, Edlira Xhafa and Michael Fichter (Eds.), "Trade Unions and the Global Crisis: Labour's Visions, Strategies, Responses", The International Labour Office, Geneva 50 (2011).

<sup>19</sup> Wolfgang Benedek, Koen Feyter, Fabrizio Marella (Eds.), Economic Globalization and Human Rights 41, Cambridge University Press (2007).

From 1991 onwards India witnessed a “paradigm shift embracing a policy of integration with the world economy”<sup>20</sup> The liberalization of policies towards Foreign Direct Investment (FDI) was an important part of opening up the economy. The reforms also brought about a change in perceptions about the role of the public sector. Areas that were previously reserved for the public sector (for example steel, petroleum, air transport, telecommunications) were thrown open to the private sector.<sup>21</sup>

The state allowed a culture of private governance and regulation to creep in with the market players. What emerged gradually was a model of regulation outside the formal structure of rights and rules embodied in state documents. In the area of labour rights, it has squeezed the labour in face to face with the market players eventually leading to reduction in bargaining power.<sup>22</sup> The focus has shifted on market labour flexibility with no reform or improvement in relation labour safeguards. As evident from the Economic Survey 2005-2006, which stated- “Indian labour market is characterized by a sharp dichotomy...Various studies indicate that Indian labour laws are highly protective of labour and labour markets are relatively inflexible.... Evidence suggests that states, which have enacted more pro-worker regulations, have lost out on industrial production in general”.<sup>23</sup> In February 2012, at the 44th session of the Indian Labour Conference the Prime Minister of India acknowledged that “the Indian labour policies unduly protect the interests of the currently employed labour and act against the expansion of employment in the organized sector...This view has lost its importance in recent years as more and more State governments have

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<sup>20</sup> Deepak Mazumdar, Sandip Sarkar, *Globalization, Labor Markets and Inequality in India* 2, Routledge London (2008).

<sup>21</sup> Montek Singh Ahluwalia, *India's Experience with Globalization*, in in K.R. Gupta (Ed.), *Liberalization and Globalization of Indian Economy* 14, Atlantic Publishers (2008).

<sup>22</sup> India 2005 India passed the Special Economic Zones Act, followed by the rules in 2006. “Analysts are divided about whether India’s labour laws are actually implemented in its SEZs. For example, India’s Contract Labour (Regulation & Abolition) Act 1970 prohibits employing contract workers in activities which are permanent and perpetual. in nature. Almost all activities conducted in SEZs are arguably permanent and perpetual. in nature and yet surveys by the International Labour Organization and testimonies by workers themselves suggest that the majority of the workforce in Indian SEZs are contract employees. These workers also do not come under the purview of the Minimum Wages Act, so India’s relatively high minimum wages may not be a factor affecting investment decisions. Still, the uncertainty of the situation is discouraging to investors”. See Vinay Tyagi, Mayank Mishra, “An Assessment of the Indo-China Special Economic Zones: The Conceptualization”, *Vo.8:1 Delhi Business Review* 44 (January-June 2007).

<sup>23</sup> Union Budget and Economic Survey, Ministry of Finance-Government of India Available at <http://indiabudget.nic.in/es2005-06/chapt2006/chap105.pdf> (Last visited on December 19, 2012)



become considerably more flexible in their approach to labour restructuring and rationalization.<sup>24</sup>

The concept of labour market flexibility can be characterized by flexible labour employment, performance based remuneration, variation in intensity of work according to market, increasing portion of casual labour...<sup>25</sup> The so called flexibilization of labour has or will result in a “sharp mismatch between codes of conduct and the effective ‘codes of practice’ imposed by firms to deploy labour and organize the labour process... Informalisation patterns have involved both the spread of informal employment relations as well as the increasing use of informal mechanisms of labour control that exploit deeply-rooted local structures of power.”<sup>26</sup>

The fundamental principle of labour legislation in India has been to guarantee the weaker party in the labour market protection and basic rights in order to be in a fair position when negotiating salary and working conditions. Unfortunately, the labour is reflected as an obstacle to prosperity, which largely gets associated with industries and the big players. The modern factory is a “factory with high production efficiency that produces lower cost products so as to prevail in fierce competition with other manufacturers and thus remain prosperous....The slogan better, faster and cheaper captures this aspect of modernization”.<sup>27</sup> The fundamental question for democracies like India is; can there be a paradigm change in the labour law framework? In the global context, is it possible for workers to coordinate action to advance their position globally?<sup>28</sup>

#### IV. THE RIGHTS AT WORK

Historical experiences have always symbolized human suppression as a direct signal for violence and revolution. The stance of individuality and human rights interpreted as the groundwork for socio-legal systems today has come to fall in great disrepute in critical areas such a labour law. The

<sup>24</sup> Press Information Bureau, Government of India. Available at <http://pib.nic.in/newsite/erelease.aspx?reliid=80303> (Last visited on December 19, 2012)

<sup>25</sup> Zaad Mahmood, *Globalization, Policy Convergence and Labour Market Reform: The Political Economy of Reform* Available at [http://www.academia.edu/219467/Globalisation\\_Policy\\_Convergence\\_and\\_Labour\\_Market\\_Reform\\_The\\_political\\_economy\\_of\\_reform](http://www.academia.edu/219467/Globalisation_Policy_Convergence_and_Labour_Market_Reform_The_political_economy_of_reform) (Last visited on December 19, 2012)

<sup>26</sup> Mezzadri Alessandra, *Reflections on Globalization and Labour Standards in the Garment Industry: Codes of Conduct Versus Codes of Practice Imposed by the Firm*, Vol.3:1 Global Labour Journal 4041 (2012).

<sup>27</sup> Annavajhula, Surendra Pratap, *Workers Voices in an Auto Production Chain: Notes from the Pits of the Low Road-I*, Vol. XLVII No. 33 The Economic and Political Weekly 49 (August 2012).

<sup>28</sup> Gregg Flynn, Robert O. Brien, *An Internationalist Western Labour Response to the Globalization of India and China*, Vol. 1 Issue 1 Global Labour Journal 179 (2010).

marked constitutionalization of labour rights, the wage re-emphasis upon the de-commodification of the labour have been accepted, yet interpreted in context of global politics and economic decision making.<sup>29</sup> Making reference to the labour problems at Maruti Suzuki during 2000-2011, which broadly initiated with a 26 day sit near the Heavy Industries Ministers office by the workers for demanding implementation of a meaningful right to collective bargaining, pension package, regularization of contract labour, wage scale revision, payment of daily allowance etc.<sup>30</sup> In addition, the mandate imposed by the management for signing a “Good Conduct Undertaking” from the workers was also opposed by the workers as a denial of their democratic right to go slow, or tool down or stay on strike. The battle can be identified simply as fallout of labour intensification, which has not been complimented with greater involvement of the workers in terms of profits and wellbeing. In addition, the entire production chain is seeking competitiveness through low road ways of labour cost-cutting and even substandard material usage.

A resultant of globalization within democracies has been a great deal of exploitation and exclusion creating new forms of injustice. India is certainly introduced to the idea of labour justice, redistributive ethos<sup>31</sup> within its own working space. What is witnessed is that “there are many victims of exploitation, arrogance, or neglect who have no recourse to a formal justice system because what was done to them... These injustices may never be put right unless their infliction breaks some law or fails to follow some established procedures. We need, therefore, a broader conception of justice that includes the legal model with its rules, adjudications, and institutions but also listens to the voices of all suffering victims.”<sup>32</sup>

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<sup>29</sup> The theme of de-commodification rose to prominence in these patterns of institutionalized collective identity; as a consequence of the expansion of the social wage... De-commodification occurs when a service is rendered as a matter of right, and when a person can maintain a livelihood without reliance on the market. The mere presence of social assistance or insurance may not necessarily bring about significant de-commodification if they do not substantially emancipate individuals from market dependence... See Franco Barchiesi, Social Citizenship, the Decline of Waged Labour and Changing Worker Strategies, [http://spip.red.m2014.net/article.php?id\\_article=30](http://spip.red.m2014.net/article.php?id_article=30) (Last visited on December 19, 2012)

<sup>30</sup> Supra note 27, 50

<sup>31</sup> “Counter hegemonic globalization is focused on the struggles against social exclusion. Since social exclusion is always the product of unequal power relations, counter hegemonic globalization is animated by a redistributive ethos in the broadest sense, involving redistribution of material, social, political, cultural and symbolic resources.” See Boaventura Santos, Cesar Garavito, *Law and Globalization from Below: Towards a Cosmopolitan Legality* 29, Cambridge University Press. New York, (2005).

<sup>32</sup> James Gross, *Worker's Rights and the Rule of Law: A Clash of Values, Standards of Judgment and Moral Choices*, in Jim Baker (Ed.) *Labour Law: Its Role, Trends and Potential* Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---)



## V. CONCLUSION

To the anti- globalists or skeptics the need for compliance with social security standards has witnessed a blow in context of a globalizing world. The re-emphasis upon social security and labour welfare by the ILO is simply an indication of prevailing insecurities in the global and domestic systems. Looking at the position of India, finer and critical issues in relation to domestic workers, casual labour, collective bargaining etc. have not been entertained and addressed comprehensively.

To succeed in establishing a hard system of labour security, its scope of vulnerability and flexibility must be defined. In addition, linkage between global developments and the domestic patterns of governance must be identified and debated. At the international platform, “a global labour movement would have to build a range of mutually reinforcing organizational forms and strategies, reflecting both the diversity of labour’s relations to global capital and the necessity of coordinated effort across sectors and political boundaries.”<sup>33</sup> Many of the grass-roots and community-oriented social experiments under way across the world are infused with values (solidarity, cooperation, mutuality, participatory democracy, etc.) and offer socio-economic arrangements which “embody forms of production and sociability beyond the capitalist values and institutions”<sup>34</sup>

Cradden argues for the acceptance of a practical; balancing approach. Under this, it is assumed that conflict between the values and interests of workers and those of the owners of capital and their agents in management is inevitable because the “demands of the market” are value-laden rather than politically neutral or disinterested. Second, these two sets of values and interests are held to be equally legitimate in themselves and their pursuit equally important to society as a whole.

Investment, competitiveness and growth are important aspects of the public interest, but so are fairness and security for employees. Neither set of values and interests, in itself, can be deemed to be representative of the general good.<sup>35</sup> The working of a functional democracy would be conducive to the

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[actrav/documents/publication/wcms\\_111442.pdf](#) at 21. (Last visited on December 19, 2012)

<sup>33</sup> Peter Evans, *Is it Labor's Turn to Globalize: 21<sup>st</sup> Century Opportunities and Strategic Responses*, Vol 1 Issue 3 Global Labour Journal 354 (2010).

<sup>34</sup> Melisa Serrano, Edlira Xhafa and Michael Fichter (Eds.), *Trade Unions and the Global Crisis: Labour's Visions, Strategies, Responses*, The International Labour Office, Geneva (2011).

<sup>35</sup> Conor Cradden, *Understanding the Past to Change the Present: The Social Compromise, The Corporate Theory of Society and the Future Shape of Industrial Relations* in Melisa Serrano, Edlira Xhafa and Michael Fichter (Eds.), *Trade Unions and the Global Crisis*:

security of the labour, only in the presence of due protection amidst economic expansion, coupled with effective participation in the decision making processes.

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Labour's Visions, Strategies, Responses 50, The International Labour Office, Geneva (2011).