

# GLOBALIZATION- The Impact on Judiciary

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As the world emerged from the yoke of feudalism in the 17<sup>th</sup> & 18<sup>th</sup> century, the State structure itself was undergoing a metamorphosis. Capitalism was ushering in the modern republics replacing the feudal State dominated by the nobilities. The initial phase of capitalism in Europe, the free competition era demanded a democratic state structure with an emancipated Judiciary free from the control of the executive. Though the judiciary did emerge out of the shadows of the executive, justice still eluded the vast army of the proletariat, who continued to work under miserable conditions. The Judiciary really catered for the rich and the property holders. To follow the dynamics of the Judiciary in the last two centuries, it may be necessary to recall the changes in the economic structures across the world during this period.

## **The feudal colonial period:**

This period goes back to the fifteenth century when the King Henry the VII<sup>th</sup>, who ruled over the British empire between 1485 to 1509, created the Royal Navy for the ostentatious purpose of protecting the maritime interests of the empire. The Royal Navy, which became an invincible naval force under Queen Elizabeth-I, became the vehicle to carry the British rule across the seven seas. Starting with the New Foundland in 1583, the British rule was established in far away countries like North America, Canada Atlantic provinces, Jamaica, Barbados and then Australia (1788), New Zealand (1840), India (1857) etc. By the end of the nineteenth century, the British Flag was fluttering over 1/4<sup>th</sup> of the world covering over 14.3 million square miles. Similarly, the French empire ruled over a large part of the world including few places in India (Pondicherry, Chandannagar) starting from 1804, the beginning of the conquest of Napoleon Bonaparte. The Portuguese empire lasted even till as late as 1999 when Macau was finally handed over to the Chinese.

This process of capturing the foreign land during the initial phase (Starting from around 1600) led to the pre-capitalist accumulation of capital through trade, commerce and sometime plain loot and slave labor. After the establishment of capitalism in their own countries, the thirst for larger control over other countries for raw material and market became far more acute and during the second half of the 19<sup>th</sup> century, the British Empire expanded by more 75%.

Thus even after the establishment of the Capitalist rule (the French revolution of 1790 being the hallmark), the countries in which the capitalist rule flourished {British empire being one of them} continued with the colonial exploitation to fuel its rapid capitalist development. Within its own colonial boundaries, the free capitalism converted themselves into monopoly capitalism and by the end of the 19<sup>th</sup> centuries, Britain, France, Portuguese etc had become imperialist powers dominating the Globe. The colonies in Asia, Africa etc remained primitive suffering the worst oppressions. *There was hardly any Justice delivery system for the people of the colonies.*

## **The first World War and rise of the Soviet Union:**

The contradictions amongst the existing imperialist powers { British empire, France, Portuguese etc} and the new imperialist powers {Germany, Japan, Italy etc} led to the first world war (1913-1918). In this period, the Soviet Union emerged out of the war torn Russia with its Socialist agenda. From a backward capitalist country, Russia surged ahead and became an economic giant by 1940s.

During this same period, the "beggar thy neighbor" policies of Capitalist countries in 1930s governments—using currency devaluations to increase the competitiveness of a country's export products in order to reduce balance of payments deficits—worsened national deflationary spirals, which resulted in plummeting national incomes, shrinking demand, mass unemployment, and an overall decline in world trade. Trade in the 1930s became largely

restricted to currency blocs (groups of nations that use an equivalent currency, such as the "Sterling Area" of the British Empire). These blocs retarded the international flow of capital and foreign investment opportunities. Although this strategy tended to increase government revenues in the short run, it dramatically worsened the situation in the medium and longer run. **This was the direct reason for the Great Depression of the 1930s.**

### **Post Second World War and first Phase of Globalization:**

The second world war of course made it impossible for the old imperialist powers to continue their hegemony as in past and the war gave rise to three new developments:

- (1) The colonies, over which the old imperialist powers were ruling over centuries were also rising demanding political independence. The ongoing independence struggles managed to grab political freedom in certain countries under the capitalist leadership (like in India in 1947) whereas in some cases political freedom was won under the leadership of the Communist parties (like in China in 1949). Soviet Union became the model for development for many of the new independent countries like India.
- (2) The erstwhile imperialist powers and the new capitalist countries like America, Germany, Japan etc realized that the past method of imperialist appropriation would no longer work. A conference was called at Bretton Wood to hammer out a new prescription of imperialist appropriation.

The rules of Bretton Woods, set forth in the articles of agreement of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), provided for a system of fixed exchange rates. The rules further sought to encourage an open system by committing members to the convertibility of their respective currencies into other currencies and to free trade.

- (3) The weakening of the old Imperialist powers, the influence of Soviet Union and China on the working people, the creation of several independent countries and the Bretton Wood agreement led to the concept of "Welfare State" in the West. Health, Education, Pension etc became the State responsibilities and the **Judiciary was made sensitive to the rights of the working people.**

The post IIInd world war period therefore saw a tremendous rise in Judicial activism in the Capitalist countries and India which was already under the influence of the Nehruvian socialism, heralded the glorious phase of Judicial development. From Gajendragadkar to Krishna Iyers, Chinappa Reddys and D.A.Desais etc, rewrote the LAW. The aim was social justice and grant of rights to the poor and exploited!

### **Second Phase of Globalization:**

No amount of solemn agreements can however hide the true predatory nature of the Capitalist countries. Post Bretton Wood also saw several attempts to put the house in Order including the creation of the World Trade Organization (WTO) but Capitalism can only go from one crisis to another. The collapse of the Soviet Union around 1985 heralded the final end to the dream of the millions for an exploitation free world. The age Global capital of "free market" and rule of WTO had started. All trade tariffs were to be demolished and free access to all markets were to be guaranteed. *Thus begins the last phase of Globalization.*

**In this phase, the Globalization had to be accompanied by liberalization and privatization since, in the second phase, the "socialist distortions" had to be corrected. LPG was therefore the motto which should lead to the complete establishment of the capitalist system all across the globe, hopefully without any further resistance to the exploitation!**

### **The law follows the economy:**

With the collapse of Soviet Union and integration of the nation states into a single global economic system, Profit, market and competition became the buzz words. Social welfare spending, subsidies, even Pensionary benefits have now become wasteful expenditures. Extraction of maximum surplus has become the key to success. The LAW had to therefore follow the economic compulsions of the ruling class. *The immediate impact was therefore felt in the realm of labour law since the maximization of the profit depends on the maximization*

*of the extraction of the surplus value of labour. The rights of the labour had to be therefore curbed or taken away altogether.*

### **The Changes of LAW between 1985 to 2007:**

1. The most efficient method to extract the maximum surplus out of the labour is to make his/her employment itself insecure. An unorganized or insecure labor is best available as either a contract worker or a temporary hand. All legal pronouncements that give legal rights to such workmen to become direct and permanent was therefore required to be done away with.

**The 3 bench Judgment of the Supreme Court in the case of Airport authority giving right to the contract worker to become a direct workman in case of abolition of the contract labor system was thus reversed in 2002 by another bench of five Judges.**

**Similarly, the series of Judgments of the SC ending with the Pyara Singhs case giving right of permanency to the daily wage workers who had completed 240 days was reversed by a larger bench in 2006 in the case of Karnataka State Vs Umadevi.**

2. As a Welfare State, the Indian Parliament had enacted the Minimum Wages Act guaranteeing the payment of the minimum wages to the workmen as mere subsistence for survival.

**In the cases of PUDR vs UOI and Raptakos, the SC in 1980/ 1990s had held that non payment of minimum wages would amount to "Forced Labour" which was prohibited by our Constitution and had held that if an Industry cannot pay minimum wages, it ought to close down! In 2006, the same Supreme Court in the Umadevi's case has glossed over the non-payment of minimum wages by observing that such a payment was accepted by the workmen with open eyes!**

3. The Industrial Disputes Act was created to adjudicate on the disputes between labour and employer and for that purpose wide powers were given to the labour Courts and Industrial Tribunals to grant relief to then workmen. In case of wrongful termination or punitive discharge, the labour courts could reinstate the employee with full back wages. Any termination in violation of section 25 F of the ID Act was to be struck down with reinstatement with full back wages.

**Till around 2000, the above was the settled law by the Supreme Court. Globalization however changed all that. Hire and fire had to be introduced through the back door though such a concept is still alien to the statutory law. The SC judgments that are now prevailing in this area have discontinued the payment of full back wages even though the termination could be wholly illegal. Minor misconduct can now be visited with the extreme punishment of dismissal. Violation of 25F would no longer make a termination automatically void. Prejudice have to be established!**

These are but few of the important changes that have been brought about by the Supreme Court in just the last few years. Some of the Judgments with more detailed illustrations are given hereinafter. The point however is to ask - was an independent Judiciary created world over after the French revolution to cater to the interest of only the ruling classes or to they have a larger democratic role to play for the whole population?

## **Judgment of Supreme Court in Globalization Era:**

1. Nagar Mahapalika(Now. Municipal Cor.) V/s Govt. of NCT of Delhi  
2006 AIR SCW 2378.

Employee appointed de hors rules should not be granted the relief of reinstatement even if his termination of service is found to be violative of Sec. 25-f.

2. Secretary State of Karnataka V/s State of Karnataka  
2006 AIR SCW 1991.

Art. 14, 16- Employment of daily wage- confers no right of permanent employment - Daily wager appointed on less than minimum wages that was made known to him- Not forced labour- Continued on post for long period- Daily wagers from a class by themselves - They cannot claim parity vis-a-vis those regularly recruited on basis of relevant Rules and cannot be made permanent in employment.

3. Abhijit Gupta V/s S. N. B. National Centre.  
2006 AIR SCW 2102.

Art. 311, Termination of service- Probationer- Discontinuance- Stigmatic of termination simpliciter- Probationer's attention drawn time to time to his deficiencies and was advised to improve his behavior, conduct and work- After giving long rope to probationer to improve- Order of discontinuance stating that his performance was unsatisfactory, passed- Order cannot be said to be punitive- Fact that intemperate language was used in some earlier letters- Irrespective.

4. General Manager, Indian Overseas Bank V/s Workmen, All India Overseas Bank Employees Union.  
2006 AIR SCW 1520.

Sec. 2 (b)- Workmen- Jewel appraisers appointed by Indian Overseas Bank- Are not employees of Bank.

5. State of Karnataka V/s KGSD Canteen Employees Welfare Asso.  
2006 AIR SCW 212.

Regularization of Service- Employees of canteen run by the State Govt. Secretariat Dept. Association- Put in ten years of service- State had no statutory compulsion to run and maintain any canteen for its employees -State has no intention to run and maintain canteen as department- In circumstances direction by High Court for regularization of services of said employees as State Govt. employees. -not proper.

Art. 16, 39(d)- Parity in pay scale- Employees of canteen run by the State Govt. Secretariat Dept. Association- Put in ten years of service- They did not hold post- No post for canteen was sanctioned by State- According to State they were found to be not employees of State- Plea by employees that at least for period they have worked they were entitled to remuneration in scale of as that of Govt. employees- Would not be tenable.

6. U.P. State Brassware Corp. Ltd V/s Udai Narain Panday  
2005 AIR SCW 6314.

U.P. Industrial Disputes Act, 1947 - S. 6N, 6O - Industrial Disputes Act, 1947 - S. 25F - backwages - appointment on daily wage basis for a fixed tenure - after expiry of the tenure workman was terminated - industrial dispute was raised - industrial undertaking run by the State Corporation was closed Labour Court held that the workman had worked for more than 240 days in each year therefore, his retrenchment of the workman was in violation of Sec. 25F of I.D. Act - reinstatement with full backwages for the period between 1.04.1987 till 26.03.1993 were awarded - whether the workman is entitled to full backwages - held, no precise formula can be laid down as to under what circumstances payment of entire backwages should be allowed - workman should raise the plea that he was not gainfully employed during the said period - in the interest of justice, on facts, 25% backwages for the said period awarded - impugned judgments of High Court and Labour Court set aside - appeal partly allowed.

7. The Regional P. F. Commr. V/s M/s. Central Aerconut and Coca Marketing and Processing Co. Op. Ltd.  
2006 AIR SCW 449

Apprentice/ trainee engaged under Apprentices Act of under standing orders - Is excluded.

8. K. Verma V/s H.M.T. Ltd.  
2006 AIR SCW 460.

Verbal abuse to superior officer- Sufficient for inflicting punishment of dismissal on delinquent.

9. Madhyamik Shiksha Parishad V/s Anil Kumar Mishra.  
2005(SCC L & S) 628

INDUSTRIAL DISPUTES ACT, 1947 - S. 25B - respondent's engaged by appellant for same casual work - purely ad hoc assignment - no sanctioned posts in existence - respondents worked for more than 240 days before their assignment was discontinued - discontinuance of service challenged on the ground that they have completed 240 days of service and entitled to benefits of regularization of services under provisions of Industrial Disputes Act - merely completion of 240 days' work does not under that law import the right to regularization - order of High Court set aside - appeals disposed of accordingly.

IMP(s):[4]

10. STATE OF HARYANA Vs. DEVINDER KUMAR  
Equivalent Citation(s): 2005-SCC-12-253,

Service and Labour - appellant challenged award of reinstatement of respondent-workman - respondent filed second writ petition during pendency of first petition claiming of regularisation of his service - High Court granted said relief - employer contended that so long as award of reinstatement was under challenge before High Court and operation of which stands stayed, respondent workman could not have been granted relief of regularisation - held, respondent cannot have been granted relief of regularisation so long as award of reinstatement was under challenge - impugned order set aside - petition remanded for its disposal - appeal allowed.

IMP(s):[5]

11. State of Maharashtra Vs. R.S.Bhonde  
Equivalent Citation(s): 2005-JT-7-400, 2005-SCC-6-751

Maharashtra Recognition of Trade Unions and Prevention of Unfair labour Practices Act, 1971 - S. 28 - Schedule IV, Item 6 - respondents engaged as daily wagers on seasonal basis in appellant no. 2 University - respondents seeking regularization alleging that although they were daily wagers but were performing work of permanent nature which amounted to unfair labour practice - Industrial Court accepting respondent's claim ordered University & college to make the respondents permanent subject to approval of the State Government - High Court modified the said order by adding words "subject to prior approval of the State Government" - thereafter, respondents filed writ petition to enforce the Industrial Court's order in its original form - High Court allowed the writ petition holding that as S. 50B of the University Act was repealed, there was no necessity to take approval of State Government - appeal - held, order of High Court is untenable as the modified order of Industrial Court was not challenged and had become final - repeal of S. 50B of University Act did not take away the effect of the modified order - impugned judgment of High Court not maintainable, set aside - regularization of respondents that has already taken place, will take effect from passing of order of regularization and not from the date directed by High Court - appeal allowed.

IMP(s):[6][7]

12. State of Uttar Pradesh Vs. Jai Bir Singh

Equivalent Citation(s): 2005-JT-5-170, 2005-SCC-5-1

Hon'ble Judges: N.S.Hegde, K.G.BALAKRISHNAN, D.M.DHARMADHIKARI, ARUN KUMAR AND B.N.SRIKRISHNA, JJ.

ACTS:

INDUSTRIAL DISPUTES ACT, 1947;S.2(j);

Industrial Disputes Act, 1947 - S. 2(j) - term 'industry' - meaning of - taking in view Supreme Court's decision in Bangalore Water Supply case, term 'industry' was amended - whether 'Social Forestry Department' is 'industry' - consideration of conflicting judicial views - three Judges Bench held that said department is covered by the term 'industry' - two Judges Bench had taken contrary view in Pratamsingh Narsingh Parmar's case - held, worker oriented approach in construing definition of industry unmindful of interest of employer or owner of industry and public would be one sided approach - activity must be 'analogous to trade or business in a commercial sense' in order to encompass activity within word 'industry' - Supreme Court must reconsider where line should be drawn and what limitations can and should be reasonably implied in interpreting wide words used in S. 2(j) - larger bench shall give such meaning and effect to definition clause in present context with experience of all these years and keeping in view amended definition of 'industry' kept dormant for long 23 years - cases should be placed before Hon'ble Chief Justice of India for constituting suitable larger bench for reconsideration of judgment of Supreme Court in case of Bangalore Water Supply - appeal disposed of accordingly.

IMP(s):[39][41][42][44][45][48][51][52][53]

13. Punjab Dairy Development Corporation Ltd. V/s Kala Singh  
1017.

1997 (2) LLN

R. Thruvirkolam V/s Presiding Officer and another  
1997-1-LLN-126

Dismissal- Theory of relation back- Where Labour Court records a finding that the domestic enquiry in the case of dismissal of employees was defective and gives opportunity to adduce evidence by management and workmen and records a finding on the basis of evidence that dismissal of employee

was valid, it would relate back to the date of original dismissal and not from the judgment of labour court.