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Securing Labor Rights in a Globalized World

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ABSTRACT

The objective of this article is to uncover and expound on one of the most crucial aspects of labor law, namely the preservation of laborers' rights. Drawing a bridge between the need to safeguard fundamental human rights, a secure working environment, and labor law on the one hand, and the burgeoning industrialization and global competition on the other. Domestic and international labor policies are premised on the labor standards established by the International Labour Organization and the emergence of the "decent work" concept. In the era of the globalized world, ILO reports, trade unions and NGOs have all played a role in reporting, scrutinizing, and bringing awareness around limited opportunities, job security, poor wages, systemic inequality, and dismal and often inhumane working conditions for laborers. This article aims at introducing the idea of labor rights in a global world, with social justice as a key promoter, as well as the measures taken by the International Labour Organization to prevent and control denials of fundamental human rights and inequalities experienced by laborers in both the formal and informal sectors.

I. INTRODUCTION

There has been an almost twofold increase in the labor force available in the global economy since the 1980s with a large number of this force coming from India, China, and the former Soviet Union.² During the same period have come up the greater prospects of integration of the world States, their national economies, and the existing political systems in the form of globalization bringing in with it the new challenges for the workers and the labor unions.³ Robertson outlines globalization as “*the transmission of ideas; the intermingling of culture; the preservation or loss of national identity; exchanges of technology, capital, workers*

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² Robert A. Senser, *Globalization's Toxic Gaps Mass Imports of Dangerous Toys into U.S. Expose Basic Flaw in World's Trade System*, HUMAN RIGHTS FOR WORKERS (Sept., 2007), <https://www.senser.com/007-09.htm>.; Richard Freeman, *The Great Doubling: The Challenge of the New Global Labor Market*, (2006).

³ Jackie Smith, *Economic Globalization and Labor Rights: Towards Global Solidarity*, 20 Notre Dame J.L. Ethics & Pub. Pol'y 873 (2006).

and products across borders; and the role of international non-governmental organizations.”⁴ There are two facets of globalization, one that highlights the market relations and profit-making, and the second emphasizes the human welfare, democratic principles, and international cooperation aspects.⁵ At the social, political, and economic levels, globalization has had a bearing on and deepened the issue of laborers' rights.⁶ Labor rights are being undermined by the increasing concentration of crony capitalism. Although states are required under international law to respect and promote workers' rights, the strength of multinational corporations often fails...workers need protection now more than ever” wrote UN Special Rapporteur Maina Kiai in his report.⁷

The most dreadful violations against the labor rights happen in the informal sector as they're often excluded from the domestic legal frameworks lacking the power of collective bargaining and suffer from issues of lack of job security, low wages, child labor, widespread inequality, poor and often inhumane working conditions and migration issues due to lack of work opportunities.⁸

In the globalizing economy, the World Trade Organization, the World Bank, and the International Monetary Fund are much stronger institutional regimes that frequently compel governments to open their markets to far more trade and investment, disempowering domestic workers in poorer nations, while fundamental human rights of the laborers are protected by much weaker frameworks of the International labor organization, United Nations, and labor unions which have little or no enforceability.⁹ The short-term interests govern the policies and social relationships of the “global north”.¹⁰ The existing free-market model under a globalized economy although economically desirable is inclined more towards the interests of the developed nations and the multinational corporations, and has to lead to a broader gap between the world rich and poor without any due regard to the individual rights and development of poorer States.¹¹ The dependence of ILO on domestic laws for implementation of its Standard

⁴ Robertson, R., Brown, D., Pierre, G. & Sanchez-Puerta, L, *Globalization, Wagers, and the Quality of Jobs*, The World Bank (2009).

⁵ Robert Blanton, Shannon Lindsey Blanton, *Globalization and Collective Labor Rights*, Wiley Online Library, Eastern Sociological Society (2016).

⁶ *Id.*

⁷ Maina Kiai, *supra* note 2.

⁸ Awojobi, Oladayo, Nathaniel & Tetteh, Jonathan, *The Effect of Globalization on Workers' Rights In The Global South: Evidence From Nigeria*, International Journal of Economics, Commerce, and Management (2014).

⁹ Jackie Smith, *supra* note 4; Robert O'Brien, *Int'l Monetary Fund, The World Bank and Labour in Countries* (2004).

¹⁰ *Id.*

¹¹ United Nations Department of Economic and Social Affairs, *World Economic Situation and Prospects 2020*, UNITED NATIONS (2020), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2020_FullReport.pdf.

and no universal mechanism for the same is the biggest impediment suffered by the Organisation.¹² The “*race to the bottom*”¹³ starts when the national authorities in structurally less developed States start dropping their labor standards and working conditions to meet the global competition.¹⁴ The transnational corporations, thus, make a shift to the less developed States with cheaper labor causing a threat to the developed countries which have higher labor standards and costs.¹⁵

The United Nations and ILO have become even more vocal about the inequalities, human rights violations, and degrading labor standards caused due to unfair globalization¹⁶ Institutional capabilities with the greater role of the world leaders and the labor unions at both national and international levels need to be developed to avoid further victimization of laborers in the hand of globalization.¹⁷

II. SECURING SOCIAL JUSTICE: BRIDGING THE GAP BETWEEN JUST GLOBALIZATION AND LABOR RIGHTS

Social justice was a central element of the model that emphasized the idea of shifting from just abstract legal rights to the involvement of social groups in attaining justice and law application in society.¹⁸ Social justice deals with “securing a source of livelihood”, “prevention from exploitation”, and protection from “dangerous or inadequate environments”.¹⁹

In international law one State cannot force another State to enforce similar labor standards in their domestic regime or consumers to buy particular labeled products and the act of imposing such restrictions on countries who do not match their standards is not considered an appropriate solution.²⁰ However, the practice of international institutions including WTO, World Bank, and

¹² Mike Bogensee, *The role of international labour standards in a global economy*, Master's Thesis, King's College London (School of Law) (2011).

¹³ WERNER SENGENBERGER, *GLOBALIZATION AND SOCIAL PROGRESS: THE ROLE AND IMPACT OF INTERNATIONAL LABOUR STANDARDS* 13 (2d ed. 2005).

¹⁴ HARRY W. ARTHURS, *Who's afraid of globalization? Reflections on the future of labour law*, *GLOBALIZATION AND THE FUTURE OF LABOUR LAW*, 51–74 (John D. R. Craig & S. Michael Lynk eds., Cambridge University Press, 2006).

¹⁵ Jackie Smith, *supra* note 4; KIM MOODY, *WORKERS IN A LEAN WORLD: UNIONS IN THE INTERNATIONAL ECONOMY* (Verso, 1997).

¹⁶ Jackie Smith, *supra* note 4; United Nations Development Programme, *Human Development Report, International cooperation at a crossroads: Aid, trade and security in an unequal world* (2005).

¹⁷ Jackie Smith, *supra* note. 4; RONALDO MUNCK, *GLOBALIZATION AND LABOUR: THE NEW GREAT TRANSFORMATION* (Zed Books Ltd, 2002).

¹⁸ Lisa Rodgers, *Human Rights, Social Justice and Labour Law* (2013), https://www.upf.edu/documents/3298481/3410076/2013-LLRNConf_Rodgers.pdf/915af91e-51e2-4a85-a731-ff6468d8ef65.

¹⁹ Gerry Rodgers, Eddy Lee, Lee Swepston and Jasmien Van Daele, *The International Labour Organisation and the quest for social justice, 1919-2009* (International Labour Office, 2009).

²⁰ Robert A. Senser, *Domestic Efforts Alone Can't Handle Global Challenge Protecting People from Dangerous Imports*, *HUMAN RIGHTS FOR WORKERS* (Oct., 2007), <https://www.senser.com/007-10.htm>.

IMF asking States to remove trade barriers, allow privatization, reduce regulations, or cut public expenditure on subsidiaries to facilitate globalization is widespread. No such institution can internationally enforce and ask States to implement labor standards in a strict sense.²¹

There is a need to establish a correlation and draw the lines to keep intact the increasing globalization and international competition on one hand and the need for protection of basic human rights and decent working conditions and standards of labor on the other. Regional and global labor policies are based on the International Labor Organization's adoption of the international labor standards on employment policy, as well as the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 Declaration on Social Justice for a Fair Globalization, and the emergence of the "decent work" principle.

The notion of "decent work" or quality in work is traditionally associated with the social justice approach, and it can please social justice in both the 'Marxist approach' and the social law arrangement.²² The workers ought to be able to satisfy their wants and their needs through work and should not be compromised by the 'commodification' processes of capitalism. Social justice law also derives the importance of work quality for the achievement of wider social goals including industrial peace, dignity as a basic human right, and social inclusion.²³

International Labor Organisation in its 100th Conference held that "*both (human) rights and social justice are central to the ILO mandate and its constitution,*²⁴ *but that 'joblessness and low-quality jobs' are the main threat to these ideals, as well as economic growth.*"²⁵

III. HUMAN RIGHTS, DECENT WORK PRINCIPLE, AND THEIR IMPACT ON LABOR POLICIES

The power of laborers to implement labor rights in the workplace is a core human right that is vital for them to fully utilize the economic, social, cultural, and political rights conferred to them under universal human rights and state constitutional law.²⁶ States need to make appropriate domestic laws and take strict action against harmful acts of such multinational corporations not to stop global economic growth but to strengthen and implement global labor standards and basic human rights for the global good.

²¹ Robert A. Senser, *supra* note 3.

²² *Id.* at 9.

²³ *Id.*

²⁴ Report of the ILO Director-General, *A New Era of Social Justice* (International Labour Conference, 100th session 2011).

²⁵ *Id.*

²⁶ Industriall global union, *Labour rights are human rights: UN report* (Oct. 19, 2016), <http://www.industriall-union.org/labour-rights-are-human-rights-un-report>.

Demanding labor rights through human rights claims and global labor movements gives them a universal status, public support, and political appeal.²⁷ This takes away the impediment of economic growth argument and gives them a higher ethical and moral ground. Human rights have substantial normative power and they are “*high priority, compelling claims which are not absolute but are strong enough to win most of the time when they compete with other considerations*”.²⁸ The protest for guaranteeing anti-discrimination labor rights is a notable example of protecting labor rights as human rights and the same being largely implemented by domestic laws.²⁹ In recent years there has been a shift from the social justice argument to the human rights claim in protecting labor rights in the global economy. Yet, the assertion that they are 'second generation' social rights rather than civil and political rights is regularly made.³⁰

The idea of broadening the corporate social responsibility and individual responsibility and liability of corporations protect human rights be extended to include labor rights and their breaches to bring them within the international legal sphere.

Ruggie³¹ mentions regarding well-known economist Amartya Sen’s insight on business and human rights that “*treating rights primarily as ‘laws in waiting’ (or only as what government demands) puts an undue limitation on social forces other than statutory law that can advance the recognition of human rights.*” He argues that any effective system is required to inspire, stimulate, and profit from all ethical, sociological, financial, and regulatory factors that can influence corporate action. This necessitates the creation of social movements and political alliances that include representatives from all important aspects of society, particularly corporations, as well as the identification of opportunities and hazards. In the environmental sector, it is already unfolding. He contrasts between mandatory and voluntary initiatives. A Society needs mandatory rules to survive and “*those that have relied disproportionately on command and control regulation often have been bad news for business and human rights alike.*”³²

IV. CONCLUSION AND SUGGESTIONS

Global progress in economic and political development has not been largely acceptable in

²⁷ K Kolben, *Labor Rights as Human Rights?*, 50 Virginia Journal of International Law 449, 462 (2010).

²⁸ JAMES NICKEL, *MAKING SENSE OF HUMAN RIGHTS* (2nd ed., Wiley-Blackwell, 2006).

²⁹ Lisa Rodgers, *supra* note at 19 at 5.

³⁰ *Id.*

³¹ John Ruggie, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises: Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, Netherlands Quarterly of Human Rights 224-253 (2011).

³² Robert A. Senser, *supra* note 21.

recent decades. There has been economic and social prosperity in the progressive industrialized States and certain Asian emerging economies with stagnation in growth in other regions over the past few decades.³³ This is a critical moment for the global economy and idea of globalization with labor and working-class getting slowly disempowered systematically and the global market not being able to fulfill society and its needs. There is every possibility of renaissance of unions and demand for rights of workers as a social movement with a focus on larger civil goals than just mending employer and worker relations.³⁴ There is a demand for accountability, justice, and participation in policymaking from all spheres of the world in both domestic and international contexts.³⁵ The aim of economic convergence and narrowing gaps between States has instead led to wider economic gaps between rich and poor States. Uneven power distribution and policy discrepancies among nation-states can also be attributed. There is a need for policy integration and global governance via global institutions to handle the economic and trade interdependence of States.³⁶ Our world economy has globalized without a parallel strengthening of global political and social relationships.³⁷ The objective of both human rights and social justice principles is to alleviate the workplace environment.³⁸ There is also the possibility that human rights legislation can achieve the aims of social justice in a Marxist sense, where that human rights legislation leads to greater worker protection.³⁹

Another solution is to include workers' and laborers' rights in the WTO regime for their implementation at the international level. Brian Moore rightly held that "The WTO, World Bank, and IMF must be made more transparent and democratic. The WTO must co-operate with the ILO to ensure that trade rules and policies respect and do not undermine labor standards. The ILO must be given equal status to these other international bodies."⁴⁰ The policies of international organizations are often inconsistent.

The ILO norms prescribe minimum wages, minimum social benefits and health, and safety standards, but they do not stipulate that these should be the same everywhere. They ought to be harmonious with local conditions as well as economic viability.⁴¹ Companies and governments often believe they could gain more from pursuing individual interests rather than

³³ WERNER SENGENBERGER, *supra* note 14.

³⁴ Graham Taylor & Andrew Mathers, *Social Partner or Social Movement? European Integration and Trade Union Renewal in Europe*, 27 LAB. STUD. J. 93 (2002).

³⁵ Jackie Smith, *supra* note 4.

³⁶ *Id.*

³⁷ *Id.* at 874.

³⁸ Lisa Rodgers, *supra* note 19.

³⁹ *Id.*

⁴⁰ Irish Congress of Trade Unions, *Trading away workers' rights*, <https://www.ictu.ie/global-solidarity/workers-rights/trading-away-rights.html>.

⁴¹ *Id.* at 121.

common concerns. The Neo-classical theory does not leave room for strategic choices, compromise, negotiation, and policies to fit local circumstances in search of appropriate solutions and debates of efficiency and equity which are rudimentary in nature.⁴² Poorly qualified and short-sighted management by corporations remains one of the greatest impediments to higher labor standards.

⁴² *Id.*