

TITLE- COMPETITION LAW & POLICY, THE CHANGING MARKET STRUCTURE & THE CONSEQUENCES FOR THE LABOUR FORCE: A PERSPECTIVE FROM INDIA

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PURPOSE – To study the anticipated impact of the changing market structure, induced by the implementation of the Competition Act, 2002 and the competition policy on the labour force (organised and the unorganised sector), and to see if adequate safeguards are existing to protect the rights of the workers. The endeavour of this paper is to show that labour reforms undertaken by the state makes the labour force vulnerable to the market forces, moving them from the organised sector to the unorganised sector. The state has started to respond to the change in market structure by increasingly responding to the requirements of the unorganised sector.

AREA OF STUDY- Competition law & policy in India.

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PAPER OUTLINE

The aim of this paper is to highlight the changing nature of the Indian labour market. Most recently the Competition Act, 2002 has been introduced, a study has been undertaken in this paper to highlight how the introduction of the new legislation may affect the rights and obligations of the organised sector labour force.

The impact of the changing legal regime on the future composition of the labour force has also been studied, highlighting the growing importance of the unorganised sector, which had for so long been outside the purview of social security safety net.

Though we be moving at a great speed in the direction of the liberalization of the market, a similar momentum has not been noticed in the expansion of the coverage of the social security schemes. This mismatched rate of growth will lead to a larger number of people being left out the protective net, who would not be in a position to fight poverty, even though the gains from liberalization would be very real.

This gap in pace had been continuing for over a decade now and the response of the State to this crisis has only been very recent. This first step should be lauded, but it also leaves a lot to be desired.

This paper analyses the change in the labour market structure and the consequent response of the State, appreciating the change and highlighting the requirements needed to help overcoming the shortfalls created by the change.

I. INTRODUCTION

India officially opened the gateway to foreign trade in the year 1991, this heralded not only the advent of globalization on Indian soil, but also opened the door to competition, in a market that had been so far dominated by a few monopoly enterprises. The introduction of competition has changed the structure of the market, the previously meagre presence of foreign enterprises on Indian soil has been supplemented by a barrage of investors, eager to capture the emerging market or using the low costs of production to their profit.

However the reforms have so long has been tilted in the direction of streamlining tariff, non-tariff barriers, removing of barriers to entry and exit, therefore are essentially fiscal and trade related in nature. The key feature of the reforms being the opening of major sectors of the economy, which had so far been reserved for the public sector, to the private sector. Restrictions on the entry of the private sector into the field of infrastructure and strategic industries were removed, also industrial licensing was done away with, import restrictions were reduced, subsidies were cut and tax rates lowered. Rules and regulations have been simplified, disinvestment of equity in selected public sector undertakings, enhancing the limits of foreign equity participation in domestic industrial undertakings, liberalisation of trade and exchange rate policies are amongst the other steps that have been initiated.

Representing the most controversial area of the process of globalisation is the issue of introducing labour reforms, the suggested reforms aim to make the labour market more flexible. The core of the reforms concerning-

- Providing greater scope for contract labour i.e. diminishing the constraints placed on enterprises due to requirements of regularisation of contract labour.
- Easier procedure for hire and fire of labour force to allow enterprises to remain competitive.

The Governments have been caution not to be labelled as anti-labour, efforts have been made to include trade unions to the maximum possible extent, continuous assurances have been given that no 'reforms' are to be initiated without the consent of the unions, industrialists and the opposition parties. The reason being that the unions represent

essentially the employees working in the organised sector i.e. factories, mines, shipyards and plantations and they would be the hardest hit if the reforms were to be introduced.

In order to fulfill the abovementioned goals the three legislation which need to be amended are the Industrial Disputes Act,1947; the Contract Labour (Regulation and Abolition) Act,1970; the Payment of Wages Act,1936. The other legislations under the scanner are the Payment of Bonus Act, 1965; the Payment of Gratuity Act, 1972 and the Trade Unions Act, 1926. These legislations were designed keeping in mind the interest of the workforce, to protect them from capitalist interest and embodied the then prevalent socialist ideology. Retrenchments, firing of workers are long drawn processes requiring government permission, these legislations are generally considered to be irresponsible to the needs of the entrepreneur.

Labour reforms, because of their politically sensitive nature have been slow to be implemented, however their advent seems inevitable now, with growing industrial pressure and the increasing realisation that the Indian industry would find it difficult to survive with increasing competition from the international arena.

II. COMPETITION LAW AND THE LIBERALIZED MARKET STRUCTURE

Adam Smith referred to competition as the 'invisible hand', identifying competition as the driving force, leading to greater efficiency. The ideal to be approached is that of perfect competition. Though the theory of perfect competition relies on a large number of unachievable conditions, this model is seen as a yardstick against which other market structures are to be judged. Thus producers would produce, that which is to be consumed, and would not waste the scarce resources, on producing that which is not demanded.

India has only recently been introduced to competition, whose aim is to allow market to flourish in the absence of, or with minimal government intervention. As we had been traditionally following an approach, wherein government intervention was the only approach

through which public interest could be protected. At the forefront of this concept lies the interest of the labour force.

The newly introduced Competition Act, 2002 is modelled on the antitrust laws, as prevalent internationally and aims to make similar headways in this area, as has been made in other countries.

- INTERACTION BETWEEN COMPETITION LAW AND LABOUR INTEREST

The Legislature passed the Competition Act, 2002 as a substitution to the previously in place Monopolies and Restrictive Trade Practices Act, 1969 (*hereinafter referred to as the MRTP Act*). The Statement of Objects and Reasons to the Competition Act, 2002 state that-

“In pursuit of globalization, India has responded to opening up its economy, removing controls and resorting to liberalization. The natural corollary to this is that the Indian market should be geared to face competition from within the country and outside the country..... The Competition Bill, 2001 seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India”

This legislation represents a crucial component to the larger process of trade liberalization. It represents a desire to pursue efficiency in production and the allocation of resources, a will to see that the factors of production are used in a manner most desirable to consumers. Consumer interest forms the source of this legislation, so much so that the term ‘public interest’ finds mention in Act only once, with specific reference only with respect to unfair trade practices.

The High Level Committee on Competition Law and Policy¹ (the Committee is also referred to as the Raghavan Committee, and the report submitted by it the as the Raghavan Committee Report), setup under the Chairmanship of Mr.S.V.S Raghavan, in its report has outlined the path that needs be followed by India in order to liberalize its market, whilst simultaneously increasing competition, for the benefit of the consumer. This report formed the background to the newly introduced Competition Act, 2002, finding mention in the Statement of Objects and Reasons of the Competition Act,2002. The Raghavan Committee Report not only looks into the requirements of ensuring inter-enterprise competition, and the restrains to be placed on monopoly enterprises, but elaborates on the changes that need be made, so that the market lends itself truly to the principle of inculcating competition. The

report discusses in detail the reduction of tariff barriers, formulation of monetary policy, labour reforms etc.

The economy over the past decade has been transformed from one subscribing to the socialist principles, to one that has embraced capitalism, this transformation is most apparent if the Competition Act, 2002 be compared to the Monopolies and Restrictive Trade Practices Act, 1969 which it has replaced.

The crux being the manner of treatment of 'consumer interest' compared with 'public interest'.

The Raghavan Committee has clearly distinguished between '*public interest*' and '*consumer interest*' in its Report, stating that though often public interest and consumer interest are considered to be synonymous, a clear distinction need be made between them for the purpose of the antitrust statute. The Report then highlights that if allowed to be used synonymously, the powers provided under the legislation would certainly be used by the Government to subvert the principles behind an antitrust legislation, aiming to strengthen market forces. The Commission states that "*there is a justifiable apprehension that in the name of "public interest", governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumer"*. The Report goes on to state that "*there are in a society too many divergent interests and therefore the resolution is best left to markets without Government intervention. They are all too conscious of the possibility of abuse of the expression 'public interest' by vested interests"*

This is in stark contrast the MRTP Act, which found its legitimacy in ensuring that there be no concentration of economic power in private hands, where it be possible, as that amounted to being detrimental to public interest. The Statement of Object and Reasons, states that "*The Bill is designated to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment and to prohibit such monopolistic and restrictive trade practices as are prejudicial to public interest*" (emphasis added)

In a similar vein the Commission constituted under the MRTP Act, had the power of issuing temporary injunction if it found that public interest would be served by ordering the same.

It is important that we comprehend the impact of inclusion of public interest under the MRTP Act, and its exclusion under the new Competition Act, 2002.

The presence or usage of the term public interest in the statute, makes it a factor that needs to be looked into and considered by the adjudicating authority. While identification of consumer interest would essentially and solely be based on the criterion of cost borne by the consumer, quality and availability of the product, selling the product based on faulty information and other comparatively precise criterion, the ambit of what constitutes as being in 'public interest' is ephemeral. Consumer interest connotes a comparatively narrower scope than public interest.

It would not be wrong to state that public interest includes labour interest, however labour interests clearly lie outside the scope of consumer interest. The Indian experience has shown that decisions of a variety of shades have been taken under the guise of public interest and even the judiciary has been unable to quantify what amounts to public interest. It was with this fear that the Raghavan Committee excluded public interest as a standard that needs to be fulfilled, realising well that the incorporation of the same would hinder the creation of free and fair markets.

The mere inclusion or exclusion of public interest in the new statute is not the only place of contention between securing the rights of the labour force and providing for greater freedom and choice in the market.

Section 3 of the MRTP Act prescribes that the Act is not to apply to trade unions or other associations of workmen or employees formed for their own reasonable protection, unless the Central Government notifies that the Act shall apply to them. It is not surprising that no such exception has been made under the Competition Act, 2000. Trade unions being a juristic person, created and registered under the Trade Union Act, 1926 are covered within the ambit of 'enterprise' to whom the Competition Act applies, as an enterprise includes a juristic person. At least theoretically speaking the trade unions can be held accountable for unfair trade practices and monopolistic behaviour.

Refusal to deal, exclusive supply agreements amount to anti-competitive agreements under the Competition Act, 2002; does this mean strikes by trade unions, refusal to allow workers who are not part of a specific trade union, the liberty to work in an industry amount to anti-competitive practices if they are to the detriment of competition in India?

The legal quagmire intensifies, when the above issue is discussed in the light of Section 19 of the Trade Union Act, 1926, which forms an exception to the common law principle that all

agreements in restraint of trade are to be void, the above mentioned provision of law provides that any agreement between the members of the registered trade union, in restraint of trade shall not be void or voidable. The proviso to the Section states that –

“nothing in this section shall enable any civil court to entertain any legal proceeding instituted for the *express purpose* of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any member of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed”

Would this imply that any proceeding instituted in a Civil Court or any other adjudicating authority would be upheld if not instituted specifically to enforce an agreement or recover damages for the breach of any agreement?

In the case of *Amalgamated Society of Carpenters v. Braithwaite* (1922 A.C 44) the Court had held that it is a totally different position in to state that a claims to posses a right compared with a position in law, that it seeks to enforce the obligation they create. In the situation of trade unions, the latter is prevented whilst the former is not.

It can be seen that there exists and incongruity when the question of the rights of trade unions vis a vis enterprises arises. The politically sensitive nature of this issue, does not allow for the making of any prediction concerning the future. The purpose being to highlight that a change is being introduced in the nations approach to labour law.

This may not be a bad thing, as previously the legislations took into account only the concerns of the workers and not of the consumer or the entrepreneur. These legislations were insensitive to market requirements.

It can be safely stated that the direction today is to align the labour laws with laws supporting enterprise and competition. Will we reach a situation when a monopoly trade union will not be tolerated, just as monopoly enterprises are not tolerated? The answers to these questions may be found in the near future.

India is slowly moving away from a command and control structure, normally referred to as ‘Licence Raj’ or ‘Permit Raj’ in India, for it represented all that was bureaucratic and covered by red tape. It has been accepted to be the cause of a stagnant economy, absence of innovation and the root of much of the prevalent corruption, wherein all decisions pertaining

to setting up of, closing of, opening new branches and offices were taken only after approval of the government.

- SPEAKING IN THE VOICE OF MARKET FORCES

The polity of the country has increasingly started speaking in the voice of market forces, the benefits of the last decade are visible, the vision of India, is aligned with the knowledge that the benefits gained over the past decade can be extended, if we continue to follow the path of liberalization whilst simultaneously investing in development of skill and creating favourable conditions for the markets to function in. The Report of the Committee on India Vision 2020² (also referred to as the S.P Gupta Committee) acknowledges the benefits of liberalization and states that concrete effort need be taken so as to continue reaping the gains, the Committee in its report has stated-

“India missed out on the boom in manufactured exports that occurred from the 1970s to 1990s. Increasing overcapacity in basic manufacturing industries, coupled with mechanisation of processes, which eliminates the advantage of low cost labour, will limit future opportunities and benefits for export of manufactured commodity goods such as cars, TVs, and computers.”

With respect to trade in services, the S.P Gupta Committee highlights that the emerging global scenario, allows for the harnessing of the skills of surplus of well-educated, highly skilled labour, that can provide an attractive commercial environment for the outsourcing of manufacturing and service businesses from high and even middle income countries.

The sentiment is to grab on to the advantage provided to us by the opening up of our markets. Apart from this there is an increasing realisation that, having opened our doors to globalization and liberalization, if our legislations are not properly streamlined to meet the demands of the industry then, our producers and manufacturers would be unable to compete in international and domestic markets- the threat of China looms large. There is a very real fear that a heavy price is to be paid if we go wrong this time with our policies, also there is a realization that it is still possible to repeat the mistakes of the past.

Though this is not to say that freer markets provide a *mantra* to all problems pertaining to trade and development, the quest for efficiency and survival in competitive market requires

that firms to cut costs to be more competitive, shift businesses to regions where cost of productions are lower and that often translates into lost jobs. Similarly competition policies, by themselves are not an answer to every social and economic problem.

In the pre-liberalization era the State had played a major role in employment generation, it has continued to be one of the largest employers even after the advent of liberalization. The Central Government employed 3.5 million employees compared to the 4.2 million persons involved in manufacturing in the private sector (ECONOMIC SURVEY- 1994-1995). The role of the Government has diminished over the years, by the year 1999 the rate of growth of employment in the public organised sector was negligible, in the previous years, as per the Planning Commission Statistics a negative growth had been recorded in the public organised sector.

Employment and anti-poverty programmes gained strength in the 1980's when, there was a great scarcity of resources and employment generation was low. This trend has continued into the 1990's. The Eighth Five Year Plan was devoted to employment creation, however there was no appreciable increase in employment during the Plan period. With the advent of globalization, it is being increasingly felt that the role of the State be limited to a few core areas, whilst the rest of the field is opened to market competition.

The Raghavan Committee Report has highlighted the pre-requisites for competition policy, the emphasis being placed on a concrete industrial policy, one that takes into account the requirements of the small scale industries; regulatory reforms; trade policy, State monopolies policy and a labour policy.

The Raghavan Commission in its report has emphasized the fact that the present labour regime is structured for the "*protection of the interests and welfare of the labour*" which though is consonant with principles of public policy with respect to labour welfare, overlooks the requirements of free market enterprises. Under the present regime of labour laws the labour costs have started to represent fixed cost. Removal of labour through retrenchment and lay off involve lengthy procedural hassles, while the scheme of providing dearness allowance to counter inflation and the prevalence of periodic long term settlements has lead to an upward revision of the remuneration of the unionised workforce.

The Commission proceeds to say that –

“If unviable units continue to operate in the market, it can only be at a very heavy price for the society. In a competition driven market, non-viable, ill-managed and inefficient firms must be allowed to exit freely, subject to their conforming to the rules and regulations governing their liabilities”

The changes required to the labour regime are amongst the vast array of changes that have been initiated or are proposed to be initiated in response to the opening up or privatisation of the economy.

- INVOKING THE MANTRA OF HIRE AND FIRE

In order to introduce a more flexible scheme, with adequate space allowing for- '*hire and fire*', changes will have to be introduced to the Industrial Disputes Regulation Act, 1947 and other relevant statutes. Most recently, the Finance Minister Mr. Yashwant Sinha when presenting the Budget for 2000-2001 had proposed to amend the Industrial Disputes Act, 1947, allowing companies to lay off employees without seeking its permission, if the staff strength is less than 1,000. This means that these employees can be dismissed without seeking government permission. The purpose of the proposed amendment being to allow the "*easy closure of loss-making units*". The impact of this proposed amendment would be that, less than 1 per cent of industrial units in the country would remain under ambit of the Act and approximately 74% employees would be out of the purview of the Industrial Disputes Act. Due to sustained opposition by the trade union and the public outcry against the adoption of such an initiative, this proposal has not yet been integrated into the law, even though the then Government had approved of the proposition in principle.

The Second National Labour Commission³, has not only reiterated the above sentiment, but gone a step further, stating that prior permission should not be made mandatory in case of lay-off's and retrenchment from any establishment of any size. Where an enterprise employs 300 or more persons and the lay-offs continue for the period of more than a month, such an establishment would be required only to take post-facto permission. With respect to closure of an enterprise the Second National Labour Commission has suggested that prior permission be sought in the case of closure of any establishment of any size.

As expected the trade unions have opposed this change, one of the fears of the organised sector labour force is that the reforms would amount to a reduction in their bargaining

power. They have stated that, as with the advent of multinationals whilst capital is free to move from country to country in search of the cheapest labour, workers are not free to move across national borders in search of the best price for their labour. This creates an inequality of choices, which is aggravated by trade liberalization because capital is even freer to move elsewhere, giving it greater negotiating leverage with labour and also with government regulators.

- CONTRACT LABOUR AND CORE COMPETENCIES

The traditional approach to contract labour has been that the system of contract labour was considered so detrimental to the interest of the labour, lending itself to the abuse of many a labour rights that the Planning Commission in the Second Five Year Plan recommended that studies be undertaken to understand the extent of the impact of the system of contract labour and that it be progressively abolished while simultaneously improving the condition of contract labour, in those areas where total removal of contract labour was not possible. It was with this aim that the Contract Labour (Regulation and Abolition) Act, 1970 was introduced, representing a broad consensus that wherever possible the system of contract labour should be done away with.

The Second National Labour Commission however has recommended that in all occupation, it is only the work that forms the core of that organisation that needs be performed by regular workers, whilst the other workers, who do ancillary work, can be contract labour.

As expected the trade unions are up in arms against such recommendations, labelling them as "labour commission disservice to labour".

Previously the Apex Court of the country had in the case of *Steel Authority of India Ltd. Vs National Union of Waterfront Workers & Others* had held that the Act neither expressly or by necessary implication provides for automatic absorption of contract labour in those industries wherein a notification had been issued under the Act prohibiting employment of contract labour in any process or operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment. This judgement was overruling prospectively the judgement in the *case Air India Statutory Corporation Ltd. & Ors vs. United Labour Union & Others*.

- OUTLINING THE FUTURE

The present state of affairs point in one direction that – the security that has been so long associated with the organised sector workforce, can no longer be taken for granted, though doomsday predictions as put forth by many trade union will not be true, it is to be realised that in the Indian economy, the unorganised sector is growing at a faster rate than the organised sector. This expansion will only gain strength as greater emphasis is placed on contract labour.

This is the sign of a revitalised industry, ready to make use of the increasing labour force, on condition that the laws be so structured that the enterprises be allowed to respond to the requirements of the market.

However, for so long the organised sector had held a position of envy compared to the unorganised sector, as the social security net for the organised sector was quite strong. In order to allow for public for public acceptance of the changing market structure, it is necessary that their fears be allayed; unemployment insurance, worker retraining and other welfare supports will be needed to ensure a domestic consensus in support of open markets.

III. SUPPORT TO THE POOR: SOCIAL SECURITY & FREE MARKETS IN INDIA.

With India's growing population, and the stagnant growth of the workforce in the organised sector, it is only be upto the unorganised sector to absorb the increasing manpower. As show earlier our policy documents too have started favouring the growth in the unorganised sector, compared to protecting the organised workforce. In order to decode, what the unorganised sector is, it is important to know of the criterion that define the sector. The same have been highlighted hereunder.

- DEFINING THE UNORGANISED WORKFORCE

The informal sector truly came to be recognised as a major provider of employment after the Kenya Mission of the ILO in its Report ascribed to the informal sector the following characteristics, and stated that it could play a major role in increasing urban employment-

- (a) Ease of entry;
- (b) Reliance on indigenous resources;
- (c) Family ownership of enterprises;
- (d) Small scale of operation;
- (e) Labour-intensive and adapted technology;
- (f) Skilled acquired outside the formal school system; and
- (g) Unregulated and competitive markets.

These characteristics are essentially true for the unorganised sector anywhere in the world and a similar definition has been echoed by the Second National Labour Commission. As per the ILO, the informal sector workforce can be grouped into three main segments-

- a. Owners or employers of micro-enterprises,
- b. Own-account workers and
- c. Dependent workers.

This issue of the unorganised sector had earlier been discussed in the Report of the National Commission on Labour, 1969 (also referred to as the First Labour Commission); the recommendation of the 1st Labour Commission were broad, and highlighted the need for legislative protection for the unorganised sector. The emphasis was on the need for a simplified administrative and legislative structure, which would be easily accessible, and understand the needs of the small establishments.

The Report of the National Commission on Self Employed Women in the Informal Sector, 1988(Shramshakti Report), had similarly suggested the simplification of the judicial process, so as to make access to justice easy.

With regards the implementation of the standards laid down by the legislature, the 1st Commission had recommended that the already existing machinery should be reinforced and strengthened; they saw no alternative from the pre-existing administrative system⁴.

The Second National Labour Commission was assigned the task of creating an '*umbrella*' legislation for the workers of the unorganised sector, based on the objective that such a legislation and the system to be created around it would provide a basic protection to the workers of the unorganised sector. The principle reason behind the creation of an umbrella legislation is that the present set of laws have proved to be very inadequate in this regard, as all of them are not meant to be applicable to the workforce, which constitutes the unorganised sector. The approach of the Second National Labour Commission is reflective of the approach adopted by the ILO- a compromise that attempts to preserve the income-generating potential of the sector while removing exploitation and gradually raising employment standards.

According to National Sample Survey Organisation survey conducted in the year 1999-2000, the total employment in both the organised and unorganised sector in the country was of the order of 397 million around 28 million in the organised sector and 369 million in the unorganised sector. Within the unorganised sector, 237 million workers are employed in agricultural sector, about 17 million in construction work, 41 million in manufacturing, 37 million in trade and another 37 million in transport, communication and services. This sector is expanding due to shrinking employment opportunities in the organised sector as a result of globalisation and liberalization.⁵

The draft legislation proposed by the Second National Labour Commission, titled as the Unorganised Sector Workers (Employment and Welfare) Bill, aims to provide recognition to all the workers of the unorganised sector. The object being to provide a minimal level of economic and social security so as to expedite the removal of poverty. It also highlights the goals of eradication of child labour and ensuring the availability of equal opportunities of work for men and women.

In order to bring the workers of the unorganised sector at par with the workers of the organised sector, the Draft legislation prescribes health and safety standards, working hours etc. It also lays down the requirement that minimum wages need to be paid to the workers of the unorganised sector, the non-payment amounting to a punishable offence.

The Draft seeks to implement social security benefits of the following kind uniformly over the unorganised sector-

- a. Benefits to be given in case of loss of income.
- b. Preventive benefits.
- c. Benefits that are promotional in nature.

Social security schemes proposed to be made available to the workers of the unorganised sector are namely old age, invalidity, group insurance, sickness, medical and employment injury benefits. These proposed schemes are however couched in inconclusive language, not providing for any proposed commitment on the part of the State.

The proposed legislation prescribes an elaborate machinery to be created or refurbished at the local, district, state and national level respectively, to oversee the implementation of the principles of the draft legislation and to mediate in case of disputes.

▪ ROLE OF THE STATE IN SUPPORTING THE UNORGANISED SECTOR

The State has traditionally not been very effective in either prescribing standards or implementing the standards that had been laid. One area where the State did try to lay down a benchmark was on the issue of minimum wages. The Minimum Wages Act, 1948 prescribes minimum wages as fixed by the Central Government, for employments detailed in the Schedule of the Act. The schedule prescribes minimum wages essentially for those categories of the labour force who are involved in 'sweated labour', this category being more susceptible to exploitation by their employers. The agricultural sector too has been included within the ambit of the Schedule under Part II,⁶ though with respect to agriculture, the Government may fix the minimum wage rates not for the states as a whole, instead fixing minimum wage rates for a part of the state or for any specific class or classes.⁷

This notification of employments where minimum wages need be disbursed has to a great extent helped in the fixation of wages for the organised sector. 27 Wage Boards have been created for 19 industries, presence of trade unions saw to the enforcement of the requirements under the Act in the organised sector, however the standards laid down

though affected the wages in the organized sector have had virtually no effect on wages in unorganized sectors.

The overwhelming majority of workers in India belong to the informal sector. Trade unions have made few attempts to formalise informal labour. The universal and most urgent complaint of informal workers is instability of employment. The impossibility of organising and bargaining collectively meant, that other urgent demands, concerning wages and benefits, working conditions, health and safety, paid leave and holidays, and so on and so forth, could never be raised. Job instability meant that even the limited social security benefits available to formal sector workers were not available to them. The unorganised sector workers have been demanding for a certain degree of formalisation of their employment.

There has been a constant cry of recognition, by the workers in the unorganised sector. The providing of identity cards is seen as a move to recognise the work that they do, giving them a sense of identity relating to their work. Another purpose that the identity cards fulfill is to provide the government with specific data, regarding the existence of the unorganised sector. There are provisions for such registration under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, and the Bidi and Cigar Workers (Conditions of Employment) Act, 1966. The advent of computers makes registration a practical proposition too. Earlier the Shramshakti Report of 1988 had suggested that a system of registration be introduced for domestic workers.

Other legislations supporting the unorganised sector were also created, some of them being the Bidi and Cigar Welfare Fund Act; Bidi and Cigar Cess Act; Bidi and Cigar Conditions of Employment Act, 1966; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The changing market structure, tilting towards increasing contract labour, a hire and fire approach, will lead to a situation of a larger and larger number of people falling outside the organised sector, wherein the employer-employee relationship is easily identifiable, also because of the very nature of the new emerging workforce, categorisation of the work for the purposes of legislations will also become increasingly difficult, and if undertaken would lead to the creation of a plethora of legislations, creating confusion and adding to the burden of the workforce, which would then be required to be compliant under many overlapping legislations. Implementation also would be cost and time intensive.

It is however important that the unorganised sector be provided with protective coverage, as they not only represent the poorer amongst the workforce, apart from being outside most social security coverage's. The sector does not have access to support, normally provided to the organised sector in the case of accident, loss of employment, disability, retirement from occupation, sickness, maternity, invalidity etc.

It is urgently required that the State appreciate the contribution of the unorganised sector made to the economy, and help alleviate the fears of the sector that in the case of loss of income by the occurrence of any of the abovementioned events, they would not be thrust deeper into the clutches of poverty. It is the responsibility of any State to help elevate the standard of living of its citizenry, seeing that the unorganised sector is not left outside the loop, would to a great extent help India attain this goal, as under the present circumstances, the workers of the unorganised sector represent the poor of the country. This story of poverty is true not only for the participants of urban unorganised sector but also for the rural unorganised sector, relying on agriculture mostly, for subsistence.

The changing market structure makes people more vulnerable to the contingencies, though the change in laws would ideally help create employment for a larger number of people, if this pro-competition, efficiency change is not accompanied by changes in laws and policy providing support to the vulnerable section, it would amount to, firstly turning a blind eye to the contribution of the sector, secondly absence of a subsistence security net would allow for an easier migration down the poverty ladder and finally create insecurity amongst the workforce, affecting their efficiency.

The State for so long has not paid an active role in supporting social security for the unorganised sector, the traditional perception being, that with the advent of industrialisation the unorganised sector would eventually become a part of the organised sector. Safeguards provided for the organised sector, then would automatically cover a large part of the workforce. However the numbers have shown that this has not taken place. To the contrary, the rate of increase in the unorganized sector has far outraced the growth in the organised sector.

- THE RECOMMENDATIONS OF THE SECOND NATIONAL COMMISSION ON LABOUR STANDARDS OF LIVING

The ILO has stated that the organisation the informal sector workers needs to be a priority of the international trade union movement because: (1) The informal sector is here to stay; (2) it is growing, whilst the formal sector is declining in terms of organizational potential; (3) these two trends are linked and are irreversible in the short and medium term; (4) consequently, the stabilization of the formal sector organizations and building trade union strength internationally depend on the organization of the informal sector. Organizing the informal sector serves the interests of the majority of workers worldwide.

The Commission too has adopted a similar stance, laying great emphasis on the need for organisation amongst the informal sector. It is commendable that the need for coherence within the sector is to be recognised, as a policy at the national level. A catena of studies have shown that, in industries where strong trade union movements have existed, there have been better standards of wages and work.

Another important reason, why the trade union movement amongst the unorganised sector workers needs to be supported at a national level is because, for so long this sector has been kept outside the policy makers domain, because of their non –uniform nature, they found it difficult to group together for a common purpose, this needs to change, and active State support can provide that vehicle. The recommendations of the Second National Labour Commission support the requirement of a strong trade union movement in the unorganised sector; the same has been reiterated in the Draft Legislation proposed by the Labour Commission.

- RESPONSE OF THE TRADE UNIONS TO THE SUGGESTIONS OF THE LABOUR COMMISSION

The response of the trade unions to the Report of the 2nd National Labour Commission has been quite uniform. The main points of contention being that the Report does not clearly address how the financial burden to the exchequer is to be handled. The other area of contention being over the suggestions, that some of the schemes may be partly or fully self financing. The contention of the trade unions essentially being that self financed social security schemes are not workable, as the proposed participants do not have adequate financial power to actually subscribe to these part or fully paid schemes of social security. The trade unions essentially state that, in reality theses schemes, meant to cater to the poorer members of the unorganised sector, will end up catering to the needs of only those

persons, who have higher earning. This contention is supported by the fact that compared to China and Sri Lanka, also developing countries, India spends comparatively less on social security and efforts should be made to increase the expenditure on social security (CITU). The suggestion being that the State should meet the entire expense for running the scheme, and a cess should be charged on all forms of production (AITUC).

AITUC has expressed its doubts over the modalities of the suggested framework as being, there being no clear identification when the schemes are to be self-financed or employer and govt supported.

- PLANNING COMMISSION AND SOCIAL SECURITY.

The Ninth Planning Commission constituted the Working Group on Labour, it was this working group that first suggested the need to provide social security to the unorganised sector.

Thereafter under the Tenth Plan, the Planning Commission constituted the Working Group on Social Security, to propose a feasible structure of extending social security to the various sectors of the society⁸. The terms of reference of the Working Group required the Working group to suggest an accepted definition of social security and the minimum acceptable services to be covered under it, to assess the existing social security measures, both in organised and unorganised sectors, to suggest ways to extend the coverage of social security to a wider segment of work force.

The Working Group emphasises that social security schemes should ideally be mindful of the right to work; the right to education and to public assistance in case of unemployment, old age, sickness and disablement. The system of social security should be such that just and humane conditions of work and for maternity relief would be possible and the social security programme should raise the level of nutrition and the standard of living of its people and improvement of public health. It is to be highlighted that by providing the above requirements as the minimum bar of social protection available to citizens, the working group has reiterated the requirement of both a promotional and protectionist approach to social security.

The Working Group on Social Security has also identified some of the key reasons why social security coverage of the unorganised sector⁹ had for so long not gained acceptance.

The Working Group has suggested the creation of a separate Pension Scheme. It has also suggested the modification of the schemes, previously dedicated only to the organised sector to include the unorganised sector as well. Apart from this it has expressed that medical care could be extended to the workers in the unorganised sector as well.

More importantly the Working Group has suggested that social security expense, occurred under social security schemes, should be recognised as planned expenditure and not as non-planned.

The thrust on community based, location specific schemes, and self help groups is reflected not only in the suggestions of the Working Group, but also in the recent budget of 2004-2005.

- STEPS TAKEN BY THE STATE

In the recent budget the Finance Minister Mr. P. Chidambaram highlighting the scattered nature of initiatives for the unorganised and the depressed sections of the society and stated that the policy on the subject of providing support for the poor and the needy needs be revisited and given a stronger shape.

Adopting both a promotional and protective approach, the Government in the Budget of 2004-2005 has stated that basic education would be provided to the children of the poor to make the child remains in school for at least eight years.

Recently under the Budget of the year 2004 announced that it proposes to introduce the proposed National Employment Guarantee Act, the objective of the proposed Act being to guarantee 100 days of employment in a year to one able-bodied person in every poor household.

Similarly there is a thrust on *micro-finance* with the proposal under the new budget being that matured self help groups may be in a position to graduate from consumption or production credit to starting micro-enterprises.

Efforts are being taken to provide adequate food and to introduce education for all, with adequate measures to keep the child in school for atleast eight days. Health care is also an area of priority and schemes specifically catering to the need of the poor.

IV. CONCLUSIONS

There is an increasing realisation that the unorganised sector forms a productive part of the economy and efforts need be taken to strengthen the informal sector in areas where its development would lead to gains for the economy as a whole.

In summary the author would say, that the shift towards capitalism has produced efforts on the part of the State, to support the marginalised classes, through socialistic measures that were not possible even during the self proclaimed 'socialistic' era, however it still remains to be seen how successful the implementation would be as our delivery systems have a lot to be desired.

In conclusion it can be said that though the advent of globalisation and the initiation of the market reforms have lead to a situation when job security in the organised sector has had to take a back seat to the profit motive of the industries, overall the effect of liberalization can be said to have taken the turn for the better. There has been an increasing realisation as to the important role played by the unorganised sector, that the productive nature of their activities has to be taken into account when national policies are formed. Though this realisation is still finding expression in providing support essentially to the urban unorganised sector, while not much thought has been given to the rural unorganised sector, essentially agricultural based informal sector, with the growing importance of agriculture in international trade talks, it is but a matter of time that social security schemes for the benefit the sector will be introduced.

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¹ Also referred to as the Raghavan Committee, the Committee constituted by the Department of Company Affairs, Ministry of Law Justice and Company Affairs. The final report was submitted in May 2000. The Committee had as its terms of reference the following areas to cover-

1. To propose a legislative framework relating competition law, including law related to merger and demerger. The Monopolies and Restrictive Trade Practices Act, 1969 (*hereinafter referred to as the MRTP Act*), which was the then law on competition, was required to be updated and modified keeping in mind the developments undergone by the economy of the country.
2. To suggest changes with respect to the law concerning restrictive trade practices. Also to demarcate the jurisdiction of the MRTP Commission and the Consumer Courts as created under the Consumer Protection Act, 1986 with respect to restrictive trade practices.
3. To suggest the administrative requirements, needed to effectively implement the proposed recommendations, in an expeditious manner.

² The Chairman of the Committee was Dr. S.P Gupta, and the report is also referred to as the S.P Gupta Committee Report. The Committee was setup under the aegis of the Planning Commission in June 2000. The initiative brought together over 30 experts from different fields. Their deliberations extended for a period of over two years.

³ The Second National Labour Commission was constituted in 2000, with the purpose of highlighting the problems of the Indian workforce, and to suggest appropriate changes in the legal regime. It was given the specific responsibility of creating a Draft legislation to fulfill the requirements of the unorganised sector, to bring under the social net.

⁴ It is to be noted that the option of placing administration in the hands of the Panchayat Raj, was not there. The 1st Commission had also supported the creation of co-operatives, so as to overcome the menace of middle men.

⁵ INFORMAL SECTOR IN INDIA- Approaches for Social Security *at*

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⁶ Schedule , Part I- Employment in any woollen carpet making or shawl weaving establishment; any rice mill, flour mill or dal mill; tobacco (including bidi making) manufactory; plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee; oil mill; construction or maintenance of roads or in building operations; stone breaking or stone crushing; lac manufactory; mica works; public motor transport; tanneries and leather manufactory; loading and unloading in railways, goods sheds; in docks and ports; ashpit cleaning on railways. Employment in laying of underground cables, electric lines, water supply lines and sewerage pipe line.]

⁷ Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

⁸ The terms of reference of the Working required the Group to suggest a system of division of responsibility for implementation of a wider social security system among Centre, State and Workers, to review the implementation of Minimum Wages Act at the State level and recommend institutional mechanism and legislative measures that enable the minimum income to the most of the wage employed, to examine the feasibility of using existing institutions such as ESIC, EPFO, Welfare Boards, etc. to extend social security to bulk of the non-agricultural work force, to examine and recommend the measures to extend social security to agricultural workers *see* Report of the Working Group on Social Security for the Tenth Five Year Plan (2002-2007), Government of India, Planning Commission (October- 2001)

⁹ The reasons as per the working group is the seasonal and intermittent nature of work, leading to difficulties in meeting the qualifying conditions; the low level and irregular pattern of earnings and employment; absence of employer-employee relationship leading to difficulties in determining the principal employer and in assessing and recovering contributions; relatively weak administrative structure, particularly in rural areas *see* Report of the Working Group on Social Security for the Tenth Five Year Plan (2002-2007) 33 Government of India, Planning Commission (October- 2001)

