Impact of Neo-liberal Economic Policy on the Legal Framework and State Policy on Labour: A Case of Sri Lanka and India

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Abstract

South Asian nations in the past three decades have entered into a process of liberalisation and deregulation of the economy. This shift in the economy from a social democratic welfare state model, to a market oriented neo-liberal model has also had an impact on the legal framework and state policy governing the social relations within the economy, between labour and capital. This paperexamines the changes in the legal framework and state policies in India and Sri Lanka on labour, to demonstrate that the pro-labour legal framework that was in place during the pre-liberalisation period is now rapidly and aggressive being replaced by an anti-labour, pro-capital legal regime. Reforms to legal regime, proposed and successfully enacted, in both countries during the post liberalisation period are extensively detailed. The interventionist state's role in the previous welfare state era, as the protector of the interests of labour within an import substitution economy, has been replaced by a minimal state that is aggressively siding with the interests of the capitalists within an export oriented globalized economy.

Keywords: *Neo-liberalism; Deregulation; Social democratic welfare state; Labour law regime*

1. Introduction

The rise of neo-liberalism has produced profound shifts in both developed and developing nations. Neo-liberalism emerged as a response to the crisis which the social democratic welfare state structures underwent in the late 1970s. State intervention in economic-social life was a salient feature of the

welfare state model, adopted in a global scale in the post second world war context. This model found wide application in both industrialized western countries as well as in new nationsemerged as a result of decolonization. Adhering to social democratic ideas, the welfare state model attempted to harmonize conflicting class interests within the society and consequently distanced itself from the laissez-faire model of early capitalism, forming an alliance with the aspirations of the popular classes in the society. This objective was accomplished through state intervention and regulation in economic and social life. Most South Asian nations adopted this model in the years following their independence from the colonial masters. Sri Lanka and India are notable South Asian countries adapting to the social democratic welfare state model in the post-colonial context.

The state interventionist welfare state model made a major impact on the legal regime governing relations between capital and labour ('employer-employee relations'). The welfare state deliberately intervened to enact laws to protect the 'weaker party' in the contract of employment from the prerogative of the employer. Thus, the labour law regime materialized within the welfare state model was widely acknowledged as a pro-labour regime. Legislations on working conditions, wages, hiring and dismissal, social security and collective bargaining rights were enacted.These provisions ensured a minimum level of protection for the workers.

Neo-liberalism, which replaced the social democratic model,strongly advocates the 'minimal state' meaning the withdrawal of the state from the economy, leaving it to the free market forces. Neo-liberalism emerged as a dominant discourse in the 1980s. Following the collapse of the Soviet styled central planned economies with the dawn of the 1990s, it established its hegemony in economic-political-ideological spheres in a worldwide scale.Structural adjustment projects were initiated to make profound changes in traditional welfare oriented structures with privatization, deregulation and state-non-interventionism being defining characters of the neo-liberal reform agenda.

This paper attempts to examine the impact of neo-liberal reform doctrine on state policy framework governing the labour law regime, with special reference to Sri Lanka and India. These two countries followed a strong welfare state system and accordingly enjoyed a largely pro-labour legal regime in the pre-liberalization period. Both nations were also subjected to a radical paradigm shift from the welfare state to the neo-liberal state in the recent decades. This paper argues that this shift has produced fundamental changesin the state policy of these countries from labour oriented policiesto pro-capital policies. To examine this thesis, the paper evaluates the developments that occurred in the terrain of labour legislations since it constitutes a vital aspect of state policy making. Thus, labour legislations and reforms of the two countries since their independence to the year 2015 are taken in to consideration.

The study is qualitative. Labour legislations of both pre and post-liberalization periods, commission and task force reports and government policy papers were analysed as primary sources of information. In addition, as secondary sources other related literature were referred.

The paper is structured as follows. Section two, through reviewing existing literature, provides an overview of the pro-labour legal regime formed during the phase of social democratic welfare state in Sri Lanka and India. Further it discusses dimensions of neo-liberal labour reform discourse and its impact on state policy making. Section three analyses the character of labour legislations and reform policies of the two countries in the era of economic liberalization. Finally sectionfour provides a conclusion of the study with follow up remarks.

2. Literature Review

2.1. Labour Oriented Legal Regime of the Social Democratic Welfare State Epoch

The case for state intervention to regulate employment relations arise from the fundamental premise that the contract of employment is made

between the two parties which hold an unequal standing. The employer who is in possession of instruments of production benefits from a superior bargaining power over the worker with regard to the contract. This superior status of the employer is defined as the 'employer's prerogative' (Bhattacharya 2008).

Employer's prerogative occupied the centre role of employer-employee relations prior to the emergence of the modern contract of employment. Before the Second World War, in most countries, no effective state protection was available to workers and only a week's notice was sufficient to terminate the employment of the worker (Battacharya 2008). The notion of modern contract of employment seeks to restrict employer's prerogative through incorporating social legislation to regulate employer-employee relations. Thus state regulation and the state recognition of the right of collective bargaining constitute an integral part of the modern contract of employment (Deakin 2001).

Ideas developed by the German Jurist Hugo Senzheimer during the days of the social democratic Weimar republic were influential in modelling the welfare-oriented conception on labour laws. Apart from remedying the structural inequality of bargaining power of two parties of the employment contract,Senzheimer based his case for state intervention in labour relations on four other main insights (Weiss2011). First, object of the employment contract is not a mere commodity but the human being itself. This implies the need of a distinct approach towards employment differing from general commercial laws governing business transactions. Second, in employment relations the worker is personally dependant on the employer. Third, this dependency endangers human dignity, therefore, law should operate as a tool of preserving dignity of the worker. Finally, he argued for a radical extension of labour laws beyond matters relating to the employment contract, covering broader issues of needs and risks employee face in his economic life. This conceptualized social security law as an indivisible part of labour law.

Post-Second world war social democratic welfare state model championed the case for state regulation of capital-labour relations. The idea of structural inequality between parties of the employment contract was

recognized as a well established doctrine in the legal scholarship within the post-world war consensus (Hepple2011) which influenced governments to implement relevant policy reforms to address this inequality. Accordingly, distinctive labour law systems comprising legislations on minimum wages, working hours, occupational safety and health, job security, dispute settlement and collective bargaining were developed. As Hepple(2011) points out, in return for continuing to be subject to hierarchical management organization, labour was guaranteed with income and employment security by means of social legislations.

In the South Asian region, Sri Lanka and India adopted the welfare state model in the immediate period following the independence from the British. In 1954 Indian Parliament adopted a resolution that stated the objective of Indian economic policy should be in accordance with a 'socialistic pattern of society' (Sarker2014). In their categorization of post-independent Indian economic history SunandaSen and ByasdebDasgupta (2009) identify the first two and a half decades of Independent India's development phase as a social democratic regime. As IshithaDey (2012) points out Nehruvian vision of development underlined the internal logic of this phase. 'Nehruvian Socialism' (An Indian form of social democracy) embraced the notion of Workers' rights in a social democratic sense[1] (Dutt,1981). During this epoch an import- substitution economic policy was adopted and private business entities who wished to initiate an industrial establishment was obliged to obtain a license from the state. Moreover, under a policy which favoured an expanded public sector eighteen industries were reserved exclusively to public ownership[1] (Sarker,2014).

It has been argued that the notion of welfare state in Sri Lanka has its roots in the social policy of British colonialism (Jayasuriya2004). However, during the 1956-1977 period in Sri Lanka, orientation towards a social democratic welfare state was enhanced. Post independent governments, especially governments elected in post-1956 era, contributed in developing a comprehensive welfare system. During this period key sectors of the economy

including transportation, ports, banks, insurance and petroleum were nationalized. Sankaran (2007) observes a similarity between post independent Indian and Sri Lankan welfare state models which she identifies as a 'socialistic model'. Apart from the social democratic ideological orientation of post independent governments, the strong presence of trade unions and the powerful influence of leftist parties in these countries can be pointed out as other decisive factors which lead to the formation of the said welfare regime(Ranaraja2005).

The welfare state doctrine succeeded in establishing a labour regime which was widely recognized as a pro-labour establishment (Weerakoon1987). In Sri Lanka Wage Boards Ordinance, No 27 of 1941 established a tripartite structure to determine minimum wages and conditions of employment in any trade or industry covered by the ordinance. This was a democratic structure which drew representation from employers, workers and the state. Maternity Benefits Ordinance, No 32 of 1939 provides for maternity leave and other maternity benefits for female workers covered by the Factories ordinance. Shop and Office Employees Act, No 19 of 1954 laid down regulations on conditions of employment such as normal working hours of a day or a week, holidays, leave, overtime etc. of shop and office employees and was described as the 'Charter of Rights of white collar workers' (Wimalasena2014).

Furthermore, the Industrial Disputes Act, no 43 of 1950 (IDA) was amended in 1957 with the introduction of Act No 62 of 1957 and accordingly a system of labour tribunals was established to regulate industrial disputes. A labour tribunal is a quasi-judicial body and it was set up to serve as one of the several avenues for settlement of disputes between employer and worker. Under the provisions of the amendment a workman or a trade union on behalf of the workman was entitled to make an application to the labour tribunal seeking for relief in respect of matters concerning- a) Termination of service by the employer, b) Issues regarding payment of gratuity or other benefits and c) Such other matters relating to the terms of employment or the conditions of labour. Thus the amendment removed the 'contractual right' of the employer to

terminate the employment of contract at will or by notice and brought the issue of dismissal under the light of state scrutiny. Ranaraja (2014) views the impact of the amendment to IDA as the establishment of ascendency of legislation over contract. Employees Provident Act, No. 15 of 1958, established a state run contributory provident fund scheme for private sector workers.

Termination of Employment (special provisions) Act, No. 45 of 1971 (TEWA) can be observed as the high water mark of pro labour legislation of the welfare state period. The act restricted the employer's common law right to terminate employment on grounds other than disciplinary grounds. According to the provisions of the Act, to terminate the employment of any workman on non disciplinary grounds, the employer should obtain a) the prior written consent of the workman or b) the prior written approval of the Commissioner of labour[2]. This law applies to any employer who employs more than 15 employees. This requirement to obtain approval of the competent state authority was also extended to the cases of termination of a single employee.The Commissioner is vested with absolute discretion in granting or refusing approval to such applications made by the employer. A worker can make a complaint to the Commissioner of Labour within 6 months of the termination if the termination was made in contravention to the act. In case of terminations the Commissioner is empowered to stipulate the quantum of compensation payable to a terminated worker. This act while ensuring a greater degree of employment security for the worker curtailed the prerogative of the employer with regard to termination significantly. Further in early 1970's legislations were enacted to enhance trade union rights. The Trade Union Representatives (Entry into Estates) Act, No. 25 of 1970 ensured freedom for Trade union representatives to enter in to estates and hold meetings[3]. Trade Union Ordinance was amended in order to permit trade unions of public sector workers - except those at the top management - to join unions common to all public servants and also to federate (Weerakoon 1987).

Three major pieces of legislation areinfluential in attributing a pro labour character to the Indian labour regime of the social democratic welfare phase.

Datta and Sil (2007) observe these laws as central to the later debate on neo-liberal restructuring of labour relations.

Industrial Dispute Act (1947) which provides a machinery to investigate and settle industrial disputes was amended in 1972 and according to the amendment any establishment employing more than 50 persons was required to give 60 days notice to the appropriate government authority in case of closure of the establishment. In 1976 Chapter V-B was introduced to the IDA making approval of the state authority mandatory in the cases of termination in firms employing more than 300 workers. In 1982, the scope of Chapter V-B was further expanded by reducing the threshold limit of 300 workers in to 100 workers (Government of India Planning Commission, 2001). These provisions weresimilar in essence to the Sri Lankan TEWA.

Contract Labour (Regulation and Prohibition) Act (1970) (CLA) was enacted to provide legal protection for workers who are hired through labour contractors by a principle employer. The act applies to establishments which employ twenty or more employees. Under this act every establishment which hire contract labour in its operations, should register itself with the registering office (section 7). Further the Act stipulates that no contractor is allowed to execute work through contract labour without obtaining a license issued by the competent authority (section 12).

A noteworthy feature of the CLA is that it grants the authority to government authorities to abolish the usage of contract labour under certain circumstances and accordingly criteria were set down to identify these 'circumstances'(Section10). These criteria were drawn by the judgment delivered by the Supreme Court in the case Standard Vacuum Refinery Company v. Their workmen (1960-II-ILJ page 233) which declared that contract labour should not be employed in circumstances which falls under the said criteria[4].

Trade Union Act (1926) provides for the legal recognition of trade unions. Although this was enacted in the British Colonial period the pro-labour doctrine embedded in this legislation formed an integral part of the post Independent

Indian welfare state. According to the original act minimum 7 workers were sufficient to form a trade union, which made forming trade union easier. The act moreover provided that' no less than one-half of the total number of the office bearers' of every trade union was required to be persons who are actually engaged or employed in the industry which the trade union is connected' (section 22). Hence outsiders of the workplace were also permitted to be members and office bearers of a trade union. This provision allowed professional trade unionists to be active in trade unions which were not necessarily connected to their profession and therefore served as a provision which encouraged trade unionism. It also provided a firm ground for political parties with affiliated trade union federations to organize workers in multiple industries. Further the Act recognized the right of a trade union to sustain a separate fund for the promotion of political purposes i.e. civic and political interests of its members (section 16). A reading of section 16 together with section 22 makes evident that political trade unionism was well recognized by the state[5].

Although the labour regime thus spelled out greater protection for the workers the protection was limited to the formal sector. Most of the legislations lay down a threshold limit of 10 or 20 employees for laws relating to social security or conditions of work to apply. In cases of disciplinary actions, retrenchment, layoffs and closure compensation the threshold is even higher, fixed at 50 or 100. Smaller establishments which employ fewer workers were thus excluded from state protection (Sankaran2007).

Even with such inadequacies, Indian and Sri Lankan legal regimes stand as exemplary models for social democratic welfare state labour regimes. It is this model which has been subjected to intense criticism within the neo-liberal reform discourse as an 'archaic', 'inflexible' and 'rigid' legal framework.

2.2. Neo-liberal Labour Reform Discourse and its Effect on State Policies

According to Harvey (2005) Neo-liberalism is a theory of political-economic practice which propose that human well-being can be advanced by

liberating individual entrepreneurial freedoms within an institutional framework, characterized by strong private property rights, free markets and free trade. Therefore, state intervention in markets must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second guess market signals (prices) and because powerful interest groups will inevitably distort state interventions (particularly in democracies) for their own benefit.

The connection between the emergence of neo-liberalism and the shrinking role of the welfare state has been well identified by a number of scholars (Jessop,2003;Harvey, 2005;Hill and Kumar,2011). The rise of neo-liberalism first in the laboratory of Chile, following the coup d'état against Salvador Allende (Klein,2007) and later in the developed countries signalled the end of Keynesianism which advocated for a social compromise in between labour and capital (Amin,1994).

Harvey (2010) describes neo-liberalism as a force reconfiguring the role of the stateby means of establishing a 'state-finance nexus' favouring the upper hand of capital over labour. He defines itas a 'political project'launched by the economic elites with the intention of curbing the relatively high bargaining power labour has consolidated within the framework of social democratic post-war welfare state.

This project consists a political front on the one hand and an ideological front on the other (Harvey, 2016). In the ideological front, think tanks funded by big capital propagated ideas of supply-side economics which later infiltrated the academia providing such ideas an ideological dominance. Politically, some version of neo-liberal theory has found acceptance of political establishments throughout the spectrum in current state of affairs,from old style social democracies such as Sweden and New Zealand to contemporary China. The practice of global financial institutions adhering to liberalized economic policies including the International Monetary Fund, World Bank and World Trade

Organization which regulate global finance and trade operates as a coercive force compelling states to pursue neo-liberal policies in state policing.

Contemporary globalization largely shaped by neo-liberal policies (Scholte, 2005) hasexpedited this trend of neo-liberalization of the state.Global corporations have emerged as a powerful actor within the global polity with a larger influential power over decisions of governments. (seeArthurs (2006) for a detailed discussion).Therefore, powerful economic dynamics of neo-liberal globalization on the one hand and submission of states to the rationale of these dynamics on the other provides the background to the emergence of contemporary labour reform discourse. These new economic dynamics has replaced the former 'Fordist' mode of capital accumulation by what Harvey(1989) describes as 'flexible accumulation' consisting of 'new sectors of production, new ways of providing financial services, new markets and intensified rates of commercial, technological and organizational innovation'. Outsourcing, offshoring and casualization of work are examples for such flexible business practices in relation to labour. As stated by Anderson et al. (2005) assisting this shift from Fordist mode to flexible accumulation is the driving objectivebehind the contemporary restructuring of labour relations.

Protective labour laws are thus often described as 'rigid' by neo-liberal ideologues as well as state policy architectures providing liberalization an ideological justification. Reasons cited to legitimize the dismantling of social-democratic labour regime are diverse.

First, rigid labour laws are said to be an obstacle for employment creation and thus a reason for widespread unemployment (Siebert,1997;). Second, it is argued that such laws cause the expansion of informal sector at the expense of the formal sector since due to rigid laws investors lose incentive in investing in the latter (Battacharya,2008). Third, Trade unions have been described as an anomaly distorting market forces, which can optimize only when left to its own instincts (Deakin&Haldar, 2015). Fourth, restrictive laws are seen as an obstacleshampering productivity of firms and thus economic growth. Sixth, in relation to third world countries, it is claimed that strong labour protective laws

meant to be applied to mature industrial countries cannot be 'transplanted' into the context of a developing country (Deakin& Haldar,2015). Therefore, third World countries face a necessary choice between meeting the needs of subsistence and enforcing 'decent' labour standards, and it would be rational to choose the former (Fields,1994). Seventh, rigidity of such laws is seen as an obstruction in attracting foreign capital (Javorick&Spatareanu,2005).

Thus, relaxing restrictions imposed by law on the prerogative of the employer constitutes the bottom-line of neo-liberal labour reforms. Battacharya (2008) observes this trend of liberalization as a restoration of the concept of employer's prerogative which social democratic state attempted to regulate.

Smith and Morton (2006) details how the regime of MargretThatcher, the pioneer of neo-liberal reforms in United Kingdom enforced a series of labour law reforms directed towards this end, including the removal of statutory support for collective bargaining, dilution of the scope of employment protection and restricting the immunity granted for trade unions in relation to torts. They argue that the 'New Labour' government, the successor of the conservative regime largely followed a similar course with combining the discourse of 'flexibility' with the rhetoric of maintaining 'fairness'. Examining the legal nature and impact of the Employment relations act of 1999 and Employment act of 2002 authors draw the conclusion that particularly in relation to 1. Restriction of trade union action and 2.liberalizing laws regarding dismissals, New Labour largely has continued its adherence to the labour reform discourse of the former Conservative regime.

Smith and Morton's account is important in understanding the political consensus neo-liberalism has established in relation to labour laws. Thatcherism amounted to a paradigm shift in British polity, compelling labour party, the traditional social democratic party in Britain, to abandon its former positions to embrace a neo-liberal oriented economic model known as the 'third way' (Hall, 1998). Acceptance of neo-liberal consensus by political parties across the traditional spectrum of left-right divide amounts to a certain 'continuity' in the trajectory of labour reforms albeit differences in the precise form of implementing these changes.

Further, Arthurs (2006) provides an impressive account on the character of labour law reforms launched in the Canadian state Ontario offeringimportant insights on the connexion between neo-liberal discourse and state policing. In this account he describes how theneo-liberal regime of premier Harris elected in 1995 approached the issue of labour relations in a highly partisan manner with the intention of making Ontario 'open for business'. Reducing workplace inspections, laying off labour department staff, outsourcing policy making to private firms and dismantling consultative forums on labour are few controversial reforms the new government adopted. Arthurs arguably describe this process as a 'politicization' of labour law implying that labour legislations in the pre-globalization era was more or less apolitical. The claim is arguable since labour legislations of the pre-liberalization era were also influenced by political factors, but the difference being it represented a different form of politics.

Commonalities can be found in various neoliberal labour law reform packages being attempted or implemented in various countries across the globe. A comparative study conducted by the International Society for Labour and Social Security Law (Compa, 2006) in 23 countries identifies such similarities. Thus, in North and South America, Europe and Asia pacific, some of the common objectives labour reforms attempted to realize includes a) Curtailing provisions on collective bargaining through diluting provisions to extend collective agreements to the wider society b) Allowing parties of the employment contract to move away from certain minimum statutory requirements in relation to working hours and overtime pay c) Enacting anti strike laws d) Curtailing protections available for workers in case of lay-offs and job assignments and e) Facilitating employers to utilise non standard forms of employment such as temporary, apprentice and trainee labour contracts to circumvent their legal obligations to workers.

In the case of global south Deakin (2011) observes how more or less all Latin American countries adopted labour law and social security systems compatible with standards then prevailing in Europe and North America prior to the neo-liberal ascendency. The labour policy coupled with the strategy of

import-substitution industrialization increased the number of workers covered by formal employment arrangements. He further identifies the neo-liberal effect on state policies leading to a process of decentralization of collective bargaining, privatization of social security funds and the advent of atypical forms of labour such as temporary and fixed-term work largely replacing formal full time work. Deakin argues that, contrary to the neo-liberal assumption, statistics on economic growth and employment didn't significantly improve following labour market reforms. Moreover, he identifies the trajectory of labour relations as complex since due to the resistance of organized labour, state regulations were not totally disappeared and there were counter-currents to the neo-liberal tendency such as certain protective laws adopted by some centre left governments during 2000s.

It is possible to extract several conclusions from the discussion so far. One, the material process of economic liberalization is accompanied by a rigorous ideological discourse demanding the dismantling of the welfare oriented labour regimes materialized within the framework of post world war consensus. Two, this ideological demand is reflected in labour reform processes unleashed by states which has come under the influence of economic currents embracing neo-liberalism whilst accommodating flexible accumulation being the driving force underpinning such processes. Three, neo-liberal labour reforms have gained wider reception signalling the submission of formerly social-democratic parties in to the neo-liberal consensus. Four, despite differences, similar patterns are observable in numerous countries in relation to reform packages whereas granting larger freedom to employers being the priority of reform procedures.

Within this conceptual framework, the next section attempts to assess the neo-liberal bias embedded in the labour reform processes of successive governments in Sri Lanka and India.

3. Analysis

Sri Lanka was the first South Asian country shifting to a market-friendly economic policy abandoning the former notion of social democratic welfare state. In 2007 the World Bank stated that Sri Lanka has been South Asia's most open economy for the past 30 years (World Bank 2007). In India shift to neo-liberalism was accelerated under the Rajiv Gandhi government and gained momentum since 1991 (ShyamSundar,2006). Sunanda Sen and Byseb Dasgupta (2009) identify late 1970's to mid-1980's as a phase marking a drive towards liberalization and the post-1991 phase as the phase of 'economic reforms'.

The ideological case for labour deregulation resonates in intellectual, academic and political circles both in Sri Lanka and India since these countries entered in to economic liberalization. There exists a wide ranging literature viewing Indian and Sri Lankan protective labour regimes as obsolete and obstructive for growth (Lucas1988; Ahluwalia1991; Papola 1994; Rama 1994; Ranaraja2005; Institute of Policy Studies of Sri Lanka 2015). Observing the evolution of neo-liberal labour reform discourse in India Battacharya (2008) identifies it as consisting of two phases. In the first phase of liberalization, labour reforms were not supposed to be a 'priority' in the reform agenda. It gained priority only after other liberalization attempts were deemed to have failed. Therefore, the failure of liberalization attempts in one market was attributed to 'rigidities' and 'distortions' in other markets and thus labour market was referred to as one of these 'other markets'. Labour laws are often cited as a reason preventing the attraction of foreign investors to Sri Lanka (Sahoo,2006). Following sub sections detail how this discourse of neo-liberal labour reforms has infiltrated the language of state policy makers gaining an 'official status' and the extent this infiltration reflects in legislations on labour.

3.1. Sri Lanka

Sri Lankan government elected in 1977 initiated in liberalizing economic relations. It embraced the contemporary 'South-East-Asian development

model[6]' which was characterized by a liberalized economy combined with an authoritative state-political structure (Weerakoon1987). Greater Colombo Economic Commission bill of 1977 was among the first laws presented by the newly elected United National Party (UNP) regime to the legislature with the purpose of establishing a commission to setup Free Trade Zones (FTZs). Free Trade Zones (Export Processing Zones / Special Economic Zones) were to be a cheap source of labour, a terrain exempted from general labour standards and provided with economic relaxations such as tax reliefs (Dey2012). The Commission was empowered to exempt industries established within a FTZ from existing labour legislations which included the Wage Board Ordinance, Shop and Office Employees Act, Factories Ordinance, Trade Union Ordinance and Maternity Benefits Ordinance. With regard to the IDA and the TEWA (see the discussion in section 2.1) the bill itself in a special section declared that these laws have no application within the recognized area of a FTZ.

The legality of the bill was challenged before the Constitutional Court by trade unions on the ground that it included discriminatory provisions and thus it violates the fundamental right of equal protection of law (Wickramaratne 2012). The Court upheld this objection and 'discriminatory sections' were removed from the bill. Therefore, the Greater Colombo Economic Commission Law, No.4 of 1978 which was later enacted by the legislature, lagged behind its proposed purpose. Nevertheless, the Prime Minister at that time is reported to have stated in the legislature that the government intends to make FTZs a 'robber baron's area'[7]

Employment Relations Law of 1978, again one of the maiden legislations presented by the newly elected regime at the time, attempted to introduce a comprehensive change to the labour regime radically breaking from its social democratic past. Due to the strong opposition it faced the bill was gazetted as a White Paper to invite public discussion (White Paper on Employment Relations of 1978).

Significant proposals of the White Paper are as follows -

a) Introduction of a 'Domestic mechanism of dispute resolution' in industries (clause 21). Employees were required to make complaints regarding termination of employment to a 'domestic mechanism' set up by the employers themselves and the workers were entitled to seek relief from labour tribunals only in exceptional circumstances where the said domestic mechanism has not observed principles of natural justice. This provision attempted in a drastic diminution of the scope of labour tribunals by reducing its functioningin to a mere appellate body which can interfere in a case of termination of service only on questions of law.

b) Restriction of strike action (clauses 29-34). Trade unions were required to give at least 21 days' prior notice to the employer in case of a strike action. Go-slow was declared as a form of illegal strike action and in such cases employer was given the discretion to terminate the employment of 'selected workers'.

c) Introduction of 'Employees' Councils' (clauses 36-86). A body of elected representatives of workers i.e. employees' councils were proposed to form in every enterprise. One of the objectives of the council was to regulate relations between employer and employees. This body was seen as a substitution for trade unions (Weerakoon1987). Trade unions traditionally are formed independent of the employer, whereas the proposed employees' councils were a mechanism which made the workers work together with the employer 'in a spirit of mutual trust' creating a dependent relationship (clause 72). In a case of dispute, a trade union was obliged to refer the grievance to the employees' council (clause 77). If the council found the grievance genuine it was supposed to remedy such grievance by 'negotiations' with the employer. If the council is of the opinion that the grievance is not well founded it was supposed to notify the employer and its decision was binding on the trade union.

d) Repeal the effect of TEWA (clause23). Labour protective measures of the TEWA were proposed to be removed repealing the provisions which required the

prior state approval in cases of terminations on non disciplinary grounds. The white paper was not passed in the legislature due to the strong resistance raised on the side of trade unions (Skanthakumar2015).

However, following the retreat of the trade union movement subsequent tothe general strike of 1980, certain reforms were successfully enacted by the government to liberalize the labour market. The Payment of Gratuities Act, No.12 of 1983 curtailed the discretion of labour tribunals to make orders in respect of gratuity. According to the previous law tribunals were at discretion to order gratuity payments ranging from 2 weeks to 8 weeks. The new act fixed the maximum limit of two weeks' wages as gratuity payment for each year of service.

The other major reform was the liberalization of provisions regarding night work for women. Although Sri Lanka has not ratified ILO Conventions on night work for women, regulations on night work were included in several existing legislations (Factory Ordinance No 45 of 1942; Shop and Office Employees act, No. 19 of 1954 and Employment of Women, Young Persons and Children Act, No. 47 of 1956). These restrictions were removed by the Act No. 32 of 1984. With the establishment of FTZs feminization of the labour force deepened and the capital demanded liberalization of restrictive measures on night work of women and thus, although enclosed with a rhetoric of removing gender discrimination, the drive to these measures should be understood against this backdrop of political-economy.

In the mid 1990 s a temporary halt can be observed in the labour reform process. The National Workers Charter was presented by the government elected in 1994 which in its initial stages appeared to have an inclination towards labour friendly legislations. However, the government failed to live up to this expectation in front of the pressure laid down by the employer community (Law and Society Trust,1995). Workers' Charter remains to be incorporated as a legislation.

In 1995 the government ratified the ILO convention No.87 of 1948 on Freedom of Association and Protection of the Right to organize. Accordingly, the IDA was amended in 1999 by the Act No.56 of 1999 to integrate provisions on freedom of association in the aforementioned convention into domestic jurisdiction. The concept of 'unfair labour practices' was introduced and discrimination within the workplace on the ground of trade union activism was declared punishable (Section 32 A). Further the act obliged the employer to bargain with a trade union if its membership consists of not less than 40% of the workers. Although this was a welcoming move from a rights based perspective, the 40% threshold a trade union requires to gain collective bargaining rights has been criticized both by trade unions and the ILO as an unrealistically high threshold which makes the application of the provision highly improbable (Skanthakumar, 2008).

However, counter trends represented by provisions such as the workers' charter and the introduction of the concept unfair labour practices are weaker in comparison to the mainstream neo-liberal drive in policy making in the larger context. Pressure of international financial institutions in implementing deregulation measures is significant in this case as following liberalization governments increasingly started depending on global economic polity. According to a 1998 IMF report, the TEWA was explained as a 'negative impact on work ethic and productivity and as a source for the rise of informal forms of labour' (Biyanwila,2011). Brown (2002) sums up the crux of labour reform recommendations promoted by International financial institutes and certain sections of the employer community as follows - 1. Dilute statutory restrictions on the employer's discretion to fire workers; 2. Eliminate overtime limits so that workers can be compelled to work longer hours; 3. Limit the right to strike; 4. Weaken the mechanism for setting liveable minimum wages. Biyanwila (2011) further cites a report of the World Bank which continued its criticism of the TEWA. It states that "reforming restrictive labour laws are 'stroke-of-the-pen reforms' if the government has the political will to do so". While the unpopular nature of the proposed reforms did not pass the attention of the International

financial institutions, this is evidence for the continuous influence they exercised over successive governments pressing for labour reforms.

Since 2000 s, consecutive governments have openly declared the need to de-regulate labour relations. On the issue, a consensus has emerged between both major parties in the country whereas traditional 'market oriented' United National party as well as the centre left Sri Lanka Freedom Party sharing the conception of removing so called labour market rigidity.

For instance, in 2002 a poverty-reduction-strategy-paper was adopted titled 'Regaining Sri Lanka - Vision and Strategy for Accelerated Development'. This paper which was adopted by the United National party regime (2001-2004) presented a comprehensive program to restructure the whole economic organization in accordance with neo-liberal principles[8]. Sri Lankan labour market was described as an over regulated market and as a factordiscouraging generation of employment in the formal sector along with functioning as an incentive for enterprises to operate in the 'unregulated' sector (Skanthakumar,2013).

Based on this rationale the government came forward with the Draft National Employment Policy in 2002. Critiquingthis policy paper, Brown (2002)questions the transparency and credibility of the paperas its conclusions are drawn through consultations with a private firm, which operates as an employers'consultants' agency.Amending provisions of the IDA which grant power to labour tribunals to issue an order of reinstatement of a worker in cases of wrongful termination and amending the TEWA were among the key reforms proposed by the policy paper.

Further, in 2002-2003 several legislations were passed by the parliament introducing pro-employer reforms to the legal framework. Factories (Amendment) Act, No.19 of 2002 lifted restrictions on overtime work of women. It extended the maximum overtime work limit of a working woman from 100 hours to 720 hours facilitating further extraction of female labour.

In 2003 Act No.12 of 2003 was enacted to amend the TEWA. Following amendments were made: - a) Under the prevailed law a period of 6 months was provided to a worker to make a complaint to the Commissioner of labour in a case of illegal termination of employment. This time period was lowered to 3 months (section 4) b) The discretion vested with the labour commissioner to determine compensation in cases of termination was abolished. The minister was empowered to put up a 'formula' to determine compensation and the labour commissioner was obliged to follow the formula (section 6 B). This provision curtailed the power of the labour commissioner to determine compensation in case of an unlawful termination which provided the commissioner a wider opportunity to intervene on behalf of the employee.

Further amendments were introduced to the TEWA through the Industrial disputes (Hearing and Determination of Proceedings) (Special Provisions) Act, No.13 of 2003. This act stipulated that the decision on any application made by an employer, seeking approval of the commissioner on termination of an employee should be concluded within two months. Previously the commissioner was entitled to make a decision within 3 months and Nagalingam vs. De mel (78 NLR 23) held that the 3 months' period is directory and not mandatory. Furthermore, as per the amendment, in cases of complaints made by the employees on unlawful terminations, the commissioner was made obliged to reach in to a decision within two months after receiving the application. These reforms attempted to lift 'inconveniences' the employer encountered in dealing with issues of termination.

The Sri Lanka Freedom Party led government's (which came in to power in 2004) open articulation on the need of labour deregulation is observable in two principle policy papers. *'MahindaChinthana' - Ten Year Horizon Development Framework* (2006-2016), the policy paper outlining the development strategy of the new government, highlighted the need to implement a 'growth oriented and investor friendly labour market approach' (Ministry of Financing and Planning, 2006). It repeats arguments of labour laws leading to unemployment and informality. The paperconceptualizes two models of achieving worker protection

i.e. 1) ensuring worker protection through upgrading employable skills of the worker, in contrast to 2) ensuring worker protection through protective legislation. The latter was seen unsatisfactory and the former was welcomed in the affirmative on the basis that it is more compatible with the market rationality. This 'theory' suggest that if the 'employable skills' of workers are high they can demand better service conditions and are in a comfortable position in finding employment opportunities in case of termination.

The *National Human Resources and Employment Policy of Sri Lanka* (2012) can be described as an extended policy arrangement developed within the conceptual premise laid down in the Ten Year Development Framework. While criticizing the rigid nature of the Sri Lankan labour market, it suggested encouraging the use of contract labour in under developed regions as a mean of employment creation (Government of Sri Lanka, 2012). Contract labour lies outside the formal labour protection regime. It even goes far as praising usage of contract labour as an 'innovative practice'. The policy was approved by the cabinet in September 2012.

It should be highlighted that although consecutive governments facilitated reform proposals to deregulate labour in favour of employers, proposals of organized labour are hardly being incorporated within labour reform packages. Longstanding trade union demands such as giving legal effect to the the National Workers Charter, lowering the 40% threshold regarding collective bargaining clause in the IDA, adopting necessary measures to implement labour standards within FTZs etc. (National Association for Trade Union Research and Education (NATURE),2009) have been overlooked by government labour reform packages.

However, it should also be noted that though governments articulated the need for neo-liberal reforms in the policy level, there is a failure of implementation of such policies in form of legislation. Even certain reform laws were enacted, it is the social democratic labour regime model which still holds the upper hand in the Sri Lankan context. The factor which prevents

governments in dismantling the existing labour framework is the mass opposition which the reform process is met with.Thus, the drive of neo-liberalism is not a linear process in its nature, but a complex process consisting counter currents as well as setbacks.

3.2. India

The approach of the Indian state towards labour relations following economic liberalization has been observed as a dualist approach (Sood et al 2014). The state whilst been reluctant to implement existing laws in favour of labour in certain areas, it has simultaneously demonstrated concerted efforts in other areas to facilitate capital.

The planning commission of India set up a task force to submit a report on employment opportunities and the task force came out with its report in 2001 (Report of the Task Force on Employment Opportunities). The report acknowledges the 'inflexibility' of the Indian labour regime (Government of India Planning Commission, 2001). According to the report inflexible labour policies burden domestic producers disadvantaging the local producers in a context of global free market economy where competition is crucial. It speaks about the 'protection of legitimate labour rights' within a framework encouraging efficiency and labour productivity. Though protecting workers is important it is also said that when doing so one should thoroughly keep in mind the 'economic nature' of the decision to hire labour.

The report further refers to the chapter V-B of IDA which restricts employers' discretion on termination of employment as an adverse effect 'especially on labour intensive industries' and as an obstacle to attract FDI in to such industries. The report recommends total deletion of the chapter. It cites two other government reports - Inter-Ministerial Working Group on Industrial Restructuring of 1992, The Committee on Industrial Sickness of 1993 - as an authority to justify the recommendation. Moreover, it promotes the usage of fixed-term contracts for production purposes as a measure to relax the burden of formal labour laws.

Furthermore, the report goes on stating that the issue of dismissal is also 'rigid' due to the intervention of trade unions. In cases of dismissals on disciplinary grounds trade unions are said to raise disputes over such dismissals which lead to litigation and it was submitted that litigation cost is a burden on the part of the employer. Regarding strike action, it recommends that a system of secret ballot should be introduced if a strike action is to be legal. This suggests an external intervention in to the domain of internal activities of a trade union which supposed to be a self governing entity, if they are to be operated with accordance to the democratic principle of freedom of association[9]. The report further proposed that a trade union should render prior notice to the employer if the strike is to be legal.

Moreover, the task force proposed fundamental reforms to the CLA which restricts the use of contract labour in perennial forms of activities of a firm. In Air India Statutory Corporation v United Labour Union (AIR 1997 SC 645) the Supreme Court interpreted the CLA in a manner declaring that activities having a regular nature performed within the premises of a firm should be regarded as 'perennial activities' and that such workers should be absorbed in to the firms permanent payroll. This legal status-quo which was seen as 'cumbersome' on the part of the employer was suggested to be repealed in order to widen the opportunity for employers to outsource services.

Suggestions were further made in relation to the minimum worker requirement to form a trade union which was seven workers at the time. The report recommended to set a higher threshold of 10% of the employees in a business establishment or 100 workers as the requiredminimum membership to form a trade union. Further suggestions were made to restrict 'outsiders' becoming office bearers of a trade union. Following the task force report Trade Union (Amendment) Act of 2001 was enacted to give legal effect to above recommendations on increasing the threshold limit and the restricting outsider participation in trade unions. Given the fact that the Planning Commission of India used to be a key policy making body during its existence these

recommendations reflects how the state prioritize 'business' at the expense of labour[10].

In 2002 Second National Commission on Labour (SNCL) publicized its report. It was set up in 1999 to review the existing labour regime within the light of liberalized and globalized economic conditions (Second National Commission on Labour, 2002). It should be noted that for a more or less extent, this report is a balanced account considering both sides of the contradiction of labour and capital.However, its recommendations did not deviate from the continued bias towards reforming the social democratic labour regime. Its decisive recommendations reflecting the neo-liberal bias are as follows -

1. To keep all the supervisory personnel outside the rank of worker regardless of their wages. Labour laws only cover workers; therefore, such wage earners are not entitled to the protection of labour laws.

2. To amend the IDA provisions on retrenchment. 'Retrenchment' was strictly meant to be applied only to circumstances where an employer terminate employment in case of surplus labour. Thus the prevailed law which brought termination in case of non renewal of contract under the provisions of retrenchment was proposed to be excluded from the provisions regulate retrenchment. Further enterprises which employ less than 300 workers were suggested to keep out from the scope of chapter V-B. In spite of the intention of the Union Finance Minister to increase the threshold limit up to 1000 workers, the commission opted for a middle ground of 300 workers as the threshold.

3. Introducing a compulsory secret ballot if a strike is to be legal. Thus a strike would be legal only if it obtains 51% of the votes of workers who are employed in the workplace where the strike is proposed to conduct. In case of 'essential services' the government shall immediately intervene and refer the dispute to arbitration and adjudication even the strike obtains a 51% support of the workers. Services such as water supply, medical services, sanitation, electricity and transport are examples which the Commission refer to as 'essential services'.

4. To recognize unfettered freedom to contract out non-core activities of an establishment even in cases where such activities are perennial in nature, in contravention to the Air India judgement discussed earlier. Thus the Commission recommended the recognition of outsourcing perennial non-core services.

However, it should be mentioned, that the report also recommended reforms which can be regarded as labour friendly proposals such as obliging a firm to clear all its dues to workers prior to retrenchment or closure, ensuring contract workers an equal payment as same as the regular workers and ensuring a minimum level of protection to workers in the unorganized sector.

On the question of inspection, the State has shown interest in granting 'relief' to a wider range of enterprises through lessening the scope of inspection. The Micro, Small and Medium Enterprises Development Act of 2006 exempted industries classified as 'micro', 'small' and 'medium', from inspection under a series of legislations[11]. Labour Laws (Exemption from Furnishing Returns and Miscellaneous Provisions) Bill was presented to the parliament in 2011, which attempted to reform the definition of 'small establishments'. The existed law at the time stipulated that an entity to be qualified as a 'small establishment' number of workers it employ should not exceed 20. The bill proposed to raise the limit of 20 up to 40. This meant that more establishments shall be exempted from the purview of the act and accordingly working conditions of its workers shall not be subjected to inspection. Sood et al. (2014) further observe that although the Indian state was used to nicknamed as the 'inspector raj', the inspection rate has drastically reduced in the post-liberalization period. The inspection rate, stood at 63.05 percent in 1986 has fallen to a mere 17.88 percent in 2008. This low rate of inspections reflects the lack of will of the part of the neoliberal state to intervene to uphold decent labour conditions.

Another crucial reform was the Special Economic Zones Act, came in to force in 2005. The act intended to facilitate the export-oriented development approach of the post-liberalization epoch. In the preliminary stage, the act intended to exempt SEZs from the general labour regime of the country, but in

face of opposition it limited its scope to lay down the procedural framework of SEZs (Sankaran,2007). Nevertheless, section 50 of the act empowers state governments to delegate power vested in any authority of the state to the 'Development Commissioner', for the purpose of giving effect to the act. This provision later was widely used to exempt SEZs from the purview of general labour laws. Function of a development commissioner is to 'ensure speedy development of the economic zone and promotion of exports'. (Section 12 of SEZ Act).Dey (2012) observes that the governance structure of SEZs is a clear departure from the democratic process of governance where the development commissioner and the SEZ authority have the power to address matters, which under other circumstances, would have been addressed by elected local authority bodies. State governments however manipulate the abovementioned section 50 of the SEZ Act to relax central laws on SEZs.

Thus state governments have enacted laws empowering the development commissioner to exercise power on issues such as fixing minimum wages, making provisions for allowing women workers to work night shifts etc. Tripathy (2008) cites state governments in Andra Pradesh, Gujarat, Karnataka, Madya Pradesh and Maharashtra as such examples. Further some states have declared SEZs as 'Industrial Townships' under article 243 Q of the constitution. Once a zone is declared as an industrial township it is exempted from the application of general rules regarding municipalities and local governments. Instead an industrial township authority is constituted to govern affairs of the zone which is consisted with nominees of the developer and the state government. Thus an industrial township attains the status of autonomous self rule. West Bengal Municipal Act of 1993 declared that SEZs will be regarded as Industrial Townships. Maharashtra has followed a similar course (Dey, 2012).

An interesting development in the case of India is the role played by state governments to materialize neo-liberal labour reforms. Although the central government has been unable to implement recommendations of the SNLC in legislative reform,state governments have adopted far reaching reforms in the

state level to deregulate labour. The states are empowered to do so as labour falls under the concurrent list of the Indian Constitution.

In several states, the applicability of retrenchment provisions of chapter V-B of the IDA has been restricted by the mean of increasing the minimum worker threshold required for the application of the law. Uththar Pradesh, Rajasthan, Tamilnadu, Karnataka, Andra Pradesh, Goa and Gujarat have adopted such amendments in relation to SEZs (Sood et al, 2014).The CLA has also undergone following changes. Andra Pradesh state assembly amended the CLA by making it applicable only to firms and contractors employing 20 contract workers or more for 12 months continuously (Act No.100 of 2003). It also introduced the distinction of core and non-core activities to legislation and a large number of activities were stipulated as 'non-core activities'. These were actually activities of perennial in nature and were incidental to core activities. In 2014 Rajasthan placed the application threshold of CLA even higher i.e at 50 through enacting the Contract Labour (Regulation and Abolition) (Rajasthan Amendment) Act.

The Union Cabinet in July 2014 approved bills to amend following acts:- a) Factories Act (1948) ; b) Apprenticeship Act (1961) and c) Labour laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act (1988). Factories Act was proposed to be amended in a manner, increasing the overtime limit of employees from 50 hours quarter to 100 hours. It also proposed to relax restrictions on night work for women. Amendments to Apprenticeship act seek to remove provisions which provide for the imprisonment of the employer in cases of non-conformity with the act. It further lifted the requirement for advisor's approval for apprenticeship training programs. Accordingly, workers recruited as apprentices are deprived of certain protections they were entitled before. Labour laws Amendment Bill defined a 'small establishment' as an establishment which employ 10-40 workers, opposed to the prevailed law which kept the upper limit at 20. Except the Factories amendment bill, others were passed by the legislature and thus became law.

The most recent reform attempt in the Union level is the proposed Labour Code on Industrial Relations Bill (2015) presented by the newly elected Barathiya Janatha Party led government at centre. This bill amalgamates the Trade Union Act, Industrial Employment (Standing Orders) Act and the IDA in to a single code with significant amendments to the original enactments. Itproposes to repeal chapter V-B of the IDA according to the recommendations of SNCL. Thus what already has been accomplished regarding termination of employment in the state level in certain states, was proposed to adopt in the union level.

Furthermore, the bill prescribes total abolition of outsider participation in trade unions of the organized sector (Section 27) deviating from the principles of the original trade union act which allowed professional trade unionists to engage in trade union activities. The amendment introduced to the act in 2001 restricted the maximum number of outsiders eligible to participate in trade unions and the new amendment, surpassing the limits of the 2001 amendment, proposes a total abolition of such participation.

Seeking to prohibit outsider participation in trade unions reflects a narrow conception on trade unionism. According to Biyanwila (2011) neo-liberal paradigm situates trade unions as actors 'within' the workplace. Therefore, the new role of trade unions in flexible markets is defined as supporting to improve labour productivity at the enterprise level in the basis of 'partnerships', avoiding negative effects of contentious collective action. Historically trade unions emerged as an important social actor which did not confine itself to the narrow limits of the workplace. The social democratic welfare state acknowledged this broad character of unions and considered it as a part of the social contract. The new reform proposals of the government indicate a radical shift from this social-democratic conception to a neo-liberal perception.

Moreover, chapter eight of the bill lay down a plethora of laws on strikes. If a strike is to be legal six weeks prior notice should be given to the employer (section 71). Therefore, between a decision to strike and the actual strike action,

there will be an 'in-between period' of 42 days which allows the employer to engage in activities which can discourage the strike such as penalizing militant workers.

The pro-capital reasoning of the state legislative policy finds its reflection in other aspects of the state apparatus such as the Judiciary. Sood et al.(2014) bring our attention to a series of judgments which adopted a restrictive approach towards labour issues including the use of contract labour[12], the right of a wrongfully dismissed worker to be reinstated with back wages[13]and the right to strike[14]. From an instrument to promote social justice, it is argued that the Judiciary has transformed itself in to a machinery facilitating anti trade unionism of the political regime (Shyam Sundar, 2006). Sood et al. (2014) also refers to the phenomenon of non enforcement of existing labour legislation and manipulation of loopholes in such legislation by employers to avoid their obligations in a larger scale.

4. Conclusion

When positioning the above discussion within the conceptual outline the paper sketched in section two, it is suggested that general patterns occurring in other countries with regard to neo-liberal impact on the labour policies are reflected in Sri Lanka and India during their post-liberalization phase. This reflection is summed up as follows.

First, ideologically neo-liberal case for labour deregulation is widespread in academic, political and legal literature in both countries. Second, this ideological hegemony has infiltrated state policy approach on labour relations accompanying real shifts emerged in the political-economy with the adoption of neo-liberal policies. The driving motive underlying labour reforms in the neo-liberal era is assisting businesses through deregulation and the focus has shifted towards prioritizing capital over labour. Whereas the social democratic welfare state attempted in restricting the prerogative of employer through protective legislation, the neo-liberal state tends to liberalize these restrictions. Relaxing

laws on hiring and firing of workers, weakening the collective bargaining power of trade unions, facilitating the usage of contract labour and promoting means to achieve labour flexibility such as establishment of special economic zones are commonalities observable in both countries. Third, neo-liberalism has developed a new 'common sense' among political forces in relation to labour,blurring former left-right divisions. 'Right-wing' regimes such as BJP (India) and UNP (Sri Lanka) as well as regimes led by traditional social democratic parties, Indian Congress on the one hand and its Sri Lankan counterpart SLFP on the other, have well demonstrated their submission to the discourse of neo-liberal labour reforms.

Therefore, it is argued that neo-liberal economic policies have produced a paradigm shift within state policy approach towards labour; replacing the labour-oriented former policy with a new line, which is extensively pro-capital in its character. Even though counter trends are observable within this shift, the general trend of reforms reflects a bias towards capital.

This bias character of state reform policies towards labour poses a fundamental question about the very idea of economic development. In the neo-liberal paradigm reformers tend to achieve 'development goals' such as labour productivity, economic efficiency, employment generation and high rates of investment at the expense of labour rights. Ideologically this conception of development considers labour, just as another 'factor of production' and therefore yet another input in the production.

The ascendency of this notion is a total reversal of every historical achievement labour gained during eventful epochs of the 20th century. History of organized labour is a history of the struggle against conceptualizing labour as a mere commodity. Stipulating the objectives of the ILO, Declaration of Philadelphia (1944) famously stated that 'Labour is not a commodity' and 'freedom of association and expression are essential to sustained progress'. It articulated the case for a balanced, democratic model of development by stating ' poverty anywhere constitutes a danger to prosperity everywhere'. The

progress of international human rights discourse articulated the notion of worker's rights in a nuance form identifying a broad spectrum of rights, including 'survival rights' - right to a living wage, right to a limited working week etc.; 'security rights' - right against arbitrary dismissal, right to retirement compensation etc. and 'civic rights' - right to free association, collective bargaining and redress grievances etc. In this context labour was considered not as just another 'factor of production' but as a social actor entitled to a dignified life and a decent social existence.

The neo-liberal labour reform discourse stressing on efficiency and growth lacks this crucial dimension of social justice.Reformers tend to approach the problem of development and thus the issue of labour reforms from the point of view of the employers and investors; not vice versa. Some researchers have challenged the alleged connexion between the labour market 'rigidity' and unemployment(Rodegers, 2007; Jha and Golder, 2008 ; Deakin,2011). Even if oneassumes that employment can be generated at the expense of labour protection, a 'job' deprived of human dignity and basic rights itself is problematic. Such is the case with employment generated *en masse* in SEZs.

However, it should be noted that regulating labour within the boundaries of the nation state has increasingly become a complicated task in a globalized context. The 'race to bottom' created by globalization among countries operates as a powerful current attacking labour standards. Thus returning to the 'old' social democratic model, which had its existence in a pre-globalized context, is obsolete as an alternative. This new context demands nuanced approaches to defend labour rights. For instance, Hensmen (2010) argues for incorporating a 'social clause' in WTO agreements to counter degeneration of labour in the face of increasing free trade arrangements. Such innovative measures are needed to revive social democratic values within a globalized economic scenario, which will ensure a democratic model of development characterized with the notions of social justice and human rights.

Appendix

Notes

1. The resolution adopted by the Indian National Congress in Karachchi (1931) declared the recognition of a series of workers' rights including right to form unions, right to a limited working day and living wages, protection of women workers in mines and factories etc. Jawaharlal Nehru was influential in framing the resolution.

2. The law excluded government servants, employees in local government authorities, co-operative societies or public corporations from its purview. Further it doesn't apply to workers who have been employed less than a one year.

3. Plantation estates in Sri Lanka was established under the colonial rule. British administration brought workers from South India to work in the estates. Trade unionism was subjected in to severe restrictions under the colonial rule in theseestates.

4. The criteria is as follows - a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment: (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and (d) whether it is sufficient to employ considerable number of whole-time workmen.

5. Trade union federations affiliated to political parties play a key role to shape the trade union movement. Organizers of political parties may work in the ranks of trade unions which attribute unions a broad political dimension allowing them to operate in a politically significant manner.

6. Singapore and Malaysia were prominent South East Asian countries adopted a restrictive labour code with the intention of providing businesses to flourish. Malaysian Trade Union Ordinance(1959) provides that if a strike to be legal a two-third majority of workers should vote for it in a secret ballot. It prohibits public employees to form a trade union. Malaysian Industrial Act (1967) stipulates that only one union in a workplace is allowed.

7. See Parliament Hansard of 1978-01-19

8. The Regaining Sri Lanka program included following key policy proposals - a) Accelerate privatization ; b) Strict fiscal discipline and labour flexibility ;c) Reduction of trade and regulatory barriers.

9. Trade Unions are organizations of workers where the office bearers are being elected by its members. Strike action is a form of collective action in the part of workers and the process of deciding on a strike action itself is an internal matter. If the decision to strike is against the members' collective will such a strike shall fail. Therefore, within the trade union formation internal check and balances exist to control bureaucratic excesses. External interference may violate the self governing character of unions.

10. The Planning Commission formulated five-year plans which provided the framework of development in post Independent India. This was a key policy planning body. It was dissolved in 2014 by the newly elected Narendra Modi government.

11. Payment of Wages Act (1936), Employees' State Insurance Act (1948), Factories Act (1948),Maternity Benefits Act (1961), Payment of Bonus Act (1965), Payment of Gratuity Act (1972) were among the acts which will not be applied to industries which fall under the SME development Act.

12. JK Synthetic Ltd vs KP Agarwal (2007 (2) SCC 433)

13. Ranarajan v Government of Tamilnadu and others (2003 6 SCC 581)

14. Steel Authority of India Ltd (SAIL) & Othersvs National Union of Waterfront Workers [(2001) 7 SCC 1]

References

Ahluwalia, Isher Judge.(1991).Productivity an Growth In Indian Manufacturing. New Delhi :Oxford University Press.

Anderson,S., Cavanagh,J and Lee.T (2005). Field Guide to the Global Economy, New york : The New Press

Amin, A. (1994). Post Fordism - A Reader. Oxford : Blackwell Publishers.

Arthurs,H. (2006). 'Who's Afraid of Globalization? Reflections on the Future of Labour Law : in Globalization and the Future of Labour Law, D.R. Craig and S.MichealLynk, eds, cambridge university press

Bhattacharya, S. (2008). The Changing Discourse of Neo-Liberal Labour Reform : From Labour Suffering Temporarily For Transition to Labour Creating The Obstacle to Transition. The Indian Journal of Labour Economics, Vol 51, No 4, 575-586.

Biyanwila, J.(2011). The Labour Movement in the Global South : Trade Unions in Sri Lanka (1st ed.). Abingdon and New York :Routledge, Taylor & Francis Group.

Brown, Earl.(2002).The New Employment Policy Paper - A Recipe for Cheap Labour?. Moot Point Legal Review, Vol.5, 55-61.

Compa, L. (2006, September). Trade liberalization and labour law[Electronic version]. Paper presented at the XVIII World Congress, International Society for Labour & Social Security Law, Paris. Retrieved from - http://digitalcommons.ilr.cornell.edu/conference/6/

Datta, R. &Sil,M. (2007), Contemporary Issues on Labor Law Reform in India: An Overview. Discussion Paper, Mumbai : Tata Institute of Social Sciences.

Deakin, Simon. (2011). 'The Contribution of Labour Law to Economic and Human Development' in : Guy Davidov and Brian Langille,eds, The Idea of Labour Law, New York : Oxford University Press

Deakin, Simon & Haldar, Antara. (2015). How Should India Reform it Labour Laws?. University of Cambridge Faculty of Law Research Paper No.25/2015, Retrieved from : http://dx.doi.org/10.2139/ssm.261039

Deakin, Simon. (2001). The Contract of Employment : A Study In Legal Evolution. CBR Working Paper Series, No.203. Cambridge : University of Cambridge.

Dey, Ishitha.(2012). Emerging Spaces and Labour Relations in Neo-Liberal India : A Review Essay. Retrieved from : http://www.mcrg.ac.in/PP49.pdf

Dutt,R.C. (1981). Socialism of Jawaharlal Nehru. New Delhi :Abhinav Publications.

Fields,G. (1994). Employment, Income Distribution and Economic Growth in Seven Small Open Economies, Economic Journal, Vol. 94, March, 74-83.

Government of India Planning Commission.(2001). Report of the Task Force on Employment Opportunities. Retrieved from: http://planningcommission.nic.in/aboutus/taskforce/tk_empopp.pdf

Government of Sri Lanka. (2002). Regaining Sri Lanka : Vision and Strategy for Accelerated Development. retrieved from : www.erd.gov.lk/

Government of Sri Lanka. (2012). The National Employment Policy of Sri Lanka. retrieved from : www.nhrep.gov.lk/

Hall, S. (1998) 'The great moving nowhere show', Marxism Today, November/December

Harvey, David. (2005). A Brief History of Neo Liberalism.Oxford : Oxford University Press.Harvey, David.(2010).'The Enigma of Capital and the Crises of Capitalism'.London : Profile booksHarvey, David. (2016).Neo liberalism is a Political Project. Jacobin. Retrieved from : https://www.jacobinmag.com/2016/07/david-harvey-neoliberalism-capitalism-labor-crisis-resistance/

Harvey, David.(1989). The Condition of Post Modernity: An Enquiry into the Origins of Cultural Change. Oxford: Basil Blackwell

Hepple, Bob.(2011). 'Factors Influencing the Making and Transformation of Labour Law in Europe' in : Guy Davidov and Brian Langille, eds, The Idea of Labour Law, New York : Oxford University Press

Hill,D &Kumar,R.(2009).' Neo liberalism and its Impacts' in : Global Neo liberalism and Education and its Consequences, eds, New York : Routledge

Institute of policy studies of Sri Lanka. (2015). Sri Lanka State of The Economy 2015. Colombo: Institute of Policy Studies of Sri Lanka.

Jayasuriya,Laksiri. (2004). The Colonial Lineages of the Welfare State in :KalegamaSaman,ed, Economic Policy in Sri Lanka - Issues and Debate. Colombo : Institute of Policy Studies of Sri Lanka.

Javorick, B.S &Spatareanu.M.(2005). Do Foreign Investors Care About Labour Market Regulations? Review of World Economics, Springer ;Institut fur Weltwirtschaft (Kiel Institute for the World Economy), vol.141(3), p.375-403

Jessop, Bob. (2003). The future of the State in an Era of Globalization, International Politics and Society, No.2, p.30

Jha,P. & Golder,S. (2008). Labour Market Regulation and Economic Performance : A Critical Review of Arguments and some Plausible Lessons for India. Economic and Labour Market Papers, 2008/1.Geneva : ILO.

Klein, Naomi.(2007). The Shock Doctrine : The Rise of Disaster Capitalism. London : Penguin Books.

Law and Society Trust, (1995). Sri Lanka : State of Human Rights Report 1995. Colombo : Law and Society Trust.

Lucas, Robert E.B. (1988). India's Industrial Policy, in : Robert E.B. Lucas and Gutav F. Papanek, eds, The Indian Economy, Boulder Colorado : Westview Press

Ministry of Finance and Planning. (2006). Mahindachinthana : Vision for A New Sri Lanka - A Ten Year Horizon Development Framework 2006-2016 Discussion paper, Colombo : Department of National Planning - Ministry of Finance and Planning. Moutsatsos, Chrisy.(2009). 'Economic Globalization and its effects on Labour'.in : Unhealthy Work, Causes, Consequences, Cures ; Peter L. Schnall, Marine Dobson and Ellen Rosskam, eds, Amityville New York : Baywood, p.21-36

National Association for Trade Union Research and Education.(2009). Labour Issues in Development.Colombo : NATURE.

Papola, T.S. (1994). Structural Adjustment, Labour Market and Employment. The Indian Journal of Labour Economics, Vol.37, No.1, 3-16.

Rama, Martin. (1994). Labor Market Flexibility in Sri Lanka. Washington D.C : Policy Research Department, Trade Policy Division.

Ranaraja, Shyamali.(2005). 'Labour Market Reforms' in :Muttukrishna Sarvanandan, ed, Economic Reforms in Sri Lanka - Post 1977 Period. Colombo : International Centre for Ethnic Studies.

Ranaraja, Shyamali.(2014). A Closer Look at Sri Lankan Labour Law and Practice, Conference Paper National Labour Law Symposium, 2014 : Taking Labour Law to a New Realm - Achieving Flexibility with Equity

Sahoo,P. (2006). Foreign Direct Investment in South Asia: Policy, Trends, Impact and Determinants. ADB Institute Discussion Paper. No.56. Retrived from: https://www.adb.org/sites/default/files/publication/156693/adbi-dp56.pdf

Sankaran, Kamala.(2009). Labour Laws in South Asia : Need for an Inclusive Approach. Geneva : International Institute for Labour Studies.

Sarker, Kanchen.(2014).Neo-Liberal State, Austerity and Workers' Resistance in India. Interface : a Journal For and About Social Movements, Vol. 6 (1), 416-440.

Scholte,J.A.(2005). The Sources of Neo liberal Globalization. Overreaching Concerns Programme Paper no.8 , Geneva : United Nations Research Institute for Social Development.

Sen .S & Dasgupta,B.(2009). Unfreedom and Waged Work : Labour in India's Manufacturing Industry. Sage : New Delhi Thousand Oaks.

Shyam Sundar,K.R.(2006). Trade Unions and The New Challenges : One Step Forward and Two Steps Backward. The Indian Journal of Labour Economics, Vol. 49, No. 4, 903-918.

Siebert,H. (1997). Labour Market Rigidities: At the Root of Unemployment in Europe. Journal of Economic Perspectives, vol.11. No.3, p.37-54

Skanthakumar,B.(2013).Growth With Inequality : The Political Economy of Neo Liberalism in Sri Lanka. LST Review, Vol. 24, Issue 310, 1-31.

Skanthakumar, B. (2015). Labour's Lost Agency. Himal South Asian : Labour and Its Discontents, March 2015, 12-34.

Skanthakumar, B. (2008). Workers Rights in : Sri Lanka : State of Human Rights Report 2008. Colombo : Law and Society Trust.

Smith,Paul & Morton, Garry.(2006 September). Nine Years of New Labour: Neo liberalism and Workers' Rights. British Journal of Industrial Relations, 44:3 0007-1080, pp.401-420

Sood, Atul.,Naath,Paaritosh.,& Ghosh,Sangeeth.(2014). Deregulating Capital, Regulating Labour : The Dynamics in the Manufacturing Sector in India. Economic and Political Weekly, Vol. XLIX, No. 26-27, 58-68.

Sri Lanka Ministry of Labour.(1978) White Paper on Employment Relations.Ministry of Labour Sri Lanka.

Tripathy, S.N. (2008). SEZ and Labour Administration in Labour File Special Issue : Special Economic Zones : Their Impact in Labour, Vol. 6, No. 4-5,31-32.

Weerakoon,R.(1987). Evolution of Labour Law in Sri Lanka : From Tea Plantation to Free Trade Zone. Colombo : Ceylon Federation of Labour.

Weiss, Manfred. (2011). 'Re-inventing Labour Law?' in : Guy Davidov and Brian Langille, eds, The Idea of Labour Law, New York : Oxford University Press

Wickramaratne, J. (2012). Fundamental Rights in the 1972 Constitution in :Welikala Asanka, ed, The Sri Lankan Republic at 40 (Vol 2). Colombo : Centre For Policy Alternative and Friedrich Naumann Foundation For Freedom.

Wimalasena,P.R. (2014). Maintenance of Flexibility with Just and Equity in Labour Laws. Conference Paper National Labour Law Symposium, 2014 : Taking Labour Law to a New Realm - Achieving Flexibility with Equity.

World Bank, (2007).Doing Business in South Asia. Retrieved from : http://web.worldbank.org/