Globalizing Labor Standards: The Developed-Developing Divide

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Globalization gives rise to two apparently conflicting options for labor policy makers and advocates, both with social justice implications for workers. This article argues that all international labor standards need not be (and should not be) adhered to by all developing states. The international community should not mandate the religious adherence of international labor standards by all states under threat of sanctions via overlapping international organizations. Member states should be given leeway to a certain extent to determine the nature of labor standards that suit their necessities and levels of development. This should not be, however, taken to mean that the plight of the workers be made subject to the whim of a domestic political elite. The international community should secure minimum adherence to the labor standards by the member states through diplomatic and political channels, rather than enforcement of positive law through sanctions.

INTRODUCTION

Globalization promises that the relation between the member states of a global regime "in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand ...."1 This inclusive and sustainable development of all people throughout the globe has been the basic thesis of globalization. Yet globalization has not been a linear process.2

The globalization thesis is being tested against the background of the realities of the globe.3 The liberalized market economy is finding it difficult to combine the varied interests of the nation states, situated at their typical developmental stages.4 The social justice promises of free trade are increasingly being perceived as illusionary by a vast majority of the liberalized world whom globalization ignored.5

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3. Canova, supra note 2, at 3-6.

4. Id. at 4-5.

The purpose of this essay is to chart the promises of social justice so far as the workers are concerned and take a balanced approach in suggesting mechanisms for the emancipation of the workers in the liberalized trade regime on a global continuum of varied working conditions.

The Free Trade regime has not provided any guaranteed protection to the workers. The welfare of the workers has wholly been left at the individual policy level of the respective member states of the WTO. It is essentially upon the member states to channel the fruits of the global economic order to the category of people most in need, to ensure an equitable growth resulting in social equilibrium.

In view of the destabilizing nature of global free trade on workers worldwide, worker protection is increasingly taking center stage in the free trade domain. Scholars are calling for the protection of workers from the vagaries of the global economic order. The welfare measures sculpted by the juxtaposition of the legislation on labor standards on a country-specific basis are taken to be the testimony of protection of the workers globally.

There is another perspective on welfare-ist social justice that is based on the social protection guarantees of the individual nation-states. This welfare-ist approach germinates in the classical neoliberal argument put forth by the proponents of globalization. This proposition asserts that globalization results in economic development and such economic development percolates down to the underprivileged and needy sections of society. Significance of the argument with regard to the workers lies in the assertion that the process of globalization creates opportunities for the workers. But for people who are actually left outside such opportunities, the welfare initiatives of the domestic regimes need to care for them. Economic development of the states would enable more and more

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6. There is no agreement in the WTO Treaty delineating the rights of workers as a whole. The Dispute Settlement Body has also not interfered with the plight of the workers the world over, as they have done with the environmental issues. The only relevant clause in the WTO on labor is the Article XX (a) exception that addresses trade in products from prison labor. See General Agreement on Tariffs and Trade, Oct. 30, 1947, art. 61 Stat. A-11. T.I.A.S. 1700, 55 U.N.T.S. 194.


9. See Johnson, supra note 7, at 304.


13. See generally Tarrow, supra note 2, at 51-78, for the role of the state and welfare mechanism and its relevance in the globalized world; See Canova, supra note 1 at 5; See also Scholte, supra note 10, at 215; See generally Stiglitz, supra note 4 at 21, on the regulation of business in the laissez-faire economy by the federal government and welfare measures curbed by it during America’s economic development in the nineteenth
resources to be invested for the welfare of the workers. Thus the initiative of the member state participants of globalization is channeled towards maximization of the economic benefit from the process of globalization. To ensure economic development member states use their "comparative advantage" to their utmost benefit, which is the propeller of the liberalized trade regime.

For some participating countries in the trade regime (principally, or may be, solely developing and less developed countries) the "comparative advantage" of global trade lies in the huge domestic labor force (skilled and unskilled). It is quite but natural that these countries would be apathetic to any arrangement that erodes their comparative advantage. As a rational choice these countries would like to maintain their comparative advantage by keeping the labor pool cheap with a view to attracting international (and domestic) business and investment.

Thus, globalization gives rise to two apparently conflicting social justice issues for the workers. One perspective of the debate presents the question of incorporation of global labor standards in the national regimes and thereby ensuring a better life for the workers. The other perspective lies in the rejection of global labor standards. This view contends that the incorporation of international labor standards would make labor expensive. And an expensive labor force would erode the important "comparative advantage" of cheap labor that these countries have. Investment and resultant economic development would shy away from these countries because of such erosion of comparative advantage. In the absence of investment, especially foreign investment (and, appropriate planning and sequencing), there will be stagnation of the domestic economy because of limited availability of capital resulting in unemployment and job loss by the vast majority of the workforce. On the contrary, if because of the

century.

14. See TRAB, supra note 2, at 51-53 (The social democratic national Keynesianism (or Welfare-ism) had its origin in the post-Second World War economic development period. The economic idea was devised to distribute the fruits of economic development more broadly, especially to the people who were not part of or benefited from such development.).


18. Id.

19. See Berry, supra note 11, at 20-21.

20. Cheap labor in these economies draws investment from foreign multinationals. If labor cost is on the higher side, these multinationals may not want to invest in such economics anymore. See Gary Burtless, ROBERT Z. LAWRENCE, ROBERT E. LYTEN & ROBERT J. SHAPIRO, GLAMOUR: CONFRONTING FEAR ABOUT OPEN TRADE 64-67, 62-63 (1998).

21. For a discussion on the benefits of foreign investment on the host country where the investment is made see Id. at 35-38.


23. See STIGLITZ, supra note 5, at 18-19, 60, on the unemployment crisis in Latin America and Asia, and the
cheap labor force foreign investment is attracted, newer jobs would be created.24 Such employment would ensure at least the minimum level of sustenance for the workers.25 Apart from the creation of jobs, investment would ensure economic development, thereby increasing the resources of the domestic economy as a whole.26 More such resources are generated more would be the capacity of the states to cover the categories of people left outside the process of liberalization, through its welfare mechanisms.27

In this paper, I have weighed the contention of both the sides – in favor of having global labor standards and against the incorporation of such standards for all partner nations of the global trade regime irrespective of their inherent differences.

I would argue that all international labor standards need not be (and should not be) adhered to by all the member states of globalization in toto. The international community should not mandate the religious adherence to international labor standards by all the states under threat of sanctions. The member states should be given leeway to to a certain extent to determine the nature of labor standards that suits their necessities and level of development. This should not be, however, taken to mean that the plight of the workers be made subject to the whim of the domestic political elite. The international community should secure some minimum adherence to the labor standards by the member states through diplomatic and political channels, instead of positive law enforced through sanctions.

The paper is divided into four main parts. In Part I, I discuss the classical neoliberal concepts of globalization and look into the benefits of the free trade regime. The conceptual groundwork of the social justice mission of the liberal trade regime is laid in this part. I have looked into the fact as to how economic development of a country facilitates the social justice mission of such country.

In Part II, I elaborate upon the concepts of free trade and comparative advantage. The concept of comparative advantage is the principal driving force of free trade. Therefore, countries having comparative advantage on a particular

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24. See Arthur, supra note 22. However, there are arguments that contend that investment pattern depends more on conditions other than labor. Low labor cost is only a tertiary factor, if at all, in determining the investment prospects of transnational capital. However, it is also contended that low labor cost is sometimes devised to compensate for the absence of the other factors. See Kevin Banks, The Impact of Globalization on Labor Standards – A Second Look at the Evidence, in GLOBALIZATION AND THE FUTURE OF LABOUR LAW 77, 84-92, (John D.R. Craig and S. Michael Lynk, eds., 2006).

25. To quote Stiglitz on the point: “People in the West may regard low-paying jobs as Nike as exploitation, but for many people in the developing world, working in a factory is a far better option than staying down on the farm and growing rice.” See Stiglitz, supra note 5, at 4.

26. See Stiglitz, Id. at 67-73. However, Prof. Stiglitz argues that foreign investment can do good only when it is kept under check by the domestic governments; otherwise it has the potential to distort the domestic economy. See also Jayati Ghosh, Keynesian Economics: a Note on its Relevance and Limitations in the Face of Globalization, in GLOBALIZATION VERSUS DEVELOPMENT, 218-219 (Jomo K. S. and Shyamala Nagaraj, eds., 2001). See also Borkless, et. al., supra note 20.

27. See Ghosh, supra note 26, at 218-219.
factor of production would never want to concede such an advantage to the rest
of the competitors in global trade. But the issue of social justice of the workers
becomes a global concern when countries perceive the low domestic labor cost as
their comparative advantage in the free trade regime.

In Part III, I have addressed the debate on labor standards in the global trade
regime. There is a stark difference of opinion on the incorporation of international
labor standards in the domestic regime depending on the part of the globe the
countries are situated. This difference in perspectives between the global partners
of the North and the South, or the developed and the developing countries should
be seen in the context of the prevailing economic, political, social and cultural
situations in the respective countries.

In Part IV, I contend with the identification and acknowledgment of the
inherent differences between the different member states of the global trade
regime. I have argued for the incorporation of some of the core labor standards
identified by the ILO in the domestic regimes. However, most of the core labor
standards are the basic human rights identified by the international community.
For the rest of the labor standards, the respective regimes should be given the right
determine the applicable standards. This might, however, result in lowering the
cost of the labor in some countries, thus deteriorating their living standards; and
the result of such decreasing labor cost in some countries will be to derogate the
conditions of labor in other countries because of loss and lack of jobs (resulting
from the higher labor cost). Such dialectic would give rise to the much anticipated
and debated race to the bottom. Under such circumstances, I have argued that
the developed countries should enhance and improve the welfare schemes and
mechanisms to better the lives of the workers suffering from such eventuality of
job loss because of higher labor cost.

In the final part of the essay I have concluded my argument by briefly touching
upon the essence of my thesis that the individual countries should be given the
liberty to determine the labor policy that suits their respective economic, social,
political and cultural necessities and conditions; and responsibilities should be
attributed to these countries based on such differences.

I. GLOBALIZATION, ECONOMIC DEVELOPMENT & SOCIAL JUSTICE

Globalization promised across-the-board improvement of the lives of the
people throughout the globe: “Champions of neoliberal globalization have suggested
that transworld production, markets, monies and finance will, by the magic of laissez-
faire, automatically yield material prosperity for all.”

The foremost of the normative conceptualization of the globalization discourse
lies in the neoliberal ideals of the laissez-faire economy. Neoliberal argue that

29. See Tabb, supra note 2, at 61-67.
the market forces and unhindered demand-supply would promote prosperity for all the constituents of the market.\textsuperscript{30} Benefits of the unrestricted economy would percolate down to the most needed sections of the population by the rules of economics.\textsuperscript{31} The states should not interfere or restrict the pace of the market economy – all state-imposed limitations and restrictions should be done away with.\textsuperscript{32}

Despite the neoliberal's forceful argument and superior political lobbying, reformists argue that state interference is a must for the protection of the most vulnerable sections of the society in the face of globalization.\textsuperscript{33} Reformists acknowledge the benefits and outcome of the free market economy and capitalism. But, they argue that to canalize the benefits of globalization to all sections of the society, there needs to be an appropriately designed and executed public policy.\textsuperscript{34} The reformist ideal is increasingly gaining ground with the participants of free trade.\textsuperscript{35}

The popularity of the reformist theory is also incidental to the failure of the neoliberal ideals to delimit and restrict poverty and improve the overall living standards throughout the world.\textsuperscript{36} Though pro-neoliberal arguments assert that the overall poverty and living standards of the globe have improved,\textsuperscript{37} most of this improvement is limited to only the Northern part of the globe.\textsuperscript{38} Neoliberals argue that poverty in the South is temporary and it is the result of the structural adjustments made by the newly liberalized countries to cope with the process of globalization. But the question remains as to whether it is not the duty of the state to protect its citizens from the vagaries of the open market economy, even during the purportedly 'short period' of the structural adjustments. Even in the face of such requirement to protect its citizens, it becomes difficult for the states to support the underprivileged population of the country from their shrinking revenue sources. Many poor countries are deprived of their hereinbefore principal source of tax revenue – customs duties,\textsuperscript{39} because of the open market policies. These countries also depended on foreign aid to consolidate their welfare initiatives to a large extent; such aids are also shrinking.\textsuperscript{40} How would a country

\textsuperscript{30} SCHOLTE, supra note 10, at 34-35.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id at 35-37.
\textsuperscript{34} Id.; Appeal of the reformists' seem to be pragmatically realized in the political reigns of the states like Argentina, Brazil, Britain, Czech Republic, Germany, South Africa and the number of states in the so called Third World. See also STIGLITZ, supra note 4 at 73-78.
\textsuperscript{35} SCHOLTE, supra note 10, at 34-35.
\textsuperscript{36} See GEORGE TSOGAS, LABOR REGULATION IN A GLOBAL ECONOMY, 5-6 (2001).
\textsuperscript{37} SCHOLTE, supra note 10, at 213-217.
\textsuperscript{38} Id.
\textsuperscript{39} Id. at 215.
\textsuperscript{40} See generally Anne Boschini and Anders Olofsgard, Foreign Aid: an Instrument for Fighting Poverty or Communism?, available at http://info.worldbank.org/etools/docs/voddocs/155/336/olofsgard.pdf (last visited April 7, 2010); See also http://www.oecd.org/dataoecd/43/24/1894385.xls for a comparative chart of aids given by OECD-Development Cooperation Directorate (DAC) member-nations. (last visited April 7, 2010).
constrained by the availability of resources then improve the conditions of their underprivileged population and facilitate social justice?

One way in which countries can facilitate social justice is to create avenues for more employment. Creation of employment for both the skilled and unskilled categories of workers can substitute policy measures ensuring social protection to some extent. There is a developing and developed country divide vis-à-vis the above policy measures. Developing countries not having well-developed social protection measures would resort to creation of jobs. On the other hand, developed countries’ advantage lies in their over-developed social protection mechanism. To develop adequate social protection mechanisms, states must invest significantly in targeted social policy schemes. Therefore, generation of revenue is a significant factor in facilitation of social justice.

From a welfare perspective, since generation of revenue enables the states to safeguard the interests of the weaker sections of the population, states are always looking forward to maximizing their capacity to bring socio-economic equilibrium through economic development. Maximization of economic benefit from free trade becomes the prerogative of the member states of globalization. This urge on the part of the states propels them to create an environment conducive to drawing foreign investment. Member states of global trade compete with each other in the creation of such a trading environment. Comparative advantage of the member states takes centre stage in their competition to draw Foreign Direct Investment (FDI).

II. Liberalization & the Concept of Comparative Advantage

In a free market states would specialize in trades in which they have comparative advantage over their competitors. In economic terms, the Ricardian comparative advantage facilitates trade amongst nations when there is no external restriction on trade amongst countries. Countries trade because their comparative advantage is sector-specific; since they specialize in different things, trade amongst them benefits both of them by facilitating exchange of their specialties. In the language of comparative advantage, some countries have the advantage of abundant and cheap labor. Countries having comparative advantage in labor are principally located in the Southern part of the globe - the developing and less developed countries. This comparative advantage in labor has further been broken down to two aspects of labor - one, abundance of skilled and unskilled labor (more significantly, unskilled labor), and two, cheap labor, i.e., cost of per-unit labor is much lower than that of the industrialized North.

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41. See STIGLITZ, supra note 5, at 55-59; See also SCHOLTE, supra note 10, at 218-222.
42. See STIGLITZ, supra note 5, at 55-59.
43. SCHOLTE, supra note 10, at 217-218.
44. See Banks, supra note 24, at 77, 79. However, as I shall argue at the later part of the paper, this distinction is only superficial. "Labor abundance" and "labor cost" are not mutually exclusive concepts - one necessarily follows the other. Therefore, these two phenomenon cannot be treated in isolation, they are inherently related.
As a rational choice, countries would like to perpetuate their respective comparative advantages. So countries with comparative advantage of labor would, as a rational policy choice, strategize to keep the labor pool cheap. Since there is a direct relation between cheap labor and the labor standards, the rational policy choice would have adverse effect on labor standards. One may, however, draw a distinction here between the "core labor standards" and "cash labor standards". Core standards include: right to association, provision for collective bargaining, and principle of non discrimination. Core labor standards endeavor to protect and facilitate the civil and political rights of the workers. These are essentially human rights standards that the international community mandates to be followed by all civilized nations. The International Labour Organization (ILO) in 1998 came up with the Declaration on Fundamental Principles and Rights at Work. The Declaration guarantees certain inalienable rights to the workers – “freedom of association and effective recognition of the right to collective bargaining”, “elimination of forced or compulsory labor”, “abolition of child labor” and “elimination of discrimination in respect of employment and occupation”. All these guarantees are human rights guarantees to be found in human rights instruments. The Declaration is mandatory on all the ILO member states irrespective of their ratification of the respective individual instruments guaranteeing such rights. These core standards though involve costs on the part of the states, do not have a significant bearing on the overall cost of production or the unit cost of the labor.

Per unit cost of labor is, however, significantly influenced by the cash standards attached to labor. Cash standards include payment of bonus, gratuity, pension, provision for health and safety, provision for provident fund, etc. By comparative advantage in labor, I mean the abundance of labor (both skilled as well as

45. See Johnson, supra note 7, at 334.

46. See Id. at 335.


50. Though administrative costs on the part of the States is incurred to protect and promote these core standards in their respective territories, these do not involve significant "business cost" that can be associated with the cost of production of a business.
unskilled) and the low per unit cost of labor made possible by the absence of cash labor standards.51

Countries having comparative advantage in labor would specialize in labor intensive trade.52 Because of this comparative advantage majority of the labor intensive business would concentrate in those countries in a free market regime, increasing capital flow and FDI.53 However, empirical evidence is inconclusive on the above thesis. A study conducted by the Organization for Economic Cooperation and Development (OECD) in 1996 attempted to ascertain the relation between the labor standards and trade performance including FDI. The conclusion could not categorically establish a relation between labor standards (or the lack of it) and international trade and investment.54 In absence of such a clear and categorical relation between labor standards, low wage, trade and investment, I would base my assumption on theoretical possibility. Theoretically, abundance of labor would result in low wage for labor; and, lower and absence of cash labor standards would keep per unit cost of labor down. Cheap labor would, thus, constitute comparative advantage (though not necessarily the sole comparative advantage) of a domestic regime.55 Such comparative advantage would attract trade and investment facilitating the economic development of the country. The following part of the paper proceeds on this assumption.

III. Free Trade & Labor Standards: The Issue of Social Justice

Lower labor cost creates comparative advantage and comparative advantage draws trade and FDI. Trade and FDI contribute to economic development and a welfare state rides on such economic development to ensure socio-economic equilibrium by addressing social justice issues of the weaker section of the

51. However, Kevin Banks argues that low wages resulting from abundance of labor supply has been recognized as a legitimate comparative advantage, which offsets market uncertainties during globalization adjustments. But, low labor standards resulting in low per unit labor cost is not a recognized legitimate comparative advantage; See Banks, supra note 24, at 80-81.

52. Paul Samuelson had predicted that comparative advantage in labor (specially unskilled labor) would shift the economics away from the unskilled labor of the industrialized countries and create more opportunities for the unskilled labor in the developing countries, See Paul Samuelson, International Trade and Equalization of Factor Prices, 58 Economic Journal 163 (1948) as cited in Banks, supra note 24, at 80.

53. Wal-Mart would be a classic example of the thesis. More than seventy percent of the goods sold in Wal-Mart are made in China, because of the Chinese comparative advantage of low labor cost. See Canova, supra note 1 at 15.

Increasing number of outsourcing business activities in the manufacturing and, recently, in the service sector are classic examples of such a thesis; See Tsogas, supra note 36, at 9-10.

54. Tsogas, Id. at 24-26; It has been argued that even if there is a relation between low labor standards and low per unit wage, that does not necessarily help increase competitiveness. Competitiveness depends on a lot of other factors - infrastructure, communication, technology etc. There is also a lack of empirical support suggesting a link between increasing global trade and decreasing labor standards; See Gerald, supra note 17, at 715, 725-726.

55. It has been argued that the developing countries became competitive in world trade because of their cheap labor coupled with foreign capital and technological investment. See James Atleson, The Voyage of the Nipponese Jade: The Perils and Promise of the Transnational Labor Solidarity, 52 Buffalo L. Rev. 85, 102-103 (2004).
population. But, on the other hand, sustenance of the comparative advantage would deny the workers a better life ensured by the internationally recognized labor standards. This scenario gives rise to an interesting phenomenon synthesized by interactions between apparently mutually incompatible policy objectives.

Developing country governments assert that low per unit labor cost is a legitimate comparative advantage that they have – they contend it to be the only advantage that they have. The developing country perspective must be considered in the backdrop of the labor-capital interaction in a liberalized world. Liberalization has given mobile capital further mobility, but on the other hand labor mobility is extremely limited and characterized by conditionailities and procedural formalities. There is, however, no mobility of unskilled labor; initiative of amelioration of the conditions of the semi-skilled and unskilled labor is localized and individualized to the domestic regimes. It is the priority of the national policy-making institutions to distribute the benefits of globalization amongst the workers, who cannot cross borders to take advantage of the liberal trade regime. However, one should not forget that immensely mobile capital compels workers from every part of the globe to compete amongst them for a living.

In the face of such competition domestic regimes are left with two policy choices: one, inclusive globalization, i.e., making workers equal participants in the process of globalization, and second, devising adequate social protection mechanism to safeguard people left outside the process of globalization. Governments are to do this in an economic set up over which they have no control or very minimal control.

Developing countries are under constant pressure of an ever burgeoning number of workers. Under such circumstances, the first policy option of the governments in the developing “labor abundant” economies is to provide minimum level

56. For a discussion on the direct and collateral benefits of financial globalization generally and FDI in particular, See M. Ayhan Kose, Eswar Prasad, Kenneth Rogoff & Shang-Jin Wei, Beyond the Blame Game, in FINANCIAL GLOBALIZATION: THE IMPACT OF TRADE, POLICY, LABOR, AND CAPITAL FLOWS, 2-5 (2007, IMF); See also Aminat, supra note 11, at 18.
57. See Tsogas, supra note 36, at 25.
58. See Tabb, supra note 2 at 25-26; since capital is highly mobile, it readjusts itself to the cheap and abundant labor region of the world according to its necessity.
59. See Atkeson, supra note 55, at 85, 95-96, 102-103.
60. Id. at 85, 101-102; This seamless competition amongst the workers is not only international, it has also taken national form. During late 19th century and early 20th century shoe and garment manufacturing firms moved from New England to the southern part of the United States in search of cheap labor; See Id. at 180; See also Banks, supra note 24, at 77-78.
61. See Stiglitz, supra note 5, at 214-222.
62. See Tsogas supra note 36, at 4. With respect to states the phenomenon of globalization has signified: (i) restriction of state sovereignty, (ii) consideration of national as well as supranational interests, (iii) downward pressure on public-sector welfare policies, and (iv) increased reliance on supranational regulation and institutions. See Scholte, supra note 10, at 133, 141. On domestic regime’s limitation on taxation and revenue generation, See Harold James, Is Liberalization Reversible?, in FINANCIAL GLOBALIZATION: THE IMPACT OF TRADE, POLICY, LABOR, AND CAPITAL FLOWS, 23 (2007, IMF); See also Berry, supra note 11, at 15, 19.
of sustenance to such workers by ensuring employment for them. Creation of employment for such a huge pool of labor would naturally bring down the wage rate of such labor considering the resource constraint of such economies. This low wage rate is a necessity rather than a conscious policy decision in these developing economies. At another level, these labor abundant economies compete with each other (apart from the competition with the industrialized developed countries) to get the market share in labor intensive trade. It is at this stage that per unit cost of labor becomes vital. To attract trade and investment countries compromise on labor standards to keep the labor cost minimal. It only makes sense for the domestic governments to adjust cash standards in furtherance of their requirements. One cannot, however, deny the interrelation between the core and the cash standards. But, it is the cash standards that overwhelmingly determine the cost of labor, thereby giving the comparative advantage to these developing economies. Therefore, governments of the developing countries are vehemently against any proposal of incorporating labor standards into the trade regime.

Creation of jobs and sustenance of the economies in the developing countries depends on the comparative advantage of low labor cost in these economies.

Even after having such comparative advantage, a significant number of the population remains outside the reach of the benefits of globalization in these developing economies. Increasing unemployment is a stark reality in these economies. Again, it is incumbent on the respective governments to ensure a minimum level of sustenance for these people left outside the process of globalization. Governments would have to rely on their welfare measures to address this population. Nature and scope of such welfare measures would in turn depend upon the strength of the revenue of the governments. Global trade and foreign investment contribute to such revenue in addition to the revenue generated internally. Thus, the developing economies are in such a stage where they require both – more and more jobs for the workers, and more and more revenue to ensure social justice through distributive mechanism.

Against this backdrop, the industrialized developed economies contend that the lack of labor standards in the developing economies and the resultant low

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63. In the globalized world unemployment is one of the most significant problems throughout the globe; the problem is significantly concentrated in the Southern part of the globe. See Scholte, supra note 10, at 218-222; See also Stiglitz, supra note 5, at 55-59. See also International Monetary Fund, supra note 11, at 74-75.

64. See Tabb, supra note 2, at 25-26.

65. Seattle Round of the WTO was the manifestation of the developing country perspective on the linkage of trade and labor issues. Since then the developing countries has consistently taken a stand against incorporation of any international labor standard into the trade regime; See Tabb, supra note 2, at 7-23.


67. This assumption, however, presupposes the political will of the respective government, which is less of a concern in case of democracies; See Tabb, supra note 2, at 112-126.

68. See Johnson, supra note 7, at 334.

69. See Tabb, supra note 2, at 51-33.
cost of labor is actually siphoning off the labor intensive jobs from the developed countries to the developing countries. 70 This phenomenon, however, is true only in case of unskilled workers 71 who lose out to the comparatively much lower labor cost of the developing country workers. Because of such a state of labor situation in the developed countries, the developing countries allege ulterior motives on the part of the developed countries in advocating labor standards in global trade. 72 Developing countries apprehend that labor standards would be used by the developed countries as a protectionist garb in restricting trade from the developing countries. 73 Thus, the developing countries perceive their interests to be protected in maintaining the status quo. Developing countries would have the flexibility to formulate their domestic policy to suit their individual requirements of development and social justice within the existing nature of international trade and the exclusion of labor standards.

But at the global stage, should there be an initiative for uniform labor standards or to link labor standards with trade to materialize the goals of raising standards of living of the workers? I deal with this issue in the next section.

IV. THE ENDEAVOUR OF SOCIAL JUSTICE: LABOR STANDARDS IN GLOBAL TRADE

How to ensure a higher standard of living for the workers globally within the abovementioned context? Here we need to pause a moment and reflect—reflect on whether we can really talk in global terms; reflect about whether the same remedies suit all diverse situations throughout the globe; reflect about whether the globe—North and South, East and West share the same goals; reflect about whether the nation states of the globe are equally equipped to address similar issues identically. These reflections would only point towards the inequalities and disparities of the globalized world. In such an unequal global structure one can safely categorize the nation states as developed and developing (including the less and least developed states), or, the North and the South (for the sake of notional geographic understanding), at least for the purpose of the present discussion on labor standards.

Once such a distinction is made, one can associate or alienate policy preferences for the different categories of participants in global trade. For the purpose of the present essay I broadly categorize the developing but less developed countries on one side (principally Asia, Africa and South America) and industrialized developed countries on the other (principally North America and Western Europe), even though there are internal varieties within these two groups.

70. See BURTLESS, ET AL., supra note 20, at 62-63.
71. See Banks, supra note 24, at 80.
72. See generally ELLIOTT & FREEMAN, supra note 47, at 73-92.
73. See Banks, supra note 25, at 77-78.
A. Policy Prescription for Developing Countries

The basis of Keynesian Welfare Economics is distributive justice. Distributive justice principle operates to remedy the unequal distribution of resources, thereby serving the needs of social justice. The principle has taken a significant place in the constitutional mandate of many countries. In pursuance of the distributive justice principle, it is incumbent upon the governments of the countries to redistribute the concentration of wealth in a few hands. In the globalization context, distributive justice would signify addressing the needs of the people who are not naturally part of the globalization process. Domestic political institutions are to device different welfare mechanisms to provide social justice with the help of the government exchequer. Social protection of the population left weaker in the wake of globalization is the prerogative of the government generated revenue. Government generates revenue from domestic and international transactions. International business is as important a factor for the government exchequer, as is the domestic economy. Many of the government welfare initiatives in the developing countries depended on the external aid of the foreign governments and international organizations. But, such external aid is increasingly shrinking – countries, specially developed countries, are gradually reducing their aid to the developing world. Such a situation makes the countries depend a lot on their external trade to generate revenue for social protection purposes. From such a perspective external trade is of immense importance to the developing countries in ensuring distributive social justice.

The other option open to the developing countries is to make the phenomenon

74. See Ghosh, supra note 26, at 217-224; See also Tabb, supra note 13.
75. For example, Constitution of India in Part IV provides for the Directive Principles of State Policy that incorporates the social and economic aspirations of the people of India. Though not enforceable through the Courts, these guarantees are fundamental in the governance of the country (Article 37 of the Constitution of India). Similar provisions exist in the constitutional documents of Ireland, South Africa etc. See also John Cantus Mubangizi, The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation, 2 Afr. J. Legal Stud. 1, 1-19 (2006).
76. See Stiglitz, supra note 5, at 214-222.
77. These external aids are more stable than the tax revenues generated by the developing countries; See Id. at 28-29.
78. See generally Boschini, et al., supra note 40; See also OECD-Development Cooperation Directorate (DAC) statistics on foreign aid, supra note 39. See also Schotte, supra note 9 at 28; See also Stiglitz, Id. at 98.
79. See Canova, supra note 2, at 1, 3.; The author argues that 'sweatshop labor conditions' and 'unemployment' are not the only alternatives of promoting better living standards of the workers (though the author did not seem to have addressed labor conditions that are not 'sweatshops', but stops short of being an ideal labor condition with all available labor standards). Foreign aid and public investment in human resource development and infrastructure are the other proposed alternatives. Shrinkage of foreign aid is an established fact. The other alternative depends on public investment. In absence of foreign aid, generation of public revenue depends on the generation of business in the economy. To generate such business – especially foreign investment, domestic regimes need to use their comparative advantage to the best of their ability. Comparative advantage for some of these regimes lies in their cheap labor. Cheap labor then has effect on labor conditions. Thus, there arises an egg and chicken condition, making it difficult to propose a sure-shot remedy to improve labor standards. Requirement of foreign aid to the developing countries to make the structural adjustments on social policy has also been highlighted by others. See Sungjoon Cho, Linkage of Free Trade and Social Regulation: Moving beyond the Entropic Dilemma, 5 Ctr. J. Int'l L. 625, 647 (2005); See also Gould, supra note 17, at 715, 733.
of globalization more participative, i.e., to facilitate the involvement of more and more people in the actual process of globalization. Such involvement in the process of globalization, as a natural corollary, would promote social justice. In this respect, the developing countries perceive that they have comparative advantage—comparative advantage in labor.\textsuperscript{80} Comparative advantage in labor draws foreign business, both direct and indirect investment, and outsourcing business. Such foreign business is the source of employment for a large number, making them direct participants in the globalization process. Foreign business, in turn, serves to strengthen the public eschequer, thus satisfying a two-pronged necessity.

This double necessity of generation of employment for the large number of the working population and building up of revenue for the benefit of the people whose employability is limited, propels the developing countries to continuously maintain what they perceive to be a comparative advantage on labor. Such a scenario is absolutely justified from the developing country point of view. Results of globalization have not been even throughout the globe.\textsuperscript{81} Proponents of globalization argue that the regions (and nations) on the wrong side of globalization have to go through the structural adjustment phase to absorb the shock of the process.\textsuperscript{82} I argue that the lower labor cost of the developing countries is one such shock absorbing factor for its huge pool of workers welfare. Even if the developing countries artificially keep the cost of labor down, the end should justify the means.\textsuperscript{83} Thus, the typical conditions prevailing at the developing countries should be left to be dealt with by the domestic policy measures customized to the requirements of the country and the region.\textsuperscript{84}

In addition to the abovementioned scenario, labor standard proposal of the developed countries is viewed with suspicion by the developing countries. Developing countries argue that a trade-labor linkage would give the developed countries an excuse for protectionism alleging violation of labor standards.\textsuperscript{85}

Globally imposed standards would not only be unsustainable but also would leave the countries with little flexibility to determine their policy suited to their peculiar requirements. Therefore, at the existing developmental stage there should not be any externally imposed labor standards.

Should it then mean that the developing countries be given a freer hand to decide on their domestic labor standards, even if it is in flagrant violation of the

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\textsuperscript{80} This is the comparative advantage of having a huge labor pool, making labor cheap; and comparative advantage of cheap labor in absence of cash standards, as I have already discussed in the previous paragraphs.

\textsuperscript{81} See Stiglitz, supra note 5, at ix-xvi, 3-10, 20, 21, 214-222, 248-250, 254.

\textsuperscript{82} See Tabb, supra note 13, at 51-53.

\textsuperscript{83} Here the 'means' is to keep the labor cost down to make labor cheap (and thereby having comparative advantage on labor), and the 'end' is to generate employment for as many number of people as possible.

\textsuperscript{84} See Stiglitz, supra note 5, at 251-252.

\textsuperscript{85} See Andrew T. Cunanan, Trade, Labor, Legitimacy, 91 Calif. L. Rev. 885, 894-895 (2003). In the trade-labor linkage lack of labor standards (or undermining labor standards) is contended to be a subsidy, which reduces the cost of production. An importing nation can apply countervailing measures against such constructed-subsidies. See Blackett, supra note 47, at 52-56.
internationally recognized rights of labor. A definite answer to the proposition would be in the negative. Internationally recognized core labor standards should be mandatory on all the participants of the global economy. ILO in its 1998 Declaration recognized four basic labor standards that are made obligatory on all the ILO member-states. The 1998 Declaration labor standards have been identified as the core labor standards by the ILO. These so called core labor standards are actually human rights standards delineated in the various human rights documents. These human rights and values are basic parameters of judging any modern civilized nation. If these basic human and labor rights are secured domestically, it would equip and enable the workers to assert their rightful claim. Instituting collective bargaining rights would empower the workers to bargain for their wages and other conditions of service. One follows the other – mandating core rights would go on to ensure the cash standards of the workers in the long run. This gradual shift from core human and labor rights to more demanding conditions of service provisions would help a country to grow in its natural pace. Globalization has distorting effects and less developed countries should be given enough flexibility to adjust to such effects.

B. A Policy Prescription for Developed Countries

Globalization is the imposition (or more soberly, the arrangement) of Western economic ideals on the rest of the world. WTO and GATT signify the unification of the world in furtherance of the market economy, which was already a phenomenon of the Western developed world. Since most of rest of the world did not have a laissez faire market economy, international regime had given such regions time to adjust to the changes brought by globalization of trade. Such shock-absorbing flexibility regarding policy measures are available to the developing countries till the time they catch up with the process of globalization. However, the ultimate projected objective of globalization is to attain better

86. See supra note 49.
87. See supra note 48.
88. The South Korean situation is a classic example on the point. Initially during the growth of the Korean economy labor market conditions improved because of generation of employment and reduction in the number of unemployment. This resulted in the overall improvement of the living conditions of the workers. Once such employment was generated social protection measures were introduced and expanded. Employment generation coupled with economic growth improved the living standards of the Korean workers. See Gould, supra note 17, at 715, 726-728.
89. The so called Third World depended more on the respective governments to regulate the economic market to suit the conditions of their population, prior to globalization. This "distortion" of the free market was to be corrected by the process of globalization proposed by the "First World". If find it really ironical that the "Third" part of the world is where most number of human beings live; but the world works according to the wishes of the "civilized" few of the "First" part of the world, just because they happen to conquer: more land and resources, and use it to their utter advantage. However, this is not an issue in the present paper – I might want to explore this aspect from the workers point of view in future. I relieve this paper from being overburdened with such a discussion.
living standards for the global population. Here, the prevailing standard of living of the developed countries becomes important. Developed countries are at a developmental stage where they serve as examples for the rest of the globe to catch-up – their living standards are the set-goals for the rest of the globe. Hence, their principal objective in the globalized world is to sustain the developmental advancements and the standards that they have already made; they need to sustain their social, economic as well as political developmental status.

But the phenomenon of globalization is making it increasingly difficult even for the developed countries to sustain their developmental standards (and at a micro level, living standards) – workers are the most affected in such a situation. Globalization has made the "shock" felt even by the developed part of the globe. Unemployment, especially amongst the unskilled and less skilled workers, is becoming a significant domestic political issue in these regions. Living standards of the workers is not becoming better compared to the rest of the economy. Social security and other welfare coverage for the workers are diminishing in developed economies. Under pressure from the prevailing scenario, the developed economies are in dire need to safeguard their worker constituency. Unable to cope with the situation, developed economies are proposing uniform labor standards throughout the globe.

Developed countries are comparatively resource rich. Hence, ideally the loss and lack of jobs should be addressed by the improved social security and other welfare mechanisms for the workers. Developed countries should invest more and more to encounter the loss of employment and sustain the living standard for the workers. Cash standards in these countries should be improved as per their developmental standard. The essence of the cash standards is to better the lives of the workers by increasing their living standards and safeguarding them from the vagaries of global trade. The present scenario demands the examination of the sufficiency and efficiency of the cash standards and other welfare mechanisms of the developed countries for the working people. If the developed countries falter in safeguarding the interests of their workers under the present conditions, their argument on labor standards cannot hold ground. Thus, the developed countries should use their resources to develop an appropriate safeguard mechanism to protect their workers.

91. See TABB, supra note 2; See also STIGLITZ, supra note 5.
92. See BURTLESS, et. al., supra note 20, at 62-63.; See also TABB, supra note 2, at 22; See also SCHORRY, supra note 10, at 220-222, 224.
93. See Id.; TABB, supra note 2, at 22-23.
95. See generally THOUGS, supra note 35 at 9; See also Atleson, supra note 54, at 85, 109.
96. Whereas Europe has intended to address the problem of unemployment with a strong social safety and welfare policy, United States is seemingly withdrawing from such social protection measures. See Gould, supra note 17, at 715, 725. Gould observes: "In short, the difficulty in America is poverty and inequality and in Europe, unemployment and lack of jobs and the contention by some is that globalization has produced these phenomena." See also CANORA, supra note 2, at 1, 3.
Developing countries are constrained in this respect — resource crunch is the principal (if not the only) obstacle for these countries in having an elaborate welfare network for the working population. Those countries are, therefore, left with no other alternative in the present state of affairs except for generating more and more employment for as many numbers of people as possible.  

Because of these inherent positional differences between the developed and the developing countries, the developed countries should address their labor problems domestically instead of wanting the rest of the world to conform to the uniform labor standards.  

If that is to be the case what is the role of the international community, manifested through the international organizations as a whole. Should the international community — states and international organizations included (for the present purpose, ILO and WTO), leave labor matters completely to the domestic regimes? The next section addresses the issue.

C. A Policy Prescription for the International Community

Absence of any international over-watch would allow the domestic regimes a free hand over their labor standards. Such a situation might give rise to precarious conditions under some regimes. Therefore, the international community should not leave labor standards to be determined solely by the domestic regimes. International community acting through the international organizations (for labor standards, ILO) should pressurize the domestic regime constantly to improve its labor standards, both core and cash.  

International lobbying and diplomacy should be part of such campaign.  

Amongst the core and the cash standards, the core standards resembles (or are identical to) internationally recognized human rights. Since these rights are the basic rights that a human being must possess, these rights should be made compulsory and jealously enforced, to the extent permissible under the ILO mechanism. Ensuring the core labor standards...

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98. ILO has been doing a great job in this regard to converge domestic concerns with international labor standards. Different Committees in the Organization is looking into the trade concerns of the member states and addressing the social issues burdening such nations. See generally Johnson, supra note 7, at 310-324; See also Atleson, supra note 55, at 85, 94. Atleson asserts that the ILO standards are promoted through public pressure and enforced through shaming tactics with the help of public propaganda.
99. Guzman argues that the debate on labor standards, or more specifically, trade and labor should be addressed through the political process of negotiation rather than a rule based regime; See Guzman, supra note 85, at 885, 887, 902.
100. Increasingly the international organizations, the World Bank, IMF, WTO etc. are becoming sensitive towards human rights goals and incorporating those ideals into their governance; See Christiana Ochoa, "Advancing the Language of Human Rights in a Global Economic Order: An Analysis of a Discourse", 23 B.C. THIRD WORLD L.J. 57, 81-82 (2003).
101. ILO’s enforcement mechanism, in particular is perceived to be a very soft enforcement mechanism; ILO cannot even expel an offending member state. See Atleson, supra note 97. Despite the enforcement limitation, ILO powered by its tripartite structure, is thought of as the most appropriate multilateral mechanism to better labor standards globally. See Lisa G. Balassa, "Government Sanctions and Private Initiatives: Striking a New Balance for U.S. Enforcement of Internationally-Recognized Worker’s Rights", 29 COLUM. HUM. RTS. L. REV. }
would in future facilitate the realization of the cash standards of the workers as a necessary corollary, as I have argued earlier. However, in addition to the initiative by international organizations, bilateral and multilateral diplomatic pressures should be put on the domestic regimes to improve their labor standards.¹⁰² Any such initiative would involve a complex interaction of politics, law and allocation and distribution of power between different entities.¹⁰³ Such diplomatic channels should be used in the different trading blocks. NAFTA is one such trading block where United States could push for a side labor agreement using its diplomatic and political bargaining position. However, the labor agreement attached to NAFTA is not an imposition of uniform labor standards on the trading partners;¹⁰⁴ it is rather a manifestation of the diplomatic bargain amongst the trading partners.¹⁰⁵ Another political and policy-oriented approach can be found in the Generalized System of Preferences (GSP) of market access by the United States (US) and the European Union (EU). Both US and EU provide for the withdrawal of GSP in case of rampant violation of labor rights and provides for an additional margin of preference to member states that comply with the ILO standards.¹⁰⁶

Most of the global trading partners today are democratic nations.¹⁰⁷ Democracy works under pressure – both internal as well as external. Thus the global democratic constituents must exert pressure on the domestic regimes to improve the living standards of the workers. Such initiative should be taken as a political and diplomatic prerogative of the international community, not a legal mandate. Any kind of legal mandate would be viewed with suspicion and distrust, and would be perceived as hegemonic imposition of the western trading blocks over the rest of the nations. Thus, diplomatic channels should be used to make countries come closer to and comply with the ILO delineated standards. The ILO standards (here I specifically refer to the cash standards) by itself should neither be a compulsion, nor should it be linked to trade standards to derive legitimacy. The international cash standards should rather be a guideline that the nations would endeavor to achieve. Let then, the markets decide when and how each individual

¹⁰³ See Cho, supra note 79, at 625, 647.
¹⁰⁵ See generally North American Agreement on Labor Cooperation, available at http://www.naalec.org/english/agreement2.shtml (last visited April 7, 2010); The North American Agreement on Labor Cooperation (NAALC), the side labor agreement to NAFTA works upon information exchange and development of expertise on labor matters. Monitored adjustment policies are part of the NAALC. But, the member states are essentially to follow and enforce their own domestic labor standards. See Blackett, supra note 47, at 11-13.
¹⁰⁶ For a discussion on the GSP generally and India’s unsuccessful attempt to challenge the EU’s GSP measures, See generally Robert Howe, Back to Court after Shrimp/Turtle? Almost but not Quite Yet: India’s Short Lived Challenge to Labor and Environmental Exceptions in the European Union’s Generalized System of Preferences, 18 Am. U. Int’l. L. Rev. 1333 (2003). See also Balzarex, supra note 100 at 687, 690-691.
¹⁰⁷ Significance of modern democratic ideals is of such immense importance that the European Union mandates “democracy” as a precondition of joining the Union; See B.S. Chimni, An Outline of a Marxist Course on Public International Law, LEIDEN J. INT’L. L. 17 (2004), 3, 6.
nation reaches that goal, rather than superficially and clinically imposing such goals. The problem lies in viewing attainment of labor standards itself a goal. Labor standards should actually be perceived as a means to achieving something higher – that is, betterment of the lives of the workers throughout the globe. Such goal will be attained when labor standards corresponds to the typical conditions of the domestic regimes.

IN LIEU OF A CONCLUSION

The crux of my argument lies in the fact that labor standards should be addressed at two levels – national and international. At the national level the domestic conditions of a country would decide the nature and extent of labor standards. At the international level, the international community should constantly try and evolve consensus based standards for the global community to follow.

At the national level the domestic regimes should have autonomy to decide the extent of their labor standards. This flexibility should, however, be restricted by some parameters. The parameters of international human rights – or, in the labor context, the core labor standards. This has already been ensured by the 1998 Declaration of ILO; obligating all ILO member states to follow the basic human rights of the workers. Once these basic guarantees are ensured domestic regimes should be given enough flexibility to determine their respective labor rights that suits their developmental stage. At this stage of globalization it would be unfair to expect the developing countries to bring their labor standards to the level of the developed countries. It would also be unfair to prejudicially affect prospects of the developing countries in the trading context for their inability to comply with a uniform labor standard equal to that of the developed countries.

Thus, social justice for the workers is ensured both by the presence of internationally recognized labor standards, as well as the absence of such standards at the domestic level. What is important is to consider the level of development, typical conditions of the individual domestic economies and priorities of the respective regions and states.

108. Johnson argues that while multinational efforts to encourage better labor standards should be encouraged, the international labor standards itself might remain aspirational. See Johnson, supra note 7, at 302.