



IMPACT OF GLOBALISATION ON LAW AND JUSTICE DELIVERY SYSTEM

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ABSTRACT

The development of global society brings fundamental changes not only in economic and political behaviour of society but also in law and areas which are subject to the legal regulation. This change in society is also referred to as globalisation, however the meaning of globalisation changes with person to person. The law is an ongoing process in society. Through various legal theories, we understand and analyse the impact of globalisation on our indigenous justice delivery system. We use law as a lens to better understand the society in which we live. Law is the best tool to understand societal phenomena such as political movements, discriminatory practices etc. Justice is the outcome when the law is applied, however globalisation also affects administration of justice. The debate on law and justice is an age-old debate which is increasing in contemporary times with the arrival of globalisation. Globalisation is a complex process which is making the world more interdependent, it also affects rule making procedure to nations, they come together and create rules and law with their conscience for mutual benefits. Globalisation has stimulated a revival of debates about law and justice. This process has stimulated rethinking in several fields, especially in administration of justice. In recent times, words like 'global', 'globalisation' and

'globalism' have entered common parlance in law as well as in other disciplines. Which led to diffusion of law and the spread of legal ideas all over the world. In contemporary times, as societies are witnessing rapid growth, there is an increasing debate about the concept of judicial process and administration of justice. These developments have the potential to impact modern legal thought and all forms of judicial process and administration of justice.

Keywords: Globalisation, justice, interdependent, parlance, Legitimacy, legal thoughts.

Introduction

"There is no better test of the excellence of a government than the efficiency of its judicial system"- Lord Bryce

Globalization as a process developed with civilization itself but gained a lot of fame only during the last two decades. It has a major impact on the justice delivery system of all the countries on the globe, especially third world nations including South Asia. During the prime ministership of P. V. Narasimha Rao when India opened its market to the rest of the world in 1991, then we as a nation also became an integral part of globalization. In an economic sense, it is also referred to as the adoption of open and unfettered trading markets. In the past three decades, the globalization of the economy is acting as a propulsion of the entire process of globalization. Although globalization is a most debatable concept, in the past two decades there has been a significant increase in the international flow of capital, goods and ideas, and even human resources. However, it has been argued that on the one hand globalization leads to decline of the



sovereignty of the nation-state, and on the other hand, it diminishes political power, giving rise to the coupled forces of 'globalization. Beyond the economy, the impacts of globalization can also be observed on the Indian politics and process of justice as well, globalisation creates a legitimacy vacuum. To enhance their domestic sovereignty, nations are compelled to create local administrative structures and therefore a judicial body is also required to check administrative action.

Judicial Process is a series of interconnected and interrelated steps in the course of the administration of justice through the established and recognized justice delivery system. Whereas Administration of justice means the maintenance of rights in a particular political group or community by the backing of the State. Term Globalization of Law can be referred to as, a level to which the whole world is under a single set of legal rules or principles. Such a single set of rules may be imposed by an international body or organisation, adopted by mutual consensus. Twenty first century's world is of increasing international trade and interdependence, therefore the need for transnational law has increased. Almost all the countries have opened their domestic market, either partially or completely, that is why there is a need to recognize and work towards a uniform system of law on the globe. This process of globalization can be found in all facets of law. It is the intent of this research paper, to forward in the concept of the globalization and their impact on judicial process and administration of justice, in regard to different issues and discuss the merits or demerits of such concept.

Impact of Globalisation on Different Areas of Law

Globalization has a significant impact on justice delivery mechanisms of nations around the globe. It also touches and spreads the legal developments which are going on in any part of the world to the rest of the world. Such as the development of laws related to human rights, competition law, intellectual property rights, cyber laws, media laws, law related to women etc., the laws enacted in one country have an element or concept of provisions enacted in another country. This is because of the simple fact that globalization has linked the economics, politics and culture of nations. Below is a brief discussion of some areas of law where globalization has impacted the administration of justice and judicial process of laws in India and around the world:

1. Competition Law

Since, India is a signatory of the world trade organisation agreement of 1995. After signing this agreement India has responded positively by opening its economy by removing controls during the economic reform, as a result, Indian market player's face competition from foreign players within and outside the country. This led to the need for a strong legislation to discharge justice in commercial issues and therefore the Competition Act, 2002 was introduced, before the Competition Act, 2002 there was an anti-trust law in force, named the Monopolies and Restrictive Trade Practices Act, 1969 but after economic reforms of 1991, this legislation was found incompetent in various aspects of antitrust agreement therefore as a result, a new antitrust law The Competition Act, 2002 was enacted in 2003. The Competition Commission of India, a quasi-judicial body was established for



enforcing the provisions of the Competition Act. Commercial law especially competition law also got affected due to the process of globalization and due to the above said agreement of 1995 India limited its law making jurisdiction subject to provision of 1995's agreement. Therefore globalization leads to change in the entire judicial process in regard to competition law in India.

2. Law Relating To Human Rights

This is a well-known fact that in modern day regime of rights and freedoms has started through the Universal Declaration of Human Rights and the many other international legal instruments that has been promulgated in the same spirit and extended the concept of fundamental rights. Enactment of new laws in regard to Human Rights around the world is the best example of the impact of globalization on judicial process and also provides an idea, how the administration of justice got affected by globalization. Human Rights laws are developing around the world with the increase in globalization and nations nowadays are very concerned about human rights violations. There are various conventions and conferences in which issues of Human Rights violations held in different parts of the world were raised to tackle and improve the condition of human life and dignity around the globe. Our fundamental rights provided under part III is also inspired by bills of rights of the United States, which is again an outcome of globalization, beyond this there are various international documents which guide our legislature to form a domestic law in regards to human rights. It is also a proven fact that in the name of human right violation powerful nations have invaded

various countries and taken over the entire government system or used to maintain a person in power who acts as a puppet of invader state. However it can also not be denied that globalization leads to the wellbeing of millions of people by spreading the concept and scope of human rights into the entire world.

3. Environmental Law

Because of globalization, environmental and human rights are struggling. The increase in economic activity leads to large emissions of industrial pollutants and environmental degradation¹. The pressure on corporate firms is to remain competitive in the market therefore compel them to opt for a cost effective modus operandi which can be environmentally harmful. The concept of sustainable development became important due to international Conventions. The term sustainable human development can be defined as, the capacity of all human communities, including the deprived one, to meet their basic needs for accommodation, drinking water, food, minimal conditions of health and hygiene, social cohesion, cultural and spiritual expression, etc. Some schools of thought also argued that gains from globalization are achieved at the expense of the environment because more open economies adopt looser environmental standards². One who supports this argument, used to argue that it creates a fair global competition and promotes economic activities on the cost of the environment and its natural resources. Therefore the government has weakened various environment related provisions so that the economy can be boosted. However it is also

¹ Sylvanus Kwaku Afesorgbor & Binyam Afewerk Demena, Globalization may actually be better for the environment, *The Conversation* (last visited on April

25, 2021) <https://theconversation.com/globalization-may-actually-be-better-for-the-environment-95406>.

² *Supra* note 2



true that globalisation leads to sharing of different ideas and principles related to protection of environment precautionary principle, polluter pay principle, public trust doctrine etc., these principles have also been adopted by our judicial system which lead to change in judicial proceedings in cases related to environmental degradation.

4. Criminal Law

Each and every criminal justice delivery system today somehow overlaps and interacts with other criminal justice delivery systems. It is a well-known fact that control over the criminal justice delivery system has become an obvious jurisdictional battle field between states, criminal jurisdiction is still considered as an essential element of sovereignty. States are supposed to align national justice systems in conformity with international human rights norms, and also with regional human rights courts, and those bodies that directly prosecute and adjudicate the most serious violations of international criminal law, such as the International Criminal Court³. It also demands international enforcement mechanisms. International criminal law is considered as a grey field which is growing spontaneously, but this phenomenon is not new. In their initial phase, international criminal law consisted of some substantive crimes also, which are considered as damaging factors to law and order of the world as to allow for the interruption of the traditional territorial model of criminal jurisdiction. Piracy at sea is the most established and venerable international crime, and since at least the eighteenth century, international law has recognized that

any sovereign state can prosecute pirates regardless of the site of the crime, the nationality of the perpetrators, or the nationality of the victims⁴. In the late 19th century the first major category of international crime, war crimes, was codified⁵. After the Second World Nuremberg and Tokyo tribunals was the first ever effort to punish officials by a formal institution via international criminal proceedings. Globalisation also demands decriminalisation of corporate related mal activities that is why in 2013 various provisions of the old Company Act were amended and penalty in terms of jail was removed from various provisions.

5. Law Related To Women

In India after the post Vedic period the condition of women became very poor and they were not aware of their rights, but globalisation made this section aware of different rights available to her. There are various international treaties which recognize the rights of women. World Health Organization Framework Convention on Tobacco Control (hereinafter mentioned as WHO FCTC), the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights etc. The Preamble and Guiding Principles of the WHO FCTC make a reference to the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter mentioned as CEDAW), the provisions of the WHO FCTC recognises the importance of a gender based approach to the interpretation and implementation of policies, programmes⁶. CEDAW is unique

³ Hilalz, Legal Issues of globalisation, Legal India (last visited on Jan, 18, 2020, 8:30am) <http://www.legalserviceindia.com/legal/article-69-legal-issues-of-globalization.html>.

⁴ Supra Note 4

⁵ Hague Conventions (1899 and 1907)

⁶ WHO International, Women's Rights and International Agreements, WHO International (last



among all existing human rights instruments because it is concerned exclusively with promoting and protecting women's human rights and because it operates from the premise that patriarchy is a global reality⁷. It also addresses the reality of deep-rooted gender inequality throughout the world and both public and private sphere relations and rights and specifically underlines the almost universal difference between de jure and de facto equality of women in the world.⁸ CEDAW Convention is considered as the Women's Bill of Rights. This unique instrument provides a robust framework to address the complex nature of the inequality experienced by women. India, being signatory of CEDAW in 1993, had passed 'The Protection of Women from Domestic Violence Act, 2005'. The Act recognised all forms of abuse against women in the home, provides protection from husband or partner and their families, and acknowledges rape in marriage as an offence, however marital rape is not punishable in India. Therefore it can be said that due to globalisation nations came together and recognised the rights of half of the population of the world and framed guiding principles for member states and brought changes in the justice delivery system in regard to women's rights.

6. Intellectual Property Laws

Intellectual Property Right (hereinafter mentioned as IPR) is a key issue of globalization, however IPR protection in India is narrow and limited, but it is taking momentum. The multinational companies consider India as a huge market for their

products and services. Indian companies are also getting benefit from better protection for patents, as a result they come up with more innovative products and unique services. When India signed the Trade-Related Aspects of Intellectual Property Rights (hereinafter mentioned as TRIPS) agreement, India indicated its willingness to ensure better protection for IPR rights within the territory. The Madrid Protocol, which offers trademark protection, also reflects India's intentions. Governments in developing countries have to perform in such a way which makes a balance between providing better IPR protection and ensuring the interests of its citizens. There are some jurists who argue that the level of development in India is still quite low and innovation restricted, so we need some time before allowing international companies to patent essential products. On the other hand, there are others who argue that an atmosphere of innovation and research can only be developed with better IPR protection.

Impact of Globalization on Sovereignty of States

The modern doctrine of sovereignty emerged in Europe in the 16th and 17th centuries. For the Italian political scientist, Niccolo Machiavelli, the security of the prince and the stability of the state constituted an end, which justified all means for its attainment⁹. Globalization led to decline in the power of national governments to direct and control their economics and to determine their political structures. There is a strong indication that the impact of globalization is

visited on Feb, 02, 2021, 9:00 am)
https://www.who.int/tobacco/publications/gender/en_fti_gender_women_rights_international_agreements.pdf.

⁷ Supra Note 7, at 2

⁸ Supra Note 7, at 2

⁹ B. O. Okere, Effect of Globalisation on sovereignty of states, UNECp.5 (last visited on Jan, 16, 2020) <https://www.ajol.info/index.php/naujilj/article/view/82410/72564+&cd=1&hl=en&ct=clnk&gl=in>.



most felt through the fact that politics everywhere are market driven. It is not true that governments are now unable to run their states, but to remain in office, they must increasingly "manage" domestic politics in such a way that they can take on pressures of trans-national market forces. The institutionalisation of international politics has led to political globalization. Since the early nineteenth century, the European interstate system has been developing both an increasingly consensual international norm and a set of international political structures which regulate all sorts of interaction, this phenomenon has been termed "global governance" by Craig Murphy¹⁰. The most dominant organisation that had emerged was the League of Nations and now succeeded by the United Nations. At the regional levels, the African Union, European Union, ASEAN, Organization of American States, the Arab League, OPEC etc. exist. The impact of these organizations is very impressive on member states, the organizations are able to determine and dictate what happens in the governance of member states. This is the trend of political globalisation. In the future we would see that more states will form such organizations to ensure mutual prosperity between member states. Already, the impact is being felt in the area of human rights due to the internationalisation of human rights, a state is no longer free to treat its nationals and aliens the way they want. It must be in confirmation of international standards laid down in the various treaties of human rights, most of which are now regarded as customary law.

Some expert argued, that technological development is result of globalisation and due to technological development now states are much stronger, because now state can easily surveillance their people, Further is also argued that due to globalisation and free market, government is free from spending time on basic thing like electricity supply, gas and oil distribution etc., therefore government can efficiently focus on their sovereign function such as defence, prevention of terrorism, smuggling related issues etc.

Impact of Globalisation on Judicial Sovereignty of Indian Court

In this globalised world parties do not rely on the justice delivery system of other countries, that is why they use to sign arbitration clauses and agree on different forums. But the issue is not that particular arbitration, the main issue is that the arbitrator started to criticise even our apex judicial body. Here also I will analyse a recent incident held when an award passed by an arbitral tribunal in Singapore criticised the Supreme Court of India for its delay in handling cases and directed the Government of India to compensate an investor from Australia for such a hold-up¹¹. Such an incident badly hits at the foundation of the country's judicial sovereignty. There is a group who believes that the power of the state is being destroyed by globalisation. But it was never imagined, that award passed by an arbitral tribunal situated at Singapore will be criticising the working pattern of Indian Supreme Court for delay in handling cases

¹⁰ Christopher Chase-Dunn, Globalisation: A World Systems Perspective, Journal of World Systems Research, V. 2, Summer 1999, 187–215 (last visited on Jan, 16, 2021) available at <http://jwsr.ucr.edu/>.

¹¹ P K Suresh Kumar, Globalisation and judicial sovereignty of India, campaign for judicial

accountability and judicial reforms (2016) (last visited on April, 21, 2021) <https://judicialreforms.org/globalisation-and-the-judicial-sovereignty-of-india>.



and directing the Government to compensate an investor from Australia for such a delay occurred in deciding the case **White - Industries Australia Limited and the Republic of India, 2011**¹². This award is alarming and any prudent person can realise how New Delhi drafts international treaties and also the manner in which the Government of India conducts international arbitrations. It is not the monetary part of the award which is of concern for us, the important part is that the incompetence of the Indian judiciary was taken as the basis for awarding compensation by the arbitration. The words used by an arbitral tribunal would send shudders down the spine of any Indian who believes that his or her nation is still a sovereign state¹³.

Impact of Globalization on Trade

Multilateral international trade agreements in past decades have been the consequence of rounds of negotiation under the auspices of the prior to General Agreement on Tariffs and Trade (hereinafter mentioned as GATT) and present WTO. The liberalization of international trade has, in particular, been facilitated through the most-favoured-nation (hereinafter mentioned as MFN) clause, which requires that market access “concessions” provided to one trading partner in an international trade related agreement needs also to be given to other agreed country. The MFN clause pre-empts opportunistic bilateral agreements that diminish the value of previous agreements. If two countries negotiate bilateral tariff

reductions of 30%, and if one of the countries then subsequently negotiates a bilateral tariff reduction of 50% with a third country, the value of the preferential market access in the first agreement is diminished for the original trading partner. The MFN ensures that future trade liberalization agreements with other countries do not diminish the value of the market access gained in prior agreements. Although motivated by the need to pre-empt opportunistic market access agreements that devalue the reciprocity of prior agreements, the MFN clause has been the basis for broad multilateral trade liberalization. Bilateral trade agreements and customs unions and free trade areas have also liberalized trade, and some governments have also unilaterally chosen liberal trade policies. It is in this liberal trading environment that the second aspect of contemporary globalization has been introduced, through the entry of China, India and the former Communist countries into the international trading system. The global economy has, in consequence, changed because of the changed factor endowments relevant for the world trading system. So long as China was kept isolated from the world economy, and governments in India chose protectionist state-guided development strategies, and the Communist world led by the USSR conducted planned international trade basically amongst itself. In the past, governments and people in the rich western societies worried about threats from import competition to industries or sectors of the economy. There were concerns about how free trade would affect

¹² The Tribunal: The Hon. Charles N. Brower, Christopher Lau, SC J. William Rowley QC (Chairman), *White- Industries Australia Limited and Republic of India* (2013) (last visited on Jan, 17, 2021), <https://www.italaw.com/sites/default/files/case-documents/ita0906.pdf>.

¹³ P K Suresh Kumar, *Globalisation and judicial sovereignty of India, campaign for judicial accountability and judicial reforms* (2016) (last visited on April, 21, 2021) <https://judicialreforms.org/globalisation-and-the-judicial-sovereignty-of-india>



employment and incomes in the domestic shoe or textile industry. There was collectivism in the concerns. A large number of people in an industry or sector faced the common circumstances of being “threatened” by imports. In terminology that is effective for public relations and for evoking protective political responses, people could claim that foreigners were undermining a country’s economic self-reliance. The collective nature of the threat could, through collective action, result in protectionist policies. A case could also be made under the administrative trade laws that dumping was taking place when governments agreed to liberalize international trade, protectionist options were retained through administrative protectionist procedures allowed in conjunction with the liberalization agreements. The political decision-making process and the trade laws could therefore be used to implement protection from imports that threatened the industry or the sector. Protectionist quests could be successful because many jobs were at stake and many people were threatened by income losses. Globalization has affected investment. Firms can choose where to produce, and whether to export or produce locally. International mergers and cross-border portfolio diversification have diminished the association of a firm with a nationality. Ownership of firms has become internationally diverse through the decline in transactions costs of having an internationally diversified investment portfolio. Substantial international migration has changed the face of many countries. There are also substantial numbers of illegal immigrants, in particular in countries where people who wish to work can be self-reliant. There is, of course, no point in being an illegal immigrant in a welfare state as found

in Europe, if the illegality prevents access to the benefits of the welfare state.

Impact on immigrants

Social justice is a basic idea of all governments, but non-productive immigrants are attracted by the benefits of government income transfers, and when high-income people and capital can move to avoid high taxation. The immigrants that undermine a society’s social insurance contract are generally from countries not in the domain of globalization. Wealth accumulated by others is a threat to the ruler since the best personal investment in the society is to displace the ruler and take the ruler’s power and wealth. The consequence is a society where people are not permitted to improve themselves and where poor people look to the generosity of the privileged rich for gifts and charity. When the same people move to a western welfare state, transposed norms are confirmed in the willingness of the state (the ruler) to be generous to people who are not productive. We find it difficult to oppose allowing poor people from poor countries the benefits of western wealth. There is a contradiction with the self-image of being generous and caring. Yet, as many have observed, globalization inexorably destroys a society’s social insurance contract. For this reason, developed countries have opposed immigration of low-skilled or unproductive people. This is, then, another dimension of the conflict between globalization and social justice.

Conclusion

Globalisation having a huge impact on the economy, politics and culture of any country all these factors need to be considered during framing of law. As we know, that law changes with change in society and



globalisation is a factor which leads to change in society. So, when our society believes in socialism then law also needs to be changed in accordance with the principle of socialism, and when our society inclined with individualism or capitalism in those circumstances law also needs to be inclined with elements of capitalism therefore change in law directly affects judicial process and administration of justice. Globalisation also affects political sovereignty, for mutual development states come together and surrender their political right or law making power in a new international body. European Union, in a shining example of it, member states surrendered their sovereign right to make law into the legislative body of the union, however the union had been given power to make law in regard to commercial law. Some experts also argue that some small countries use their sovereignty as a tool of negotiation. Countries situated at strategic positions on the globe take advantage of their voting power at different platforms at international level.

It is well proved fact, that more or less globalisation having significant impact of globalisation on sovereignty and impact on sovereignty directly affects law and any change in law leads to change in judicial process and justice delivery system. Definitely globalisation has its own cons but it cannot be denied that it also has many positive impacts, now governments can pull out their involvement from various fields and leave it for market regulation and can focus on sovereign functions as well.
