SPECIAL ECONOMIC ZONES IN INDIA: CRITICAL EXAMINATION OF THE NEOLIBERAL DEVELOPMENT AGENDA AND LABOUR RIGHTS TRADE-OFF

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I. INTRODUCTION - EXAMINING THE SCOPE OF THE ISSUE

The Indian state responding to a severe balance of payment crisis in 1991 initiated a landmark process of reorientation of the policy framework permanently transforming the economic landscape. With the emergence of the era of Liberalisation, Privatisation and Globalisation, the concomitant reforms introduced have revolutionised the investment climate impacting various sectors of the economy. Representing this shift towards the neo-liberal paradigm initiated by the different political regimes, the Special Economic Zone (hereinafter SEZ) policy was introduced in April 2000 as part of the Export-Import Policy in India.[1]

The characterisation of such zones as "engines of growth" has unambiguously signified the policy bias for trade liberalisation and greater private sector involvement culminating into the concretisation of the policy in 2005 via enactment of the SEZ Act which came into effect in February 2006.[2] Through this paper, the author seeks to examine the impact of such inception of Special Economic Zones on the labour law regime in India critiquing the initial governmental intent to relax labour laws in these specific areas.

Commenting upon the neo-liberal philosophy governing the legislative move, the paper will critique this promise of "Legislating for Growth" and the adversities caused to the labour class in light of the promotion of a regime of non-implementation and labour law flexibility in these economic zones single-mindedly directed towards attracting

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[1] Nishith Desai Associates, 'Special Economic Zones' (*Nishith Desai Associates*, April 2006) <http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Special_Economic_Zones.pdf> accessed 25 March 2015.

[2] ibid.

foreign investment[3]. Ultimately, the paper will conclude by culling out the worrying trend of the newly elected government to continue on the path of trading off labour rights for the attainment of economic goals reflecting upon the short-sighted nature of the approach.

II. THE SEZ ACT 2005- EXPOSING THE NATURE OF THE POLICY DISCOURSE

The SEZ Act 2005, which developed as a product of the policy dispensation of the Congress-led United Progressive Alliance (hereinafter UPA) Government at the Centre, has been the centre of constant academic and media-based discourse for a long period of time. The legislation directed towards instilling confidence in prospective investors has reflected the neo-liberal ideological rationale governing its inception focussing on instrumentalisation of law as a means of generation of wealth.[4]

Representing an effort to imitate the Chinese SEZ System often characterised as the structural foundation of its economic ascendancy, the author seeks to argue for caution against arriving at some premature conclusions in the Indian context.[5] The initial bill introduced in the Indian Parliament in May 2005 included provisions under Section 50 of the bill statutorily mandating denial of basic rights to old-age pensions, conditions of work and maternity benefits in such zones. Furthermore, requests made by state governments of Andhra Pradesh, Gujarat and Maharashtra for relaxation of labour law policies in such zones reiterated the predominance of the neo-liberal philosophy informing the legislative intent.[6]

Since labour forms a concurrent subject under entries 22-24 of List III of Seventh Schedule of the Constitution of India, such requests for easing of labour norms were rejected by the Central Government. Subsequently, responding to the active protest and uproar

[3] Atulan Guha, 'Labour Market Flexibility: An Empirical Inquiry into Neoliberal Propositions' (2009) 44(19) Economic Political Weekly <http://www.jstor.org/stable/40279336> accessed 25 March 2015.

[4] L Lakshmanan, 'Evolution of Special Economic Zones and some Issues: The Indian Experience' (*Reserve Bank of India*, 22 September 2009) <http://www.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=558> accessed 26 March 2015.

[5] Jaivir Singh, 'Labour Law and Special Economic Zones in India' (*Centre for the Study of Law and Governance Jawaharlal Nehru University Working Paper Series*, April 2009) <http://www.jnu.ac.in/cslg/workingPaper/08-Labour%20Economic(Jaivir%20Singh).pdf> accessed 26 March 2015.

[6] M Suchitra, 'SEZs: Economic or Exploitation Zones?' (*Info Change News & Features*, February 2007), <http://infochangeindia.org/agenda/cost-of-liberalisation/sezs-economic-or-exploitation-zones.html> accessed 26 March 2015.

caused by the Left parties, the UPA Government retracted on the move to create an exception of SEZs from the country's labour law regime.[7] Despite such change in governmental position, the author argues that the SEZ Act represents the interface between political interactions and dynamic policy approach of developing economies contributing towards the eminence of the neo-liberal economic agenda centralising the deregulation model.

The Act forms a legislative instrument to incentivise substantial commitment of funds by foreign investors in Indian economy and utilies the mode of fiscal packages offering duty-free import, exemptions vis-à-vis sales tax, service tax, customs tax and income tax and ease of external commercial borrowings.[8] Subsequently, the development route favoured by the SEZ Policy has placed the virtues of free market forces above the values of social and economic intervention by the State.[9] While fulfilling its promise of generating export-centric growth through private parties, the contentious legislation has promoted the culture of "accumulation by dispossession"[10] as articulated by David Harvey wherein the state-guided growth accentuates the disparities existing within the socio-economic status quo.

It is against such a backdrop featuring the rampant explosion of SEZs across the country and the government promise to ensure the continued application of labour norms that the questions of labour law enforcement and the SEZ policy promoting a culture of indifference towards labour rights have relegated in importance. The characterisation of the political move to prevent casualization of labour by relaxation of the statutory regime as an impediment to economic reforms and the often publicised suspicion of compliance with conditions of work in SEZs necessitates a scrutiny of the labour rights controversy plaguing such zones.[11]

With the global financial institutions such as the World Bank influencing the Indian legal regime, the conceptualisation of labour-market norms securing minimum wages, social security and job security as increasing costs of formal labour in its development reports highlights a disconcerting shift in the policy paradigm.[12] Therefore, it is in light

[7] Jaivir (n 5).

[8] A Aggarwal, 'Special Economic Zones: Revisiting the Policy Debate' (2006) 41(44) Economic Political Weekly, 4534, 4535.

[9] Euzeby and Van Langendonck, *Neoliberalism and Social Protection: The question of privatisation in EEC countries,* (International Labour Organisation Report Geneva, 1990).

[10] David Harvey, *Spaces of Global Capitalism: A Theory of Uneven Geographical Development* (*Verso*, May 2006) 91, 92.

[11] Atulan (n 3).

[12] ibid.

of such market-centric rule exemplifying the successful extraction of predatory concessions by the corporate sector from the governments at the centre and state that the issue of the trade-off between market efficiency and labour rights has assumed relevance.

III. TREADING TOWARDS A STATE SPONSORED REGIME OF NON-COMPLIANCE

Since the integration of the SEZ Act within the Indian legislative framework, the labour law experience in these zones exemplifies the hollowness of the explicit statement made by the government in the past of preventing dilution of labour laws within the Act. Commenting upon the legislative and judicial fate of labour laws in SEZs, it is essential to appreciate that these, "foreign territories"[13] were created with the objective of attracting foreign investment with cheap labour and capital. The introduction of SEZs operationalises the idea of graduated sovereignty as argued for by *Aiwha Ong* wherein the government voluntarily gives up control over certain areas in the name of "neoliberalism by exception"[14]. However, the author argues that the economic philosophy has played out as the normative foundation for contemporary policy action.

I. ORGANISING WORKER INTERESTS- A FARCE IN SEZS

The idealisation of trade unions as integral components of contemporary industrial relations directed towards securing interests of workers assumes relevance especially in the context of SEZs. Trade Unions providing a platform for organised representation of labour interests and collective bargaining to counter employer domination are critical to the state of affairs in such zones, enabling workers to acquire an equitable share in the wealth generated by the exponentially rising corporate bodies.[15]

Such unionisation of worker grievances and effectuation of collective bargaining rights has not been a common feature of SEZs in light of the stark imbalance of social power existing between the companies campaigning against such trade union activities and workers threatened by the prospects of unemployment.[16] It is unfortunate that the State has failed in instrumentalising labour legislations to tackle such power inequilibrium

[13] Suchitra (n 6).

[14] G Ritzer and Z Atalay, *Readings in Globalization: Key Concepts and Major Debates* (*Wiley-Blackwell* 2010) 72.

[15] P Ghosh and Geetika, 'Unionisation: A Feasibility Study for the Indian Software Industry' (2007) Russian Management Journal 46, 47.

[16] Suchitra (n 6).

between the employer and the employee as argued for by *Otto Kahn Freund* as the core of labour law jurisprudence.[17]

Freedom of Association enshrined as a fundamental right under Article 19 of the Constitution has created the jurisprudential foundation for the workers' demand for a right to form and join labour unions.[18] However, the judicial position in *All India Bank Employees Association v National Industrial Tribunal*[19] demonstrates the dilution of such right wherein the court recognised such right to form unions yet refraining from including the right to collective bargaining within its ambit.

Furthermore, the legislative device of "illegal strikes" has played a critical part in jeopardising the ability of such workers in SEZs to effectively bargain via collectivisation of interests. Under Section 22 of the Industrial Disputes Act, 1947 (hereinafter ID Act), any person employed in a public utility service will be held liable for a breach of contract and if they go on strike without giving notice during conciliation proceedings then the strike will be declared illegal under Section 24.[20] The statutory emphasis on notice and prohibition on strikes in specific situations restricts the utilisation of strikes as an instrument of organisation and representation of worker interests.

Such stringent conditions were statutorily laid down vis-à-vis specific services of public emergency/interest as defined under Section 2(n) of the ID Act, justifying the legislative intent. However, the problematic inclusion of SEZs within the ambit of such public utility services can be argued to be tantamount to committing fraud on the scheme of the legislation with units of corporate interests contributing to environmental concerns and displacement of population classified as providers of services of public interest.[21]

While the Supreme Court, in the case of *TK Rangarajan v State of Tamil Nadu*,[22] explicitly argued against holding the right to strike as a fundamental right within the constitutional framework, the public utility service status attached to SEZs further impinges upon its efficacy as a statutory right as well. Ultimately, Section 46 of the SEZ Act 2005 requires provisions of identity cards to every person employed/residing/

[17] Joanne Conaghan, 'Gender and the Idea of Labour Law' (2014) 4(1) feminists@law University of Kentpara <http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/102/265> accessed 26 March 2015.

[18] Constitution of India 1949, art 19(1)(c).

[19] *All India Bank Employees Association v National Industrial Tribunal* [1962] 3 SCR 269.

[20] Jaivir (n 5).

[21] Shatadru Chakraborty, 'Discrimination against workers under the Special Economic Zones Act 2005: A Hindrance to India's Development' (2009) 27 Singapore Law Review 189, 190.

[22] *TK Rangarajan v State of Tamil Nadu* 2003(6) SCC 581.

required to be present in SEZ. The impact of such a provision has been that the employers can effectively regulate the entry of workers in these zones enabling them to neutralise trade union attempts to organise workers.[23]

Such provision of statutory safeguards against trade union activities provided to the corporate entities in these zones has been further complicated by the nature of executive involvement as observed in the *Foxconn Case*. The issue involved a Centre of Indian Trade Union (hereinafter CITU) affiliated union submitting a charter of demands on behalf of the workers followed up by the failure of government authorities to act in this regard and the Foxconn Management's refusal to cooperate inducing the union to go for a strike.[24]

Unfortunately, the response of the state authorities to such strike has been prompt arrests and subjecting them to police custody. The political repercussions of a dispute, wherein the State government criticised CITU for obstructing the operations of the company and tarnishing the ruling party's image, represents the subversion of labour welfare.[25]

Such conscious effort of the government endorsing the management's action to penalise workers running contrary to such prohibition of discrimination against union members and union organisers under Trade Unions Act 1926[26] demonstrates the diminishing significance of labour norms in SEZs. Therefore, the failure of the Indian State to ratify the International Labour Organisation (hereinafter ILO) Conventions on Freedom of Association, Right to Organise and Collective Bargaining evidence the political scepticism surrounding such trade union activities visualised as impediments to corporate interests.[27]

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[23] Jaivir (n 5).

[24] S Dorairaj, '*Spirited Fight*' (*Frontline*, November 2010) <http://www.frontline.in/static/html/fl2723/stories/20101119272303700.htm> accessed 27 March 2015.

[25] Nivedita Menon, 'The New Cellular Jail: Madhumita Datta and Venkatachandrika Rradhakrishnan' (*Khafila*, 23 January 2011) <http://kafila.org/2011/01/23/the-new-cellu-lar-jailmadhumita-dutta-venkatachandrika-radhakrishnan/> accessed 27 March 2015.

[26] Kingfisher, 'Employee Human Rights: Policy Standard' (*Kingfisher plc*, June 2013) <http://files.the-group.net/library/kgf/responsibility/pdfs/cr_09.pdf> accessed 26 March, 2015.

[27] International Labour Organisation, '*Challenges, Prospects and Opportunities of Ratifying ILO Conventions No 87 and 98 in India*' (*International Labour Organisation* 2009) <www.ilo.org/wcmsp5/groups/public//wcms_165765.pdf> accessed 27 March 2015.

II. STATUTORILY-SANCTIONED RELAXATIONS AND LABOUR LAW FLEXIBILITY- SENSING DESPERATION IN A DEVELOPING ECONOMY

In this section, the author seeks to argue that the denigrating position enjoyed by labour legislations in SEZs has been a result of rare implementation complemented by statutory loopholes directed towards easing the compliance requirements in the name of developing an investor-friendly climate.

Section 49 of the SEZ Act 2005 enables the Central Government to declare any Central Act, Rules/Regulations inapplicable to SEZs subject to exceptions with respect to laws relating to trade unions, industrial and labour disputes or welfare of labour, such as working conditions, provident funds, employer's liability, workmen's compensation, invalidity and old age pension and maternity benefits in the SEZ. The provision has attracted criticism in light of its futility as state governments can still through notifications and administrative orders formulating SEZ Policies utilising its concurrent powers under the Constitution effectively modifying the coverage of such labour legislations.[28]

Such governmental willingness to modify the impact of labour laws and regulations without offending the rationale of Section 49 has been exemplified in the case of Kerala which, under its SEZ Policy has granted the powers of labour commissioner to the development commissioner. It is submitted that such transfer of administrative power represents a systematic dilution of the labour law regime. Under Section 12(3) of the Act, such development commissioners are responsible for the administration and control of the zone and ensure its sufficient earnings.[29]

Consequently, the operational objective of such development commissioners directed towards export promotion is principally distinct from the directive of labour commissioners who are mandated to- "to determine labour market outcomes, both with regard to working conditions or firing decisions".[30] The statutory requirement of the State Government to approach the development commissioner for inspection before inspecting the industrial units in SEZs further condemns the issue of enforceability of labour rights to the realms of uncertainty.[31]

[28] Jaivir (n 5).

[29] ibid.

[30] ibid.

[31] Shatadru (n 21).

Furthermore, it is interesting to observe that the phenomenon of employment through contract labour has assumed normalcy in such economic zones attributing a position of criticality to the implementation of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter CLRA). The employment practice is characterised by third-party agencies supplying workers to the companies wherein the contractual arrangement involves the agency constituting the employees of the contract workers and such workers are often used for perennial work crucial to the nature of business in contravention of Section 10(2) of the CLRA.[32]

In light of the fact that such workers are usually not provided any proof of employment and subject to migration from one industrial unit to another within the SEZ, the factum of non-implementation acquires prominence. Such contractual labour forming the primary source of employment generated by the SEZs represents the political compromise made by the executive authorities privileging corporate goals of generation of cheap and flexible labour over the quality of employment.[33]

Such relegation of questions of labour rights has been further re-emphasised when the Gujarat State Government under the Gujarat SEZ Act, 2004, utilising the powers granted under Section 31 of the CLRA, provided for the exemption of such SEZs from the application of the Act. Such state-sanctioned exemption legitimised the perpetual employment of workers devoid of statutory protection subject to a hire-and-fire policy.[34]

Reiterating the instrumental value of simplifying procedural compliances representing a voluntary state-sponsored compromise of labour rights for investment benefits, the self-certification practice in SEZs has permanently immunised employers from violation of social security/wage-based statutory provisions.[35] While executing the concept of self-certification provided under the SEZ Rules 2006, the industrial units are merely mandated to furnish consolidated annual reports to the development commissioner concerning their periodic returns under acts such as the Minimum Wages Act 1948, Workmen's Compensation Act 1923 and Payment of Bonus Act 1965.[36]

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[32] ILO ACTRAV Bureau for Workers' Activities, *Trade Unions and Special Economic Zones in India*, 31-32, (Pallavi Mansingh, Suneetha Eluri and Sreejesh N P Centre for Education and Communication'1st edn' March 2012) <http://www.ilo.org/wcmsp5/groups/public/—ed_dialogue/—actrav/documents/publication/wcms_221002.pdf> accessed 26 March 2015.

[33] ibid.

[34] 'Race to the Bottom' (2014) 50(23) Economic and Political Weekly <http://www.epw.in/journal/2014/26-27/editorials/race-bottom.html?0=ip_login_no_cache%3D3c8e04d96fb9f925eed917ddc600cbd0> accessed 21 February 2017 7–8.

[35] SH Iyer, 'Analysis of the Structure and the Practice of the Legal Machinery of SEZs' (Volume 6, Issue number 4, 5 Labour File Journal 2008) 14, 15.

[36] ibid 16.

The result of such reliance on self-certification has been treated as a license to abuse labour norms by employers in SEZs as evidenced in the case of Nokia production units in SEZs in Chennai exploiting such silence on the applicability of the Minimum Wages Act to the economic zones. Studies have reported allegations of differential payment of contract workers despite the performance of same work as trainees/regular employees in contravention of the Equal Remuneration Act 1976.[37]

On the other hand, the judicial precedents as laid down in the cases of Official Liquidator v Dayanand[38] and Secretary, State of Karnataka v Umadevi[39] justifying such differential wage payment to separate classes of workers indifferent to the nature of work have not enabled critics of the policy to harbour a sense of optimism in this regard. The refusal of the Apex Court to adjudicate upon a petition challenging the SEZ policy utilising the grounds of deference to the legislature in issues of economic policy demonstrates the neoliberal paradigm pervading the contemporary judicial philosophy.[40]

Ultimately, the central concerns revolving around working conditions and social security have suffered from the conscious government attempts to shroud its interventionist image viewed as a deterrent to foreign investor capital entry into the Indian economy. The SEZ Act has promoted privatisation of inspection mechanisms vis-à-vis compliance with labour rights norms. Under Section 20 of the Act, the Central Government can institute accredited agencies to carry out surveys or inspections for securing of compliance with the provisions of any Central Act such as the Factories Act, 1948 and Employees' State Insurance Act, 1948.[41]

Studies carried out by Society for Participatory Research in Asia reveals the disparaging status of the work environment in SEZs characterised by workers suffering from dehydration, heat rashes and respiratory disorders in light of the absence of insufficient basic human facilities at the working places and substandard protective equipment.[42] The reluctance of industrial units in SEZs to invest in occupational health and safety as reported by studies conducted by Asia Monitor Resource Centre demonstrates the deteriorating status of labour rights in the neoliberal economic paradigm assuming predominance.[43]

[37] ILO (n 32).

[38] *Official Liquidator v Dayanand* (2008) 10 SCC 1.

[39] *Secretary, State of Karnataka v Umadevi* (2006) 4 SCC 1.

[40] Shatadru (n 21).

[41] Iyer (n 35).

[42] ILO (n 32).

[43] M Murayama and N Yokota, 'Revisiting Labour and Gender Issues in Export Processing Zones: Cases of South Korea, Bangladesh and India' (2009) 44 EPL (22), 78, 79 <http://ir.ide.go.jp/dspace/bitstream/2344/793/3/ARRIDE_Discussion_No.174_murayama_yokota.pdf> accessed 26 M arch 2015.

Therefore, the contemporary conception of labour reforms fixated on the idea of labour market flexibility preferring market forces over government intervention in the attainment of economic growth and prosperity reflects the primacy assumed by the Market View of Labour Law.[44] Such political rationalisation of deregulation in SEZs has necessitated an argumentative discourse around the idealisation of 'Decent Work' as a legal entitlement drawing from the observations of the Reports of the National Commission for Enterprises in the Unorganised Sector.[45]

IV. CHANGE OF GOVERNMENT REFLECTING A CHANGE IN APPROACH? - FINDING A WAY FORWARD

Subsequent to the general elections in 2014 leading to the landslide majority of the Bhartiya Janta Party Government at the Centre, the precarious status quo of the labour rights regime has often been a source of debate. Seeking to replicate the model of governance employed in the State of Gujarat with one of the highest numbers of SEZs in the nation, the Narendra Modi-led government's labour policy seems to reflect an even more aggressive reformulation of the United Progressive Alliance (hereinafter UPA) government. With the newly elected government declaring the need to counter the rigidity of Factories Act 1948, Apprentices Act 1961 and the Labour Laws Act 1988, the 'flexible labour market' model has experienced unprecedented emergence.[46]

The author submits that such labour norms flexibility couched in terms of economic growth and increased employment generation is a farcical claim aimed at convincing the Indian working class to accept an oppressive regulatory regime favouring the capitalist class.[47] It is against such a backdrop that the Economic and Political Weekly Research Foundations' (hereinafter EPWRF) study on the empirical relationship between casualisation of labour and employment and output assumes relevance. The EPWRF conclusively held that such politically motivated labour market flexibility ceases to have an influence on output/employment growth merely redistributing income generated towards the capitalist class widening the socio-economic gap.[48]

[44] "Operation of market forces is more conducive to the attainment of efficient allocation of resources than state intervention". Creighton and Stewart, Labour Law: An Introduction, 5-6, (3rd edn).

[45] Lalit Deshpande, 'NCEUS' Indian Gospel of Decent Work' (2008) 51(2) Indian Journal of Labour Economics 182-183.

[46] Race to the Bottom (n 35).

[47] ibid.

[48] Atulan (n 3) 47, 48.

The inordinate focus on SEZs and the voluntary trade-off between labour rights and foreign investment-centric economic growth in a developing economy such as India can be attributed towards a misplaced idea of development and efficiency. Viewing the SEZ model as a single transaction involving a worker voluntarily taking up employment gives rise to an image of such a worker gaining productive employment and wage at the cause of exploitative work conditions. However, when such a single transaction is simultaneously carried out at an organisational level, the welfare enhancing image of the SEZ model assumes the shape of an illusion with the effects of an unregulated regime outnumbering the beneficial effects of a meagre wage and uncertain employment granted to such individual workers as also argued by *Kaushik Basu*.[49]

The recent demand for the appointment of a committee to inquire into the persistent large-scale labour law violations in the Cochin SEZ industrial units demonstrates the urgency of the matter. The rampant growth of such economic zones culls out the status quo wherein the policy goals of "labour flexibility" articulated as labour reforms have eroded the value of labour rights imposing exponentially rising negative costs on the labour class as a group.[50]

The conceptualisation of labour standards as fundamental human rights is the need of the hour and requires the government policy framework to integrate such an approach within the SEZ model. The issues of insecurity, wage stability and sufficiency and ill-treatment by employers represent concerns which demand compelling moral claims and concomitant universal entitlements.[51] Therefore, recognition of labour rights as human rights statutorily conceptualising such rights as normative entitlements ought to inform the theoretical foundation of the contemporary economic policy framework in the Indian context.

Furthermore, the author argues for the need to integrate the capabilities approach, as argued for by Sen, recognises the rights of workers as central to the process of development rather than its conceptualisation as antithetical to the economic goals of

[49] Jaivir, (n 5) 22; Kaushik Basu, 'The Economics and Law of Sexual Harassment in the Workplace' (2003) 17(3) Journal of Economic Perspectives <https://cae.economics.cornell.edu/Sexual%20Harassment%20JEP%20fin%201.pdf> accessed 21 February 2017 141–157.

[50] R Nagaraj, 'Fall in Manufacturing Employment: A Brief Note' [2004] 39 Economic and Political Weekly <http://www.igidr.ac.in/faculty/nag/Fall%20in%20Organised%20manufacturing%20Employment.pdf> 87-90 accessed 26 March 2015.

[51] Virginia Mantouvalou, 'Are Labour Rights Human Rights?' [2012] European Labour Law Journal <http://www.ucl.ac.uk/laws/lri/papers/VMantouvalou_Are_labour_rights_human_rights.pdf> 10 –11 accessed 26 March 2015.

the nation.[52] The statutorily-sanctioned placement of economic development at a pedestal needs to be replaced with such philosophy wherein the labourers are viewed as ends of the development process guarding against the capitalist instrumentalisation of the labour class to attain short-term profit-making agendas.[53]

The misplaced idea of development ignores the value of human resource development in the Indian context which has been argued for by Professor Sen in his approach. Consequently, the present neo-liberalist political philosophy informed by the neo-classical school of development requires serious re-thinking.[54] Cognizant to the fallouts of excessive state intervention, the emerging view termed as an "enlightened neo-classical school of development"[55] as argued for by Professor Bob Hepple has been in favour of protection of worker rights directed towards an equitable distribution of the returns of such institutionalisation of free-market based economies.[56]

V. CONCLUSION- DEMYSTIFYING THE POLICY DILEMMA

Through this paper, the author has attempted to highlight the manner in which the current political dispensation has failed to strike a balance between the role of the state as a facilitator within a protectionist model and the emergent model of deregulation in the neoliberal economic paradigm. With the government opting for restrained intervention within the deregulatory model, the policy-based shift in paradigm has unfortunately promoted the "commodification of labour" viewing the labour class as means to an end[57] side-lining the central issue of a rights-based perspective forming the jurisprudential foundation of labour law. Therefore, the SEZ Act 2005 is characteristic of a state-sponsored scheme enabling capitalist structures to engage employment models based on unorganised contractual labour representing a calculated move to avoid granting protection to a set of workers in the name of furthering the cause of economic development.[58]

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[52] Amartya Sen, *Development as Freedom* (Oxford University Press 1999) 3, 4.

[53] ibid 112, 113.

[54] Ricardo Contreras, 'Competing Theories of Economic Development' (1999)Journal of Transnational Law and Contemporary Problems, para 94, 95 <http://fileserver.net-texts.com/asset.aspx?dl=no&id=53188> accessed 25 March 2015.

[55] Shatadru (n 21).

[56] B Hepple, '*Labour Laws and Global Trade*' (Oxford Hart Publishing 2005).

[57] B Langille, *Labour Law's Theory of Justice* (Oxford University Press 2011) 103-104.

[58] Race to the bottom (n 34).