

## **The Debate on Social Clause: WTO, ILO & Child Labor in India**

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**Abstract:** *International trade has been one of the pillars of growth for developing economies. It is recognized that the core labor standards need to be universally appreciated considering the dignity of labor, decent living standard and fundamental rights. However, in developing economies, unless, eradication of absolute poverty is attained, amelioration of child labor issue would find no solution. The issue of social clause needs to be solved through ILO only with more active participation of NGOs and trade associations; instead of relying on WTO to solve it. The problems of labor rights can be solved through social outlook rather than legal bindings. It is necessary for the developing nations to take effective steps to combat child labor. WTO has the responsibility to see that developed nations do not impose any economic sanctions in the name of labor standards to the detriment of developing economies growth. So whether labor standards are to be imposed compulsorily with punitive action is the real question. In view of this, the paper discusses the concept of Social Clause and deliberates on arguments in favor of and against it with respect to WTO and ILO; along with discussion on measures taken by Government of India to ensure child rights.*

**Keywords:** *Convention 138 and 182, ILO, Social Clause, Social dumping, WTO.*

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### **I. INTRODUCTION:**

Child labor is a universal phenomenon and it is revealed that there is a very weak link between economic development and existence of child labor<sup>1</sup>. However the magnanimity and depth of the problem is severe in developing countries like India. The intensity of the problem is enhanced by large unorganized labor markets and socio-economic factors like poverty, illiteracy and cost cutting by the employers etc. The economic compulsions of the poor families increase the complexity of the issue resulting into sending their children to the factories for earning their daily bread. The examples of Shivkashi Fire Works in Tamil Nadu or glass factories at Faridabad near Delhi or children working in hotels everywhere are rampant in India.

The definition of child labor constitutes any act where children between the age of 5 and 14 are directly or indirectly forced to work at home or outside it<sup>2</sup>. As a consequence, children are not only deprived of dignity and freedom to play but also scope for physical, mental and emotional development. These children are denied education which is their fundamental right. This paper attempts following objectives:

1. To explain the concept of social clause.
2. To understand the link between trade and labor with respect to WTO and ILO
3. To deliberate on the arguments in favor of and against the issue of social clause.
4. To know the Government of India's stand on social clause and child labor.
5. To summarize the measures taken by Government of India to ensure child rights.

### **II. SOCIAL CLAUSE- THE CONCEPT**

Core labor standards embody basic human rights, enshrined in Universal Declaration of Human Rights (UDHR) 1948. Article 23 to 25<sup>3</sup> confer decent living standards. Therefore, irrespective of country's level of development, this should apply. Moreover, Core labor standards represent a frame work in defense of workers' rights or interest. The market system and trade liberalization in particular are fundamentally flawed under such condition and thus fail to maximize workers' welfare.

Therefore Social clause stands for protecting labor standards, more specifically prohibition of employment of children in hazardous industries, providing adequate wages, healthy and hygienic conditions, and special social welfare protection for women, prescription of hours and rest and provision for efficacious remedies in case of default by employer to provide these conditions to his workers. The social clause merely aims at setting the "social rules of the game" in the international trading order, in particular by ensuring consultation among all parties; what agreement they reach and its specific content is up to them.<sup>4</sup>

### III. LINK BETWEEN TRADE AND LABOR AND ROLES OF WTO, ILO

The first concerted effort to draw a link between trade and labor standards was made in 1880s when Kaiser Wilhelm of Germany invited other European Governments to Berlin Congress to negotiate on International Labor Laws<sup>5</sup>. In 1920, under the Treaty of Versailles Part XIII explicitly talked about International Labor Standards including Abolition of Child Labor and was followed by League of Nations in 1927. International Trade Organization 1947 also incorporated Havana Charter on trade and employment; however, there was never a consensus on the issue of labor rights and unfair practices. The issue was raised again in Tokyo Round of negotiations in 1979 and also in 1986, 1987 and first half of 1990, however, Marrakesh Summit of April 1994 of WTO witnessed support of European Union Government (French) to US proposal on labor standards.

The WTO was established at Marrakesh in 1994 as the conclusion of Uruguay Round to provide an institution to administer General Agreement on Tariffs and Trade (GATT). WTO is represented by governments of various countries. The Ministerial Conference of WTO meets every two years and it is the highest authority in WTO. The WTO provides an institutional base for the application and enforcement of multilaterally agreed trade of goods and services. In the globalized context WTO also takes note of matters incidental and ancillary to trade and investment such as employment standards, reduction in tariff rates, environment etc. for effective implementation of its provisions, WTO imposes sanctions in case of default by its member state.

The WTO Summit of Singapore held in 1996, discussed among other issues; the implementation of social clause. The linking of trade and labor standards within WTO was urged most strongly by the United States, France and some other developed countries and opposed by a substantial number of developing economies and the United Kingdom. A compromise between proponents and opponents resulted into the inclusion of following paragraph in the final Ministerial Declaration:<sup>6</sup>

*We renew our commitment to the observance of internationally recognized core labor standards. The International Labor Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that comparative advantage of the countries, particularly low wage developing countries, must in no way put into question. In this regard, we note that WTO and ILO secretariats will continue their existing collaboration.*

This declaration emphasizes following aspects:

- It promotes a link between labor standards and trade under WTO and vice versa
- It rejects the use of labor standards for protectionist purpose.
- It supports core labor standards of WTO for the members.
- However, it also emphasizes that ILO is the competent authority to set and deal with labor standards.

The issue was not finally settled and WTO assigned the task to ILO to formulate the labor standards. The matter was again discussed in Doha Round in 2002 but without much conclusion.

**International Labor Organization** is a tripartite authority formed by Governments of various nations, NGOs and representatives of trade unions and employers. ILO was established in 1919. Core labor standards are defined with reference to ILO convention. These conventions embody current International consensus and constitute the most comprehensive set of labor standards. The Copenhagen Declaration<sup>7</sup> Commitment 3 made reference to 4 categories of fundamental rights as follows:

TABLE 1:

Right /Provision	Convention	Period
Freedom of Association & Right to Bargain Collectively	C 87 and C 98	June 1999 and May 2000.
Prohibition of Forced Labor	C 29 and 105	May 2000
Prohibition of Child Labor	C 138 and 182	May 2000
Non Discrimination in Employment	C 100 and 111	May 2000

Convention number 138 is related to establishing a minimum age for child labor. It is opposed by Less Developing Countries (LDCs) in particular because they feel that it is inadequate and premature. This would warrant the children not being compelled by circumstances to seek employment. But working children are usually orphans or from poor households, in female headed families, migrants or refugees. Even OECD acknowledged this criterion as ill – suited for less developed countries<sup>8</sup>. The minimum age criterion thus drives them into illegalities and put them at greater risk of exploitation and abuse. The core of 138 has to be giving

children legal protection and to strictly regulate the conditions under which children may be permitted to work. Again the minimum age of 15 or 18 for hazardous jobs remains unrealistic for developing countries, given low level elementary schooling. Further it does not distinguish work from exploitation. This implies that to eliminate child labor there needs to be a link established between schooling and child work. Eventually, ILO endorsed this view with its Convention No 182 providing a ban in hazardous industries, and thus, Convention 182 legalizes child labor in non-hazardous industries.

#### **IV. THE DEBATE ON SOCIAL CLAUSE:**

Keeping in mind foregoing discussion, it can be recapitulated that social clause refers to a legal provision in a trade agreement aimed at removing the most extreme forms of labor exploitation in exporting countries by allowing importing countries to take trade measures against the exporting countries which fail to conform to a set of internationally agreed minimum labor standards. The principle of non-discrimination among the trading partners of WTO member states does not allow deviation or otherwise permit prohibitive tax.

The social clause debate comprises of an economic argument and a moral argument. The proponents of social clause often mix up economics and politics while the opponents hold the view that there is very weak link between trade, competition, growth and labor<sup>9</sup>. From the beginning, the debate on the issue on social clause has North – South dimension. The proponents are industrialized nations while developing economies are flatly refusing it.

**TABLE 2: Arguments in favour of and against Social Clause**

Sr. No.	Arguments in Favour of	Arguments Against
1	There has to be a definite link between trade and labor standards .	According to neo classical liberals, there is no link between trade and labor.
2	WTO must take a note of all trade related matters such as investment, employment and environment.	ILO is the competent body to deal with labor standards.
3	Better labor standards throughout the world are recommended as lack of universal standards lead to exploitation and asymmetry in international trade.	If uniform labor standards are accepted, it would cause the stagnation to growth. International labor standards do not cover unorganized sector where majority of workforce is concentrated.
4	There is no scarcity of labor in developing countries; hence, the factor price of labor is low.	It is only the protectionist policy of developed nation inviting ban on child labor.
5	According to developed nations’ stand, the employers paying wages below the labors of industrialized countries are guilty of ‘social dumping’.	According to developing economies, repayment of higher interest debt need minimizing cost of production and one such way is hiring of child labor.
6	Political, moral and human rights do not justify use of child labor.	The economic reasons justify hiring of child labor.
7	The competitive advantage is due to low levels of wages and standards in developing countries and therefore, it’s a violation of human rights.	The increased exports from south is not the result of low labor cost but due to competitive advantage of developing countries.

#### **V. SOCIAL CLAUSE AND CHILD LABOR IN INDIA:**

India is a house for more than 25 million child labors and approximately 90% of them are in rural areas. Initially India stressed that labor standard issue should not be referred to the Ministerial Conference of WTO (at Singapore); however, it silently accepted it too. From the Indian point of view, the matter of labor standards should be referred to ILO rather than WTO, which is a competent body to deal with it.

The issue of labor is a concurrent subject in the Indian Constitution. Article 246(4) of the Constitution provides for joint legislation with regards to industrial disputes, trade union, and employment etc. The Constitution (Articles 24, 39 and 45) prohibits employment of children in hazardous industries and also has 8 legislations containing provisions for protecting children. Though, India has not ratified the ILO Convention No 138 and 182, it provides a ban on hazardous industries. The Child Labour Prohibition and Regulation Act 1986 is considered inadequate as it legally permits child labour in the ‘non – hazardous’ sector<sup>10</sup>. The Act of 1986 incorporates 14 Conventions of the ILO. In addition, The National Human Rights Commission (NHRC) in India has been monitoring the implementation of Government policies and programmes; on identification, release and rehabilitation of child labor in selected districts of the country.

The other supportive measures to prevent the employment of child labor include Sarva Shiksha Abhiyan, Right to Education Act, National Skill Development Policy and National Child Labor Project, which offer education through non formal education centers.

India has large and comprehensive laws on labor. However, extensive regulated system of labor protection is present only in case of organized sector for welfare of workers. Only a limited number of social security measures are available for workers in unorganized sector where most of the children are employed in.

## **VI. CONCLUDING OBSERVATIONS:**

International trade has been one of the pillars of growth for developing economies. It is recognized that the core labor standards need to be universally appreciated considering the dignity of labor, decent living standard and fundamental rights. However, in developing economies, unless, eradication of absolute poverty is attained, amelioration of child labor issue would find no solution. The issue of social clause needs to be solved through ILO only with more active participation of NGOs and trade associations; instead of relying on WTO to solve it. The problems of labor rights can be solved through social outlook rather than legal bindings. It is necessary for the developing countries to take effective steps to combat child labor. WTO has the responsibility to see that developed nations do not impose any economic sanctions in the name of labor standards to the detriment of developing economies growth. So whether labor standards are to be imposed compulsorily with punitive action is the real question.

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