

# Labour Standards: Voluntary Self-regulation vs. Mandatory Legislative Schemes

## Introduction

*As developing countries compete against each other to attract foreign investment, they often adopt measures that help them keep the labour costs down. These include relinquishing minimum wage protection, trade union rights, social insurance provisions and secure employment contracts. In this way, increased international trade strongly impacts conditions of labour in liberalised economies.*

*That does not mean, however, that industrialised countries are justified in using the WTO to apply trade sanctions in an effort to raise labour standards. Nor are the developing countries unjustified in their concerns about the protectionist interest that influences the current approaches to social clauses. Can an alternative to improve the conditions of labour be proposed?*

*The objectives of this paper are to review: 1) the issues under current discussions on labour standards; 2) their linkage with trade; and 3) the scope of codes of conduct and social labels for improving the conditions of labour in India, based on the experience of codes of conduct in other countries.*

## Labour Standards: Need of the Hour

The public policy view that dominates in the developed countries believes that labour market regulations and the persistence of welfare state are the key causes for the rise in and the persistence of unemployment in these countries. Labour market regulations, unemployment benefits and other welfare measures are seen as factors reducing the incentives for workers to seek work and for employers to create jobs.

These factors are also held responsible for the impending structural change in economy by providing excessive employment security. Thus, the policy prescription emanating from this has been to deregulate labour markets in search of more flexible labour markets that would be in line with market forces. The propagation of labour market deregulation has increasingly come to feature also in the policy conditionality of the structural adjustment programmes for developing countries.

Labour standards have been questioned by an emerging common view that (a) heightened international competition, as a result of globalisation, increases the pressure to cut costs, including labour costs and (b) achieving greater flexibility in the production system implies a negative impact on acquired levels of labour standards. Growing mobility of capital increases the bargaining strength of the employers vis-à-

vis both governments and workers. Governments keen to retain and attract foreign direct investment (FDI) have to make concessions, while workers are in a weakened bargaining position, in the face of the threat of relocation. Thus, the nature of the global competition is highlighted as another reason for questioning the implementation of labour standards.

A controversial issue that has emerged is whether or not a social clause should be included in the trade agreements. Those in favour advocate a link between international labour standards and the liberalisation of international trade, i.e., violation of the agreed international standards would be a ground for invoking trade sanctions.

The case of the proponents of a social clause is based essentially on arguments about fair trade, buttressed by moral concern over child labour and other exploitative labour standards. The rationale for including a social clause in trade agreements rests on the need to eliminate unfair trade competition deriving from labour exploitation and the notion that trade sanctions are the most effective means of achieving this.

In contrast, the position of developing countries is opposed to a social clause. This is based on the view that the developing countries are, generally, doing the best they can to improve labour standards, given the constraints of their level of development and their limited financial and administrative capacity.

From this point of view, the only constructive avenue for improving the current position would be to provide financial and technical assistance to developing countries, directed at strengthening their capacity to progressively improve labour standards.

### New Regulatory Regime

The 1990s saw the proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. These emerged as a result of a major shift in the economic role of the state and policies towards transnational corporations and foreign direct investment.

In the 1970s, many governments had sought to regulate the activities of transnational corporations both at the national and international level. However, the 1980s were a decade of deregulation and increased effort to attract foreign direct investment. Several changes in the global economy contributed to the growing interest in corporate responsibility and codes of conduct in the 1990s.

### New International Economic Order and Labour Codes

Labour codes were first observed in the late 1960s and 1970s, in response to an increase in the operations of Multinational Corporations (MNCs) all round the world. Governments and organised labour in host countries did not perceive the MNCs to be beneficial. In fact, it was felt that they were exploiting the smaller weaker countries of the south.

Hence, the International Confederation of Free Trade Union (ICFTU) called for the regulation of the Multinational Corporations in 1960s. This period was characterised by measures ranging from legislation controlling the activities of MNCs to outright nationalisation of foreign-owned companies.

By the late 1980s, the attitude towards foreign investments and MNC activities had undergone a complete turnaround. The process of liberalisation adopted by newly opened up countries was usually centred on policies that facilitated development through

foreign direct investment (FDI). Over the period 1991-99, developing economies promoted FDI by reducing sectoral restrictions on foreign investment, opening up industries that were closed to foreign investments.

In countries like India, Thailand and the Russian Federation, the 1990s saw a complete turnaround in FDI policies. These positive changes were accompanied by the conclusion of several bilateral treaties. Regional agreements also emphasised the role of foreign investment between countries. For instance, in India, the Chief Ministers of various states compete with each other to offer the most advantageous sites for projects financed by foreign investments.

While favourable policies have pulled FDI into the developing countries, foreign investment has also been pushed by Multinational Corporations' quest for new markets and lower cost reduction facilities in these countries. As a result, there has been an increase in the number of multinational corporations.

### General Concerns

Global economic integration poses a serious challenge to the existing system of regulation. First, capital inflows from MNCs have acquired the reputation of being "footloose", as they swiftly shift production from one country to another in search of cheaper labour. The adverse economic and social impact of their withdrawal, or even the threat of withdrawal, assures them government support and concessions.

Secondly, governments vie with each other to set up "Special Economic Zones", where even the basic labour standards are ignored, to create a low-cost production location. There is ample evidence that MNCs shop for the most attractive production sites. For example, Mattel's toy production moved from Hong Kong to Malaysia, when labour costs rose in Hong Kong, and then partly to India, when costs rose in Malaysia.

Another aspect of MNC activity is its ability to generate both direct and indirect employment. Foreign affiliates of multinational corporations not only employ people directly in their establishments, but also create additional indirect employment by using franchises, sub-contractors and suppliers in host countries.

Many multinational companies outsource their products with suppliers and sub-contractors in different locations across the world. This supply chain structure creates a corporation where the ownership of a brand name and technology rests with an MNC, but the actual production is carried out elsewhere. As a result, a majority of workers who contribute to the MNC's output are not directly employed by it.

Such international diversification of economic activity calls for an international framework of labour regulation, which does not exist at present.

#### Box 1: 1960s and 1990s Codes

##### 1960s Codes

- This was the period characterised by measures ranging from legislation controlling the activities of MNCs to outright nationalisation of foreign-owned companies.
- These codes were actively initiated by developing countries as a way to counter misuse of national resources by MNCs.

##### 1990s Codes

- They mainly focused on the impact of corporate activity on labour and environment.
- These codes were voluntary initiatives, adopted by the business sector itself.
- These codes emerged largely as a result of activities and consumer pressure from developed countries.

## Codes of Conduct

Codes of Conduct refer to standards or principles that are adopted by a corporate entity, an association of businesses or a group of multiple stakeholders. Codes could be related to improving working conditions for labour, preserving and protecting the environment or fulfilling some other social responsibilities. An increasing number of companies are voluntarily adopting codes of conduct to fulfil their environmental and social obligations.

These voluntary initiatives may be unilaterally developed by the industry, designed and run by the government, jointly developed by the government and the industry or developed and run by the non-governmental organisations.

Implementation of codes was weak and marked by complete absence of independent monitoring and verification. Codes were often displayed in languages that were not understood by the workers. There was no systematic procedure for channelling feedback or handling complaints about code implementation and, sometimes, managers were not sufficiently trained or informed about different elements of the code.

The concept of voluntary corporate initiatives began changing with the emergence of the view that a corporate organisation is responsible not only to its shareholders but to multiple stakeholders who influence and are affected by its operations. The "multiple stakeholder" theory of corporations stressed that companies should be responsive to the needs of a broad range of people who have some "stake" in the organisation.

## Voluntary Approaches to Labour Standards

While national laws are inadequate to tackle the regulation of transnational labour, international declarations of protection of labour rights have also failed to regulate employment practices of MNCs. Only the Organisation for Economic Co-operation and Development (OECD) and International Labour Organisation (ILO) declarations remained as major international codes of protection to the rights of MNC labour.

But, the mechanisms of both are rather weak. Each has voluntary standards for multinationals; neither provides any remedies; individual companies are not identified publicly or judged; and the procedures merely clarify the meaning of the standards for the future.

In a dual context, where neo-liberalism was weakening certain state institutions and discrediting the idea of "command and control" regulation and where certain state-based and international regulatory initiatives had failed, voluntary approaches were seen as a way forward. The early 1990s, therefore, saw the emergence of a second wave of corporate codes. These codes mainly focused on the impact of corporate activity on labour and environment.

The rationale for the firms to adopt codes of conduct can be seen in the emergence of brand imaging as a factor influencing the success of firms as business practices are increasingly coming under public scrutiny because of environmental and public health concerns. Environmental and public health concerns have become part of the social and political discourse and companies have to respond to consumer concerns.

Improved labour standards result in long-term financial benefits, particularly in the industrial sector. Employers who have invested substantial capital are interested in promoting health and safety standards, since these tend to increase the productivity of workers and an increase in the level of workforce commitment. Treating the workers well is expected to make them more efficient, in turn leading to higher efficiency, profitability and competitive edge – a win-win strategy.

Reforming the management and supply chain systems, to incorporate better labour practices, can only lead to greater overall profitability in the long run.

## Voluntary Initiatives and Labour Standards in India

The Indian legal frameworks on labour have been significantly influenced by the recommendations and conventions of the ILO. India has ratified three of the seven core standards: those pertaining to forced labour equal remuneration and non-discrimination in employment and occupation. But despite the existence of rigorous labour laws in the Indian context, implementation leaves much to be achieved. This leaves ample scope for voluntary initiatives to improve work place conditions.

Some of the voluntary initiatives in India related to improving the conditions of labour that have been initiated in the recent years are:

- SA 8000 is defined as 'humane workplace standard and verification programme' made fully operational in mid 1998. It is an auditable standard for third-party verification. This code is expected to maximise benefits by putting company values into action;

### Box 2: Requirements for the Effective Functioning of Codes of Conduct

- The content of the code and its implementation process must involve and empower workers covered by it.
- The code must respond to the local needs of the workers and must, at least, guarantee the core standards prescribed by the International Labour Organisation.
- Companies adopting codes must ensure its effective implementation by providing resources, training, monitoring and reporting systems to make it work.
- Companies should have transparent labour practices and compliance with the code should be subject to independent verification by qualified assessors.

improving employee recruitment, retention and performance; better supply-chain management, etc.

- *The Global Sullivan Principles of Social Responsibility* is a code of conduct by which socially responsible companies and organisations can be aligned with one another.
- *The Ethical Trading Initiatives (ETI)* is an alliance of companies, NGOs and trade unions committed to working together to change business behaviour by identifying and promoting good practices in the implementation of codes of labour practices. The rationale behind ETI is to respond to the "growing concern among consumers that goods that they buy should be produced in conditions that are safe and decent and which enable working people to maintain their dignity and a reasonable standard of living".
- *Christian Aid and South Coalition on Child Services (SACCS)* have been instrumental in making visible the abysmal conditions of work, especially of child workers and calling for the Indian Government's adherence to the UN Convention on the Rights of the Child (Article 32).
- *RUGMARK Foundation* is an independent body that offers a voluntary certification programme for carpet exporters in India to ensure that children do not make carpets.
- Likewise, *Robert Stephen Holding Plc (RSH)* and *Social Awareness and Voluntary Education (SAVE)* are codes for improving labour standards.

Besides these, the voluntary initiatives that involve complete monitoring and auditing of the supply chain also address issues of home-based workers.

## Conclusions

An increasing number of companies are voluntarily adopting codes of conduct to fulfil their environmental and social obligations. A majority of voluntary codes developed in the 1990s tend to be multiple stakeholder initiatives (including employees, shareholders, neighbours, public interest groups, customers, suppliers, governments and the general public), which address the needs and concerns of some or all stakeholders of a corporation.

If self regulation and market forces were the best means to ensure respect for environmental and labour rights, one might expect, since this has been the dominant paradigm for quite some time, the number of abuses attributable to companies to have diminished. Nevertheless, accounts of continuing abuse must be seen in the context of political trends that reduce state intervention and increase the scope of private sector activity.

At the same time, traditional means for securing workers' rights, such as unionisation, have weakened. The lesson from history remains that, at the level of nation states,

voluntarism rarely causes states to respect human rights. So, why will voluntarism do it for companies? In the last 50 years, co-operation and enforcement both have been required to protect rights of the communities.

Voluntary initiatives apply only to those who accept them. A company might accept a code of conduct because of commitment to the principles or because its reputation is at stake. Even where there is commitment, voluntary codes may not be respected, if their principles clash with other, more powerful commercial interests.

It is argued that if it makes good commercial sense to respect human rights, then market forces will ensure compliance. Possibly, a binding international regulation can play an important role in ensuring that the companies respect labour and environmental rights.

International rules do not reduce the importance of national regulations. Instead, international laws look first to states to enforce its rules. If an international law says that companies must respect human rights, it is primarily up to the states to make sure that this happens through domestic laws. Though international rules are not a substitute for national law or regulation, they can help harmonise rules at the time of weak national regulation, act as a common reference point for national law, setting benchmarks, drawing attention to core minimum requirements and establishing clearly what is permissible.

In sum, neither legal nor voluntary approaches should be a substitute for each other. Both are needed, and they can be complimentary.

The challenge is therefore, to continue to build a vibrant set of civil institutions, capable of 'feeding' the corporate community and their markets with 'signals of success' that orient companies towards social and environmental 'goods', and away from the equivalent 'bads'. If civil action cannot make ethical markets, then it is unlikely to be effective in turning around the corporate community, except at the margin. Public regulation in this light is not a different route, since governments are increasingly influenced by the needs of the corporate community.

Those who want and predict real development benefits from new rules governing corporate behaviour, both to improve standards for workers and to prevent companies investing internationally to escape stricter home laws, can possibly support voluntary initiatives as the best available option.

In the current state of global economy, reduction of state intervention in the economy and the weakening of the unions, seems to be one of the best option in the given circumstances.

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This Briefing Paper is an abridged version of the research report "Voluntary Self-regulation versus Mandatory Legislative Schemes for Implementing Labour Standards" written by Dr. Atul Sood, Associate Professor, Jawaharlal Nehru University, New Delhi, India. The abridged version has been prepared by Garima Joshi of and for CUTS Centre for International Trade, Economics & Environment, D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India, Ph: 91.141.220 7482, Fx: 91.141.220 7486, E-mail: citee@cuts.org, Web Site: www.cuts.org, and printed by KBS Printers, Tonk Road, Jaipur 302 001, India.

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