

CHAPTER - V

APPROACH TO REVIEW OF LAWS

Whether one is sanguine about the results of globalisation or suspicious and apprehensive, one has to accept the fact that we have travelled quite some distance along the road to full-scale globalisation. The current socio-economic scene is no longer what it was when we started on the journey. Old parameters set by old perceptions and possibilities, have ceased to exist and inhibit. Developments in technology have created a new era. It is technology that has made globalisation possible and, perhaps, inevitable. It is technology that has radiated visions of possibilities, generated new hopes and given rise to new dangers and temptations. Its impact can already be seen in many fields of human activity. Many institutions that we have got accustomed to, feel the impact of the revelations of technology, and are compelled to pass through the crucible that will test their relevance, effectiveness and social tenability. Such situations call for considerable

resilience in the human mind. Old and ossified mindsets may prove a handicap in responding to, or in dealing with the new situations and factors that have emerged. One cannot be allergic to radical reflection, and the radical revision of confrontationist attitudes and mindsets. Old catechisms may have to be given up.

5.2 No economic activity is an end in itself. Industry is not an end in itself. It is a social activity, an activity undertaken by members of society, or constituent groups of society, to meet the needs of society. As far as one can see, it will not cease to be a social activity. What makes industry possible, are the paradigms of interdependence within which society functions and progresses. There can be no industry, if there is no consumer. There can be no consumer if there is no producer. There can be no market without producers and consumers. There can be no production for the market without tools or machinery, without capital,

without labour, without managerial skills that bring all these together to produce goods or services that are in demand. There can be no effective demand without purchasing power, and there can be no purchasing power unless there is income, and there can be no income without inherited property or earning from labour/employment, or interest on deployed capital. It is thus clear that all economic activity is the result of interdependent interests, and co-operation among the various factors that together constitute the cycle of economic activity. Compulsions that flow from interdependence can be ignored or violated only at the cost of success in one's efforts or at the cost of one's goals. Globalisation has not altered this fundamental; it has only underlined its importance for communities that choose to enter the arena of competition.

5.3 For many years, many countries in the world, including India, pleaded for the creation of a New Economic Order which would be more equitable and fair to the developing countries of the world, and the poverty stricken and the deprived in the world. But we have failed in our efforts, at least temporarily. Instead,

we have been confronted with a new order, which is governed by the philosophy of competition. There are no intergovernmental organisations or international courts of justice to protect the interests of the developing countries. In fact, in spite of democratic facades, the powerful among the developed nations manage to dragoon the developing nations at international fora for economic negotiations. It is clear that each sovereign state still has the responsibility to protect the interests of the people it represents. In a regime of competition, this means that every nation has to acquire and retain sufficient competitiveness to be able to survive and prosper in world markets. It has, therefore, become a national necessity to acquire competitiveness. Neither the interests of the poor and unemployed, nor the interests of the affluent can be served without competitiveness. This competitiveness cannot be acquired without harmonious relations or at least peaceful relations in industry. Peaceful industrial relations are, therefore, an imperative for the survival and progress of everyone – whether he or she is a worker or entrepreneur, whether he or she is an employer or employee. Without it,

the economy will lag behind, targets will not be attained, and there will be general disruption of structures and plans. It has, therefore, become a social and national duty to create peaceful relations among the social partners, who together constitute the backbone of industry, or agriculture, or the provision of services. The first requisite for the employers and employees today, therefore, is to develop a mindset that looks upon each other as partners, to develop a work culture that new technology and the context of globalisation demand.

5.4 In this context, we must refer to a view that has been forcefully canvassed before us. We have been told at many places, that what stands in the way of the economic and industrial progress of the country, what is a disincentive for investment, and what acts as a repellent to foreign investment in our country, are our labour laws; that there can be no increase in employment without increased investment, and since what stands in the way of increase in investment is labour that demands the continuance of present labour laws, it is labour that stands in the way of increase in employment opportunities, or to put it positively, stands in the

way of the liquidation of unemployment. This argument is put forward with a degree of conviction by some, and a degree of ingenuity by others. It has many aspects, and we cannot, or need not go into all of them here. But there are some considerations that must be stated while examining the weight of this contention.

5.5 Firstly, it is an overstatement to say that labour, or labour laws are the only cause of our unsatisfactory economic development, or our inability to attract foreign investment in the same way as some other countries, or to the extent of our requirements. There are other factors that affect the efficiency of industry like managerial skills, managerial integrity and honesty, efficient and reliable infrastructure like transport, electricity etc, access to requisite and timely flows of credit, access to materials, constantly improving and competitive technology, Government policies, etc. It is difficult to contend that all these are present in impeccable measure, and it is only labour laws or labour that is dragging the economy down. No one can say that our infrastructure – power, transport, communication, technology

etc – is as adequate, efficient and reliable as it has to be for industrial efficiency or global competition. No one can wish away the distressing picture of the increasing man-days lost in lock outs or the malfeasance involved in the mind boggling scams involving thousands of crores of Rupees or the impunity with which such malfeasance is perpetuated, connived at or condoned. The non performing assets of Banks have reached an astounding figure of Rs. 80,000 crores. The taxes due from industries to the Government have reached a figure of Rs. 1,52,600 crores. All these neither add to the credibility of industry nor reflect its efficiency as we have pointed out in the preceding chapter. Secondly, if there are many causes, and one deals only with one, and ignores all others, with a uni-focal approach, one cannot overcome the disease or hope for cure. Thirdly, sometimes, looking for causes outside makes one blind to causes that act from within. All these reasons make it necessary for us to place labour laws in perspective, as a part of what we have to look at, and not the whole, ignoring other inter connected matters.

5.6 This does not mean that we do not believe in the need for important changes both in laws and in attitudes.

5.7 Most of the witnesses who tendered evidence before the Commission, talked of the imperative need to evolve a new work culture in our country. It is obvious that the work culture that obtains in any industrial undertaking, in fact, in any place of work, depends on all those who participate in the processes of work that go on in the undertaking. It is based on the attitudes of individuals as well as on the conditions in which these individuals work. Thus, the creation and maintenance of a conducive work culture depends on:

- (a) the individual worker, and his attitude to work;
- (b) the conditions that relate to work;
- (c) the management and its attitude to workers; and
- (d) the norms that a society sets before itself, its commitment to excellence and conscientiousness, and its sense of fair play and justice to its constituents.

5.8 Let us have a closer look at each of these. The individual has to look upon work not merely as a means of access to personal income, but also as a commitment to society at large, and the undertaking or activity of which he is a part. In this sense, his status as a wage earner or employee depends on the existence and, in the long run, the development of the undertaking. If the activities of the undertaking are rendered uneconomic, and it is therefore, compelled to close down, the worker has to move to another undertaking, or to seek a job elsewhere. It has, therefore, to be conceded that the worker has a stake in the viability and growth of the undertaking, and an attendant responsibility as well as right. Wages cannot be looked upon merely as means to provide personal incomes, but have also to be looked upon as incomes that are earned through hard work. It has to be admitted that there is an element of 'quid pro quo' in wages that are earned from employment. The quid pro quo involves not merely monetary payment but also a balance of responsibilities and rights. This should not be taken to mean that industrial

or economic activities, or for that matter, any undertaking involving the collective efforts of many partners or participants can be effectively undertaken without demarcating and respecting exclusive or relatively exclusive areas of responsibility. There will be division of labour, and there will be division or demarcation of primary responsibilities. But the infrastructure on which such a demarcation is made, will have to ensure an essential command structure, as well as respect for and responsiveness to each other's rights and responsibilities. These rights will have to include the right to equitable remuneration and equitable sharing of the profits that are generated by collective effort.

5.9 In our perception, the individual worker's attitude to work has to include (i) pride in maximising his own productivity to repay his debt to society (ii) pride in his commitment to excellence, as reflected in the quality of his work. It follows that he or she has to be concerned with the full utilization of his hours of work in doing the share of work that he had accepted to do when he sought and accepted to work as an employee.

5.10 In the evidence tendered before the Commission, many witnesses pointed out that many workers in private and public undertakings, as well as in the offices of the Government do not put in the stipulated eight or seven hours of work in the office. They spend many hours in "chit-chatting", discussing public affairs or private affairs in clusters, exchanging pleasantries over, or going in search of cups of tea or looking at the TV screen when matches are on. A calculation made by a highly respected Trade Union (TU) leader puts the number of hours "actually" spent on official work only at 4 or 5 a day. This is not only true of Government or administrative offices, but true of factory workers as well.

5.11 There are 27 million workers in the organised sector, and at the rate of 4 hours, if one goes by the calculation of the Trade Union leader to whom we have referred, the country is losing 108 million man hours daily. The degrees of under-utilization or mis-utilisation of office time or work time may vary. But the prevailing situation in our country is one that should cause deep concern and distress. We must be concerned at

the moral culpability of "short charging" or working less and accepting the full payment. The loss in time and output caused by the underutilization of resources, particularly because social time lost cannot be regained by any society, and the atmosphere that we create in our places of work by converting them into talk shops with the resultant fall in efficiency even during working hours, further compounds loss of output.

5.12 That it is within our power to remedy this situation, is clear from the exceptions that we have in our country, as well as the reputation that our men and women have earned in other countries as exemplary and extremely efficient and innovative workers. Our reputation shows that our workers are capable of creating and maintaining the highest levels of work culture. The question 'Why is it that we do not create and maintain such high standards of work culture in our own country' is a matter for concern and reflection. The Commission feels that each of the partners involved in individual or social undertakings, should seriously reflect on how he/she can contribute to the transformation of our work culture.

5.13 One of the arguments that is often put forward to explain or explain away the current state of work culture, is that there is a prevailing sense of injustice and absence of fairplay that acts as a disincentive to maintain higher standards of work culture. We have already referred to the need to ensure a sense of equitability in remunerations, rights and responsibilities. We may have more to say on this when we consider the basics of a national policy on wages and profits.

5.14 At this point, we must make a few observations on the contribution that managements can make to improve our work culture. We cannot overlook the fact that industrial relations relate to the relations between management and the workforce employed in the undertaking. The workers are human beings. So, are the managers. Industrial relations, therefore, cannot ignore the basics of human relations. In the ultimate analysis, therefore, industrial relations are a branch of human relations. The management needs workers, and workers need the management, i.e. the entrepreneur. Both need each other. Industry needs both. Human beings like to be treated

as human beings, and not like cogs in a machine or pawns in the pursuit of profits. Human beings expect to be treated with respect, as persons with individuality. The early days of industrialisation, described as the 'days of regimentation', when workers, who had lost ownership of the means of production had to starve or seek employment in factories, or mines or "sweat shops," are over. Since then, technology has developed tremendously. The skills required from employees have changed, the level of the cultural development of the average employee has changed. No longer is there need to "regiment" and supervise workers under one roof. The vulnerability of workers, in the absence of the strength of unionization has decreased appreciably. Unions have received social recognition, and have become powerful guardians of the interests of the working class. Democratisation of politics has brought about a sea change in the force and direction of public opinion. Laws have intervened to provide protection: a greater degree of co-operation, anticipatory action, precision and promptness is expected from the workers who are engaged in different but inter-related stages of

rapid or simultaneous processes necessitated by technological changes and sophistication in machines, tools, processes and the nature of materials. It is imperative then, that old perceptions and mindsets about the workforce have therefore to change, and new methods have to be identified and pursued to elicit co-operation and respect. Old forms of organisation, may also need scrutiny and reform. So too, old forms of interaction, and means of dispute resolution.

5.15 In the ultimate analysis, the level of work culture in any undertaking will depend on the level of awareness or realization of identity, or commonality of interest, or, at the least, the sense of belonging, and the sense of interdependence. That, perhaps, is the rationale behind the ancient injunction, **“Parasparam Bhavayantah Sreyah Param Avapsyatham.”** It is only concern for each other that can enable one to reach the heights of well being.

5.16 The systemic arrangements that will help us to maintain a high level of work-culture, essential to increase our competitiveness in the current phase of globalisation

includes: fair wages, equitable profit sharing, effective organs of participatory management at all levels and opportunities to interact without chips on the shoulder. A high degree of responsibility towards each other lies on the leaders of both the management as well as the workers. This awareness has to be reflected in the common responsibility to maximize the achievements of the society to which both belong.

5.17 Many of the witnesses, who appeared before our Commission, made two other observations about the existing state of our work culture. They pointed out that there was a discernible difference between the level of application, consciousness, efficiency and innovativeness seen in the Indian workers working outside the country in countries like the U.K., Germany, the USA and even the countries in the Middle East, and in the average Indian worker working in his own country. Many expressed the belief that if Indian workers worked with the same efficiency and zeal in India, our economy would acquire a high level of competitiveness, and progress, and our reputation for excellence and resilience would be comparable to that of developed nations.

5.18 The other aspect, to which many witnesses drew our attention, was the difference in the application and efficiency of workers who were on probation, whose status was temporary, and the attitude to work that one could see in those who had been confirmed as permanent employees. No one denied this vehemently, and no one offered a full explanation for the difference. The only explanation that was put forward was that temporary workers felt insecure, and feared loss of employment, and that this fear made them work hard to establish themselves. Some went on to contend that an element of fear was essential for efficiency. We do not want to enter into an argument on whether this contention is right or wrong, but we feel that if this is true, it cannot be a desirable state of affairs. In fact, we believe that this train of thought goes against the tenets of freedom and the requirements of democratic organization. This explanation is somewhat unpalatable to our sense of self-respect. It may, therefore, be difficult to accept the explanation, but it must be accepted that one needs to investigate the cause of the difference, and to find measures to correct the situation.

5.19 Over manned organisations are also a cause of poor work culture. When the number of hands recruited exceeds the optimum requirement for efficiency, it lowers normal levels of work efficiency and the work hours per employee. Workers then have time to fritter away. One has only to visit a Government office to see this situation.

5.20 The work environment also plays a role in promoting good work culture. A vibrant and dynamic work environment will result in greater output than what comes out from a relatively dull, and overcrowded work place.

5.21 Japan is often described as the country with the best work culture. It is said that the Japanese worker does not need someone to supervise his work. Rather, if a supervisor is appointed, he/she often takes it as an insult. He/she does not like to take holidays. Recently, when the economy was in recession, Japanese markets were over flooded and there were few buyers, the Government introduced a five-day week, and, workers were encouraged to take holidays. The Government carried on propaganda about the benefits of

taking holidays and spending time with families. But, it is said that workers resisted, not knowing what to do with the extra holidays.

5.22 Another important suggestion that many witnesses made - in fact some argued with considerable force and vehemence - related to what may be described as our addiction to holidays. It was pointed out that we had as many as 30 holidays in the year

5.23 The Government sector comprises of state and central Government offices, postal and telecom departments, railways, banks and financial institutions, and other public sector undertakings. Colleges, schools and other educational institutions also generally follow the Government policy on public holidays. This has its chain effects on the work culture of the country. Hence, the Government's policy on public holidays needs to be carefully reviewed.

5.24 A comparison of India's list of holidays with that of some other countries, reveals that we have the maximum number of holidays. Countries like Brazil, United Kingdom, Sweden, Italy and Holland have only

eight holidays in the year. France, Philippines, Australia and Australia have 10, Finland has 11, Belgium, New Zealand, United States and Switzerland have 12. By contrast, in India, the Central Government employees have 17 holidays in the year. Some State Governments have more than 30 holidays in the year. Besides these 17 gazetted holidays, government employees are also entitled to restricted holidays, casual leave, privilege leave, sick leave and so on. A study reveals that three out of every seven days are holidays for an average Government servant. The Government staff in India has the shortest working hours in the year comprising of about 1600 hours as compared with the 1700-1800 put in by a worker in Europe and United States. All commercial and industrial activities are closely connected with various departments of the Government and if the Government offices are closed, many economic activities in the country also come to a standstill.

5.25 The State Government holidays are also holidays declared under the Negotiable Instruments Act. Therefore, Commercial Banks are closed and no financial transactions

take place during those days. India is probably the only country where two three holidays are followed by a weekend, and the entire industrial and commercial services, and financial operations in the country come to a standstill for almost an entire week. This creates difficulties for everyone, and the country itself, loses considerably.

5.26 It is estimated that each day of Bank closure costs around Rs.150 crores to the economy. Therefore, it may be wise to delink holidays in the banking system from Government holidays, and ensure that banks are closed only for a minimum number of holidays.

5.27 It is not as if the subject of holidays has not been discussed earlier. Many Committees and Commissions have studied it, and have made suggestions. The latest among them was the Fifth Pay Commission, which recommended, inter alia, that Government offices should work six days a week and Gazetted holidays should be reduced from 17 to only 3 National holidays, with the employees having the option to choose a fixed number of holidays from a panel of holidays.

5.28 Prior to that, both the Customer Service Committee appointed by the Reserve Bank of India in 1991 and the Administrative Reforms Committee in 1971 had suggested reduction in holidays. However, it appears that not much action has been taken on these suggestions. While the pay hike recommendations of the Commission were accepted, the recommendations on holidays were ignored.

5.29 We have dealt with the question of introducing flexibility in hours of work in the Chapter on 'Review of Laws'.

We recommend that:

- a) The Central Government and all State Governments should have a uniform policy on holidays.
- b) Only 3 national holidays be gazetted – viz. Independence Day, Republic Day and Gandhi Jayanti Day (October 2).
- c) Two more days may be added to be determined by each state according to its own tradition. Apart from these each person must be allowed to avail of 10 restricted holidays in the year,

which he or she may be free to choose on the basis of custom, religious observances and so forth.

- d) Government holidays should be delinked from holidays under the Negotiable Instruments Act.
- e) In case of the option of a five-day week, if a holiday occurs during the week, Saturday should be a working day.
- f) The movement of quality circles, which encourages workers to improve quality and productivity in each enterprise, should be encouraged. It has already paid good dividends. This will enable workers to take interest in the work they perform and contribute to the improvement in the overall work culture in the organisation.

5.31 We have referred to the new situation that has arisen with globalisation. This demands provisions to enable activities to be carried on continuously, across the limitations of time zones, so that we do not fail to take full advantage of common market operations in a market that has become global and common.

5.32 Time frames and working hours too, have to meet these demands. We do not want workers to suffer from the changes that are required. We do not want them to lose opportunities to retain or acquire employment, or increase their incomes. Nor do we want industry to lose opportunities or economic advantages. We have, therefore, recommended elsewhere that the attitude to hours of work should not be rigid. The total number of hours per day should not be more than nine, and hours of work per week should not be more than 48. But within these limits there may be flexibility, and compensation for overtime.

5.33 There are some entrepreneurs who believe that no economic progress can be made without the right "to hire and fire" workers at will. Some say China allows this right to the entrepreneur. We have already pointed out elsewhere that Chinese laws in the statute book do not substantiate this claim. When one asks for the right to hire and fire at will, it means the will of the entrepreneur, exercised without hindrance, on the basis of what he considers legitimate or warranted. The question that arises is whether

this 'right' is to be exercised, closing all avenues for a third party review or a judicial review. It is easy to take the view that the person against whom the action is taken should not have a veto. But is he to have a right of appeal against animus or prejudice or caprice? If there is to be a right to appeal, it has to be to a judicial or quasi-judicial authority. We cannot ignore the fact that even if the labour court does not have jurisdiction, and the existing laws are amended to provide for the right to hire and fire, the Constitutional rights of the citizen to seek justice according to the principles of natural justice cannot be taken away. So, the worker, who is terminated, can knock at the doors of the judiciary. Secondly, all rights, including fundamental rights have to be exercised within the parameters of social interest. That is the reason why the Constitution itself provides for redress through judicial scrutiny and redress when a citizen feels that the state or another citizen infringes his fundamental rights, including the right to natural justice.

5.34 Most, if not all, of those who demand the right to hire and fire also want to bring about a fundamental change in the nature or perception of

employment. They want all employment to be on the basis of contracts for stipulated periods. Without going into the need or merits of the contract system, it must be admitted that this introduces a basic or fundamental change in the current system in vogue in most kinds of employments. In the current system, those who are appointed against "permanent jobs" are appointed on the assumption that they will be in service or employment as long as the provision for the job exists or the person who is employed reaches the prescribed retirement age, or is removed for offences or transgression of which he had been warned. We have been accustomed to distinguish jobs as permanent and ad hoc or non-permanent. While we understand that non-permanent jobs or temporary assignments can be on contract for specified periods, with the possibility of extensions, we are accustomed to look upon employment against permanent jobs as permanent service. Any attempt, therefore, to change the basis of tenure in all jobs (permanent as well as non-permanent) to contractual, and for stipulated periods, no doubt involves a basic change in attitudes and notions. This affects not merely

entrepreneurs, but also the vast number of citizens who are in employment and who are seeking employment. If transforming the basis of all employment is a social necessity because it has become an economic necessity for industrial or commercial enterprises, then, it is equally necessary to create social acceptability for the change, and the social institutions that can take care of the consequences. So, two preconditions are to be focused upon: (1) social acceptance, and (2) socially acceptable arrangements for the period of transition during which one base is substituted by another base. The transition can be socially bearable, only if it does not lead to large-scale uncertainty, deprivation, loss of incomes and penury for those who lose employment, and are forced to transit the wilderness, in search of new jobs. While creating such situations in which only a few among the entrepreneurs will benefit, the explosive possibilities inherent in the situation and the threat to law and order, and therefore, to the smooth functioning of industry, should not be lost sight of by those who advocate such a rupture in the employment structure as well as those who have to pilot society and the volatile masses of

citizens through the period of transition.

5.35 In short, a fundamental change of this kind has to be preceded by (i) the evolution of a socially accepted consensus on the new perception of jobs (ii) the evolution of a system of constant upgradation of employability through training in a wide spectrum of multiple skills; (iii) the setting up of a system of social security that includes unemployment insurance and provisions for medical facilities; and (iv) the institution of a mandatory system of two contracts that each employer signs with the employees (somewhat as in the Chinese system) – one, an individual contract with each worker, and two, a collective contract with the workers' union in the undertaking.

5.36 Therefore, there are weighty considerations that should temper the demand for an immediate switchover to the contract system and to unrestricted rights of 'hire and fire.'

5.37 This does not mean that the present system can go on without any changes in attitudes on the part of

both the employer and employees. We have referred to some of them elsewhere in other paragraphs.

5.38 It is not necessary to adduce many arguments or cite the examples of many other countries to show the relationship between a transformation of all employment (including government jobs) into contractual employment and universal access to adequate social security, including unemployment insurance that enables a worker to transit through the period when he or she is moving from one kind of job or unemployment to another kind of job. He or she has to survive; his or her family including children have to survive. The state has to enable them to survive. If it fails, one cannot ignore the possibility of social upheavals that may throw all economic activity out of gear and pose challenges to the very system that needs to be preserved. Most of the developed countries where the majority of jobs are contracts have elaborate and effective systems of social security, partly contributory and partly state subsidized, or underwritten by the State. China which we may cite as an example, too has stringent laws on a social security system that takes care of the worker's

income and requirements at least for two or three years of transition or unemployment. Elsewhere in our report, we have referred to laws in China that stipulate that a retrenched worker will be able to continue to reside in the residential accommodation provided by his retrenching employer for two to three years, receive a retrenchment compensation, a basic living allowance, limited access to medical facilities and facilities for retraining. In India, we do not have such legal provisions or practices. We wonder whether those who argue for the unfettered right to fire or retrench workers will accept the post-retrenchment responsibilities that Chinese law provides for, and consider whether they have the mind or resources to accept such responsibilities. But we are convinced that social justice as well as the benefit of the economic returns that accrue from a moderately assured, if not contented workforce, demand the establishment of a socially acceptable link between transition to a contract based employment system and the establishment of a viable social security system to which the entire vulnerable workforce has access. In fact, we recall that the first Finance

Minister who ushered India into the era of globalisation, Dr. Manmohan Singh talked of the need for supporting social security systems or safety nets, and the need to ensure that globalisation had a human face. Talking about economic reforms, he told our Commission "the economic reforms still had a large unfinished agenda. The physical infrastructure sector urgently needs reforms, both in the management and tariff structures, which would enable us to raise more resources for the development of the infrastructure. This in turn would enable both the private and public sector to expand operations. Then, there is the social infrastructure. There is a tremendous backlog in education and health. We must ensure that development is not promoted on the backs of the poorest people. We must put in place adequate social safety nets to ensure that too much burden is not imposed on the weakest sections as we go along. And finally, we should create an environment which encourages sustainable growth and poverty eradication".

5.39 We support the view that those who take the country along the road to globalisation have the responsibility to enable the country to cope with the

consequences and effects of globalisation. They cannot abdicate responsibility.

5.40 In this context we feel that we cannot overlook three significant developments that have followed the trauma and the aftermath of September 11, 2001 (1) the impact of the events of September 11; (2) President Bush's State of the Union message and; (3) the crash of Enron.

1. The shattering impact on the Airlines systems, and all allied or related industries and avenues of employment that followed the traumatic events of September 11.

This caused some internationally established Airlines like the Sabena Airlines to declare bankruptcy, and others to cut services, lay off and retrench employees on a mass scale. Moreover, some airlines were forced to seek financial assistance from governments to tide over the crisis and to salvage enterprises on a long-term basis. This prompted well-known analysts and economists of the West, who had believed in exorcising the state from the

realm of economic affairs, to plead for a second look at the 'centrality' of the state, not merely in ensuring security from external aggression, but also in ensuring economic security. This should alert policy makers to the role of the State.

2. The state of the Union address that the President of the United States of America, George Bush delivered on the 29 January, 2002 :

There are quite a few in the world who look upon the United States as a model to emulate. They believe that the key to economic development lies in replicating the industrial and economic system that prevails in the United States. They also believe that the collapse of the Soviet system has finally exposed the untenability and utter failure of Socialism, and established the superiority and inevitability of the Capitalist model and Capitalist economic doctrines. We have not been asked to examine the validity of these claims. But some recent events have come as a shock

to the smug claims of infallibility. The mindset that was rooted in faith in the invincibility of the nation and the power and resilience of private initiative and industry to take over the role of the State in economic matters have been shaken. September 11 and the crash of Enron have altered the scenario in many ways. The hope of driving the state into the wilderness has had to be given up. As Fareed Zakaria, Editor of the International Edition of the *Newsweek* has said, the "centrality" of the state in ensuring security – security against forces of disintegration and terrorism, and social security – has had to be acknowledged again. The role of the State in protecting people from the forays of disruptive forces from outside has been underlined. The role of the state in providing a regime of law and order necessary for industry and economic activities has been emphasised. The fact that such activities of hostile and disruptive forces can throw the economy totally out of gear has been underlined. September 11

has had unforeseen but colossal impact on air transport companies with worldwide reputations for stability and profitability. The chain reactions on

- (a) demand
- (b) public perceptions and preferences
- (c) profit
- (d) related industries and
- (e) the need to break even or to seek profit by retrenching labour and downsizing are all there for everyone to see.

Corporate giants have had to turn to Governments and the Public Exchequer to salvage their reputations, or to save them from bankruptcy or closure affecting production, viability, profit, demand and employment. We have referred to some of these colossuses in earlier paragraphs.

Retrenchment, downsizing and voluntary retirement schemes have affected employment, and increased unemployment in almost all the developed countries.

Human beings and families, reduced to a life without incomes, affected by these cuts, are not mere statistical entities. Unless backed by adequate compensation and security systems, starvation and suffering can become causes of acute and explosive social unrest, which may affect not merely politicians and political systems, but also economic undertakings and economic systems.

The danger of such social and national hazards is reflected in the State of the Union address that President Bush delivered to the American Congress on the 29th of January, 2002. He declared that the priorities of the American Budget and state spending for many years would have to be the war on terrorism that might be prolonged, the need to assure internal security, and the need to ensure social security.

It may be useful to quote what the President said on social security.

"Americans who have lost their jobs need our help, and I support extending unemployment benefits and direct assistance for health care coverage. Yet, American workers want for more than unemployment checks – they want a steady paycheck. When America works, America prospers, **so my economic security plan can be summed up in one word: jobs**" (emphasis ours)

..."Good jobs must be the aim of welfare reform. As we consider these important reforms, we must always remember the goal is to reduce depending on government and offer every American the dignity of a job".

..."Americans know economic security can vanish in an instant without health security. I ask Congress to join me this year to enact a patients' Bill of Rights – to give uninsured workers credits to help buy health-coverage – to approve, an historic increase in the spending, for veteran's health –

and to give seniors a sound and modern Medicare system that includes coverage for prescription drugs."

"A good job should lead to security in retirement. I ask Congress to enact new safeguards for 401K and pension plans. Employees who have worked hard and served all their lives should not have to risk losing everything if their company fails ... Retirement security also depends upon keeping the commitments of social security, and we will. We must make social security financially stable and allow personal retirement accounts for younger workers who choose them."

We need not point out that these are as necessary in our country as in America. In fact our country has many more millions who are entitled to means of livelihood, and are yet unemployed and unprotected by insurance or assistance. Those who look to America as a model should therefore, see the need for polices oriented to the

creation of jobs and the provision of basic social security.

3. The crash of the Energy giant Enron has exposed many of the weaknesses and the socially harmful effects of the Corporate system. We do not have to go into it in detail, but it has administered a severe shock, and created apprehensions about the potential for manipulation and deceitfulness demonstrated by mechanisms that were meant to assure accountability and keep vigil on behalf of the investor and the public, the involvement of politicians who use power and access to cover up or connive at fraudulent practices etc. We should learn from experience, not only our experience, but the experience of others who have gone before, and not be more sanguine than the insiders. These developments have therefore, had their impact on the credibility of financial and industrial institutions, and the President of the United States is currently engaged in a serious and massive exercise to restore credibility to the State and the

financial and industrial system, and the system of Corporate governance in the United States. The new mindset that the new context calls for must be reflected in all attitudes and activities in industrial relations or employer employee relationships. We also believe that the employer and the employee should consider themselves as Trustees of the welfare of the totality of society and the environment. But we do not believe that such an attitude will take root all at once, or pre-empt and resolve all disputes. There will still be differences and disputes. But the attempt that is consistent with the spirit of the new context, and of interdependence, is to settle disputes through bilateral discussions and negotiations. All efforts must therefore be made to promote bilateralism based on mutual interests and universally accepted fundamental rights and norms. The legal system should therefore promote bilateralism. Both parties must take up the responsibilities that devolve on

them in bilateralist attempts to protect each other's interests and of society of which both are parts. Where differences persist in spite of genuine bilateral attempts, the law must enable contending views to be settled through mediation and arbitration, including compulsory arbitration where the disputes may lead to disruption of social life affecting public health, sanitation, drinking water supply, medical facilities and transport, and cause suffering to large sections of people who are unrelated to the disputes.

While workers have the right to strike, and employers have the right to lock out, the rights must be exercised after exploring and exhausting all other means including the means of mutual consultation and negotiations. If negotiations fail, means must be available for adjudication or voluntary arbitration. Processes of adjudication must be quick, expeditious and inexpensive. They should not

involve delays that cripple the worker who has limited staying power, or no staying power at all. Workers should be encouraged to organize themselves with the awareness that struggles on the basis of extraneous issues may divide and weaken them.

5.41 We have already talked of transparency and the need for a new work culture. We have also talked of the paramount need for access to an effective system of social security that will be based on contributions as far as possible, and underwritten by the state or local bodies or workers' co-operatives or associations where necessary and possible. We believe that such an order will maximize industrial cooperation and national competitiveness and, at the same time, ensure protection, security and welfare to workers. It is in the light of this belief that we proceed to review the industrial relations laws, social security system and the need for upgradation of skills and training.

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