

# GLOBAL JUSTICE AND GLOBAL RULE OF LAW – LEGISLATIVE, EXECUTIVE AND JUDICIAL RESPONSE TO GLOBALIZATION

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## INTRODUCTION

Many a times economists, scholars, academicians etc. have made an attempt to describe and define Globalization. However, Globalization is an inclusive term, seeking to inscribe within its barriers a multitude of social, economic and political change which has come about due to a free exchange of not only goods and services but also of ideas, customs and exchanges of various kinds.<sup>1</sup> The history of Globalization dates back from when man or rather civilizations travelled in search of better pastures from one place to another. Some believe that it all began when the early migrants moved out of Africa, taking with them their practices, adaptations and ideas, spreading them across the world.<sup>2</sup> Therefore, geographical boundaries were broken down, causing these merchants, cultivators etc. to deliver their customs and products to a new land. This also meant that human interaction increased as the traditional boundaries to such interaction (spatial, cognitive and temporal) were broken down as globalization advanced.<sup>3</sup> Though a clear precise date cannot be attributed to this process, we do know that this is an occurrence in existence from time immemorial. The roots of globalization can be traced back to the colonization of Asia, Africa, and the Americas by the dominant economic powers of Europe but many believe that with travel, came the methods of exchange, thus naturally attributing to the process little by little. The 1990's however witnessed a breakthrough

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<sup>1</sup> KG Balakrishnan, 'Justice in the 21st century: The Challenge of Globalization' Qatar Law Forum.

<sup>2</sup> History of Globalization, YALEGLOBAL ONLINE(2002), <https://yaleglobal.yale.edu/history-globalization> (last visited Sep 12, 2018).

<sup>3</sup> Kelley Lee, *Globalisation and Health Policy: A Review of the Literature and Proposed Research and Policy Agenda*, Pan American Health Organization, Health and Human Development in the New Global Economy (2000).

in this field, with a sudden upheaval of laws, breaking down of obstructive trade barriers and opening up the markets to what is today called a ‘global market’ of sorts. Thus, it can be safely said that globalization seeks to break through the traditional notions of a geographical boundary. The Globalization is multidimensional. History is proof that globalization is closely linked to the development, technology, environment, healthcare<sup>4</sup> and the economic viability of nations, thus making it pertinent to understand the concept and ideology behind Globalization. Due to it being a complex and multi-faceted area, it has been a topic of great debate across the globe. The definition of globalization is still poorly defined, varying from sociologists to economists and so on, some focus on only the economic aspects whereas others take the linguistic, cultural and other multidimensional features of the modern day system, into consideration whilst defining this term. Many believe that Globalization is a convergence of economic players with political forces, driven by the ambition to achieve a greater stance or place in the global market, reaping maximum benefits.<sup>5</sup> Due to the growing interdependence amongst the nations, theorists, academicians and economists hope to find the integration of societies and nations as an outcome of this process.<sup>6</sup> The definition is thus limited to linguistics and undermines the actual complexities associated with the process. As the proponents of globalization claim, the countries that adhere to the principles or strive to achieve globalization would naturally have a greater access to knowledge and technology, an increase in the standards of living, consumption power, and political ideals. As globalization involves the intermingling of local markets with international markets, it seeks to benefit from the factors of competition, and thus the economy receives an upliftment by the greater generation of wealth. However, the negative resounding effects of this process come forth with this process often hampering home markets, thereby increasing poverty and often, leading to downfalls. What began with the Sugar Crisis in the 1880s<sup>7</sup>, lead to several debates on free trade and protectionism, ultimately culminating in the institutionalization of trade by the setting up of the ‘actors’ of globalization such as the World Trade Organization, International Monetary Fund,

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<sup>4</sup> Kelley Lee; Richard Dodgson, *Globalization and Cholera: Implications for Global Governance*, 6 *Global Governance* 213 (2000)

<sup>5</sup> *Shalmali Guttal, Development in Practice*, 17 *Oxfam GB Globalisation; Taylor & Francis, Ltd.* 523–531 (2007).

<sup>6</sup> James Midgley, *Perspectives on Globalization, Social Justice and Welfare*, 34 *J. Soc. & Soc. Welfare* 17 (2007)

<sup>7</sup> Howe, *Free Trade and the Protectionist Regime*, *Free Trade Nation*, , at 154–161.

The World Bank (The IMF and IBRD are known as the Bretton Woods Twins)<sup>8</sup>, several financial and economic policies, treaties and conventions. These actors so to say, come about to regulate and form a series of regulations and guidance to the smooth process of globalization. This of course is at an international level. Globalization, also requires to be closely linked to legal thought and action since, its conceptualization would be incomplete without it being in coherence with the systems of the world. The theories of 'Justice' and 'Rule of Law' are closely linked with the theory of globalization. The linkage of Globalization to the theories of 'Global Justice' and 'Global Rule of Law' are in focus in this paper. The concept of the "rule of law," and indeed the term itself, has its origin in the constitutional doctrine of the common law. The Rule of Law is generally acknowledged to be of great importance as a basic principle of governance, despite the fact that its exact meaning is widely contested.<sup>9</sup> The area of Rule of Law is clearly defined, however, the concept has become so overburdened in recent years that one eminent authority, Lord Bingham, has suggested that the phrase 'the rule of law' has become meaningless thanks to ideological abuse and general over-use.<sup>10</sup> The rule of law in a global sense or a global rule of law, naturally thus assumes wider connotation as analysed later. The theory of Justice as well, is subjected to severe criticism. Principles of justice, according to Rawls, are principles which "provide a way of assigning rights and duties in the basic institutions of society and . . . define the appropriate distribution of the benefits and burdens of social cooperation."<sup>11</sup> Global Justice is thus a bi product of the work endeavored by the global agencies or institutions to do such justice such as 'The Hague' and dispute settlement organizations vide various charters, treaties and conventions. The 'globalization' of India can be best described as it being the best of times and worst of times. The growing inequality at which globalization has hit is alarming. As is the case of most generalization, globalization as well is twofold in India. Female feticide, lack of education, infant mortality is still rampant whereas food production, adult literacy has seen a change in the positive direction.<sup>12</sup> On the face of it, there has been a positive change in the country, but figures and facts state otherwise. This paper seeks to analyze the concepts of 'Global Justice' and 'Global Rule of law' whilst

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<sup>8</sup> John Williamson, *On the System in Bretton Woods*, 75 *The American Economic Review; Papers and Proceedings of the Ninety-Seventh Annual Meeting of the American Economic Association* 74–79.

<sup>9</sup> PETER RIJPKEMA, *THE RULE OF LAW BEYOND THICK AND THIN*, 32 *Law and Philosophy* 793–816 (2013), <https://www.jstor.org/stable/24572426>.

<sup>10</sup> LORD BINGHAM, *THE RULE OF LAW*, 66 *CAMBRIDGE L.J.* 67, 68 (2007)

<sup>11</sup> R. M. Hare & John Rawls, *Rawls Theory of Justice--I*, 23 *The Philosophical Quarterly* 144 (1973).

<sup>12</sup> GOWHER RIZVI, *Emergent India: Globalization, Democracy, and Social Justice*, 62 *Int'l J.* 753 (2007)

drawing attention to the legislative, executive and judicial response in to the abstract of Globalization with a reference to the Indian perspective.

## GLOBAL JUSTICE

Justice, a term that can be understood to be the driving force behind the entire object of the legal system as may be understood by the lay man. Several men of international acclaim have endeavored to theorize the meaning and system of justice, attributing the term as an end of the means or a means to the end. Since this term of Justice is rater analogous in nature, several theorists have theorized upon this. Justice can be linked with morality to culminate into a system of Utilitarianism or can be analysed closely by what the Natural Law Theory states about a social contract.<sup>13</sup> John Rawls, in his masterpiece “A Theory of Justice’ furthered the concept of justice by attributing it to the intermingling of the concepts of “fairness” with that of “social-contract”. He proponed the ideology that justice sought is that, which is deemed to be fair, rationale likeminded people would agree to adhere to these principles of fairness to govern their associations. A well-ordered society is one governed by a public conception of justice. The underlying philosophy is that the principles of justice are those that would receive agreement from free and equal rational persons to regulate their common associations. Fairness is the moral connotation given to this theory and choice of principle give it precision.<sup>14</sup> Thus, Rawls writes "For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions" <sup>15</sup> Thus, a system as the one seen today has several institutions that are major players that are instrumental to the dispensation of justice. The working of these institutions that form the basic structure of society, their adaptation of the principles of fairness, forms the

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<sup>13</sup> DAN W. BROCK, *The Theory of Justice*, 40, The University of Chicago Law Review, 486-499(1973).

<sup>14</sup> *Infra* 13

<sup>15</sup> *Infra* 11

basic structure of the society at large. The benefits and burdens of the society are shared by these institutions to work in such a manner that ultimately justice is served. Therefore, according to Rawls, we as members of society, are obligated to ensure that the basic terms of these interactions in society are just. Rawls, could have presupposed the existence of a society at large, as part of an international community. Rawls theory did not venture into the morality of economic institutions redistributing the assists from the rich to the poor but rather, focused on changing institutions that govern the distribution of such resources to ensure equality or ‘fairness’ ensues.<sup>16</sup> Hence, the background of a just society are these institutions. This theory of justice however, applies to the domestic front, its applicability to an international regime is a task as modern day societies operate on a closed scheme. The ‘veil of ignorance’ which is basically the lack of knowledge about political set ups, economic organisations, want of the people is at a greater level of operation on an international front. Therefore, to overcome this veil of justice and to afford a global justice scheme of social reform, wants of the parties in terms of an economy which is proactive in terms of distribution concerns, ensuring that basic material to ensure justice in the domestic front, is in place. Secondly, disputes arising would need to be settled through institutions that are recognised by legal measures and free will rather than through threat or war. Third, an international system of law and order should be paramount wherein if there is an abuse of power, it be curbed at the earliest.<sup>17</sup> This theory though strong in lettering was seen to be weak in implementation as countries would often put forward their domestic interests first rather than adhere to the demands collectively as an international community. Therefore, Rawls gave several models of justice at the global level as well. Critiques of the Rawls theory of justice however argue that though he did not look for a communal state, he did base his theory on one which is distributive and is operational in a democratic state which adheres to the principles of a democratic nation having a system of distributive justice.<sup>18</sup> Thus, his theory falls short in an international regime where there is no formal structure in place as such. As Martin Luther King Jr. rightly once said “Injustice anywhere is a threat to justice everywhere” The abstract of justice propounded by political scholars as well as the happenings across the world, be it genocide, racial cleansing, terrirrosim,

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<sup>16</sup> THOMAS POGGE, *Rawls and Global Justice*, 18 Canadian Journal of Philosophy 227-256 (1988).

<sup>17</sup> *Infra* 16

<sup>18</sup> ALIX DIETZEL, *Introducing Global Justice in International Relations Theory*, E INTERNATIONAL RELATIONS STUDENTS (2018), <https://www.e-ir.info/2018/01/02/global-justice-in-international-relations-theory/>.

etc. became catalysts to further inquiries into this subject. Theorists attribute the development of this concept to the occurrence of the Second World War, after which concerns regarding the international law regime being a lonely space peaked. National justice was a much talked about subject but there was not much that contributed towards the existence or the implementation of justice at a global level.<sup>19</sup> This aspect, added to contemporary instances such as the clash between Yugoslavia and Rwanda, the issue of Palestine, the Nazi Regime, growing inequalities between countries and the effect of international relations on domestic workings, were just some of the eye openers that cropped up to push the international community further towards a global justice system. The scheme of global justice is different from international justice as the latter focuses on the state whereas the former is a theory focused on breaking the shell of the state by reaching out to individual interests. Therefore, global justice being justice served at a global level, aims to satisfy the elements of this theory by apprentices that are acceptable to the community at large. Human Rights advocacy, the implementation of a systematic basic for rendering justice, a collection of agents for the dispensation of these methods of justice and the identification of the problem areas or lacuna to be filled are elements of ‘global justice lawyering’<sup>20</sup> The simplest example of this can be the adoption of the Universal Declaration of Human Rights.<sup>21</sup> The Peace Association, Trade Association, the Public Goods Association were all steps or means to achieve the end.<sup>22</sup> Fair social legislation by nation states in order to adhere to the justice system at large was another approach warranted.<sup>23</sup> The needs of nationals at a global level are also subject to developments. The global justice system thus clearly needs to evolve with the fast paced evolution that is taking place in leaps and bounds across the world. One of the major systems of evolution is that of globalization. Globalization is changing society, with this change, the problems or issues that crop up are also fast changing and thus, the global justice system has to be well equipped to satisfy these changes in order to keep the system in place. There are a number of institutions in place that are used to dispense justice. Individual nations must strengthen these institutions and policy frameworks by their unilateral

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<sup>19</sup> PIETER PEKELHARING, *GLOBAL JUSTICE AND THE STATE*, in *Doing Good or Doing Better* (2009).

<sup>20</sup> Global Justice, (2015), <https://plato.stanford.edu/entries/justice-global/> (last visited Sep 12, 2018).

<sup>21</sup> SHANNON M. ROESLER, *The Ethics of Global Justice Lawyering*, 13 *Yale Hum. Rts. & Dev. L.J.* 185 (2010)

<sup>22</sup> HORACIO SPECTOR, *Two Conceptions of Justice and the Dystopia of Global Justice*, 52 *San Diego L. Rev.* 1077 (2015).

<sup>23</sup> EDWARD B. FOLEY, *The Elusive Quest for Global Justice*, 66 *Fordham L. Rev.* 249 (1997)

and bilateral activity.<sup>24</sup> The primary concern however is the eradication of social atrocities such as poverty, lack of education and health care that stares globalization right in the face. Society seems to be developing in a uni-directional manner without the implementation of effective policies to curb these atrocities that mankind faces in extreme measures. The linkage of justice or the true system of global justice will only thus be realised when these social evils as they are known, are seemingly lessened in a globalizing world. Thus, from obscure tools of justice implementation, tools that are well defined and are more action oriented effective have to be formulated by the global community for the proper dispensation of global justice.<sup>25</sup>

## GLOBAL RULE OF LAW

The 'Rule of law' is a constitutional term that has been defined and means different things in different systems of law. It is an overburdened term, often used to describe the synthesis of normative principles developed, such as 'due process', 'justice', 'moral principles'.<sup>26</sup> It further goes on to safeguard the rights of an individual and to bring them under the ambit of the ideals that operate in a sovereign power. By providing redress against an abuse of power, the 'Rule of Law' helps to ensure that the power exerted is ample yet just enough. In the international perspective, the 'global rule of law' relates to this principle being applied to international institutions and entities that make up the world. Perhaps, the main rationale behind the implementation of this principle is to curb international violence, ensure healthy relations of nations and to provide a legal sanctioning in case of an abuse of authority. However, some believe that conformity to the rule of law is moralistic in nature (The internal morality of law - Fuller) whilst others argue that in order to have a system of law in place, there is a need to conform to these principles which need not be moralistic. (Hart and Raz).<sup>27</sup> However, a common conclusion of the importance of the rule of law is universally agreed upon as it has been seen that a system tends to collapse without such a thread in place. One of the earliest recognitions of this principle took place in the World Peace Conference, (after the holocaust)

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<sup>24</sup> FRANK J. GARCIA, *Three Takes on Global Justice*, 31 U.La Verne L. Rev. 323 (2009)

<sup>26</sup> CHARLES S. RHYNE, *The Rule of Law*, 127 World Affairs LJ, 82-87 (1987).

<sup>27</sup> MARK J. BENNETT, *Hart And Raz On The Non-Instrumental Moral Value Of The Rule Of Law: A Reconsideration*, 30 Law and Philosophy, 603-635 (2011).

attended by hundred and fifteen nations of the world in Athens. The declaration adopted came to be known as the law. The Declaration of General Principles for a World Rule of Law which set out twelve important topics for discussion the ideal behind which was to ensure that justice, fair play and the principles to attain the 'Rule of Law' is maintained throughout the globe. The workings of the committee further went on to state that it is only through the application and extension of this principle can peace be attained and therefore, international institutions are to embody this principle in their dealing. The proclamation further went on to identify that a violation of this principle would lead to disharmony and a disruption of peace leading to chaos and widespread distress across the world. Thus, the rule of law has developed across the world since its inception and is conceptualized in a legal system of a nation as well as at an international level. This concept includes a strong reliance of law as opposed to arbitrary power in international relations, and the realization that law can be used as an instrument for cooperative international furtherance of social aims and to promote the values and the freedom of the people of the world in a guided and regulated manner.<sup>28</sup> The benefits of a systemised and regularised system of rule of law include the stability and structure conferred to society knowing and realising that their rights are protected. A rule of law system is signified with clearly written laws that create certainty and enforceability of legal rights, an independent and impartial judiciary that promotes fairness and ensures transparency and timely and predictable resolution of disputes and effective and efficient system of public institutions that empower businesses and individuals to make positive impacts to the economy and society.<sup>29</sup> In fact, The preamble to the 1948 Universal Declaration of Human Rights states that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".<sup>30</sup> Therefore an analysis of the deflection and scope of this concept is imperative at this point. The Rule of law is a system of clearly defined laws that are clear in meaning and are applicable to everyone equally. They enshrine and uphold those laws that are universal in nature. The institutions in a system that embodies the rule of law is efficient, fair and just. The "just Rule of Law" is classified upon the occurrence of just laws, the just application of a free and fair justice system, and

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<sup>28</sup> WILLIAM W. BISHOP, *The International Rule of Law* 59 Michigan L.Rev, 553-574(1961).

<sup>29</sup> Rule of Law | UN Global Compact, Global Corporate Sustainability Report 2013 | UN Global Compact, <https://www.unglobalcompact.org/what-is-gc/our-work/governance/rule-law> (last visited Sep 18, 2018).

<sup>30</sup> Universal Declaration of Human Rights, GA Res 217A (III), pmbl, U.N. Doc. A/810 (Dec. 12, 1948).



access to an independent bar, for regulation.<sup>31</sup>The judges are impartial and are not subject to political influence. The government itself is subject to the legal framework and a system of checks for its own conduct.<sup>32</sup>Therefore, this concept has been subject to development and progress in society at large. Views relating to this are divergent and numerous but it is well established that it is the practice and the various principles that it embodies both at a national and international level that make it an all-encompassing and a universal topic applicable to domestic and in the international sphere.<sup>33</sup> The content however is a topic of contest across stages and boundaries.<sup>34</sup>Analysis often begins by a narrow scope incorporating the state authority and checks of the same as a subject matter mainly incorporating the political context, whereas a broader outlook would incorporate the ideals, framework and instrumentalities that surround the term. Free market capital movement, an organised structure of the government, regulations for rendering justice, reasons behind the judgement so rendered<sup>35</sup> are critical aspects that belong to the latter outlook. Even on an international front, the ‘rule of law’ has been promoted through treaties, conventions and has been instrumental in advocating human rights across the globe. One of the main instances of its adoption has in fact been the UN Security Council’s adoption of this principle as a form to resolve conflicts. The principles of the rule of law are universal but there is no universal agreement specifically in place as to their implementation. The implementation of these principles thereof depend on the balance of individual and societal rights that is not specified in this context and is dependent on the social, cultural and economic set up of the world as well as the domestic nations. Ultimately therefore, it is the role of every organization to balance these rights in order to implement the rule of law.<sup>36</sup>As the world continues to grow and progress, as seen earlier, one of the central and most trade, new important changes it has been subject to is that of Globalization. The processes of globalization such as global capital flows, liberalized informational technologies have brought the world closer by a system of easier access and better communication. The critiques of this phenomenon often argue that globalisation stands to threaten the sovereignty of a state or

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<sup>31</sup> Aaron Schildhaus, *The Just Rule of Law*, 43 *The International Lawyer* 59–60 (2001).

<sup>32</sup> *Infra* 29

<sup>33</sup> Simon Chesterman, *An International Rule of Law?*, 56 *The American Journal of Comparative Law* 331–336 (2008).

<sup>34</sup> Thomas Carothers, *The Rule of Law Revival*, 77 *Foreign Affairs* 95–106 (1998).

<sup>35</sup> Mathilda Cohen, *The Rule of Law as the Rule of Reasons*, 96 *Archives for Philosophy of Law and Social Philosophy* 1–16 (2010).

<sup>36</sup> S. Jayakumar, *Applying the Rule of Law*, 43 *The International Lawyer*, 83-89 (2009).

weaken the it whilst others argue that in fact, helps to improve a sovereign. The rule of law, the very thread of national and international law, thus directly seems to be in correlation with this phenomenon. International institutions such as the United Nations and its subsidiaries tend to disseminate the Rule of Law by regularised regulations and rules in place to ensure that globalization is subject to the rule of law as well in this global age.<sup>37</sup> one of the most prominent features of the law has always been its dynamic approach and the 'Rule of Law' is no exception. Within its dynamic ways, it has seemed to mould the occurrences of globalization via the incorporation of the new policy changes, structures and via the formulation of new laws and rules whenever applicable in multiple levels. A society in order to thrive, thus requires a rule of law in place. International cooperation, and the will to have an orderly and better nation with guided principles is imperative if the true benefits of globalization are to be realised. It is thus concluded that in order for a phenomenon such as that of globalization to actually work for the benefit of the world at large, the 'Rule of Law' is thus integral.

## **GLOBALIZATION-EXECUTIVE, JUDICIAL AND LEGISLATIVE RESPONSE**

Globalization has been seen to be defined to mean different things as seen in the first section of this paper. Since this phenomenon effects the world at large, this current part attempts to focus on the effects of globalization in the Indian context with an analysis of the steps undertaken by the three organs of the Indian Government, the executive, the judiciary and the legislature. India, due to its veracity, was seen as the center for trade from the 1800s, the British in fact, ventured into India as traders, which ended in its colonization and the struggle of independence that followed has been ebbed in history. India witnessed through phases an increase in trade in the early 1900s, which significantly decreased post policy changes made after Independence. The 1990's witnessed the opening up of trade barriers which ultimately lead to the area of globalization in India. Throughout, however, the one aspect which has been constant is the contribution of the Indian economy, knowingly or unknowingly, to the

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<sup>37</sup> David P. Fidler, *The Rule of Law in the Era of Globalization*, 6 Ind. J. Global Legal Stud. 421 (1999)

phenomenon of what has come about today to be known as ‘Globalization’ as an international participant and in the domestic front as well.

## **EXECUTIVE AND LEGISLATIVE RESPONSE TO GLOBALIZATION**

As the debates across the world took a turn on capitalist or socialist economies; the former being a closed door economy, India aimed to be a socialistic economy. Self-reliance by way of import substitution and a strong reliance on the home market were the underlying principles of the Indian regime. Though foreign trade formed perhaps a little more than five percent of the economy, movements and developments in the domestic front in the defense, agricultural and rapid changes to the policy framework mobilized by the active participation of the people occurred. The Green Revolution of the 1960s, the nationalization of banks, the ‘Garibi Hatao andolan’ were powerful movements that had resounding effects. However, the slow growth rate and the purely socialistic regimes effected the overall development in the country. The precarious foreign reserves pushed India to obtain a loan from the International Monetary Fund. This loan however, were subject to conditions that served as a much needed thrust towards globalization. Fiscal deficit reduction, industrial and trade policy reformation, agricultural policy changes, infrastructure development and social sector development pushed India to be a part of the global market so to speak. The benefits of course were almost immediate as an increase in the GDP, benefits of foreign trade and recognition of India as a player in the domestic market were realized.<sup>38</sup> Globalization, thus gave India a platform for development. In the early 1990s, the Congress government of P.V. Narasimha Rao launched the New Economic Policy, in which the government initiated new liberalization policies<sup>39</sup> This included the introduction of policies aimed at reregulation, liberalization of government licensing regimes, and a shift toward privatization of government owned enterprises<sup>40</sup>. The rupee was devalued which means a fall in the value of domestic currency in terms of foreign currency/currencies. This was done at a rate of 18-19 percent against major currencies. There was a sharp devaluation of rupee and the rupee had dropped to Rs. 24.5 against a Dollar in

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<sup>38</sup> J. S. Sodhi, *An Analysis of India's Development: Before and after Globalisation*, 43 *Indian Journal of Industrial Relations*, 317-354(2008).

<sup>39</sup> Suresh Tendulkar & T.A. Bhavani, *UNDERSTANDING REFORMS: POST-1991 INDIA* 1-5 (2007).

<sup>40</sup> David B. H. Denoon, *Cycles in Indian Economic Liberalization, 1966-1996*, 31 *COMP. POL.* 52-55 (1988).

1991 after the imposition of this policy. The main motives behind devaluation are the rise of exports, thereby increasing foreign trade.<sup>41</sup> The next major step taken by the executive was the opening up of the Indian market to allow foreign direct investment (FDI). FDI in India grew over the decade by a multiple of 1.5, albeit from a very low average in the late 1980s largely owing to the gradual opening and flow of FDI to India, where the average annual flow stood at \$2.7 billion in the late 1990s.<sup>42</sup> to ensure that globalization took place in a wholesome manner, privatization and liberalization policies were incorporated as well. This meant that Privatization is the transfer of control of ownership of from the public sector to the private sector of economic resources. It is mainly done to reduce the interference of the state causing there to be a shift in the rights of private ownership. As globalization grew, privatization also occurred granting greater autonomy to namely nine public sector undertakings, or the 'navaratnas' such as ONGC, HPCL, BPCL, VSNL, BHEL to take their own decisions. The number of industries reserved for the public sector were reduced in phases from seventeen to eight and then to only three including Railways, Atomic energy, Specified minerals. This in turn witnessed a broadening of the scope for investment for private individuals which improved of the public sector. The disinvestment process, which began in 1991-92 with the sale of minority stakes in some public sector undertakings continued to be increased as the years moved on to a strong and effective public sector whose social objectives are met by its commercial functioning.<sup>43</sup> Further, the executive also took various decisions regarding the foreign trade market, the adoption of labor policies, a strong IPR backing and mainly reformation in phases which ultimately lead to globalization being welcomed into the Indian economy.

## **JUDICIAL RESPONSE TO GLOBALIZATION**

"The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution."<sup>44</sup> This statement

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<sup>41</sup>Dr Vivek Gupta, *Devaluation of Indian Currency in Indian Economy: Causes and Effects* 2 International Journal of Techno-Management Research(2014)

<sup>42</sup> United Nations, *World Investment Directory*, (2000), Volume VII: Asia and the Pacific.

<sup>43</sup> Disinvestment, , <https://www.indiabudget.gov.in/es2004-05/chapt2005/chap78.pdf> (last visited Sep 2018).

<sup>44</sup> *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983).

perhaps embodies that the courts are the guards and the interpreters of the law in a land. It is well established that the access to court is the underlying basis on which a democratic society operates. Globalization hit the India in leaps and bounds. The role of the judiciary cannot be undermined in the recognition of this phenomenon. The case of *Balco Employees Union vs. Union of India and others*<sup>45</sup> also known as the disinvestment case, wherein the courts sought to analyze the effects of disinvestment and refused to interfere with the economic powers of the government, thereby refraining from overstepping the doctrine of separation of powers. As the Indian economy witnessed an upheaval, the Courts approach to the interpretation of the rights of individuals and application of these rights also changed. The scope of the fundamental right enshrined under Part III of the Constitution of India were broadened to create a new rights-based framework.<sup>46</sup> Public interest litigation was made affordable to the common man, however, the courts were careful not to overstep their rights and conform that policy making was not their domain. However, the court through a series of legislations held that though formulation was not their duty, the check on the power so exerted was. Thereby, ‘arbitrariness’ of government policy and a check to see that it does not violate Part III of the Constitution is the duty of the court.<sup>47</sup> The Court reiterated and applied this non arbitrariness standard in later cases like, *R.D. Shetty v. International Airports Authority*,<sup>48</sup> where the Court applied robust rights-based scrutiny in its review of government policies under arbitrariness review. The courts therefore have redefined the relationship between globalization and the state and have ensured that globalization seeps down to the citizens by way of alteration and recognition of their rights. In a lot of ways, the judiciary has broadened the scope of the rights conferred upon the citizens of the state to realise the true benefits and advantages of globalization.

## CONCLUSION

Globalization is not just an economic activity. There are several aspects associated with this multi-dimensional phenomenon. The spread and realisation of globalization has helped developing and under developing economies reap benefits from the developed nations of the

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<sup>45</sup> *Balco Employees Union vs. Union of India and others*, (2001).

<sup>46</sup> Manoj Mate, *Globalization, Rights, And Judicial Review In The Supreme Court Of India*, 25 *Washington International Law Journal Association* (2016).

<sup>47</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 283–84

<sup>48</sup> (1979) SCC 489

world. As the world transforms to be part of a global regime, globalization has seemingly seeped into domestic politics across the countries of the world. The various international organisations that embed either openly or by way of camouflage, a policy relating to globalization have increased as the years fly by. Therefore, it is well established that without globalization, a country may find it hard to survive in the world and may face the perils of this lack of inclusion in a global scheme. The concepts of justice, and the rule of law go hand in hand with the phenomenon of globalization. The justice system as interpreted by Rawls, requires a structure and participation from institutions. The international organisations such as the IMF, The ICJ, the United Nations and various other institutions play this part for the dissemination of justice. The rule of law, is the thread which runs across the global scheme of order, embodying a scheme of rules and regulations that ensure that globalisation takes place in a manner which is beneficial and is direction oriented. The universal applicability of both these principles in order to realise development is perhaps what ensures that globalisation goes hand in hand with both 'global justice' and 'the rule of law'. The paper also seeks to analyse the effects of globalisation on the Indian economy. Though the Indian economy was in a way forced to incorporate the Liberalisation, Globalization and Privatization regime, it has benefited tremendously from it. India by way of incorporation through legislative, economic and judicial interpretation has realised to become a major dominance in the process of globalization and stands to serve as a positive example for the benefits of this phenomena.<sup>49</sup> However, the true efficacy of this phenomenon will only be realised in equality of its implementation for which, steps and measures should be taken to ensure that the least developing countries as well as sectors within a domestic country that are untouched by the principles of globalization are developed. As has rightly been said, unification of the world can only be realised with an effective spread of globalization.

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<sup>49</sup> B.M. JAIN, *Globalisation and India Challenges and Opportunities* 8/9 Indian Journal of Asian Affairs, 71-79(1996)

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