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# **NAVIGATING THE CONTOURS OF SOCIAL DUMPING: LEGAL PERSPECTIVES ON SOCIAL CHANGE**

AUTHORED BY - AASTHA THAKUR

## **Abstract**

As globalization continues to reshape the landscape of international commerce, the phenomenon of social dumping has emerged as a complex and multifaceted challenge. Dumping is an unfair trade practice where one country exports goods to another country at a price lower than their normal value, leading to the downfall and closure of domestic industries. To deal with this issue, 'anti-dumping' laws and regulations have been devised to hold parties accountable. Moreover, the WTO has set forth anti-dumping measures to regulate the investigation, assessment, and imposition of anti-dumping duties.

Social dumping creates a huge impact on social justice and equality within the context of globalization, elucidating the ways in which businesses exploit disparities in labor and social standards. Drawing inspiration from the sociological jurisprudence of Roscoe Pound, this paper examines social engineering theory with aim of establishing a social order that would eradicate exploitation and secure equal opportunities for all citizens. Also explores Pound's emphasis on justice, fairness, and social engineering with respect to assessing the existing legal frameworks to impede social dumping practices and, in turn, their potential for contributing to societal transformation.

Furthermore, it also explores the current scenario of anti-dumping measures taken by India after the G20 summit held last year. A critical evaluation is necessary to determine its efficacy in dealing with social inequalities perpetuated by social dumping. It necessitates insights to ensure fair trade as well as its potential as a catalyst for social change, reimagining fair trade practices, and reshaping the global economic order.

**Key Words:** Social Engineering, Dumping, Social Inequalities, Fair Trade, Social Order.

## Introduction

Dumping occurs when the price at which the product is exported to a country is less than normal value at which 'like goods' are sold in the domestic market of the exporter.<sup>1</sup> There is no universally recognized definition for the same; it is rather seen as a set of illicit practices conducted at the national, international, or inter-corporate level, with the aim of outpacing related competitors in specific domains, consequently bearing detrimental effects on the world economy. Its cross-border functioning makes the countries having open borders prone to the easy access to markets and labour forces. One can easily identify the dumping by analysing the prices in two markets.

Social dumping has become a complex and contentious phenomenon which has gained prominent place in the global economic forum. At its core, social dumping is the act of exploiting of discrepancies in social protections, labour laws, and wages between nations in order to obtain a competitive edge in global trade. This phenomenon often occurs when companies move their base of operations or manufacturing to nations with more relaxed labour laws and social standards, leading to an erosion of worker rights, substandard working conditions, and a race to the bottom in terms of wages. The consequences of social dumping are extensive, impacting not only the workers directly involved but also creating an environment of unfair competition that contradicts the values of social justice and sustainable economic growth.

As the global economy becomes grows more interconnected, the issue of social dumping has generated debates and calls for regulatory measures to address these imbalances. Policymakers, international organizations, and advocacy groups are facing with the difficult task of creating a fair and level playing field that safeguards workers' rights and ensures a just distribution of the advantages of economic globalization. The complex and varied issue of social dumping has consequences for both developed and emerging economies, and to find a balance between protecting their citizens from the adverse effects of social dumping, making it a complex and multifaceted issue with implications for both developed and developing economies.

Social dumping has a significant impact on the world economy, influencing everything from social welfare and economic inequality to labour markets and international trade. The worldwide distortion of competitiveness is one of the main effects. By taking advantage of cheaper labour

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<sup>1</sup> An Analysis of Anti-Dumping Cases in India by Samir Kumar Singh

costs, businesses that engage in social dumping can undercut competitors, which frequently sparks a race to slash salaries and undercut labour regulations. This dynamic not only stifles honest competition but also encourages companies to put cost-cutting ahead of morality and social responsibility.

Social dumping has the potential to exacerbate global income disparity. As corporations chase lower production costs, workers in high-wage countries may face job losses or stagnant wages, while their counterparts in low-wage countries endure exploitative working conditions. The difference in economic success may worsen social unrest inside countries and feed a sense of unfairness in both established and developing economies.<sup>2</sup> These kind of discrepancy in labour standards and income can obstruct societal advancement as well as the accomplishment of sustainable development objectives.

Furthermore, trade imbalances and strained international relations might result from social dumping. Protectionist policies, such tariffs or trade barriers, may be used by nations that lose jobs as a result of social dumping to try to defend their native industries. This could lead to trade conflicts and impede the seamless operation of the world trade system. Thus, combating social dumping becomes not only economically necessary but also essential to promoting a more just and sustainable global economy.

### **Roscoe Pound's Theory in Anti-Dumping Regulations**

Society has become an indispensable condition for human life to develop its personality. The human being has certain desires and expectations which he wants to be fulfilled, which as per Pounds theory falls in the category of interest. And hence, came the concept of social engineering. Its aims at building an efficient structure of society via law to promote social harmony and justice. He envisioned law as a tool for actively engineering social relationships to achieve maximum happiness with the minimum of friction and waste.

The early 20th century social engineering theory of Roscoe Pound put a strong emphasis on the significance of legislation in promoting social justice and order. The law in the broad sense and the whole legal system with its institutions, rules, procedures, remedies, is society's attempt

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<sup>2</sup> [Trends in Income Inequality and its Impact on Economic Growth by Federico Cingano](#)

through state to steer this process and give it a desired direction.<sup>3</sup> Pound believed that law is a social institution and its aim is to satisfy social wants, the claims, demands with least sacrifice. law is a social institution and its aim is to satisfy social wants, the claims, the demands with least sacrifice law is a social institution and its aim is to satisfy social wants, the claims, the demands with least sacrifice Applying this perspective to anti-dumping legislation reveals a correlation between Pound's theory and the regulatory framework designed to address unfair trade practices in the global marketplace.

Pound distinguished four primary social interests—individual security, individual freedom, social order, and social justice—that had to be balanced via the legal engineering process.<sup>4</sup> He held that a pragmatic approach to jurisprudence must enable the law evolve to reflect evolving societal demands and circumstances. The anti-dumping laws is kind a legal intervention in the global economy platform, seeking to rectify distortions in international trade caused by predatory pricing strategies. In the context of Pound's social engineering theory, anti-dumping legislation serves as a means of preserving economic stability and averting market disturbances that could impact negatively on country's labour and industries.

By addressing unfair trade practices like social dumping, the importing countries has imposed an anti-dumping duty with aim to engineer a more just and stable global economic order.<sup>5</sup> This can be seen as an optimistic approach taken by the legal realm, actively resolving the issues, encouraging collaboration, and advocating for the fair and equal allocation of workforce and wages. This holistic perspective gives legal philosophy a legal conception to flourish the function of the law in building and maintaining a just and orderly society in later generations.

Therefore, the importing countries is hereby has right to impose an anti-dumping (AD) duty, for three preventive regulations: dumping, injury to the domestic firms and establishments of a causal link between injury and dumping.<sup>6</sup> In contrast, Pound's theory also puts emphasis on the significance of striking a balance between divergent societal interests. Anti-dumping laws attempt to strike such a balance by addressing the interests of domestic industries and workers while also promoting fair competition in the international market. These rules seek to shield local businesses from unfair competition and possible job losses by levying tariffs on items that have been

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<sup>3</sup> The Role of Law in Social Transformation by A P Singh

<sup>4</sup> Roscoe Pound's Theory of Interests and Furtherance of Western Civilization Authored by Edward B. McLean

<sup>5</sup> Dumping: Still a Problem in International Trade Authored by Thomas R. Howell

<sup>6</sup> An Analysis of Anti-dumping Cases in India Authored by Samir Kumar Singh

dumped. Anti-dumping laws can therefore be seen as a type of legal engineering intended to reconcile divergent economic interests for the good of society as a whole.

Moreover, when the society enters into organic solidarity such as modern industrial society, the objective here need for legal regulation is greater as industrial society is much more interdependent. The law tends to shift from traditional legal positivism and focuses on the interdependence of individuals within a society. Law should not be seen as a set of commands imposed by a sovereign authority but as a reflection of the inherent social solidarity that binds individuals together.<sup>7</sup> In this framework, law is the expression of the collective conscience and shared values of a community, serving as a means to maintain social cohesion and order.

Applying this in AD regulatory framework it acts as a protectionist tariff that a domestic government imposes on foreign imports that it believes are priced below fair market value. Many nations impose taxes on goods they perceive are being dumped in their national markets in an effort to preserve their separate economies. The reasoning behind these actions is that the goods may undermine local companies and the local economy.

### **Social Solidarity – Anti Dumping Policies**

Léon Duguit's concept of social solidarity resonates with certain aspects of anti-dumping measures, particularly in the context of protecting domestic industries and workers from unfair competition. According to Duguit, social solidarity underlines how interdependent people are within a society and how important it is for common goals to take precedence over individual ones. In the realm of anti-dumping policies, this principle is consistent with the notion that nations have an obligation to protect the welfare of their own industries and labour forces when it comes to anti-dumping laws.

Anti-dumping measures are often implemented to counteract the negative effects of predatory pricing and unfair trade practices that can harm local industries. These policies can be seen as an expression of social solidarity in the sense that they prioritize the collective welfare of the nation over individual economic interests. Anti-dumping policies work to ensure that native industries are able to compete fairly without being undermined by unfairly low-priced imports by imposing

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<sup>7</sup> The Law and the State by L Duguit

tariffs on dumped items or regulating trade practices.<sup>8</sup>

In this context, social solidarity resonates with the idea that nations have a shared responsibility to protect their economic foundations and maintain a certain standard of living for their citizens. When implemented properly, anti-dumping laws exhibit a commitment to the welfare of society by discouraging the exploitation of market imperfections and advancing a more just international financial system. However, it's crucial to strike a balance to avoid protectionist measures that may hinder the broader goals of international cooperation and fair trade, a tension that requires careful consideration within the framework of social solidarity.

It can be seen that the Durkheim's and Pound's contribution to legal sociology gave sense of collective welfare of the society, be conceiving the division of labour in society and social engineering theory respectively. This all leads to the future growth of the relationship between the social structure of the modern State and anti-dumping laws. This can be seen as broad-spectrum part of sociological school of law - the observatory of any social phenomenon and understanding the nature of law and establishing the inter-relationship between the law and society and the study of community and of social phenomena, of group or individual interest and their realisation and fulfilment. In this context, the collective interests include the economic development, reduce competitive trading and predatory pricing resulting to social dumping.

### **International Guidelines on Dumping**

The WTO, fully known as World Trade Organisation established in 1995, from starting has recognized the importance of labour standards and social issues within the realm of international trade. The organization operates under the understanding that trade policies should not undermine workers' rights or lead to a race to the bottom in terms of labour conditions. The WTO's agreements allow member countries to adopt and enforce measures that protect public morals, the human health, and essential security interests, and these provisions may indirectly touch upon certain aspects related to social dumping.

The GATT 1994 sets forth a number of basic principles applicable in trade between Members of the WTO, including the "most favoured nation" principle.<sup>9</sup> Member of the WTO agrees that

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<sup>8</sup> chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://wtocentre.iift.ac.in/FAQ/english/Anti-dumping.pdf

<sup>9</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_info\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm)

imports must not be subject to internal taxes or other changes that go beyond what is required of domestic products. Furthermore, imports must receive the same treatment under domestic laws and regulations as domestic products in terms of quantitative restrictions, fees and formalities associated with importation, and customs valuation.

Article VI of GATT 1994, specifically discusses the imposition of anti-dumping duty on imports from a particular source, in excess of bound rates in cases where dumping causes or threatens injury to a domestic industry, or materially retards the establishment of a domestic industry.<sup>10</sup> The code was formulated after the Uruguay Round of negotiations in 1994.<sup>11</sup> This successfully put forward the international standards for the member nations to follow. WTO released guidelines for Anti-Dumping Agreement in year 1994, it basically consists of basic measures dealing with investigation, assessment, and application, of anti-dumping duties.

GATT contains some contingent measures, which permit the signatories to withdraw their normal obligations under specified circumstances and impose higher protection against import of one or more goods from one or more countries.<sup>12</sup> A significant number of WTO member nations have implemented or modified antidumping laws mainly to ensure compliance with GATT rules to address imports that have been dumped. Antidumping laws are also in place in some of the non-WTO members' nations. Currently, nations with antidumping legislation account for over 90% of all imports into the world.

There has been seen a spectacular growth in anti-dumping cases, no longer confining them to the limited number of industrialized countries. The committee under the GATT Agreement meets twice a year, for discussing any issues related to the Anti-Dumping Agreement and it has undertaken to review the consistency of national practice with the Anti-Dumping Agreement. The administrative wing has been created known as, the Ad Hoc Group on Implementation, open to all members of the WTO, which is expected to focus on technical issues of implementation: that is, the “how to” questions that frequently arise in the administration of anti-dumping laws.

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<sup>10</sup> ibid

<sup>11</sup> [Understanding the WTO – The Uruguay Round](#)

<sup>12</sup> Anti dumping Law and Practice: An Indian Perspective authored by Aradhna Aggarwal

## Legislation in India

India has emerged as one of the most frequent users of antidumping measures among the developing countries. India imposed the first anti-dumping duty on companies from the United States, Brazil, Mexico, and the Republic of Korea in 1993. From beginning, India has made adequate amendments in legislation to counter the dumping phenomenon.

India's anti-dumping legislation is the 1975 Customs Tariff Act, revised in 1995. It is quite essential that a developing country, post freedom, has guidelines to ensure fair trade practices in order to protect its domestic industries from the harm caused by foreign businesses. Primarily, anti-dumping laws were enacted to protect India's iron and steel industry. Later on, the increase in import caused damaged to domestic market of India. To regulate it, Indian government has imposed anti-dumping duties on an exporter that causes any material or substantial injury to a domestic industry in India to ensure dumping activities do not affect the domestic market.

In India, labour laws and standards play a crucial role in shaping the employment landscape and safeguarding the rights of workers. The Minimum Wages Act of 1948 establishes a framework for determining and enforcing minimum wages, which varies across states and employment sectors. The provisions of the Act are gender neutral and thus do not discriminate between male and female workers. This also ensures the workers are provided with a decent standard of living and whether there are mechanisms for timely adjustments.

The Factories Act of 1948 also address working hours and overtime regulations. While these statutes define the maximum number of working hours and mandate overtime pay, the extent to which these provisions are enforced and adhered to by employers varies. Ensuring compliance with these regulations is crucial to prevent the exploitation of workers through excessive working hours. Additionally, health and safety standards are addressed under the Factories Act<sup>13</sup>, but the effectiveness of these regulations in preventing workplace accidents and illnesses requires scrutiny, particularly in sectors where hazardous conditions prevail.

The Industrial Disputes Act and the Trade Unions Act provide the legal framework for collective bargaining and union rights in India. While these acts recognize the rights of workers to form and

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<sup>13</sup> <https://wageindicator.org/labour-laws/labour-law-around-the-world/minimum-wages-regulations/minimum-wages-regulations-india>

join trade unions, the practical exercise of these rights can be hindered by challenges such as anti-union practices by employers and bureaucratic hurdles. Additionally, addressing child labour and forced labour is a priority in Indian legislation through laws like the Child Labour (Prohibition and Regulation) Act, 2016 and the Bonded Labour System (Abolition) Act, 1976. The two fundamental ILO Conventions concerning the elimination of child labour, the Minimum Age Convention, 1973 and the Worst Forms of Child Labour Convention, 1999 as have been ratified by the Government of India and the 'Central sector Scheme for Rehabilitation of Bonded Labourer, 2016' towards financial assistance for rehabilitation of a rescued bonded labourer.<sup>14</sup> Apart from all this there is The Equal Remuneration Act, 1976 which safeguards the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. Moreover, the Indian Constitution<sup>15</sup>, 1950 contains equal opportunity provisions considered as part of the legal framework.

### **Impact on Social Justice and Equality**

The practice of dumping, where goods are exported to another country at prices lower than their production costs, can have significant negative impacts on social justice and equality. Dumping contributes to the erosion of domestic industries in importing countries, often leading to job losses and economic distress for workers. In the pursuit of cost advantages, companies engaging in dumping may exploit lower labour standards and environmental regulations in the exporting country, perpetuating a cycle of social inequality. As local industries struggle to compete, vulnerable segments of the population, such as low-skilled workers, face heightened economic insecurity, wage suppression, and diminished employment opportunities, exacerbating social disparities.

Furthermore, dumping can impede progress towards global economic equality by perpetuating an uneven distribution of resources and opportunities. Developing countries, often targeted as destinations for dumped goods due to lower production costs, may find it challenging to build sustainable and diverse economies. This not only hinders their economic growth but also perpetuates a dependency on low-wage industries, perpetuating global economic inequalities. The social justice implications of dumping are profound, affecting both importing and exporting

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<sup>14</sup> <https://envionicsindia.in/2021/06/14/an-observation-on-elimination-of-child-labour-on-world-day-against-child-labour/>

<sup>15</sup> Article 16 of the Indian Constitution, 1950

nations, as the pursuit of profit through unfair trade practices can perpetuate cycles of poverty, hinder social mobility, and widen the gap between the privileged and the marginalized. Addressing dumping practices becomes essential in the pursuit of a more just and equitable global economic system that uplifts all members of society.

## Implications on Global Economy

The impact of dumping on the global economic system is multifaceted and extends across various dimensions. Firstly, the practice distorts the dynamics of international trade by fostering an environment of unfair competition.<sup>16</sup> Dumping undermines the principles of free and fair trade by allowing companies to gain a competitive edge through artificially low prices. This not only hampers the growth of domestic industries in importing countries but also distorts the allocation of resources on a global scale. The global economic system, which ideally relies on market forces to determine prices and allocate resources efficiently, is disrupted when dumping creates artificial advantages for certain players, leading to market inefficiencies and suboptimal resource distribution.

Secondly, dumping contributes to the perpetuation of economic inequalities among nations.<sup>17</sup> Developing countries, often targeted as recipients of dumped goods due to lower production costs, may become trapped in a cycle of dependency on low-wage industries. This perpetuates a hierarchical global economic structure where certain nations serve as primary suppliers of inexpensive goods, while others struggle to diversify their economies and escape a reliance on low-value-added production. The resultant imbalance in economic power and opportunities exacerbates global disparities, hindering the achievement of a more equitable and inclusive global economic system.<sup>18</sup>

Moreover, the impact of dumping on the global economic system extends to the erosion of social and labour standards. Companies engaging in dumping may seek production locations with lax regulations, leading to substandard working conditions, lower wages, and diminished workers' rights. This race to the bottom in labour standards not only compromises the well-being of workers but also sets a precedent for a global economic system that tolerates and even incentivizes

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<sup>16</sup> Unfair Competition in International Trade: An Analysis of the Effects of Antidumping Proliferation in Developing Countries Authored by Allwell Uwazuruike

<sup>17</sup> Individuals, interactions and institutions: How economic inequality affects organizations Authored by Hari Bapuji

<sup>18</sup> <https://openknowledge.worldbank.org/bitstream/handle/10986/38030/GEP-January-2023.pdf>

the exploitation of vulnerable populations. Consequently, addressing the impact of dumping is vital for fostering a global economic system that prioritizes fairness, sustainability, and the well-being of all participants.

The G20 representing a global forum for international economic cooperation and coordination, comprises of 19 individual countries and the EU (European Union). This has always created impact on global economic system, where the countries come together to discuss the economic crisis or any pressing global economic challenges.

The recent G20 meetings was conclude in India, where the trade related discussions including trade restrictions and anti-dumping regulations took place. It was settled that trade remedy actions, especially anti-dumping measures, remain an important trade policy tool for most G20 economies, accounting for 87.0% of all initiations. It was recorded that while anti-dumping investigations do not necessarily lead to the application of measures, an increase or decrease in the number of investigations initiated is an early indicator of a likely increase or decrease in the number of measures applied. Over the 24 months reviewed, 215 anti-dumping investigations were initiated, and 229 measures were applied by G20 economies.

The data shows India is second highest country who has initiated 31 anti-dumping cases in the first six months of 2023. The Directorate General of Trade Remedies (DGTR) imposes anti-dumping regulations to promote healthy competitions in the Indian market and continuation of the duties would not deprive the domestic industry of any requirements. In order to protect indigenous market, the government has extended the imposition of an anti-dumping duty on certain Chinese steel for another five years.<sup>19</sup> This measure was taken in lieu of export prices of Chinese steel export which was significantly dumped and injurious prices. This shows the commitment to promote the fair market by preventing the domestic business market.

While the G20 does not have formal decision-making powers, its significance lies in its ability to foster consensus and collaboration among nations, shaping policies that impact the global economic landscape. The G20 plays a pivotal role in steering collective efforts to address shared challenges, reflecting the increasing interdependence of nations in an interconnected world.

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<sup>19</sup> [https://www.newindianexpress.com/nation/2024/Mar/10/india-signs-free-trade-agreement-with-efta?utm\\_source=website&utm\\_medium=related-stories](https://www.newindianexpress.com/nation/2024/Mar/10/india-signs-free-trade-agreement-with-efta?utm_source=website&utm_medium=related-stories)

## Conclusion

In conclusion, the concept of social dumping, characterized by the exploitation of disparities in labour standards to gain a competitive advantage, stands in stark contrast to the ideals of social engineering and its pursuit of a just and harmonious societal order. Social engineering, as envisioned by legal theorists like Roscoe Pound, underscores the importance of law as a dynamic force to mould and shape society for the collective good. In contrast, social dumping introduces distortions in the global economic system by prioritizing short-term economic gains over long-term societal well-being. The clash between these two perspectives highlights the tensions between profit-driven practices and the ethical imperative of promoting social justice and equality.

The impact of social dumping on social justice and equality is profound, reaching across national borders and affecting both developed and developing economies. It exacerbates economic disparities by undermining domestic industries and contributing to job losses, particularly among vulnerable segments of the population. Moreover, the exploitation of lower labour standards in the pursuit of cost advantages perpetuates a cycle of inequality, compromising the very principles of fairness and social justice that social engineering seeks to uphold. As a consequence, the global economic system witnesses a widening gap between privileged and marginalized nations, hindering progress towards a more equitable distribution of resources and opportunities.

Addressing the challenge of social dumping requires a concerted effort on both national and international levels. Strengthening and enforcing labour standards, promoting responsible business practices, and fostering international cooperation are essential components of a comprehensive strategy. By aligning policies with the principles of social engineering, wherein the law actively serves to enhance social cohesion and justice, nations can strive towards a more equitable global economic system that upholds the dignity and well-being of all individuals, regardless of their position in the economic hierarchy.

The actual implementation and impact of workers laws in promoting workplace equality deserve close examination, especially in the context of gender and caste-based discrimination. Enforcement mechanisms, encompassing labour inspections and complaint procedures, form a critical part of India's labour laws. Evaluating the accessibility and effectiveness of these mechanisms in providing legal remedies for workers facing violations of their rights is crucial for

a comprehensive understanding of the Indian labour landscape.

In summary, a nuanced examination of these legal aspects within Indian legislation is essential to identify strengths, weaknesses, and potential areas for reform to address the challenges posed by social dumping and ensure fair and just labour practices.

