

Constitutional Response to Unfair Labour Practices--- An Analysis

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I. Introduction:

Unfair labour practice has been defined in Section 26 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971² to mean 'the practices listed in Sch 2, 3 and 4 thereof. Schedule 2 enumerates 'unfair labour practice' on the part of the trade unions and Schedule 4 enumerates 'unfair labour practices' on the part of the employee.

The growth of industrial jurisprudence in India subsequent to 1950 bears close resemblance to the growth of Constitutional law in relations to the fundamental rights guaranteed to the citizens. Industrial jurisprudence seeks to evolve a rational synthesis between conflicting claims of the employers and the employees. The interests of the employees which have received constitutional guarantees under the Directive Principles, the interest of the employers which have received a guarantee under Article 19 and other Article of Part III, and the interests of the community at large which are so important in a welfare state.³ It is on these lines that industrial jurisprudence has developed in the last two decades in India.⁴

II. Constitution of India and Labour Law:

The preamble of Indian Constitution secures to all citizens social, economic and political justice. The fundamental rights and directive principles of state policy are guaranteed against unfair trade practice.

The principle of 'just and humane conditions of work' has been extended even to work of prisoners in jails, so that convicts and under trial prisoners are not subjected to 'subtle forms of punishments'. A provision in Air Corporation Act according to which the service of Air Hostess would stand terminated on first pregnancy is not only manifestly unreasonable and

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² Act No 1 of 1971

³ Sharath Babu and Rashmi Shetty, *Social Justice and Labour Jurisprudence: Justice V.R. Krishna Iyer's Contributions* 51 (1st ed., 2007).

⁴ *Id.*

arbitrary, but contains the quality of unfairness and exhibits naked despotism and hence invalid.⁵ It amounts to the Air Hostess not to have any children and thus interferes with and diverts the ordinary course of human's physical capacity to continue her employment even after pregnancy which undoubtedly is a most unreasonable approach.⁶ The termination of the services of Air Hostess under such circumstances is not only a callous and cruel act, but an open insult to Indian womanhood.⁷

Among fundamental rights, articles 14, 19 and 23 are relevant to country. Article 14 provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 19 guarantees the right to form associations or unions, and to practice any profession, or to carry on any occupation, trade or business, subject to reasonable restrictions.

III. Article 23 Prohibits Traffic in Human Beings and Forced Labour:

The right guaranteed by Article 19(1)(c) extends to the formation of an association and, in so far as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose of its creation, they are subject to such laws as reference to the criteria to be found in art 19(4).

Article 39 lays down the state shall direct its policy inter alia towards securing adequate means of livelihood for all citizens, distribution of the ownership and control of the materials resources of the community in a manner they best sub-serve the common good, preventing concentration of wealth and means of production, equal pay for equal work for both men and women, and prevention of abuse of the tender age of children as well as the health and strength of workers, men and women, and prevention of abuse of the tender age of children as well as the health and strength of workers, men and women.

Article 41 recognizes every citizen's right to work, to education and public assistance in case of unemployment, old age, sickness and disablement, and other cases of undeserved want.

⁵ JUSTICE V.R. KRISHNA IYER, *Fundamental Rights And Directive Principles* 105 (Deep and Deep Publications, 1992).

⁶ *Id.*

⁷ *Id.*

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 43 imposes upon the state the obligation to secure, by suitable legislation or economic organization or in any other way, to all workers-agricultural, industrial or otherwise-work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This particular provision has been declared as a Magna Carta of all workers.⁸

Article 43A directs the state to secure the participation of workers in the management of undertakings. The question, as to the extent to which the Directive Principles can be invoked by the judiciary while interpreting the provisions of a labour statute or while determining the rights of parties, has acquired controversial dimensions in so far as a few judges wedded to radical ideology, during the late 1970s and 1980s, relied more on directive principles than on the plain provisions of law while settling claims of the parties.

IV. Bandhu Labour:

In *Bandhua Mukti Morcha v. Union of India*⁹, the Supreme Court read Art. 21 and 23 with such Directive Principles as Art. 39(e) and (f) and Arts. 41 and 42 to secure the release of bonded labour and free them from exploitation. The Court has observed in this connection:

“Art. 42 of the constitution makes it the obligation of the state to make provisions for securing just and human conditions of work. There are several other Articles in Part IV of the Constitution (i.e., Directive Principles) which indicate that it is the State’s obligation to create social atmosphere befitting human dignity for citizens to live in.”

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief. This Article provides the basic of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the constitution expresses a deep concern for the welfare of the workers. The Court may not enforce

⁸ *Id.*, at 48.

⁹ AIR 1964 SC 802

Directive Principles as such, but they must interpret laws so as to further and not hinder the goals set out in the directive principles.¹⁰

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V. Social Services:

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and other cases of underserved want. Article 41 directs the state to make effective provision for securing the right to work but within the limits of its economic capacity and development". Thus, even while directing the state to ensure the right to work, the constion-makers thought it prudent to qualify it.¹¹

VI. Living Wage:

Article 43 requires the state to endeavor to secure, by suitable legislation, or economic or organization, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

A 'living wages' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum

¹⁰ U.P.S.E. Board v. Hari Shankar, AIR 1979 SC 65

¹¹ Delhi Development Horticulture Employees' Union v. Delhi Administration, AIR 1992 SC 789.

wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Art. 19(1)(g).¹²

A 'fair wage' is a mean between 'living wage' and 'minimum wage'. Living and fair wages have to be fixed keeping in view the capacity of the industry to pay. Fixing of minimum wages under the Minimum Wages Act has been characterized as "just the first step" in the direction of fulfilling the mandate of Art. 43. "In course of time, the state has to take many more steps to implement that mandate". The mandate of the constitution is to build a welfare society. The aspirations aroused by the constitution will be belied if the minimum needs of the lowest of the Indian citizens are not met.¹³

Article 14 enjoins the state to ensure a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and enjoyable leisure, relieving the boredom and the humility of dependence in the old age. The court applied the liberal formula to all pensioners irrespective of the date of retirement, as distinction among pensioners with reference to a specified date was held to be discriminatory.¹⁴

Article 43 does not envisage that the workers should be compelled to work on all days. It is not the philosophy that they also enjoy some holidays. As human beings, they are entitled to a period of rest which would enable them to fully enjoy their leisure and participate in social and cultural activities.

Participation of workers in Management of Industries: Article 43A requires the state to take steps, by suitable legislation, or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

VI. I. Preamble to the constitution

The preamble to the constitution lays down the goals of politico-socio-economic democracy for the citizens of India. The preamble emphasizes that India should be a socialist secular democratic republic. The preamble further states that the people of India have given the constitution to themselves to secure to all its citizens justice, economic and of opportunity and fraternity assuming the dignity of the individual.

¹² *Edwad Mills Co. V. Ajmeer*, AIR 1955 SC 25.

¹³ *Candra Bhavan Boarding House v. State of Mysore*, AIR 1970 SC 2042.

¹⁴ M P Jain, *Indin Constituional law*, Sixth Ed. 2011.

VI. II. *Right against exploitation*

According to Art. 23(1), traffic in human beings, beggar, and other similar forms of forced labour are prohibited and any contravention of this provision shall be offence punishable in accordance with law.

Art.23(1) prescribes three unsocial practices, viz

- a. Beggar;
- b. Traffic in human beings; and
- c. Forced labour

Significant features of Art. 23 is that it protects the individual not only against the state but also against private citizens.¹⁵

It is to be noted that most of fundamental rights operate as limitations on the power of the state and impose negative obligations on the state and not to encroach on individual liberty and the right are not only enforceable against the state. But there are certain fundamental rights which are enforceable against the whole world, e.g. Arts. 17, 23 and 24, Art.23 is not limited in its application against the state, but strikes at such practices whenever they are found, and, thus, the sweep of Art. 23 is wide and unlimited.

VI. III. *Beggar abolished*

The term beggar means compulsory work without any payment. Beggar is labour or service which a person is forced to give without receiving any remuneration for it.¹⁶ To ask a man to work and then not to pay him any salary or wages savours of beggar. It is a fundamental right of a citizen of India not to be compelled to work without wages.¹⁷

VI. IV. *Traffic in Human Beings*

The expression 'traffic in human beings', commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

¹⁶ Vasudevan v. Mittal, AIR 1962 Bom 53.

¹⁷ Suraj v.State of Madhya Pradesh, (2003) 6 SCC 175.

VI. V. *Forced labour*

The kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings or beggar. The Supreme Court has given an expansive significance to the term "forced labour" used in Art. 23 is intended to abolish every form of forced labour even if it has original in a contract. Art. 23 shrikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

In *people's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473, Supreme Court rejected this narrow view of Art. 23. Bhagwati, J. said while countering such a view:

"It is difficult to imagine that the constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour."

So, the court insisted that every form of forced labour is within the inhibition of Art. 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if a person has contracted with another to perform service and there is consideration for such service, "he cannot be forced, by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour.

Not only this. Even payment of wages less than the minimum wages would be regarded as forced labour. Giving a very expansive interpretation to Art. 23 Bhagwati, J., said in the *Asiad* case¹⁸

"The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternative to a person in want and compels him to provide labour or service even though the remuneration received for it less than the minimum wage."

¹⁸ *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

Bhagwati, J., has argued that ordinarily no one would willingly supply his labour for less than the minimum wages. He will do so only under the force of some compulsion. The Court has therefore declared in *Asiad*:

“we are, therefore, of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23”.

Therefore, a complaint that minimum wages is not being paid to the workmen by the government contractor is, in effect and substance, a complaint against violation of the fundamental right of the workmen under Art. 23 for providing labour for less than the minimum wage clearly falls within the scope and ambit of the words ‘forced labour’ in Art. 23 such a person can come to the court for enforcement of his fundamental right under Art. 23 and ask the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be ‘forced labour’ and the breach of Art. 23 is remedied.

Whenever any labour or service is taken by the state from any person, whether he is affected by drought and scarcity conditions or not, the state must pay, at the least, minimum wage to him on pain of violation of Art. 23.

Non-observance of the Equal Remuneration Act, 1976, by government contractors raises questions under Art. 14. The Act has been enacted in pursuance of Art. 39, a Directive Principle. The Act provides for payment of equal remuneration to men and women workers for the same work, or work of a similar nature and for the prevention of discrimination on grounds of sex.

As stated above, Art. 23 operate not only against the government but even against private parties. Bhagwati, J., emphasized in *Asiad* that whenever any fundamental right which is enforceable against private individuals, such as, Art. 17, 23 or 24, is being violated, the state is under a constitutional obligation to take necessary steps so as to interdict such violation and ensure that the fundamental right is observed by the private individual who is transgressing the same.

The person whose fundamental right is violated can always approach the court for enforcement of his fundamental right. Thus, in *Asiad*, the Supreme Court ordered the concerned authorities- central Government and the Delhi

Development got minimum wages and other labour welfare measures were not flouted to the detriment of the workers. The authorities were required to ensure observance of the various labour laws, e.g., the Contract Labour Act. The Minimum Wages Act, the Equal Remuneration Act, the Employment of Children Act and the Inter-State Wages Act, the Equal Remuneration Act, the Employment of Children Act and the Inter-state Migrant Workmen Act.

VII. Bonded Labour:

A serious socio-economic problem in India has been that of bonded labour. Under the bonded system, one person is bonded to provide labour to another for years and years until a debt is supposed to be wiped out. The bonded system is designed to enable a few socially and economically powerful persons to exploit the weaker section of the people.

The Supreme Court has ruled that bonded labour is unconstitutional under Art. 23 as it can be regarded as a form of forced labour. To give effect to Art. 23, parliament has enacted the Bonded Labour System (Abolition) Act, 1976. This act strikes t the system of bonded labour.

VII. I. *Bandhua Mukti Morcha*

The slow implementation of the law banning bonded labour has given rise to several judicial pronouncements by way of public interest litigation.

In *Bandhua Mukti Morcha v. Union of India*¹⁹, an action was brought in the Supreme Court by an organization dedicated to the cause of release of bonded labourers. the Supreme Court has characterized the system of bonded labour under which one person is bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out which never seems to happen during the life time of the bonded labourer as "totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic human dignity but also constitutes gross and revolting violation of constitutional values".

The court has linked Arts. 23 and 21 in the context of the bonded labour and observed: "It is the Fundamental Right of every one in this country, assured under the interpretation given to Art. 21 to live with human dignity, free from exploitation."²⁰ Where legislation has already been enacted investing

¹⁹ AIR 1984 SC 802.

²⁰ Frances Coralie v. U.T. of Delhi, AIR 1981 SC 746.

the right of the workmen to live with human dignity, with concrete reality and content, "the state can certainly be obligated to ensure observance of such legislation for inaction on the part of the state in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Art. 21."²¹

On the question of identifying bonded labour, the Supreme Court has said in *Neeraja Choudhary v. State of Madhya Pradesh*:²²

"whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the state government is in a position to prove otherwise by rebutting such presumption".

The court has insisted not only on the release of the bonded labourers, but has also laid stress on their proper rehabilitation. The question of rehabilitation of bonded labourers after their release from bondage is of crucial importance, for, otherwise, these labourers will again relapse into bondage if not properly rehabilitated. The court has squarely placed the whole responsibility on the state. The court has emphasized that it is the "plainest requirement of Art. 21 and 23 of the constitution that bonded labourers must be indentified and released and, on release, they must be suitably rehabilitated." The court has emphasized that any failure on the part of the government in implementing the provision of the Bonded Labour System (Abolition) Act would be the clearest violation of Art. 21 and Art. 23. The court has further emphasized that this act was enacted by parliament pursuance to the directive principles of state policy with a view to ensuring basic human dignity to the bonded labourers.

Child-labour abolition: Article 24 prohibits the employment of a child below the age of fourteen years to work in any factory or mine, or in any other hazardous employment. The Supreme Court has emphasized in *Asiad* that Art. 24 embodies a fundamental right "which is plainly and indubitably enforceable against everyone." By reason of compulsory mandate in Art. 24, no one can employ a child below the age of 14 years in a hazardous employment like construction work.

²¹ AIR 1984 SC 802, 812.

²² *Id.*, at 1103.

The contractor are thus under a constitutional mandate not to employ any child below 14 years on construction work. It is also the duty of the Union Government, State Government and other government bodies to ensure that the contractors to whom they have entrusted construction work also obey this obligation.

In *M.C Mehta v. State of Tamil Nadu*²³, the Court has considered the constitutional perspective of the abolition of the child labour in the notorious Sivakasi Match Industries. The court has issued detailed directions to eradicate the practice of employing children below the age of 14 years in this haradous industry. The court has insisted the employer should comply with the provision of the Child Labour (Prohibition and Regulation) Act.

VIII. Conclusion:

In this paper the author has endeavoured to analyse the Unfair Labour Practice in India from a Constitutional Law perspective. Part IV of the constitution makes it the obligation of the state to make provisions for securing just and human conditions of work. There are several articles in part IV of the constitution which indicate that it is the state's obligation to create social atmosphere benefiting human dignity for citizens to live in. The state is required to secure, by suitable legislation, or economic or organization, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. Such is also evident from the various case laws which have been discussed in this paper.

²³ AIR 1997 SC 699.