

Right to Work and Working Conditions: Its Constitutional Aspects

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I. Introduction:

Social Justice is a basic need of all people regardless of the sector of employment in which they work and live. It is an important form of social protection we should begin with birth and should continue till death. In a general sense social justice refers to protection extended by the society and state to its members to enable them to overcome various contingencies.

According to the Supreme Court of India, the principal aim of socialism is to eliminate inequality of income, status, and standard of life and to provide a decent standard of life to the working people. Social justice is said to be signature tune of Indian Constitution. It is designed to secure social, economic and political justice to all its citizen. Several legislations, both central as well as state have been enacted to provide social security to the workers.

Our Constitution provides for equal rights to adequate means of livelihood, to all, right to work, just and human condition of work, equal pay for equal work for both men and women, living wage and the health and strength of workers.

The right to work and employment is the most essential requirement of life one has to make his livelihood through his work or Employment. Therefore, it is important to give a broad recognition to right to work. The Charter of the United Nations organisation affirms faith in the equal rights of men and women. Every one has right to life, liberty and security of person². Every one has the right to work, Equal pay for Equal work, right to join trade union³.

The United Nations Charter aims at promoting the higher standard of living and full employment⁴. The right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguards this right⁵. Everyone has right to

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2 Article 3, The Universal Declaration of Human Rights, 1948.

3 Article 23, of the Declaration provides everyone has the right of work, to free choice of employment, to just and favourable conditions of work and protection against unemployment. Without any discrimination, has the right to equal Pay for equal work, right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and to form and to join trade unions for the protection of his interest.

4 Article 55(a), The United Nations Charter 1945.

5 Article 6 (i), International covenant on Economic Social and Cultural Rights (1966).

the enjoyment of just and favourable condition of work⁶.

II. Constitutional Provisions:

The Constitution accords justice to all sections of society by providing social security. Welfare measures and opportunity to remove handicaps and disabilities with which the poor workmen are languishing to secure dignity to their person.

The Preamble of the Constitution declares⁷:

“Justice, social, economic and political liberty of thought, expression belief, faith and worship, equality of status and of opportunity.”

The Preamble of the constitution is notable for two reasons. First, it resorts to a fiction by conferring on the people of India the ultimate authority for not only constituting the future Society but also laying down the cherished ideals of society and bringing into force the constitution itself. Secondly, it spells out a social mission that people of India resolve to purpose, namely, setting up a sovereign, socialist, secular, Democratic Republic, securing the ideals of justice liberty, equality and fraternity and adopt enact and give a Constitution.

The people having given themselves the Constitution. It assures to its citizen to secure justice – social economic and political, liberty of thought etc. Equality of status and of opportunity, and to promote fraternity among them all assuring dignity of the individual and the unity and integrity of the country.

In fulfillment thereof, Part III of the Constitution assures the rights which are fundamental to the citizens/ persons and Part IV provides certain fundamental principles of state policy.

Part III of the constitution of India Contains the fundamental rights, which are as necessary and important as a heart to a human being. The infractions of fundamental rights could be complained under Article 32 of the constitution to the Supreme Court of India or under Article 222 to the respective High Court of status. The Constitution guaranteed equality of opportunity in matter of public

6 Article 7(a) Ibid, Provides(a) Remuneration which provides all workers, as a minimum with:-

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed condition of work not inferior or those enjoyed by men, with equal pay for equal work.
- (ii) A decent living for themselves and their families in accordance with the provisions of the present covenant.
- (b) Safe and healthy working condition.
- (c) Equal opportunity for every one to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.
- (d) Rest leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

7 Constitution of India, 1950.

employment⁸. But it does not guarantee right to Employment or work.

“The state shall within the limits of its economic capacity and development, make effective provisions for securing right to work”⁹.

The state shall make provision for securing just and human conditions of work¹⁰.

Having discussed certain broad social features in respect of the labour as analysis may now be made of the condition of there employment pattern of unemployment and sessional divisions in the number of days in which employment is available. In the existing agrarian pattern. The nature of agriculture and the unfavourable man land ratio, there are uncertainty and inadequacy of employment. The extent of under employment or distinguished unemployment is a usual feature, under –employment has also affected to a considerable extent the standard of living. It has also created disparity in the working class. It has hampered the growth of the labour movement and trade unions. Political parties may take advantage of the unemployed millions and divert them from the search for gainful employment into unproductive political actions¹¹

III. Judicial Trend and Directive Principles:

In earlier days, the Directive Principles of State Policy were considered to be dormant in as much as they are not enforceable in the Courts and do not create any justifiable rights in favour of the individuals. The Courts were also helpless and not in a position to declare any laws, as void on the ground that it Contravenes any of the Directive Principles. The courts arte also not competent to Compel the government to carry out any directive or to make any law for that purpose. For example, to provide compulsory education with in the time limit by Article 45 to provide adequate means of lively hood to every citizen. Though the earlier decisions of the supreme court paid Comparatively scant attention to the directive in Part IV of the ground that the court had little to do with them since they were not justiciable or enforceable in the courts of law like the fundamental rights, the duty of the courts in relation to directives came to emphasize in later decision, this trend reached its culmination in the 13 judges Bench of Supreme court of India in Kesavananda Bharati case which laid down certain broad propositions.

- (1) There is no disharmony between the directive principles and fundamental rights because they Supplement each other in aiming at

8 Article 16 of the Constitution of India.

9 Article 41 of the constitution, provides, Right to work, to Education, and Public assistance, in cases of unemployment, old ages, Sickness, and disablement, and other cases of undeserved want.

10 Article 42, provides, “Provision for just and human conditions of work and Maternity relief.”

11 Srikant Mishra, “Rural labour some key Dimensions,” 4 CILQ (1991) at 482.

the same goal or bringing about a social revolution and the establishment of a welfare state which is envisaged in preamble.

- (2) Even the conditions for exercise by each individual of his fundamental rights cannot be ensured until the directives are implemented.
- (3) The parliament is competent to amend the constitution to override or abrogate any of the fundamental rights in order to enable the state to implement the directives so long as the basic structure of the constitution is not affected.

The court has a responsibility in interpreting the Constitution to ensure the implementation of directives and to harmonize the social objectives underlying the directives with the individual rights. It necessarily follows that the courts should as far as possible, legislation enacted by the state to ensure distributive justice, the law which seeks to remove inequalities and also attempt to achieve a fair division of wealth among the members of the society, redressing unconstitutional or unfair bargains¹².

The Courts while applying the doctrine of harmonious construction held that the directives are to adjust the ambit of fundamental rights themselves to give liberal interpretation to the ambit of legislative entry so as to make it possible. Directives are being enforceable directly by the Court by issuing suitable directions¹³.

In *Randhir Singh v. Union of India*¹⁴ the Supreme Court virtually elevated the status of directives on par with the fundamental rights by observing that the directive principles are to be read into fundamental rights.

In *Bandhua Mukti Morcha v. Union of India*¹⁵ the petition was filed by an organization, dedicated to the cause of release of bonded labourers, alleging that a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan were working under inhuman and intolerable conditions in stone quarries situated in Faridabad district of Haryana and that some of them were bonded labourers. In a letter addressed to one of the judges of the Supreme Court it was pointed out that a large number of labourers were languishing under degrading conditions of bondage for about ten years. The letter was treated as a writ petition. Justice Bhagwati brought the public interest litigation as an appropriate proceeding under Article 32 and 226. He explained that a member of the public may move the court even by just writing a letter.

“Because it would not be right or fair to expect a person acting pro-bono public to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in court for enforcement of fundamental rights of the poor and deprived

12 *Lingappa v. State of Maharashtra*, AIR 1985 SC 385.

13 *Id.*

14 AIR 1982 SC 879.

15 AIR 1984 SC 802.

sections of the community and in such a case a letter addressed by him can legitimately be regarded as an 'appropriate' proceeding".

The court held that when it was found that the workmen were in bondage and living in miserable conditions, their Fundamental Right under Article 21 was violated.

Justice R. S. Pathak criticised the practice of entertaining letters as writ petitions and insisted on certain formalities. However, he accepted that there may be exceptional circumstances which may justify the waiver of the rule. Two out of three Judges expressed the opinion that the letter or other communications should be addressed to the whole court and not to a particular Judge. A change over in this wave-length can be seen in *Neeraja*, when the Bench consisting of Justice Bhagwati and Justice Sen, treated the letter form a journalist or writ petition but requested the advocate to file a regular writ petition in substitution of his letter.

It is now well settled that when any member of the public or social organization espouses the cause of bonded labour, he would be able to move the court by just writing a letter.

The problems of gathering relevant facts- How can the court know the social reality.

The Supreme court, in exercise of its power under Article 32 and supreme court rules, invoked the power to appoint inquiry Commissions to ascertain various facts. In the *Bandhua Mukti Morcha* case the court appointed two advocates as commissioners to inquire into the conditions of workers. They reported inter alia, there was pollution of air and water. The report disclosed that the condition of workers were worse than animals. These reports were treated by the Supreme court as prima facie evidence in behalf of bonded labour.

In *D S Nakara v. Union of India*¹⁶ court held that the Articles 39, 41, and 43 aimed at establishing a socialist state as envisaged by the preamble which would endeavour to secure a decent standard of life and economic security to the working people. To most of workers the "right to work" is primarily concerned with the maintenance of full employment, the availability of suitable work for which worker is trained and job security by way of protection from arbitrary dismissal.

Some of the important social pieces of legislation towards the achievement of the cherished goals of the constitution are industrial Dispute Act, Beedi and cigar workers (conditions of employment) Act 1966, Dock workers (Regulation of employment) Act 1948, The Factories Act 1948, The Mines Act 1952, Motor Transport workers Act 1961.

The various protective provisions were aimed at ensuring that the workmen are not unduly subjected to unemployment, there by upholding their

16 AIR 1983 SC 130.

right to work¹⁷.

In this regard it is also pertinent to refer to Dock Workers (Regulation of Employment) Act 1948 which comes closer to the labour legislation “Right to work” in a sense right to be engaged for employment.

Similarly in Beedi & Cigar workers Act the authorities are constituted to ensure that these casual/daily/Home workers/Ad hoc Labour get the work continuously. In fact this legislation is in the right direction in tune with the doctrine of right to work¹⁸.

The factories Act 1948, Minimum wages Act 1948, Employees state Insurance Act 1948, contract labour (Regulation and Abolition) Act 1970 Maternity Benefit Act 1961, Motor Transport workers Act 1961 etc. are clearly intended to ensure basic human dignity to workmen. Any violation of these provisions would be violation of Article 21 of the Constitution of India. Suitable provisions have been made for redressal when workmen are terminated from service. Therefore, though the right to work is a directive under Article 41, the legislation of India Conferred various legal protective umbrellas to ensure that the employees are not thrown out of employment. It is not a myth, but a real and effective right.

Millions of persons belonging to the section of humanity have been looking to the courts for improving their live conditions and making their basic human rights meaningful for them. They have been crying for justice. Mahatma Gandhi once said to Gurudeve Tagore “I have had the pain of watching birds, who for want of strength could not be coaxed even into a flutter of their wings. The human bird under the Indian sky gets up weaker than when he pretended to retire. For millions it is an eternal vigil or an eternal trance.”

In case of Federation of All India Stenographers (Custom & Central Excise) and other v. Union of India and others¹⁹. The principle of equal pay for equal work was Sought to be distinguished by the supreme court in certain cases where slight distinction is drawn in the nature of duties.

The Supreme Court not only directed the employees working in Nehru yuvak Kendra²⁰ to pay the wages to class IV employees at par with the regular employees by stating that the casual employees accepted employment with full knowledge, that they will be paid only daily wages and that they will not get the same salary and conditions of service as other class IV employees cannot be a ground to avoid mandate of equality enshrined in Article 14 of the Constitution.

In Daily Rated Casual Labour Employed under P & T v. Union of India²¹ the Supreme Court has been most eloquent about the problem of ad hoc casual employees. Workers in P & T, department, where in the observations are note

17 Industrial Disputes Act, 1947.

18 Beedi and Cigar (Conditions of Employment) Act, 1966.

19 AIR 1988 SC 1291.

20 Dhirendra Chamali v. State of UP, (1980)(1) SCC 637.

21 AIR 1987 SC 2342.

worthy. “India is a socialist Republic it implies the existence of certain important obligation which the state has to discharge.

The right to work, right to free choice of employment, the right to just and favourable condition of work, right to protection against unemployment, the right of every one who works to just and favourable remuneration ensuring a decent living for himself and family the right of every one without discrimination of any kind to equal work the right to rest leisure, reasonable limitation on working hours and periodic holiday with pay, the right to form trade union, and right to security of work are some of rights which have to be ensured by appropriate legislative and executive measures. Similarity in U.P. Income tax Department Contingent paid staff welfare Association v. Union of India²² the supreme court issued directions to regularise their services.

In Bhagwati Prasad v. Delhi state Mineral Development Corporation²³ the principle of equal pay and regularisation of services was involved. One of the contentions raised by the employers that they cannot be regularized as they did not possess the minimum educational qualification for regular service. This was dispelled by the supreme court, by saying “once the appointments are made as daily workers and they were allowed to work for Considerable length of time, it would be hard and horse not to confirm them in respective posts on the ground that they lack the prescribed educational qualifications.”

The right to work almost has been crystalised into a substantive right fundamental in nature through various notable judgement of the Supreme court of India But, However, as a feather in cap of the labour, the Government of India have decided to amend the constitution Providing right to work as fundamental Right justice Raina had rightly perceived. The difficulties and legal problems which would arise if right to work is declared a fundamental right. He says –

“It must be realised that if we amend the constitution so as to make the right to work a fundamental right casting a duty on the state to provide employment to each person numerous in surmountable difficulties would crop up. The first question that would arise is as to what would be the upper age and lower limits of the age of which a person shall be entitled to claim this right.”²⁴

In order to avoid further complication that would arise if right to work is declared a fundamental right it would be a right and wise step if the state strives to achieve only the objectives enshrined in the preamble to the Constitution. The preamble in the sole depository of legitimate aspiration of the Indian citizens.

22 AIR 1988 SC 517.

23 AIR 1990 SC 371.

24 Justice S. M. N. Raina, “A fresh look at Right to work” V CILQ (1990) at 324.

IV: Conclusion:

The right to work which finds place in the directive principles has been interpreted jointly with the right to livelihood and right to life. From case to case development of right to work has been established as a fundamental right. However it means the security of work who are having it and does not provide the work for those who are not having it. The right to human working conditions is another aspect provided in the directive principles which has been interpreted by the Supreme Court for guaranteeing a number of rights and facilities to the workers. It included the adequate housing facility, educational facility, fresh air and potable drinking water, health and hygienic conditions. The right to work, right to free choice of employment, the right to just and favorable condition of work, right to protection of employment the right of every and who work to just and favourable remuneration ensuring a decent living for himself and family. The right of every one without discrimination of any kind to equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holiday with pay, the right to form trade union, and right to security of work are some of rights which have to be ensured by appropriate legislative and executive measures.