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Right to Work is an Essence of Human Needs

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Abstract—Labour law is an ever-growing concern in the law of jurisprudence. Now industrial relations occupy special place in the modern industrial set-up in India. It is not only developed through the legislative enactment but also by judicial interpretation. Industrial relation are eventually human relations; therefore, the same basis of human needs prevails in the field of industrial relations as well. The 'right to work' subsequently is the most basic component of life to live. To have the basic needs of food, water, clothing and shelter and furthermore something more than simply the basic needs of life one must work to earn. Indian constitution is a social welfare document which continuously aims at the welfare of the people and is continuously working for the upliftment of the people of India. Socialism is one of the essential features of the Indian Constitution. It aims at providing socio - economic justice to every citizen from cradle to grave.

Everyone has the right to work. The right to work is a foundation for the realization of other human rights and for life with dignity. It includes the opportunity to earn a livelihood by work freely chosen or accepted. In progressively realizing this right, States are obliged to ensure the availability of technical and vocational guidance, and take appropriate measures to develop an enabling environment for productive employment opportunities. States must ensure non-discrimination in relation to all aspects of work. Forced labour is prohibited under international law.

The landmark judgment of the Supreme Court in the *Olga Tellis* case recognized the right as being inborn in Article 21. However, 'right to work' is certainly not a fundamental right expressly specified in Part III of the Constitution of India, it is currently perused alongside the 'right to life' under the Article-21. Right to work is implicit under Article 21, of the Indian Constitution.

Index Terms- Duty, Human, Society, Right & Work

I. INTRODUCTION

Work is worship. Anybody cannot restrict to do work for pleasure or necessity. Hindu mythology has given importance in this regard. Everybody can acquire anything or satisfy their dream through labour. It is believed that working opportunity has given by God. Right to work is the idea that individuals have a human right to work or take part in productive employment, and may not be kept from doing as such.

The right to work is revered in the Universal Declaration of Human Rights and recognized in international human rights law through its incorporation in the International Covenant on Economic, Social and Cultural Rights, where the right to work focuses on financial, social and cultural development.

The 'right to work' subsequently is the most basic component of life to live. To have the basic needs of food, water, clothing and shelter and furthermore something more than simply the basic needs of life one must work to earn. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, the two of which were acceded by India, in Article 23 and Article 6 separately, perceive the right to work in employment of one's own choice and the State's obligation to protect this right.

However, the Indian Constitution does not expressly recognize the 'right to work' as a fundamental right. It is set in Part IV (Directive Principles of State Policy) of the Constitution under Article-41, which henceforth makes it unenforceable in the court. In spite of the lack of an express wording of the 'right to work' in Part III (Fundamental Rights) of the Constitution, it was turned into a 'fundamental right' through a judicial interpretation. According to wider interpretation of Article-21, the Hon'ble Supreme Court through its judgment in *Olga Tellis and Ors. v Bombay Municipal Corporation and Ors.* - 'right to work' was perceived as a fundamental right which is inalienable in the 'right to life'.

II. INTERNATIONAL HORIZONS

The United Nation Committee on Economic, Social, and Cultural Rights (CESCR) provided detailed guidance to States regarding their obligations to respect, protect and fulfil the right to work. The Committee also noted that the right includes the following interest and essential features.

- *Availability*: States must ensure the existence of tailored services to help people to identify employment opportunities and find work.
- *Accessibility*: Access to work involves three key elements non-discrimination, physical accessibility, and information accessibility.

Discrimination in access to and continuation of employment is prohibited. States must ensure that reasonable accommodation is made so that work places are physically accessible, particularly for persons with physical disabilities. Everyone has the right seek, obtain and impart information on employment opportunities.

- *Acceptability and quality:* the right to work comprises several interrelated components, including the right to choose and accept work freely, just and favourable conditions of work, safe working conditions, and the right to form trade unions.

It is important to note that the right to work and related rights are further enabled and informed by the numerous international standards of the International Labour Organization is external (ILO) a specialized agency of United Nation.

As economies around the world struggle to recover from the double whammy of a pandemic and a lockdown, unemployment is soaring. In India, the land of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNEGA), the promise of jobs and the politics of unemployment have a long history. Can citizen demand work as a right, and is it the state's responsibility to provide employment?

The right to work was big issues of discussion after World War II, and the Universal Declaration of Human Rights includes the right to work in International Covenant on Economic, Social and Cultural Rights.

III. CONSTITUTIONAL ESSENCE

Livelihood is an essential for a person and their family. Therefore the 'right to livelihood' as claimed by the petitioners, the Hon'ble Court had observed that to make living significant there must be a means of living, i.e. the means of livelihood. That, if the right to livelihood was not regarded as a part of the right to life, the most convenient method for denying a man of his right to life is denying him of his means of earning a living.

The Court held-that, which makes life possible to live, must be regarded to be an indispensable part of the right to life. For if a man is denied of his right to livelihood he will be thusly denied of his right to life, forever as revered under Article 21, implied more than mere animal existence.

According to Article 41 of the Constitution provides that "the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want," (Article 6 of the ICESCR). Article 43 states that the state shall strive to promote the welfare of the people and Article 43, given importance that states it shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the DPSP, the court said:

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavor to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these Articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal.

The Government should be a model employer are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is tenable. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than the degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence industrial peace throughout the country.



IV. JUDICIAL INTERPRETATION

In the *Olga Tellis and Ors. v Bombay Municipal Corporation and Ors.* (AIR 1986 SC 18), the writ petition was filed by the petitioners under Article 32 before the Supreme Court of India challenging the order of the Respondents-State of Maharashtra and the Bombay Municipal Corporation, to demolish pavement dwellings and slums.

At the very beginning, the Court dismissed the contention of the respondent which stated that by the operation of the doctrine of estoppels, the petitioner couldn't claim the fundamental right-the right to work. The Court held that there could be no estoppels against the Constitution. That, it was to satisfy the vision in the Preamble that Fundamental Rights were conferred and no individual could deal away from the rights consequently given by way of Fundamental Rights.

Regarding the current case, the Court observed that people in the situation of the petitioners lived in slums and on pavements since they had small jobs in the city. That they lived on pavements or in slums in close proximity of their work to avoid the travelling costs which cost them way more than their meager earning. Losing the sheds consequently implied losing work.

The Court likewise observed that however, the petitioners were utilizing the public property for personal use, they had no intention of committing an offense, threaten, insult or annoy any individual, which is the significance of the offense of 'Criminal Trespass' as stated under Section.441 of the Indian Penal Code. They have forced to do for their lively hood due to economic compulsion.

In *Bandhua Mukti Morcha vs Union of India*, (1984) 3 SCC 161 a PIL by an Ngo highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not from the Supreme Court. A host of protective and welfare-oriented labour legislation, including the Bonded Labour (Abolition) Act and the Minimum wages Act, were being observed in the breach. In giving extensive directions to the state government to enable discharge its constitutional obligation towards the bonded labourers, the court said: the rights to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and Article 42 and at the least, therefore, it must include protection of the health and strength of men and women, and of the tender age of children against abuse, opportunities and for children to develop in a healthy manner and in conditions of work and maternity relief.

These are minimum requirements which must exist in order to enable a person to live with human conditions of work and maternity relief.

The minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principle of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law may not be possible to compel the State through the judicial process to make provision by the statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing basic requirements to the workmen and thus investing their right to live with basic human dignity enshrined in Article 21, more so in the context of Article 256 which provides that executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

V. LEGISLATIVE ENACTMENT

Labour laws attempt to regulate employment. These laws contain provisions concerning working conditions, wages, welfare, social security, and employer-employee relation. Therefore, parliament and various State assemblies made laws which plan to secure and defend the rights of employees/ laborers. It is subsequently mandatory that the contract between the employer and employee adhere to the law of contract and also the pervasive labour laws.

The central laws which address the labour issues are-

- The Factories Act, 1948.
- Industrial Employment (Standing Orders) Act, 1946.
- The Minimum Wages Act, 1948.
- Payment of Wages Act, 1936.
- The Industrial Disputes Act, 1947.
- Employees Provident Funds and Miscellaneous Provisions Act, 1952.
- Payment of Gratuity Act, 1972.
- The Payment of Bonus Act, 1965.
- Maternity Benefit Act, 1961.
- Workmen Compensation Act, 1923.
- Equal Remuneration Act, 1976.

The first thing to be remembered is, leave alone the exemptions, since it is the State which authorizes the presence of fundamental rights, the same can only be claimed against the State and not against any private organization. In other words, the right to work must be claimed against the State and not against any private organization.

Decoding the Supreme Court judgment in Olga Tellis case right to work is violated-

- When a man is fired from his job against the terms of his employment. For example, as in the Charan Singh case, if a permanent worker is fired from his job without a reasonable cause it amounts to the infringement of the 'right to work'.
- When a man is fired from his job infringing upon the officially set down Central or State laws.
- When a man is not given a job based on an unfair and unreasonable classification
- When a man is denied his livelihood in violation of the just and fair procedure established by law, just like the case in Olga Tellis and Ors. v Bombay Municipal Corporation and Ors.

Note that voluntary unemployment or unemployment because of the absence of jobs or absence of skills shall not amount to an infringement of the Right to Work.

In case of infringement of the 'right to work,' a writ petition can be filed in the High Court of the respective State under Article 226 of the Constitution of India, or In the Supreme Court of India under Article 32 of the Constitution of India.

As opposed to the other fundamental rights which are suspended for the period amid which the Proclamation of Emergency is in power, Article 21 and 22 of the Constitution keep on working. Therefore, 'right to work' which is incorporated into 'right to life' under Article 21 can be claimed notwithstanding the time of Emergency and the aggrieved can look for a remedy from the Court in case of its infringement. However, a man seeking after an occupation/trade/business denied by law can't claim the 'right to work' when the State takes measures to control it. For example, living on the gains of prostitution, betting, gambling and the likewise isn't ensured under the 'right to work'.

What began as a struggle to stop the demolition of pavement dwellings and slum hutments ended with the Supreme Court recognizing 'right to work' as a fundamental right.

Hereafter, giving each individual living in the Indian territory with the right to be employed in the employment of their choice, subject to legal restrictions, to protect them from being denied of their life. Besides, the right prevents the removal of any individual from employment or deprivation of a man from being employed except as per the procedure established by law.

Everyone has the right to work. The right to work is a foundation for the realization of other human rights and for life with dignity. It includes the opportunity to earn a livelihood by work freely chosen or accepted. In progressively realizing this right, States are obliged to ensure the availability of technical and vocational guidance, and take appropriate measures to develop an enabling environment for productive employment opportunities. States must ensure non-discrimination in relation to all aspects of work. Forced labour is prohibited under international law.

Closely connected with the right to work are the right to just and favorable conditions of work, and trade union-related rights. States are obliged to ensure fair wages, equal pay for equal work, and equal remuneration for work of equal value. Workers should be guaranteed a minimum wage that allows for a decent living for themselves and their families. Working conditions must be safe, healthy, and not demeaning to human dignity. Employees must be provided with reasonable work hours, adequate rest and leisure time, as well as periodic, paid holidays. Workers have the right to associate with one another and bargain collectively for improved working conditions and living standards. They have the right to form and join a trade union of their choice, and trade unions have the right to form national or international groupings. Workers have the right to strike, as long as it is in conformity with national laws. Collective worker rights cannot be subject to restrictions by States other than those prescribed by law and necessary in a democratic society in accordance with national security interests, public order, or for the protection of the rights and freedoms of others.

VI. CASE STUDY

In India, we don't have a constitutional right to work. But we do have is MGNREGA. This was one unique step in the persuasion of right to work, but it is a statutory right. Under MGNREGA, a person can hold the state accountable for not fulfilling the right by demanding an unemployment allowance. But if the law is amended or withdrawn, the right will not enforceable.



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India is becoming a declining jobs-to-GDP ratio, and mostly jobless growth, with labour also subject to the laws of the market. It is prissily under these circumstances that this right becomes essential for a democratic state like India.

The term 'right to work' is often used in the context of unemployment or lack of availability of work. But there is also another sense of it, which is the right to earn my livelihood without any obstruction. In both these senses, what we have seen in the past few decades is that the path of development not only does not create adequate employment opportunities, it also actively dispossesses or displaces people from their means of livelihood. So, on the one hand, displacement and dispossession, and on the other, failure to create new jobs make it all the more important to imagine the right to work in a creative way and make it legally enforceable.

The idea like MGNREGA, is to create new employment opportunities so that those who are unemployed may be gainfully employed and earn a dignified living. This dignity is supposed to come from work conditions, such as being paid a fair wage and having regulated work hours, and also from the social value of the work that people do- useful things such as repairing school buildings, cleaning parks, and so on.

The Government has sanctioned the post but yet it is not filledup. So, it is not creating employment rather it's restricted exercise right to work. Right to work when it's very fundamental rights 'in work' are being violated, and violated not only for lack of legislation, but also because of labour legislation being diluted. In comparison between labour legislation and recent four Labour Code. We should remember that India is a loubler surplus economy. In the capital-labour bargaining process, labor is structurally weak in India, which means it is incumbent on the state to provide that support to labour.

The right to work is not only about lack of adequate work but also the profound lack of public goods and assets, in urban India generally. It is the state's responsibility to provide these public goods, and assets, in urban India generally. It is the state's responsibility to provide these public goods, and this imperative can be combined with an employment creation programme just like MGNREGA does in rural areas. In MGNREGA too, the asset creation part is often under-emphasized, and it would be good to bring both these things together through an urban employment guarantee. In the wake of COVID-19, only three states – Odisha, Jharkhand and Himachal Pradesh have launched something along these lines.

There are bits of these policies that could be used if we wanted to try it out on a national scale. Together with MGNREGA, an Urban Employment Guarantee can be a very important piece of the puzzle, on the way to ensuring the right so work.

VII. CONCLUSION

Whether right to work the same as an employment guarantee? Whether it is a responsibility of the state in a capitalist economy where welfare and employment are not guaranteed by-product of decent livelihoods, or if it displaces livelihoods, then what is incumbent on the state to do? Therefore, it may not be arguable as a holistic thing like state generating its own work- for public goods, education, healthcare, administration, etc. Supposed the state is to emphasized, it should generate its own employment. But at the same time, it's also supposed to safeguard people's employment. That includes everything, from ensuring that street vendors have vending zones, and fish workers are protected, to ensuring that farmers have viable incomes- all of this comes broadly under the right to livelihood or right to work.

Effective employment guarantee programme can be an excellent solution to the structural weakness of labour. Therefore, a good job guarantee programme would function as far as the rights "in work" are concerned. If the state steps in and significantly reduces the surplus labour, particularly in the casual market, it automatically creates the conditions for better treatment or workers.

VIII. SUGGESTIONS

- More and more automation in a country like India is likely to lead to jobless growth. Such fundamental questions about our growth strategy need to review.
- Urban local bodies cn issue job vouchers to certified public institutions such as schools and universities for pre approved tasks. These institutions can only use the vouchers to hire labour for pre-defined tasks – e.g. painting school buildings, repairing broken furniture, and so on. A whole range of skills can be accommodated. So this is a workable agenda, but to make it workable, we need not only political will, but also fiscal resources.
- Legal protection should be strengthening and justice delivery system should be expeditious.



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