

RIGHT TO WORK—A LEGAL PERSPECTIVE-WITH SPECIAL REFERENCE TO THE CONSTITUTION OF INDIA

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INTRODUCTION

The notion of the right to work is not new in India, or indeed in other parts of the world. However, the concept has assumed varying definitions in different Countries. In the United States, for example, the law on Right to Work explicitly gives everyone the opportunity to earn a living wage in a safe work environment and also provides for freedom to organize and bargain collectively. This law does not guarantee that every person will have a job; rather, it means that Governments are required to take effective steps to realize the right over time. States are deemed to violate the right when they either fail to take steps for the protection of this right or when they make the situation worse.²

It is the State's responsibility to secure an equitable income for those who are employed, to care for those incapable of doing any work, and to relieve those who are able to work but are prevented from doing so by economic forces. Among the basic rights is the right to work. This has been recognized since the eighteenth century, when the German thinker Fichte argued that the right to live and the right to work must be protected by the State. Socialist systems recognize the right to work as an obligation; the State may extract the work that is socially and economically useful. For example, the Chinese Constitution of 1982 declares that the right to work is "a glorious duty of every able-bodied citizen." However, because the socialist systems lack strong judiciary, they have not made this right justiciable. It's native to suppose that the right to work can be guaranteed only in socialistic systems. It is as effectively ensured in several democratic nations, along with programs of insurance for the unemployed. France (1905), Norway (1906), Denmark (1907), Great Britain (1911), Italy (1919), and Canada (1955) have programs providing employment. In the United States, the problems of unemployment are met by the Social Security Act of 1935. The Japanese Constitution makes it obligatory for the State

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² Jayati Ghosh, "The Right to Work and Recent Legislation in India" *JSTOR:Social Scientist*, Vol. 34.No.1/2(January-February 2006) 88.

to provide employment. In the Scandinavian countries the unemployment alleviating programs are administered by the trade unions and subsidized by tax revenues.³

Article 23(1) of the Universal Declaration of Human Rights states that, "everyone has right to work, to free choice of employment, just and favorable conditions of work, and protection against unemployment." Article 6 of the International Covenant on Economic Social and Cultural Rights adds, "Full realization of this right shall include technical and vocational guidance and training programs." The International Labour Organization sought to ensure that "there is work for all who are available for and seeking work" and that "there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for his employment." These rights prescribe the goals to which nations aspire.⁴

In India, the joint family system, the caste system, and the agricultural background of ancient Indian society left no room for unemployment. Manu, the law-giver of ancient India, ordained that the king should support all his subjects as earth does for all the living beings, without discrimination. The epic Mahabharat mentions that the king should look after the welfare of the disabled, helpless, orphans, widows, victims of calamities and pregnant women by meeting their minimum needs. Kautilya, the greatest economist of the medieval period of Indian history, said, "In the happiness of his subjects lies the king's happiness, in their welfare his welfare..."

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The right to work is the concept that people have a right to work, or engage in productive employment, and may not be prevented from doing so. The right to work is closely related to other basic rights such as the right to life, the right to food and the right to education. In a country where millions of people are deprived of any economic assets other than labour power, gainful employment is essential for these rights to be fulfilled. Indeed, unemployment is the main cause of widespread poverty and hunger in India. The right to work states that everyone should be given the opportunity to work for a basic living wage.

The Indian Constitution refers to the Right to Work under the "Directive Principles of State Policy". Article 39 urges the State to ensure that "the citizens, men and women equally, have the right to an adequate means to livelihood", and that "there is equal pay for equal work for both men and women. Further, the Constitution stresses that "the State, shall within the limits

³ Dr. T.V.Subbarao, et.al, "Public Policy and Right to Work in India", *Peace Magazine*, Nov-Dec.1998, p.24.

⁴ Ibid.

⁵ National Human Rights Commission, *Right to Work*, (New Delhi: NHRC, Faridkot House, Copernicus Marg, 2011) 1.

of its economic capacity and development, make effective provision for securing right to work..."⁶ **Article 23.1 of the Universal Declaration of Human Rights states:** "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

The International Covenant on Economic, Social and Cultural Rights states in Part III, Article 6:(1) The States Parties to the present Covenant recognize 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 safeguard this right.

(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

The African Charter on Human and Peoples' Rights also recognizes the right, emphasizing conditions and pay, i.e. labour rights. Article 15, states:

"Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

HISTORICAL ASPECT OF RIGHT TO WORK

The phrase "the right to work" was coined by the French socialist leader Louis Blanc in the light of the social turmoil of the early 19th century and rising unemployment in the wake of the 1846 financial crisis which led to the French Revolution of 1848. The right to property was a crucial demand in early quests for political freedom and equality, and against feudal control of property. Property can serve as the basis for the entitlements that ensure the realization of the right to an adequate standard of living and it was only property owners which were initially granted civil and political rights, such as the right to vote. Because everybody was not a property owner, the right to work was enshrined to allow everybody to attain an adequate standard of living. Today discrimination on the basis of property ownership is recognized as a serious threat to the equal enjoyment of human rights by all and non-discrimination clauses in International Human Rights Instruments frequently include property as a ground on the basis of which discrimination is prohibited.⁷

⁶ Article 41 of Constitutional law of India.

⁷ "Revolutions of 1848: A Social History by Priscilla Robertson", 1952, Princeton University Press, retrieved from <<http://wikipedia.org>> visited on 12 March 2014.

The right to work as a self-employed profession came under regulatory attack throughout the 20th Century, when numerous United States' States passed laws requiring licensing, testing, and other arbitrary educational requirements (such as requiring that the prospective worker donate thousands of hours of work as an unpaid or low-paid "intern" before being allowed to work at their chosen profession). Friedmans reported in 1980 that "Today you are not free to offer your services as a lawyer, a physician, a dentist, a plumber, a barber, a mortician or engage in a host of other occupations, without first getting a permit or license from a Government official." Many of these laws were attempts by existing professionals in a field to restrict others from competing with them, thereby limiting consumer choice and driving up prices for their own benefit. In response, entrepreneurs and activists have won numerous court cases securing Constitutional protection for the right to earn a living. These cases have won the right to work for Louisiana's monks who sell caskets, Philadelphia's tour guides, Colorado's taxi drivers, and Connecticut's interior designers.⁸

INTERNATIONAL CONVENTIONS ON RIGHT TO WORK

A number of Conventions such as the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families, 1990, the Convention on the Elimination of All Forms of Discrimination against Women, 1967, the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, the African Charter on Human and People's Rights, 1986, have been concluded under the auspices of United Nations and other International Organizations to protect the Human Rights of vulnerable groups and to prevent the commission of inhuman acts. However, they shall be binding only on those States which have become parties to the above concerned Convention. This customary rule has been expressed in a Latin maxim which is called "pacta tertis nec no cent nec pro sunt". This rule has been incorporated under Article 34 of the Vienna Convention on the Law of Treaties 1969, which says that a treaty does not create either obligations or rights for a third State without its consent.⁹

India by becoming a party to above mentioned Conventions has shown to the world community that it has faith in the promotion and protection of Human Rights. The ratification of these Conventions also signifies that it intends to be in the forefront of the worldwide Human Rights

⁸ "Free to Choose", Milton Friedman and Rose Friedman 1980, retrieved from <http://wikipedia.org> visited on 12 March 2014.

⁹ Dr. H.O. Agarwal. *International Law and Human Rights*, (Allahabad: Central Law Publication, 2009) 483.

Movement. The ratification of these Conventions obliges India to honour the obligations imposed by the Conventions by virtue of Article 51¹⁰, which states that “India shall endeavor to-

- Promote international peace and security;
- Maintain just and honorable relations between Nations;
- Foster respect for International Law and Treaty obligations in the dealings of organized peoples with one another; and
- Encourage Settlement of International Dispute by Arbitration.”

The above Article from Part IV of the Constitution which lays down the Directive Principles of State Policy and as such is not enforceable before any court. It has been addressed to Executives and Legislatures of the Country. Thus, Indian Constitutional policy is committed to foster respect for treaty obligations and to apply the principles in making laws. But, International Law has no supremacy over Municipal Law under Indian Constitution.¹¹

However, in the absence of contrary Legislation, the Municipal Courts in India would respect rules of International Law. Also, in interpreting a Statute, the Indian Courts would so construe it, if possible, as will not violate any established principle of International Law. It is well settled that a Statute should be interpreted in the light of the International Treaties and Conventions. Holding that the Fundamental Rights under the Indian Constitution are almost in consonance with the Rights contained in the Universal Declaration of Human Rights as also the Declaration and Covenants of Civil and Political rights and the Covenant of Economic, Social and Cultural Rights, to which India is a party, having ratified them.¹²

INDIAN CONSTITUTION AND RIGHT TO WORK

The Indian Constitution refers to the right to work under the “Directive Principles of the State Policy”. Article 39 urges the State to ensure that “the citizens, men and women equally, have the right to an adequate means to livelihood,”¹³ and that “there is equal pay for equal work for both men and women. Further, Art 41 stresses that “the State shall within the limits of its economic capacity and development, make effective provision for securing right to work”.¹⁴

¹⁰ Constitutional law of India.

¹¹ J.G. Varghes v. Bank of Cochin, AIR 1980 SC 470.

¹² Chairman Rly. Board v. Chandrima Das, AIR 2000 SC 988.

¹³ Constitutional law of India

¹⁴ Ibid.

The right to work is closely related to other basic rights such as the right to life, right to food and the right to education. The right to work is not a Fundamental Right; it is Right to Livelihood which springs from the Right to Life under Art.21 of Indian Constitution. The Preamble¹⁵ to the Indian Constitution summarizes the aims and objectives of the Constitution. It is a legitimate aid in the interpretation of the Constitution. The Constitution of India, undoubtedly, is goal oriented, policy oriented, and Welfare State oriented and permeates all laws of the land and its Preamble sets the human tone and temper of the Constitution which envisages, among other things, justice, equality and dignity of individuals. The Preamble when analyzed can be divided into three parts by reference to its qualitative characteristics. The first part is declaratory, whereby the people of India in their Constituent Assembly adopted, enacted and gave to themselves this Constitution that is Constitution of India. The second part is resolutionary, whereby the people of India solemnly resolved to constitute India into Sovereign, Democratic and Republic. The third part is promissory, a commitment by the people of India to secure to all its citizens the four objectives mentioned in the Preamble, that is, justice, liberty, equality and fraternity, accompanied by an assurance of the dignity of the individual and the unity of the nation.¹⁶

ARTICLE 21 PROTECTIONS OF LIFE AND PERSONAL LIBERTY¹⁷

“No person shall be deprived of his life or personal liberty except according to procedure established by law.” This right has been held to be the heart of the Constitution, the most organic and progressive provision in the Indian Constitution. The founding fathers of the Indian laws have secured two rights under Article 21:

- (a) Right to Life, and
- (b) Right to Liberty.

Article 21 prohibits the deprivation of the above rights except according to procedure establish by law. Article 21 can be claimed only when a person is deprived of his “life”

¹⁵ The Preamble of the Constitution of India declares, WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR DEMOCRATIC, REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

¹⁶ Justice R.C. Lahoti. *Preamble: The Spirit and Backbone of the Constitution of India* (Lucknow: Eastern Book Company, 2004) 4.

¹⁷ Constitutional Law of India

or “personal liberty” by the “State” as defined by Article 12 of the Indian Constitution. It not only refers to the necessity to comply with procedural requirements, but also, substantive right of a citizen. Violation of the right by a private individual is not within the purview of Article 21. The right secured by Article 21 is available to every person, citizen or non-citizen. Thus, even a foreigner can claim this right. However, Article 21 applies only to natural persons. It has no application to corporate bodies.¹⁸

The right to life embraces not only physical existence but the quality of life as understood in its richness and fullness by the ambit of the Constitution. It means “the fullest opportunity to develop one’s personality and potentiality to the highest level possible in the existing stage of our civilization.”¹⁹

RIGHT TO LIVELIHOOD

Right to livelihood²⁰ whether included in fundamental rights or not, to begin with this Supreme Court took the view that Right to Life under Article 21, would not include livelihood. In the case of *Re Sant Ram*²¹ a case which arose before Maneka Gandhi, the Supreme Court ruled that the right to livelihood would not fall within the expression ‘life’ in Article 21. The Court said that “the argument that the word ‘life’ in Article 21 of the Constitution includes livelihood has only to be rejected. The question of livelihood has not been dealt with by Art 21.” The right to livelihood would be included in the freedom enumerated in Art 19 or even in Art 16, in a limited sense. But the language of Article 21 cannot be pressed into aid of the argument that word ‘life’ in Art 21 include livelihood also.”

In the case of *A.V. Nachane V. Union of India*²², the Supreme Court reiterated the same proposition without much argument. Again the court adopted the *Sant Ram* view in the case of *Bapi Raju*²³ without any elaboration. In the case of *Board of Trustees of Port of Bombay V. Dilip kumar R. Nandkarnis*²⁴, the view of the court underwent a change with the defining of the word ‘life’ in Art 21 in a broad and expansive manner, the court came to hold that ‘The Right to Life’ guaranteed by Art 21 includes the ‘Right to Livelihood.’

¹⁸ Narinder kumar. *Constitutional Law of India* (Faridabad: Allahabad Law Agency, 2008) 294-295.

¹⁹ Durga Das Basu. *Constitutional Law of India* (Nagpur: Lexis Nexis Butterworths Wadhwa, 2011) 131.

²⁰ *OlegaTellis v. Bombay Muncipal Corporation* (AIR 1986 SC 180).

²¹ AIR 1960 SC 932.

²² AIR 1982 SC 1182.

²³ *Bapi Raju V. State of A.P.* (AIR 1983 SC 1073).

²⁴ (AIR 1983 SC 109).

The Supreme Court has argued in *Olga Tellis V. Bombay Municipal Corporation*²⁵ a case which was brought by pavement dwellers to resist eviction from their habitat by the Bombay Municipal Corporation that the right to livelihood is born out of the right to life, as no person can live without the means of living, that is, the means of livelihood. The court has observed in this connection-

“The question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question namely, that it does. The sweep of the “Right to Life” conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is the reason why one aspect of the “Right to Life” an equally important facet of that right to livelihood because, no person can live without the means of living, that is the means of livelihood.”

If the right to livelihood is not treated as a part and parcel of the Constitutional Right to life the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.²⁶ The court has observed on this point.

“The State may not by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.”

Deprivation of livelihood would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet such deprivation of life would not be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life.

Right to work has not yet been recognized as a Fundamental Right. In the case of *Secretary, State of Karnataka V. Uma Devi*²⁷, the argument of infringement on an expansive interpretation of Article 21 i.e., the right of employment was not accepted by the Supreme Court and the reason for that was amongst others, that the employees accepted the employment on their own consent and with eyes open as to the nature of their employment. The Court also rejected the

²⁵ (AIR 1986 SC 180).

²⁶ Ibid.

²⁷ AIR 2006 SC 1806.

argument that the right to life under Article 21 would include the right of employment at the present point of time.

RELATIONSHIP BETWEEN RIGHT TO LIFE AND LIVELIHOOD

Referring to the Directive Principles of the State Policy, e.g. Art 39 (a), 37, 41 the court has pointed out that if these Directive Principles obligate the State to secure the citizens an adequate means of livelihood and the right to work, “it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. In the case of *Olga Tellis V. Bombay Municipal Corporation*, the Supreme Court has ruled that the eviction of a person from pavement or slum inevitably leads to deprivation of his means of livelihood and, therefore, reasonable, fair and just procedure must be followed for the purpose. It will thus be seen that from the traditional concept of right to life, the court has developed a very significant economic right for the people.²⁸

In the case of *Delhi Development Horticulture Employees’ Union V. Delhi Administration*²⁹, Supreme Court has stated “there is no doubt that broadly interpreted and as a necessary logical corollary, Right to Life would include the Right to Livelihood and, therefore, Right to Work. But this is in the context of Art 21 which seeks to protect persons against deprivation of their life except according to procedure established by law”. This does not obligate the State to provide work or livelihood to the people. There is no such positive obligation on the State. This matter falls under the Directive Principle in Art 41. The Supreme Court has explained the position thus.

“This country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it consider it the less fundamental to life. Advisedly, therefore, it has been placed in the chapter on Directive Principles Art. 41 of which enjoins upon the State to make effective provision for securing the same within the limits of its economic capacity and development.”³⁰

RESTRICTION ON RIGHT TO LIVELIHOOD

²⁸ Prof. M.P. Jain. *Indian Constitutional Law* (Nagpur: Lexis Nexis Butter worth Wadhwa, 2008) 1123.

²⁹ AIR 1992 SC 789.

³⁰ Ibid.

There are some restrictions upon Right to Livelihood, because no right is absolute. In the case of *M.J. Sivani V. State of Karnataka*³¹ the SC ruled that regulation to video games does not violate Article 21, it is true that Article 21 protects livelihood but “its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order.”

In the case of *Sodan Singh V. New Delhi Municipal Committee*³² court held that While Hawkers have a fundamental right under Art 19 (g) to carry on trade or business of their choice; they have no right to do so at a particular place. They cannot be permitted to carry on their trade on every road in the city. If the road is not wide enough to conveniently accommodate the traffic on it, hawking may be permitted at all, or may be permitted once a week, say on Sunday, when the rush considerably thins out. Footpaths streets or roads are public property and are designed for general public and are not meant for private use.

RIGHT TO WORK UNDER DIRECTIVE PRINCIPLES OF THE STATE POLICY IN INDIAN CONSTITUTION

The Directive Principles of the State Policy are guidelines to the Central and State Governments of India, to be kept in mind while framing laws and policies. They are enumerated in Part IV of the Constitution of India i.e. Directive Principles of the State Policy. They are the instruments of instructions in the governance of the country. The Directive Principles lay down certain economic and social policies to be pursued by the various State Governments in India. They are classified as social and economic charter, social security charter and community welfare charter.

These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court³³, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The principles have been borrowed from the Constitution of “Ireland.” The Directive Principles of State Policy in Part IV of the Constitution contains directions of future State action leading to social transformation. These principles are fundamental in the governance of the country but they cannot be enforced through action in courts. In the Constituent Assembly, this toothless character of the Directive Principles of the

³¹ AIR 1995 SC 1770.

³² AIR 1989 SC 1988.

³³ Provisions contained in the Part IV shall not be enforceable by any court (Article 37 of Constitution of India),

State Policy was severally criticized by the members. Some said that they were merely ornamental or platitudinous. Others felt that they deserved to be thrown into the dustbin. Dr. Ambedkar defended them and said that they would be backed by public opinion. He hoped that a Government which did not implement them would not be returned at the next election. However this did not happen. In fact Dr. Ambedkar was rather too much ahead of the times. Most of the Directive Principles have remained unimplemented³⁴.

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 38 states that the State shall strive to promote the welfare of the people and Article 43 states it shall endeavor to secure a living wage and a decent standard of life to all workers.

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 without 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.

The question whether a person who ceases to be a Government servant according to law should be rehabilitated by providing an alternative employment is, as the law stands today, a matter of policy on which the court has no voice. But the court has since then felt free to interfere even in areas which would have been considered to be in the domain of the policy of the executive. Where the issue was of regularizing the services of a large number of casual (non-permanent) workers in the posts and telegraphs department of the Government, the court has not hesitated to invoke the Directive Principles of the State Policy to direct such regularization. The explanation was:

³⁴ S.P. Sathe, “Civil Society and Liberty, Equality and Justice: Percolation of Values to the Grassroots: some Concern”, in S.P. Sathe, (ed.), *Liberty Equality and Justice, Struggles for new Social Order*, (Lucknow: Eastern Book Company, 2003) 38.

“Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The Government should be a model employer. We 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 paying 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 not 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 all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance.”³⁵

In the case of *Bandhua Mukti Morcha v. Union of India*³⁶, a PIL by an NGO highlighted the deplorable condition of bonded laborers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labor legislation, including the Bonded Labour (Abolition) Act 1976 and the Minimum Wages Act 1948, were observed. In giving extensive directions to the State Government enable it to discharge its Constitutional obligation towards the bonded laborers, the court said: “ The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of the State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and the children of tender age against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are 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

³⁵ K.Rajendran v. State of Tamil Nadu [(1982) 2 SCC 273].

³⁶ [(1984) 3 SCC 161].

deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of the State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive 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 these basic requirements to the workmen and thus investing their right to live with basic 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 Article 21, more so in the context of Article 256 which provides that the 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.”

Thus the court converted what seemed a non-justiciable issue into a justiciable one by invoking the wide sweep of the enforceable Article 21. The court performed a similar exercise when, in the context of Articles 21 and 42, it evolved legally binding guidelines to deal with the problems of sexual harassment of women at the work place in the case of *Vishaka V. State of Rajasthan*³⁷.

WHAT HAS BEEN DONE IN INDIA TO MAKE THE RIGHT TO WORK A REALITY?

The Indian Constitution refers to the right to work under the “Directive Principles of State Policy” Article 39, of the Indian Constitution urges the State to ensure that “the citizens, men and women equally, have the right to an adequate means to livelihood,” and that “there is equal pay for equal work for both men and women. Further, Art 41, stresses that “the State shall within the limits of its economic capacity and development, make effective provision for securing right to work”. The State has made many efforts to implement the Directive Principles. The programme of universalization of Elementary Education has been accorded the highest priority in order to provide free education to all children up to the age of 14 years. The 86th Constitutional Amendment of 2002 inserted a new Article, Article 21-A, into the Constitution, that seeks to provide free and compulsory education to all children aged 6 to 14 years. Welfare schemes for the weaker sections are being implemented both by the Central and State Governments. These include programmes such as

³⁷ [(1997) 6 SCC 241].

boys' and girls' hostels for Scheduled Castes' or Scheduled Tribes' students. The year 1990-1991 was declared as the "Year of Social Justice" in the memory of Dr. B.R. Ambedkar. The Government provided free textbooks to students belonging to Scheduled Castes or Scheduled Tribes pursuing medicine and engineering courses. During 2002-2003, a sum of Rs. 4.77 crore was released for this purpose. In order that Scheduled Castes and Scheduled Tribes are protected from atrocities, the Government enacted the Prevention of Atrocities Act in 1995, which provided severe punishments for such atrocities. Several Land Reform Acts were enacted to provide ownership rights to poor farmers. Up to September 2001, more than 20,000,000 acres (80,000 km) of land had been distributed to Scheduled Castes, Scheduled Tribes and the landless poor. The thrust of banking policy in India has been to improve banking facilities in the rural areas. The Minimum Wages Act of 1948 empowers Government to fix minimum wages for employees engaged in various employments. Consumer Protection Act of 1986 provides for the better protection of consumers. The act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, award relief and compensation wherever appropriate to the consumer. The Equal Remuneration Act of 1976 provides for equal pay for equal work for both men and women. Various employment programmes, one of these MG-NREGA, 2005, were launched to attain the objective of gainful employment for the rural poor. The programme was implemented through the Panchayati Raj institutions. Panchayati Raj now covers almost all States and Union Territories.³⁸ Some States like Bihar and Madhya Pradesh have reserved 50 percent seats in Panchayati Raj elections for women. These instances indicate that although there is no legal force behind the Directive Principles of the State Policy and there is no obligation on the State to enforce them, yet the Governments have been implementing these principles. Some of the implemented principles are as follows:

- a. Minimum wages have been fixed in almost all the spheres of employment.
- b. Equal wages for equal work for both men and women have been enacted.
- c. Various programmes have been launched to boost rural employment. Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MG-NREGA) and Swaran Jayanti Gram Swarajgar Yozna are the examples.
- d. Panchayati Raj has been given Constitutional status. Village Panchayats have been set up and are functioning at village level.
- e. The 42nd Constitutional Amendment, 1976 added a Directive Principle, which ensures Protection and improvement of environment and safeguarding of forests and wild life.

³⁸ Retrieved from <<http://en.wikipedia.org/wiki/welfarestate>> visited on 12 june, 2014, Thursday.

- f. Many laws have been passed to protect children from exploitation, for example The Child Labour (Prohibition and Regulation) Act, 1986, The Prohibition of Child Marriage Act, 2006.
- g. The 86th Constitutional Amendment, 2002 was adopted to ensure provision for free and compulsory education for children and the Right to Education Act was passed in 2009 to make it a Fundamental Right.
- h. A number of welfare schemes have been implemented for the poor and backward classes and also for Scheduled Castes and Scheduled Tribes. Seats have been reserved for them in the Parliament and Vidhan Sabhas.
- i. Several laws and welfare schemes have been launched to protect women from exploitation.
- j. Indian foreign policy is in consonance with the principles of international peace and security, and maintaining just and honorable relations between Nations.
- k. The Government of India supports and works for world peace.

In view of the above, it is clear that Governments at Central, State and local levels are working for the implementation of the Directive Principles of the State Policy. A lot of work has been done but still problems of poverty, unemployment, poor health and illiteracy do exist.

In India, there is a long tradition of labour-intensive rural works programmes, especially in years of drought. These programmes, however, are not based on the right to work. They are just additional employment opportunities provided by the State, as and when resources and commitment are available. So far, the only serious attempt to make the right to work a reality is Maharashtra's "Employment Guarantee Scheme, 1976".

The right to work is closely related to other basic rights such as the Right to Life, the Right to Food and the Right to Education. In a country where millions of people are deprived of any economic assets other than labour power, gainful employment is essential for the fulfillment of these rights. Indeed, unemployment is the main cause of widespread poverty and hunger in India. The right to work states that everyone should be given the opportunity to work for a basic living wage.

Since independence, it was being demanded that right to work should be included in the list of Fundamental Rights. It was a matter of concern for all the Governments that in spite of their best efforts, the problem of unemployment and poverty never came under control. Since 1993-94 to 2004, unemployment rate for males increased from 5.6 percent to 9.0 percent in rural areas and from 6.7 to 8.1 percent in urban areas. It is pertinent to

note that a large number of rural youth have been migrating to the cities since independence. Therefore it always remained the priority of the Governments to stop this exodus of population to the cities. Keeping this in mind, poverty reduction has been an important goal of development policy since the inception of planning commission.³⁹

Initially, Government felt that it is practically impossible to provide employment to such a huge population, especially to the people living in rural areas. Even today, 72 percent of households belonging to rural India account for nearly 75 percent of total population. Such a large number of populations cannot be accommodated in any guarantee scheme. In rural areas, about 66% of employed males and 84 percent of employed female are engaged in the agriculture sector. This way, they are still depending on monsoon. It was, therefore, imperative to assure that they are part and parcel of our developing economy.⁴⁰ The social security measures make the Right to Work a Fundamental Legal Right for the first time. The Parliament has passed the National Rural Employment Act, 2005 which provides 100⁴¹ days assured employment every year to each and every household in 200 districts to begin with. This includes 150 districts under the food for work programme. The Government was confident that it would be possible to extend this scheme to all the districts of India within five years. The National Rural Employment Guarantee Scheme provides an indispensable life line to the millions of poor in rural areas.⁴²

The Government, through this act, aims at removing poverty in the rural areas and thus improve infrastructure. Keeping this in view, the works to be done under this scheme are related to drought, deforestation and soil erosion. The objective behind this is to rejuvenate natural resources to stimulate the local economy and to stop local population from migration to the cities.

As mentioned by a number of decisions of the Supreme Court spread over decades it is now well settled that the word 'Life' as employed by Article 21 takes in its sweep not only the concept of mere physical existence but also all finer values of life including the Right to Work and Right to Livelihood. This right is a Fundamental Right guaranteed to all persons residing in India as contra-distinguished with only citizens covered by the sweep of Article 19(1) (g).

³⁹ Manohar Puri, "The NREGA: Rural people to Grow with the Nation," *Kurkushetra Administrative Journal of Rural Development*, Vol.54, (April 2006) 17.

⁴⁰ Ibid.

⁴¹ This is now in news that work should be given for 150 days.(News flashed on TV screen, During Main News Bulletin)

⁴² Manohar Puri, "The NREGA: Rural people to Grow with the Nation," *Kurkushetra Administrative Journal of Rural Development*, Vol.54 (April 2006) 18.

This right cannot be interfered with by the State save and except by a procedure emanating from a valid law which should be passed by a competent legislature and which should not come in conflict in any of the other Fundamental Rights especially those guaranteed under Article 14 and 19(1) (g) in so far as they are available to concerned person invoking such a Fundamental Right. Though Article 19(1) (g) caters to the needs of only citizens, Article 14 is available to all persons and not necessarily only to citizens. Therefore, Article 21 goes hand in hand with Article 14 and both of them serve the same class of humanity residing in India both citizens and non-citizens. It is of course true that Article 21 is couched in a negative form and cannot be enforced in absolute terms by way of a substantive provision as is the case with the Fundamental Right under Article 19(1)(g) available to citizens of India. Still, however, the fact remains that the State is prohibited from thinking about Right to Work or Right to Livelihood guaranteed under Article 21 to all residents of India, citizens and non-citizens alike save and except by enacting a procedural law which stands the test of Part III of the Constitution of India and the State has also a positive duty to be guided by the provisions of Articles 39(a) and 41 for making the Right to Life as envisaged by Article 21 more effective and kicking. It has also to be kept in view that Article 21 is neither suspendable during emergency nor capable of being abrogated or amended and , therefore, the State being governed and guided by the provisions of Article 21 in Part III and the Directive Principles in Part IV in this connection has to see to it that right to life including right to livelihood and work as guaranteed by Article 21 is not reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding fathers while enacting the Constitution of India along with its Preamble.

CONCLUSION

Firstly like Fundamental Rights, Directive Principles could also be made justifiable, which could be done by Constitutional Amendment in Article 37 removing the reference to unenforceability of Directive Principles. Such an amendment will not in any way affect the harmony between Fundamental Rights and Directive Principles which are basic features of the Constitution. It may however bring in its own problems, which needs serious examination. The foremost among them is the same that weighed in the minds of Constitution makers, that is, the suitability of courts to enforce Directive Principles. In this regard, a distinction could be drawn between those Directive Principles which guarantee right to individual and the rest.

While the former may be made enforceable, the later may be left as they are. Such division may not be a simple affair because some of the Directive Principles like Article 47 mix up the right to nutrition, standard of living and health with the duty of the State to impose prohibition. Some others like, Article 40 relating to the organization of village Panchayats, Article 50 relating to separation of judiciary from the executive, Article 51 relating to promotion of international peace and security, may fall within the category of rest without much difficulty. About some others, like Article 44 requiring a uniform civil code, doubt arise whether they confer rights on individuals and whether such rights are worth pursuing. All these problems, however, can deal with either by making suitable exception to the enforceability of Directive Principles in Article 37 or by suitable Constitutional Amendment of Directive Principles concerned.⁴³

⁴³ Mahendra P.Singh, "Statics and Dynamics of Fundamental Rights and Directive Principles-A Human Rights Perspective", in S.P.Sathe, *Liberty Equality and Justice-Struggles for a new Social Order*, (Lucknow: Eastern Book Company, 2003) 51.