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**“RIGHT TO WORK IN INDIA:
A DISTANT DREAM”**

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ABSTRACT –

This article explores the importance of Right to work and especially in a country like India. Though this right is not explicitly incorporated as a fundamental right under the Constitution of India but it has been considered a basic human right under the umbrella of Article 21 by the Supreme Court of India. Right to live with dignity which was held in *Maneka Gandhi vs. Union of India*¹ is not possible if the person does not earn its livelihood. Though in India it is not possible to implement this right at the ground level due to its humongous population which is also one of the reasons that right to work is enshrined under the Constitution of India as a Directive Principle rather than a fundamental right. But after India's independence the governments have taken a number of forward steps and one such step is the implementation of MGNREGA policy. The paper further critically analyses this right in the current times and various judgements given by the apex court in relation to Right to earn livelihood and other essential rights related to it.

Keywords: Livelihood, MGNREGA, Constitution, Directive Principle, ICESCR, Supreme Court.



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¹ A. I. R. 1978 S. C. 597(India).

INTRODUCTION

Right to work is one of the most essential elements of life in this modern time as one cannot survive without earning a minimum wage to support his basic life necessities. The economy of a country is also strong when most of its citizens work and contribute to the national income of the country. Everyone has the right to work. It is one of the rights which ensures right to live with dignity. To have the basic necessities of life that is clothes, shelter and food one must earn therefore, right to work becomes a life supporting right in itself. But at the same time it is very difficult to implement this right and especially in a country like India which ranks second in the world regarding population. It is impossible for the government of India in present stage to provide employment to all its citizens. Right to work is a social and economic right which is therefore quite difficult to achieve in India. But the government of India has worked in this direction a lot since independence by undertaking number of Comprehensive programs in the form of social security, and social assistance and framing laws for the same.

The National Rural Employment Guarantee Act, 2005 ensures to provide legal assurance of 100 days of work in each budgetary year to grown-up members of any rural household willing to do any public work-related unskilled manual work at the statutory minimum wage. The MRD ministry is overseeing the entire application of the scheme in association with the State governments. The act was presented with the point of improving the buying power of the provincial individuals, and furthermore endeavours to overcome any issues between the rich and poor individuals in the nation. It also provides women employment by ensuring that the one third of the entire work force are women. The scheme now covers 648 districts, 6849 blocks and 250441 gram panchayats in the financial year 2015-16. This year since the Covid-19 pandemic has hit India these rural people who were employed in the NREGA jobs have suffered most and only 30 lakh people have found work under MGNREGA in April, about 17% of the usual according to government data. This figure shows the data of last five years which is the lowest, and shows an 82% drop from the previous year's figure of 1.7 crore workers.² During the lockdown when every activity had been suspended by the government, the minimum wage workers and the unskilled labourers have been affected the most with nothing to earn they started going to their homes which resulted into a huge loss as the workers

² Priscilla Jebarage, Coronavirus lockdown only 30 lakh found MGNREGA work in April, THE HINDU (30th April, 2020, 8: 46 Am), <https://www.google.com/amp/s/www.thehindu.com/news/national/coronavirus-lockdown-only-30-lakh-found-mgnrega-work-in-april/article31467548.ece/amp/>.

found themselves in a dark pit of misery. Packages were announced by the Central government for the welfare of the workers which provided them with not only jobs to earn their livelihood, but also grains were provided at subsidised rates. According to the MGNREGA website, around 3.5 million new job applications have come in the current financial year since April 1 till May 20. For the same period in the last fiscal, the new applicants were about 1.8 lakh which definitely shows a sign of improvement for the workers, and the country in economic terms, but still the conditions are far beyond stable.

RIGHT TO WORK AS A HUMAN RIGHT

Right to work is not a new concept and has been accepted as a basic human right from a very long time. As per Universal Declaration of Human Rights, 1948 (UDHR) everyone has right to work, to free decision of employment, to simply and ideal conditions of work and to provide security against joblessness³. As indicated by the covenant “The States Parties to the present Covenant recognizes the right to work, which incorporates the right of everyone to the chance to gain [her or his] living by work which [she or he] freely chooses or accepts, and can take appropriate steps to safeguard this right.”⁴

However, in Indian Constitution the right to work has been included in the Directive Principles of State Policy which is unenforceable in any court of law in India and is a guideline which the Central and State governments must consider while legislating laws and public policies.

RIGHT TO WORK AS A DIRECTIVE PRINCIPLE OF STATE POLICY (DPSP)

The Right to work is enshrined within the DPSP contained in part IV of the Constitution. Article 41 provides that, “the State shall within the bounds 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, sickness and disablement, and in other cases of undeserved want.”⁵ Besides this the part III of the Constitution that is the fundamental rights also deliberates non-discrimination⁶and equal opportunity in public employment.⁷ There are other Directive Principles that deals with rights which are also essential for better fulfilment of Right to earn livelihood.

³ Universal Declaration Of Human Rights, Article 23.

⁴ International Convention of Economic, Social and Cultural Rights, Article 6, cl. 1.

⁵ INDIA CONST. Art. 41.

⁶ INDIA CONST. Art. 15.

⁷ INDIA CONST. Art. 16.

Article 42 requires that state shall make arrangements for securing just and human conditions of work and also ensure that maternity relief is provided to the women in workplace. It is very important and also one of the rights mentioned in ICESCR to provide the workers a good working environment for their social and economic development.

Article 43 also provides that the state through legislations or economic organisation must provide the workers a living wage through which they could support a better standard of living. All these Articles provide workers with opportunities through which they can ensure a better life and earn in order to support themselves and their families. But these articles are incorporated in the DPSP rather than the Fundamental rights as they are not enforceable in the courts. It would have been so much better if these rights were mentioned in the part III of the Constitution and every citizen could then fight for his right but the framers of the Indian Constitution knew that in reality and on the actual ground levels India it would have been impossible to actually grant the Right to work to every citizen. Thus, these rights were kept in part IV of the Indian Constitution but this doesn't mean that these rights are unachievable, the courts of law may interpret laws keeping in mind the Directive Principles of State Policy and may see whether any law is constitutionally valid or not.

LANDMARK JUDGMENTS

We have already discussed that the Right to work is not guaranteed by the Indian Constitution explicitly and is therefore not mentioned separately in the part III of the Constitution, but Right to work has been given the title of a basic fundamental right necessary for achieving social equality by the Supreme Court of India in its wide interpretation of the right, whereby the Right to work was recognised as a right inherent to the Right to life and personal liberty⁸. Thus, Right to work became a fundamental right through judicial activism.

Article 21 is one of the most important right included in the Constitution and also it is the only right which has been given the most interpretation by the courts. Many rights have been derived from Article 21 and gradually more will come. In *Francis Corali v. Union Territory of Delhi*⁹, the apex court gave a new dimension to Article 21 by observing that Right to life is not just a mere physical existence but it includes right to live with human dignity. Coming back to the Right to work Supreme Court in its landmark judgment of *Olga Tellis v. Bombay Municipal Corporation*¹⁰ the five judge bench of the Supreme Court ruled that the word 'life' in Article

⁸ INDIA CONST. Art. 21.

⁹ A. I. R. 1981 S. C. 746 (India).

¹⁰ A. I. R. 1986 S. C. 180(India).

21 also contains **Right to livelihood**. The Supreme Court in the case observed that “*If the right to livelihood is not treated as a part of the Constitutional right to life, the simplest method of denying an individual of his entitlement to right to life would be to deprive him of his means of livelihood. Taking into consideration the way that Art. 39(a) and Art. 41 require the State to secure to the citizen an adequate means of livelihood and also the right to work, it should be sheer pedantry to exclude the right to livelihood from the ambit of the right to life.*” Thus, Right to livelihood was considered as basic component of Right to live with human dignity. In order to sustain a dignified life one needs to work and earn a living wage through which he can support his family too. This judgement at last recognised Right to work as an essential right under the Article 21.

In subsequent decisions the apex court has recognised Right to employment and given it the same strength as that of a fundamental right in the Constitution¹¹. In **D.K. Yadav v. J.M.A. industries**¹², it had been observed that Art. 21 puts together life with liberty and dignity of persons by providing the means of livelihood without which the essence of dignity of person would be reduced to mere animal existence.

However, the Supreme Court in one of its judgement has also clarified through logic that the Right to life includes right to livelihood and therefore right to work but it is not mentioned in the part III of the Constitution because so far the country has not attained the capacity to guarantee this right and thus the right was included in the Directive Principles of State Policy. Article 41 provides that the state must provide work through legislations which is ultimately dependent on the economic capacity of the nation.¹³

CRITICAL ANALYSIS OF RIGHT TO WORK IN CURRENT TIMES

Through the landmark case of ***Olga Tellis v. Bombay Municipal Corporation***¹⁴, the right to work was awarded a title of Fundamental Right by interpreting Art. 21. It is very important for the people to know that this right is available only in the case of public employment and not in private organisations. A person must know when his right to work is being violated by the state. According to the a Right to Work is violated when:

- When a person is fired from his job against the terms of his employment.
- When a person is fired and thereby violating the official set of central and state laws.

¹¹ Sodhan Singh v. New Delhi Municipal Committee, A. I. R. 1989 S. C. 1988(India).

¹² (1993) 3 S. C. C. 258(India).

¹³ Delhi Development Horticulture Employees' Union v. Delhi Administration, A. I. R. 1992 S. C. 789(India).

¹⁴ 1985 SCC (3) 545

- When a person is not given a job based on an unfair and unreasonable classification.

Through this landmark case the people of India have realised that Right to Work is a basic human right which is available to them and if their right is violated by the State they can file a writ petition in High Court by Article 226 and in Supreme Court under Article 32.

It has been provided in the Constitution and also international Covenant that it is the duty of the State to provide ample opportunity to the people and especially poor people which do not have the sufficient resources with work so that they can earn their livelihood and support their families. Besides this the state must ensure that there is no discrimination in providing work to people. In addition to the current Right to Work is additionally connected with right to just and good conditions of work, and union related rights. States are obliged to provide the workers with healthy environment and conditions with which they work with a value of human dignity. It is responsibility of the state to provide the workers with fair wage and ensure equal pay for equal work. It must be ensured that the workers are provided with a minimum pay permitted by law that takes into consideration a good living for themselves and their families¹⁵.

The workers also have a right to form associations and trade unions through which they can look out for their overall development. All these right are provided to the workers in India and it is a great responsibility on us and the state to ensure that these rights are not infringed by anyone including the government. At present there are many NGOs who work for the rights of the workers in India. Society for Labour and development is one such NGO which is fighting for the cause of labour rights and there are many more which help these workers in critical times. Internationally there are organisations such as International labour organisation and Fair labour association which work to protect workers' rights in different parts of the globe.

Mahatma Gandhi National Rural Employment Guarantee act 2005 is one of the biggest mission which works for the workers. At present there are 8.17 crore of active MGNREGA workers in the entire nation under this scheme through which they are able to sustain their family and themselves. But as a nation India is still far away to achieve its goal, still there are millions of people who are unemployed, and they are not able to sustain in this difficult time. Therefore, the government must come up with such economic and social plans which will help the workers in this needy time.

¹⁵ INDIA CONST. Art. 43 and Art. 44.

CONCLUSION

In India the poor families need a regular source of minimum wage through which they can support themselves. This can only be done when the State enacts laws which meet all necessary requirements and provide employment to the people. With this minimum wage the workers could ensure other basic life necessities such as clothing, food, education and many more. Therefore, right to work and employment is one of the prime stepping stone through which India could harness the capacity of every individual and in turn develop its economy and GDP. If executed well, the National-level Employment Guarantee Programme will go far in maintaining the privilege to work for the most unfortunate who are barely surviving on daily basis. This right will acquire a more prominent security and confidence into their lives, and furthermore serve to fortify their bargaining power. Just framing the laws and enacting Acts won't help much if the implementation is not done accordingly. The state is duty-bound to implement its laws and develop a mechanism through which the workers could then take a part in the schemes launched for their welfare.



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