Title Page

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"RIGHT TO WORK"

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1. INTRODUCTION

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 Mahabharata 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..."* Mahatma Gandhi viewed work more as duty than as right.[1]

It is found there is reference of right to work in constitution of 1938 in Aundh. In constitution of India in Articles 39, 41, 43, right to work is clearly mentioned in its direct principles.

In Russian constitution in 1936 this right was clearly accepted. It was mentioned in the 118th Article of Russian constitution that every citizen will get work with quality and quantity in Soviet Russian constitution in 1977.

According to Leonit Dannilor, employments right should include in man's fundamental needs. Revolutionary struggle for Human Democratic Rights started in 18th century in Europe, Man's fundamental need of his being a creative worker can't be fulfilled by the burden of work in capitalism, so he lives the savage life to

[1] http://archive.peacemagazine.org/v14n6p24.htm

fulfil his physical needs changing the basic nature or structure of work in capitalism. To erect new socialist social economy there is need of work as an objective centring the human soul.

United Nations Organization (UNO) included employment rights in global human rights manifesto in 1948 by the Article of 23(1) every citizen ought to have a right employment and right choice of employment; also they have the right to choose a proper and suitable condition for employment. Indian government took part in preparing such manifesto. This manifesto was granted UNOs assembly whose president was an Indian representative. Today, many constitutions have inserted the employment rights. But none of constitution has offered it in true sense that means to provide everyone work on demand.

2. The Right to Work and Differentiation in India

When we think of the right to work, we may not think of any economics at all. We might think of civil society, human rights, political and civil liberties, and the freedoms that come along with a modern democratic society. The right to work is entrenched in the United Nations' Universal Declaration of Human Rights. India's constitution guarantees citizens the right to equality of opportunity in employment, the right to work, the right to 'just and humane conditions of work and maternity relief', a 'living wage', 'participation of workers in management of industries', and the 'right to avoid children working in factories'. Europe has adopted a much milder form of the declaration as its Convention on Human Rights[2]. This Convention omits the right to work and most rights related to decent work.

The Universal Declaration of Human Rights is a major statement motivating much work that is being conducted under the auspices of the International Labour Office (ILO), as well as by institutes of development economics and of human development. The European Convention on Human Rights, which does not mention the right to work explicitly but does ban slavery, is being diffused throughout the 25 countries which now form Europe.

[2] [http://www.pfc.org.uk/legal/echrtext.htm]

Equal opportunities are explicit in the European Convention on Human Rights[3]. Article 14 states that: *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

But the right to work is not part of this entrenchment of rights. Hence the agencies, such as ILO, could be split between those who will, and those who won't, foster the sets of rights described in the Universal Declaration.

The Indian government has recently issued a declaration that it will provide work to the unemployed through employment guarantee schemes. This costly exercise in public infrastructure-building and political alliance-building may bolster the current government. In itself, it won't change the basic structure underlying the labour markets very much. In an evolutionary way it may affect labour-market institutions, but this effect depends on how people interpret the new regulations. However it does illustrate how the spread of the human rights movement across the globe can support improvements and experiments within particular countries. Independent of the Indian movement toward free markets, neoliberalism, and alliances with Western countries, a movement for employment rights has suddenly reached a major

[3] European Convention on Human Rights, 1950

change-point, which will have large effects on earnings in rural India over the next five years.

The spread of the 'right to work' notion reflects in part a pattern of globalisation which goes beyond the economic facets of globalisation. The new political globalisation lessens the power of individual nation states to act independently upon their peoples. In a sense there is an ideological basis to it, and ideologies of both left and right stand to benefit from their ability to spread beyond national borders, into other countries, into country policies, without getting the usual local alliances set up in advance. Perhaps the 'right to work' is ahead of its time. Certainly the implementation of the Universal Declaration of Human Rights in its entirety is not achievable even by 2015. Yet India's government has decided to nail its colours to this mast.

We must first compare the right to work with the *rights of citizens* in order to show that there are nuances here which are very telling. In particular, these nuances help us to discern the levels of achievement of decent work (which is far more important than the right to work per se.

If the right to work were defined only in terms of final outcomes, as it perhaps would appear in a list of desirable human capabilities, then none of the means to achieving decent work could be attended to.

In the promotion of the right to work one might, for instance, advocate giving paid work to poor people so as to enable them to earn their living rather than being dependent or impoverished. This is what the National Employment Guarantee Scheme does. As advocated by S. Mahendra Dev, Director of the Centre for Economic & Social Studies at Hyderabad, 'in spite of 6% GDP growth, employment growth was very low' in the 1990s. 'In a country where we do not have unemployment insurance and social security, there is no better alternative than the rural employment guarantee scheme for many unorganised sector workers'.

Those who are interested in income redistribution through employment will also tend to be interested in the equalization of wages. The gross pay differentials are large by gender as well as by occupation. Whether women earn wages enters as a major factor in pay inequality, since women's unpaid work cannot simply be assumed not to matter. In patriarchy, people act as if women, along with children, were resting upon their husbands' or fathers' earnings. Without a patriarchal assumption, the right to decent work implies a need to redress both gender pay inequalities and women's low labour force participation.

2.1 The Differentiation of Indian Workers

Levels and Modes of Remuneration

The different levels of pay for different occupations are well known. What needs to be noted is the different modes of payment. The list

below indicates (roughly) a growing level of control over the monetised proceeds of working:

1. Dependent worker inside the family,
2. Family subsistence worker,
3. Informal sector worker,
4. Business person who can put expenses down to 'the business' and get gain from the business,
5. Group contract worker,
6. Casual worker for pay,
7. Regular wage worker,
8. Permanently employed wage and salaried worker, and
9. Business owner or landlord who decides on other people's pay.

As argued elsewhere, bargaining over wage-rates and terms and conditions is an important way that workers obtain decent work.[4] Their bargaining position requires them to have firm civil rights, strong assets and household incomes, and a close connection between family membership and the place of work.

The Indian workers are dispersed across social classes and labour force statuses. In rural areas the there is much more self-employment work.

If the right-to-work were interpreted in the traditional way, as a need to avoid unemployment, it might appear not to be relevant for

[4] Olsen, 2000; Agarwal, 1997

women since their "unemployment rates" appear so low. This misinterpretation rests upon the biased measurement of "unemployment". Even using ILO measures, we have the person needing not only to be seeking work but crucially to be available for work. For many domestic workers this means that they would have to have a solution to the problem of who would do the domestic work if she/he were going to do paid work? Because their judgement is that they should do the domestic work, and that the labour market doesn't offer ways to combine childcare and cooking with paid work, they cannot go out to work as paid workers.

It would be better to consider most of the "inactive" caring women as lacking the real right to do paid work. They may need this as a substantive right. Since they are busy caring, they do not get paid. They may wish to see the whole system transformed to ensure that they can earn at least some money. They may find it difficult to conduct a transformation themselves, and instead social initiatives can look into modes of child care, changes in the domestic division of labour, and flexibility of hours [of paid work] in order to begin to create a set of institutions within which women who current do unpaid caring can begin to have a real choice about whether they do paid work.

3. The Concept of Right to Work

The spread of the 'right to work' notion reflects in part a pattern of globalisation which goes beyond the economic to the ideological and ethical domains. We compare the right to work with the *rights of citizens,* specifying three types of rights (procedural rights; substantive rights which are opportunities; and substantive rights to functioning). Therefore, the outcomes of different forms of work need to be measured. The levels of remuneration and the terms & conditions of work – including unpaid work - have to be looked at empirically. The right to work is neither just a theoretical question nor a simple matter of principle. Simple answers like a universal right to paid work are insufficiently specified. Having a discourse about the right to work is much better than having a neoliberal discourse about 'employability'. It is important to analyze how 'work' took place in the Indian economy in 1999 and how poverty, gender, and the right to decent work interact.[5]

"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

[5] This paper derives some of its empirical detail from related papers presented to the Development Studies Association conference in Milton Keynes, UK, September 2005 and to the conference on Perspectives in Moral Economy, University of Lancaster, UK, August 2005. These are available via the Global Poverty Research Group website (www.gprg.org).

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."[6] 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 the 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 those steps or when they make the situation worse. This law also prohibits the use of compulsory or forced labour.

[6] http://www.righttofoodindia.org/rtowork/rtw-briefing.pdf

4. INTERNATIONAL LEGISLATIONS

The Right to Work is an important Human Right which has been explained in Articles 23 and 24 of the Universal Declaration of Human Rights. Everyone has the right to work and free choice of employment in just and favourable conditions.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Everyone has the right to be protected against unemployment apart from having the right to equal pay for equal work without any discrimination, in particular women being guaranteed conditions of work not inferior to those enjoyed by men.

The right to work emphasizes on the steps to be taken by a State Party for the achievement of the full realization of this right and includes 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. It also includes safe and healthy working conditions, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays and the right to form and to join trade unions for the protection of his interests.

The UNO covenant on economic, social and cultural rights, which was ratified by the UNO General Assembly in 1966 and to which India was a signatory, makes similar declarations. The relevant provisions are as follows. According to Article 6:

i. 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.

ii. The steps to be taken by as 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 full and productive employment under conditions safe guarding fundamental political and economic freedoms to the individual.

According to Article 7, the States Parties to the present covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

a) Remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.
b) A decent living for themselves and their families in accordance with the provisions of the present covenant,
c) Safe and healthy working conditions;
d) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; and
e) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[7]

[7] Ghosh Jayati (2005), "The Right to Work and Recent Legislation in India" The Indian Journal of Labour Economics, Vol. 48 No. 4, Oct.-Dec.-2005, pp. 689-690.

5. The Constitution of India and Right to Work

RIGHT TO WORK

There are two parts to the question. One is the legal implications of making the right to work a fundamental right. The second is what the state can in fact do to fulfil the right to work. The two parts need to be considered, together so that making the right to work fundamental may not place a burden on the state beyond it means.

Though reference is usually made to Article 41 of the constitution, there are in fact three Articles, namely 39, 41 and 43, which are relevant to right to work. Article 39 relates to right to an adequate means of livelihood; Article 41 relates to right to work and to public assistance in case of unemployment. Article 43 relates to right to work, and to a living wage.

The three articles read as under:

Article 39: 'The state shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.'

Article 41: 'The state shall, within the limits of its economic capacity and development, make effective provision for securing 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 43: 'The state shall endeavour to secure by suitable legislation or economic organization or in any other way, to all

workers, agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.'

These articles are all listed under the directive principles of state policy and not under fundamental rights and therefore they are not justiciable. The proposal now is to make the right to work fundamental and thus, justiciable. Hence, phrases such as 'the right to an adequate means of livelihood' in Article 39 and 'a living wage' and conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities' in Article 43 will have to be more precisely defined in a manner that the right of citizens do not go beyond the economic capacity of the state as Article 41 clearly requires. For instance, adequate means of livelihood' cannot be more than what the average per capita national income can provide and 'a fair wage' cannot be more than the same national income per adult of working age. Even this will require an entirely equal distribution of national income; and if this is not considered politically feasible, economically advisable, or operationally practicable, what may be legally guaranteed will have to be much less than the average.

Article 41, while directing the state to make provision for securing right to work and to public assistance in case of unemployment,

explicitly recognizes that it may not all be within the limits of the state's economic capacity.

One of the contexts in which the problem of enforceability of such rights 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 endeavour 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 question whether a person who ceases to be a government servant according to law should be rehabilitated by being given an

alternative employment is, as the law stands today, a matter of policy on which the court has no voice *(K. Rajendran v. State of Tamil Nadu)*[8]**.** But the court has since then felt freer 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 DPSP to direct such regularization. The explanation was:

"…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

[8] (1982) 2 SCC 273, Para. 34, Pg. 294

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."

In *Bandhua Mukti Morcha v. Union of India*[9], a PIL by an NGO highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not very far 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 it to discharge its constitutional obligation towards the bonded labourers, the court said: *"…The right 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 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of*

[9] (1984) 3 SCC 161

children 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 deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of 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 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 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.

More recently, 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 *(Vishaka v. State of Rajasthan)*[10]. The right of workmen to be heard at the stage of winding up of a company was a contentious issue. In a bench of five judges that heard the case the judges that constituted the majority that upheld the right were three. The justification for the right was traced to the newly inserted article 43-A, which asked the state to take suitable steps to secure participation of workers in management. The court observed: It is therefore idle to contend 32 years after coming into force of the Constitution and particularly after the introduction of article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprises should continue to run or be shut down under an order of the court.

It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish

[10] (1997) 6 SCC 241

that centre of economic power *(National Textile Workers Union v. P. R. Ramakrishnan)*[11].

The Constitution of India has conferred innumerable rights on the protection of labour.

Article 14

Article 14 of the Indian Constitution explains the concept of Equality before law. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr. Jennings puts it: *"Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike."*

The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence" It only means that all persons similarly circumstance shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be

[11] (1983) 1 SCC 249

no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same.

Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. In *Randhir Singh v. Union of India*[12], the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification. This decision has been followed in a number of cases by the Supreme Court.

In *Dhirendra Chamoli v. State of U.P*[13] it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. Accordingly, it was held that persons employed in Nehru Yuwak Kendra in the country as casual workers on daily wage basis were doing the same work as done by Class IV employees appointed on regular basis and, therefore, entitled to the same salary and conditions of service. It makes no difference whether they are appointed in sanctioned posts or not. It is not open to the Government to deny such benefit to them on the ground that they accepted the employment with full

[12] AIR 1982 SC 879

[13] AIR 1986 SC 172

knowledge that they would be paid daily wages. Such denial would amount to violation of Article 14. A welfare State committed to a socialist pattern of society cannot be permitted to take such an argument.

In *Daily Rated Casual Labour v. Union of India*[14] it has been held that the daily rated casual labourers in P & T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus D.A. but without increments. Classification of employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights 1966. Although the directive principle contained in Articles 38 and 39 (d) is not enforceable by virtue of Article 37, but they may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination:

Denial of minimum pay amounts to exploitation of labour. The government cannot take advantage of its dominant position. The government should be a model employer. In *F.A.I.C. and C.E.S. v. Union of India*[15] the Supreme Court has held that different pay

[14] [(1988) 1 SCC 122)]
[15] (1998) 3 SCC 91

scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, and as such it will not be violative of the principle of equal pay for equal work, implicit in Article 14. The Court said, "Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference.

Equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of the right". Accordingly, the court held that different pay scales fixed for Stenographers Grade I working in Central Secretariat and those attached to the heads of subordinate offices on the basis of recommendation of the Third Pay Commission was not violative of Article 14. Although the duties of the petitioners and respondents are identical, their functions are not identical. The Stenographers Grade I formed a distinguishable class as their duties and responsibilities are of much higher nature than that of the stenographers attached to the subordinate offices.

In *Gopika Ranjan Chawdhary v. Union of India*[16] the Armed Forces controlled by NEFA were reorganized as a result of which a separate unit known as Central Record and Pay Accounts

[16] 1990 AIR 1212

Office was created at the head quarters. The Third Pay Commission had recommended two different scales of pay for the ministerial staff, one attached to the headquarters and the other to the Battalions/units. The pay scales of the staff at the headquarters were higher than those of the staff attached to the Battalions/units. It was held that this was discriminatory and violative of Article 14 as there was no difference in the nature of the work, the duties and responsibilities of the staff working in the Battalions/units and those working at the headquarters. There was also no difference in the qualifications required for appointment in the two establishments. The services of the staff from Battalions/units are transferable to the Headquarters.

In *Mewa Ram v. A.I.I. Medical Science*[17] the Supreme Court has held that the doctrine of 'equal pay for equal work' is not an abstract doctrine. Equality must be among equals, unequals cannot claim equality. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of equal pay for equal work would not apply. Different treatment to persons belonging to the same class is permissible classification on the basis of educational qualifications.

[17] [1989] 2 SCC 235

In *State of Orissa v. Balaram Sahu*[18] the respondents, who were daily wagers or casual workers in Rengali Power Project of State of Orissa in appeal claimed that they were entitled to equal pay on the same basis as paid to regular employees as they were discharging the same duties and functions. The Supreme Court held that they were not entitled for equal pay with regularly employed permanent staff because their, duties and responsibilities were not similar to permanent employees. The duties and responsibilities of the regular and permanent employees were more onerous than that of the duties of. N.M.R. workers whose employment depends on the availability of the work. The Court held that although equal pay for equal work is a fundamental right under Article 14 of the Constitution but does not depend only on the nature or the volume of work but also on the qualitative difference as regards reliability and responsibility. Though the functions may be the same but the responsibilities do make a real and substantial difference. They have failed to prove the basis of their claim and in such situation to claim parity with pay amounts to negation of right of equality in Article 14 of the Constitution. However, the Court said that State has to ensure that minimum wages are prescribed and the same is paid to them.

Article19 (1) (c)

This Article speaks about the Fundamental right of citizen to form an associations and unions.. Under clause (4) of Article 19,

[18] SLP (C) 596 OF 2009

however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization. It as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union, and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In *Damayanti v. Union of India*[19], The Supreme Court held that "The right to form an association", the Court said, "necessarily 'implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association".

In *Balakotiah v. Union of India*[20] the services of the appellant were terminated under Railway Service Rules for his being a member of

[19] 1971 AIR 966
[20] AIR 1958 SC 232

Communist Party and a trade unionist. The appellant contended that the termination from service amounted in substance to a denial to him the right to form association. The appellant had no doubt a fundamental right to from association but he had no fundamental right to be continued in the Government service. It was, therefore, held that the order terminating his services was not in contravention of Article 19(1)(c) because the order did not prevent the appellant from continuing to be in Communist Party or trade unionist.. The right to form union does not carry with it the right to achieve every object. Thus the trade unions have no guaranteed right to an effective bargaining or right to strike or right to declare a lock out. Right to life, includes right to the means of livelihood which make it possible for a person to live.

Article 21

The sweep of the right to life, conferred by Article 21 is wide and far reaching. 'Life' means something more than mere animal existence. 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 but one aspect of the right to life. An equally important facet of that right is the 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 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. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right of life.

In *Maneka Gandhi's case*[21] the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view the Court in *Francis Coralie v. Union Territory of Delhi*[22] said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

[21] (1978) 1 SCC 248
[22] (1981) 1 SCC 608

In *State of Maharashtra v. Chandrabhan*[23] the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

In *Olga Tellis v. Bombay Municipal Corporation*[24] popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court said: *"It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39((a).and 41 require the State to secure to the citizen 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."*

[23] 1983 AIR 803: 1983 SCR (3) 327
[24] AIR 1986 SC 180

In *Delhi Development Horticulture Employee's Union v. Delhi Administration*[25],the Supreme Court has held that daily wages workmen employed under the Jawahar Rozgar Yojna has no right of automatic regularization even though they have put in work for 240 or more days. The petitioners who were employed on daily wages in the Jawhar Rozgar Yojna filed a petition for their regular absorption as regular employees in the Development Department of the Delhi Administration. They contended that right to life, includes the right to livelihood and therefore, right to work. The Court held that although broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and therefore right to work but this country has so far not found 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 considers it any the less fundamental to life. Advisedly therefore it has been placed in the chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same, "within the limits of its economic development".

In *D.K. Yadav v. J.M.A. Industries*[26], The Supreme Court has held that the right to life enshrined under Article 21 includes the right to livelihood and therefore termination of the service of a worker

[25] (1992) 4 SCC 99
[26] 1993 LLR 583

without giving him reasonable opportunity of hearing in unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and so it must be right, just and fair and not arbitrary, fanciful or oppressive. In the instant case, the appellant was removed from service by the management of the M/s. J.M.A. Industries Ltd. on the ground that he had wilfully absented from duty continuously for more than 8 days without leave or prior permission from the management arid, therefore, "deemed to have left the service of the company under Clause 12 (2) (iv) of the Certified Standing Order. But the appellant contended that despite his reporting to duty every day he was not allowed to join duty without assigning any reason. The Labour Court upheld the termination of the appellant from service as legal. The Supreme Court held that the right to life enshrined under Article 21 includes right to livelihood and therefore before terminating the service of an employee or workman fair play requires that a reasonable opportunity should be given to him to explain his case. The procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14, that is, it must be right, just and fair and not arbitrary, fanciful or oppressive. In short, it must be in conformity of the rules of natural justice, Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. The

Court set aside the Labour Court award and ordered his reinstatement.

Articles 39 (a) and 41

The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to 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. 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 conferred under the Article 21.

The Articles 21, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 of the Constitution, are calculated to give an idea of the conditions under which labour can be had for work and also of the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

Article 23

Article 23 of the Constitution prohibits traffic in human being and begar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes. Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. "Begar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he

was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will.

6. Other forms of Right to Work

6.1 Right to Decent Work

The word decent means accepted moral standards, decent work; it shows an acceptable quality of work. let us say, workers are pleasant at work places and they are satisfied from any type of work due to decent conditions of life as well as decent working conditions of labour. It shows various types of freedoms and rights for men, women and children in order to maintain dignity of human life in the society, in other words, development of society, workers, as per labour standards.

Decent work refers to work wider than job or employment including wage employment, self employment and home working and is based on the core enabling labour standards viz, freedom of association, collective bargaining, freedom from discrimination and child labour. Besides, the word decent too involves some notion of the normal standards of society, lack of decent work therefore has something common with concepts of deprivation or exclusion, but of which concerned with social and economic situations, which do not meet social standards.

Decent work is a broad concept which is related to overall development of the society and workers. Decent work is a way of capturing interrelated social and economic goals of development. Development involves the removal of poverty, lack of access to public infrastructures or the denial of civil rights. Decent work

brings together different types of freedoms. Such as labour rights, social security, employment opportunities etc.

Therefore, there are four dimensions of decent work:

a) Work and employment itself,

b) Rights at work,

c) Security, and

d) Reprehensive at work dialogue.

Having made this distinction, a series of specific rights could also be listed with a view to enumerating the kinds of rights that might qualify as the right to decent work in India. The specific rights might include the right to send one's children to school (in order for them to get decent work later on), the right to autonomous work (a form of work desired by many white-collar employees), the right to work with pay (problematic when so much work is done without pay, e.g. domestic work), the right to decent work in the sense of having good terms and conditions, the right to work without pregnancy discrimination, the right to work part-time (desired by many parents), the right to work part-time without loss of future career prospects, and the right to work near home.

6.2 What is remuneration?

The term "remuneration" includes "the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer

to the worker and arising out of the worker's employment" (Convention No. 100, Article 1(a)).

The principle of equal remuneration may be applied by means of:

a) National laws or regulations;
b) Legally established or recognized machinery for wage determination;
c) Collective agreements between employers and workers; or
d) A combination of these various means (Article 2).

6.3 The application of the principle of equal remuneration:

A common responsibility of the State and the social partners-

Ratifying States must ensure the application of the principle of equal remuneration in the areas where they are involved in wage fixing. When they are not directly involved, they have the obligation to promote the observance of this principle by those who are involved in the determination of remuneration rates. States must cooperate with employers' and workers' organizations to implement the Convention and must involve them in the establishment, where appropriate, of objective job evaluation methods. Employers' and workers' organizations are also responsible for the effective application of this principle.

7. Discrimination At Work

Discrimination is defined under ILO Convention No. 111 as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (among other characteristics), "which has the effect of nullifying or impairing equal) of opportunity and treatment in employment or occupation."

Discrimination can perpetuate poverty, stifle development, productivity and competitiveness, and ignite political instability, says the report which was prepared under the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

Discrimination is still a common problem in the workplace. While some of the more blatant forms of discrimination may have faded, many remain, and others have taken on new or less visible forms, the report says. Global migration combined with the redefinition of national boundaries and growing economic problems and inequalities have worsened xenophobia and racial and religious discrimination.

More recently, new forms of discrimination based on disability, HIV/AIDS, age or sexual orientation are cause for growing concern.

- Progress in fighting discrimination at work has been uneven and patchy, even for long recognized forms such as discrimination against women. Discrimination at work will not

vanish by itself; neither will the market, on its own, take care of it.

- Inequalities within discriminated groups are widening. Affirmative action policies, for example, helped create a new middle class of formerly-discriminated persons in some countries. A few rise to the top of the social ladder, while most remain among the low paid and socially excluded.
- Discrimination often traps people in low-paid, "informal" economy jobs. The discriminated are often stuck in the worst jobs, and denied benefits, social protection, training, capital, land or credit. Women are more likely than men to be engaged in these more invisible and undercounted activities.
- The failure to eradicate discrimination helps perpetuate poverty. Discrimination creates a web of poverty, forced and child labour and social exclusion, the report says, adding "eliminating discrimination is indispensable to any viable strategy for poverty reduction and sustainable economic development".
- Everyone gains from eliminating discrimination at work - individuals, enterprises and society at large. Fairness and justice at the workplace boosts the self-esteem and morale of workers. A more motivated and productive workforce enhances the productivity and competitiveness of businesses.

7.1 Types of Discrimination

Discrimination at work can be direct or indirect.

I. *Direct Discrimination*

Discrimination is direct when regulations, laws and policies explicitly exclude or disadvantage workers on the basis of characteristics such as political opinion, marital status or sex.

II. *Indirect Discrimination*

Indirect discrimination may occur when apparently neutral rules and practices have negative effects on a disproportionate number of members of a particular group irrespective of whether or not they meet the requirements of the job. The notion of indirect discrimination is particularly useful for policymaking. It shows that the application of the same condition, treatment or requirement to everyone can, in fact, lead to very unequal results, depending on the life circumstances and personal characteristics of the people concerned. The requirement of knowledge of a particular language to obtain a job, when language competence is not indispensable, is a form of indirect discrimination based on national or ethnic origin.

Why is it important to eliminate discrimination at work?

- The elimination of discrimination in the workplace is strategic to combating discrimination elsewhere. By bringing together and giving equal treatment to people with different characteristics, the workplace can help dispel prejudices and stereotypes. It can

provide role models for members of disadvantaged groups. Socially inclusive workplaces can pave the way for more egalitarian, democratic and cohesive labour markets and societies.

- Equality in employment and occupation is important for the freedom, dignity and well-being of individuals. The day-to-day work atmosphere and labour relations generally improve when employees feel valued.
- The elimination of discrimination in the labour market allows human potential to expand and to be deployed more effectively. A rise in the proportion of workers with decent work will widen the market for consumer goods and enlarge development options.

7.2 Link between Discrimination and Equality

Discrimination in employment and occupation often results in poverty, which furthers discrimination at work in a vicious cycle. Lack of work and work that is unproductive, insecure and unprotected are the main causes of the material deprivation and vulnerability that poor people experience. Discrimination in the labour market, by excluding members of certain groups from work or by impairing their chances of developing market relevant capabilities, lowers the quality of jobs they can aspire to.

8. Gender Equality and Right to Work

The elimination of discrimination in remuneration is crucial for achieving genuine gender equality and promoting social equity and decent work. Convention No. 100 and its accompanying recommendation provide policy guidance on how to eliminate sex-based discrimination in respect of remuneration and how to promote the principle of equal pay for work of equal value. This Convention is among the most widely ratified ILO Conventions.

Equal Remuneration Convention, 1951 (No. 100) and its accompanying Recommendation (No. 90) Convention No. 100 and Recommendation No. 90 list a number of measures to promote and ensure the application of *"the principle of equal remuneration for men and women workers for work of equal value*".

Convention No. 100 establishes that remuneration rates are to be established without discrimination based on the sex of the worker. Furthermore, it requires that men and women workers obtain equal remuneration for work of equal value and not just for the same or similar work. The implementation of this principle requires a comparison among jobs to determine their relative value. Since men and women tend to work in different occupations, it is important to have systems that can objectively measure the relative value of jobs that differ in content and skill requirements.

8.1 Women Workers' Right in India

In the years following independence, despite the constitutional provisions and the enactment of various laws, it was felt that the slow pace of social change and the actualities of the enforcement of rights for women, required comprehensive examination. To this end, in 1975 came the watershed report, *Towards Equality*, of the Committee on the Status of Women in India (CSWI) constituted in 1971 by the Department of Social Welfare at the instance of the United Nations General Assembly. The report recognized:

"*The impact of transition to a modern economy has meant… that a considerable number (of women) continue to participate (in the productive process) for no return and no recognition. The majority of those who do participate fully or on sufferance, without equal treatment, security of employment or humane conditions of work, a very large number of them are subject to exploitation of various kinds with no protection from society or State. Legislative and executive actions initiated in this direction have made some impact in the organized sector, where only 6% of working women are employed, but in the vast unorganized sector, which engages 94% of working women in this country, no impact of these measures have been felt on conditions of work, wages or opportunities*[27]*".*

To operationalise the recommendations listed in *Towards Equality*, the Department of Social Welfare formulated a *Blueprint of Action*

[27] Chapter V – Roles, Rights and Opportunities for Economic Participation.

Points for Women and National Plan of Action for Women in 1976. Chapter III of the blueprint not only recognized 'self-employed' women and organizations working for their benefit but also laid out actions plans on how to encourage women's participation in self-employment activities.

Towards Equality led to extensive policy debates. These contributed, in part, to a recognizable shift from viewing women as targets of welfare policies in the social sector to regarding them as critical actors of development. The report influenced the Sixth Five Year Plan (1980-85), which contained, for the first time in India's planning history, a Chapter 5 on 'Women & Development' and included therein a sub-section on employment and economic independence.

The *Shram Shakti* report of the National Commission for Self-Employed Women (1987-89) and Women in the Informal Sector, submitted in June 1988, was the second landmark after *Towards Equality for Homebased workers' rights*. Elaben Bhatt, founder members of SEWA was the Chair of the Commission. However, the setting up of the Commission itself was the culmination of a long struggle. In 1984, SEWA annual conference passed a resolution which asked for Commission for the Self-employed to study the conditions under which the self-employed workers lived and worked and to propose solutions. SEWA took a delegation to the labour Minister in 1985 and subsequently to the Prime Minister in

1986 to press for this resolution. The Commission was set up in 1987. The Commission adopted an inclusive approach and involved governmental and nongovernmental organizations as well as activists in the discussions. For the first time, the report underlined the critical contribution of the marginalized poor women, in both rural and urban areas, to the growth of the formal economy.

The recommendations not only pointed to the need for recognition of home based workers but also called for enlarging the *definition of women* workers in subsequent data collections efforts. Several suggestions were given on how to improve the living conditions of self-employed women in the informal sector, including home-based workers. *Shram Shakti* strongly advocated ownership and control over productive resources for poor working women because this was a proven formula for a qualitative improvement in the women's living conditions (Sections 1.8 & 1.10):

"*Perhaps, it will be the single most important intervention towards both their empowerment and economic well-being. Some of the assets that women can be given are a plot of land, housing, tree pattas, joint ownership of all assets transferred by the State to the family, animals, licenses, bank accounts, membership of organizations and identity cards.*"

The report further noted (Section 1.11):

"*At least one-third of the households are solely supported and another one-third receives at least 50% contribution from women. Therefore, while fixing financial and physical targets and allocating of resources this reality should be kept in view. Such households should be specifically identified at the village level and covered by all programmes.*"

The S*hram Shakti* Report has been used as a tool for expanding home-based workers' movement at all levels. It was following this report that the government initiated several women-focused schemes for those working in the unorganized sector. The report was translated into 14 languages and triggered several follow-up state-level meetings.

8.2 Rights of woman employees

There are a number of cases in which the Supreme Court helped to advance the rights of women and strike down those laws or practices that were discriminatory. Though, this may not be true in the case of all women workers. One of the earliest challenges came from Ms. Muthamma (who died only recently), a senior Indian Foreign Service Officer. In 1978 she filed a writ petition stating that certain rules in the Indian Foreign Service (Recruitment, cadre, seniority and promotion) Rules, 1961 were discriminatory. The rules in fact provided that no married woman would be entitled as of right to be appointed to the service.

In fact a woman member was required to obtain permission of the government in writing before her marriage was solemnized and that she could be required to resign if the government was satisfied that due to her family and domestic commitments she was unable to discharge her duties efficiently. The Supreme Court struck down these rules on the ground that they violated the fundamental right of women employees to equal treatment in matters of public employment under Article 16 of the Constitution.

Similarly in *AIR India v. Nargesh Mirza*[28], the discriminatory regulations of Air India were challenged. The regulations did not allow the Air Hostesses to marry before completing four years of service. If anyone of them got married within that period that she had to resign and if she got married after four years but became pregnant after that she still had to resign. If she neither got married before the four year period was over or married only after the four year period and did not become pregnant she could only continue in service till she attained the age of 35. These provisions were challenged in this case, while the Supreme Court did not accept all the contentions. It, in fact, said that Air Hostesses were a separate category and therefore those regulations could not be termed discriminatory. It was a reasonable classification as in their situation both in spirit and purport the classes were essentially different. It, however, regarded the provision relating

[28] (1981) 4 SCC 335

to pregnancy as being manifestly unreasonable and arbitrary and therefore violative of Article 14.

In *Mrs. Neera Mathur v Life Insurance Corporation of India*[29] the Supreme Court recognized the right to privacy of female employee. Mrs. Neera had been appointed by the LIC without them knowing that she was pregnant. She applied for maternity leave and when she returned thereafter she was terminated. The reason given was that she had withheld information regarding her pregnancy when she had filled their questionnaire. The Supreme Court on perusing the questionnaire was shocked to find that it required women candidates to provide information about the dates of their menstrual cycles and past pregnancies. It considered them to be an invasion of privacy of a person and violative of Article 21 which guarantees right to life and privacy. It, therefore, directed the LIC to reinstate Mrs. Neera and to delete those columns from its future questionnaires. In this case the petitioner drew the attention of the Court to the Equal Remuneration Act (25 of 1976) Section 4. The Supreme Court upheld her contention and stated that the employer was bound to pay the same remuneration to both male and female workers irrespective of the place where they were working unless it is shown that the women were not fit to do the work of the male stenographers.

[29] 1992 AIR 392

In *Ram Bahadur Thakur (p) Ltd. v Chief Inspector of Plantations*[30] a woman worker employed in the Pambanar Tea Estate was denied maternity benefit on the grounds that she had actually worked for only 157 days instead of the required 160 days. The Court, however, drew attention to a Supreme Court Decision[31]wherein the Court held that for purposes of computing maternity benefit all the days including Sundays and rest days which maybe wage less holidays have to be taken into consideration. It also stated that the Maternity Benefit Act would have to be interpreted in such a way as to advance the purpose of the Act therefore upheld the woman worker's claim.

One of the most important decisions of the Supreme Court is *Vishaka and Ors v State of Rajasthan*[32]. This was a writ petition filed by several non-governmental organizations and social activists seeking judicial intervention in the absence of any law to protect women from sexual harassment in the work place. The Court observed that every incident of sexual harassment is a violation of the right to equality and right to life and liberty under the Constitution and that the logical consequence of sexual harassment further violated a woman's right to freedom to choose whatever business, occupation or trade she wanted under Article 19 (1) (g). The Court further held that gender equality included protection from sexual harassment and right to work

[30] (1989) IILJ 20 Ker
[31] 1982 (2) LLJ 20
[32] Supra

with dignity which is a basic human right. Therefore in the absence of domestic law, the Court referred to the CEDAW and its provisions which were consistent with the provisions of the Indian Constitution and therefore read those provisions into the Fundamental Rights interpreting them in the broader context of the objective contained in the Preamble.

While these cases demonstrate the instances in which the Supreme Court stepped in to safeguard the fundamental human rights of women there are several instances where such rights are brazenly violated. The women workers most vulnerable to this are those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors women, generally, tend to be employed in the lowest paid, most menial tasks using the least technology. Women often work in labour intensive sectors. It is almost like they are working in a different segment of the labour market from that of men one that is invariably lower paid. There are even instances in some sectors of women being paid less than men for even the same work for example in the tea plantations, construction, agriculture etc. These women do not even get the Maternity Benefit. This is mostly because of the fact that their employment is temporary, poor enforcement of the Act and the inability of these women to fight for their rights. It is estimated that only 1.8% of the workforce is covered by the statutory provisions.

In some of the states like Andhra Pradesh, Karnataka and Gujarat efforts are on to extend the maternity benefits to agricultural workers. While in Kerala the boards that look after the welfare of the cashew workers, coir workers and hand loom weavers have also begun to provide maternity benefit.

Similarly the provision of the Factories Act of 1948 for crèches in factories where more than 25 women are employed does not extend to the unorganized sector. Thus, excepting for the crèches run under the Social Welfare Boards or voluntary agencies there is little help in this regard for women in this sector. Considering that majority of the women workers are in the organized sector there is urgent need to ensure that the discrimination against women is ended and that the State take immediate steps to ensure the implementation of many of its progressive welfare legislations for workers extends to women workers in the unorganized sector. Some gains have been made but there is still a long way to go.

9. Pronouncements/Decisions of Apex Court on Right to Work

The question whether a person who ceases to be a government servant according to law should be rehabilitated by being given an alternative employment is, as the law stands today, a matter of policy on which the court has no voice *(K. Rajendran vs. State of Tamil Nadu)*.[33]

But the court has since then felt freer 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 State Policy (DPSP) to direct such regularization.

The explanation was**:**

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

[33] (1982) 2 SCC 273, Para. 34, Pg. 294

to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work on starvation wages even to a casual labourer. 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.

In the *Bandhua Mukti Morcha v. Union of India*[34], case the court said: The right 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

[34] (1984) 3 SCC 161

42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children 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 deprive a person of the enjoyment of these basic essentials.

Since the Directive Principles of 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 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 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. More recently, 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 *(Vishaka v. State of Rajasthan)*[35].

The right of workmen to be heard at the stage of winding up of a company was a contentious issue. In a bench of five judges that heard the case the judges that constituted the majority that upheld the right were three. The justification for the right was traced to the newly inserted Article 43-A, which asked the state to take suitable steps to secure participation of workers in management. The court observed: It is therefore idle to contend 32 years after coming into force of the Constitution and particularly after the introduction of Article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court. It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

[35] (1997) 6 SCC 241

10. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)

MNREGA is a job guarantee scheme, enacted by legislation on ***25 August, 2005.*** The scheme provides a legal guarantee for one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage of Rs.100 per day. The Central Government outlay for the scheme was Rs. 39,100 crore ($8 billion) in FY 2009-10. This act was introduced with an aim of improving the purchasing power of the rural people, by providing semi or un-skilled work to people living in rural India, whether or not they are below the poverty line. Around one-third of the stipulated work force is women. The government is planning to open a call centre, which upon becoming operational can be approached on the toll-free number, 1800-345-22-44. No discrimination between men and women is allowed under the act. Therefore, men and women must be paid the same wage. All adults can apply for employment.

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) has completed four years since its inception in India. The aim of this programme is to enhance livelihood security of households in rural areas of the country by providing at least one hundred days of manual wage employment to every household in a year. If this programme achieve its objectives of, first, providing

work and thus income to the poor and marginal sections of the society and second, create productive assets that raise land productivity and thus, contribute in raising agricultural yields, then it would be able to transform the face of rural India.

The 'Right to Work' establishes in this Act makes it a distinctive and special in terms of resource allocation and the number of households demand employment. Today, 45 million households have demanded jobs under this programme for year 2009-10. The participation of Schedule Castes and Schedule Tribes and Women in the large proportion is one of the main achievements of this programme. There are still large regional variations in the performance in the implementation of this scheme in various states. It is essential to reduce this gap among states in terms of its implementation.

However, the average 42 days of the work at all India level have been provided under MGNREGA and this is significant to raise this average, especially when it is completing now two years of implantation in all rural districts of the country.

Various independent studies have challenged the claims made by the government regarding the success of this programme. But important is that, such a huge employment guarantee programme in terms of size and resources is showing its positive results on the rural India. It is important to underline that vast mechanism for its

monitoring and evaluation sometime works in making the implementation process slow. But the involvement of Gram Sabha, civil society members and government administration machinery has been bearing the good results in general. However, challenges are there but progress is quite encouraging. There are reports of delays in the release of funds, providing jobs, payments of work and issuance of job cards etc. Lack of trained and professional staff is another acute problem at the grass root implementation of the programme.

But despite all these weaknesses this Act is a major step in the direction of addressing the problem of poverty in rural India. The change is slow but its impacts are visible in terms of income generation and creation of productive assets in villages. Off course, whether more optimistic possibilities work themselves out depends on a number of conditions. Most importantly it depends on the social mobilisation, and participation of beneficiaries in the planning, implementation and evaluation of the programmes.

10.1 Need for MNREGA

India today presents a striking contrast of development and deprivation.Nearly two decades after the unleashing of economic reforms in India, there is no doubt that GDP growth has accelerated. The rate of GDP growth has consistently been above 5% during the last two decades.

India is the 12th largest economy in the world in terms of GDP and is also one of the fastest growing economies in the world today. Impressive as these achievements are, they pale into insignificance when confronted with the fact that after six decades of planned development, nearly 77 per cent of India's population or over 800 million people, have a per capita consumption expenditure of less than or equal to Rs.20 per day (roughly $2 in PPP terms).

The National Family Health Survey-3 (2005-06) shows that since the previous NFHS-2 survey of 1998-99, the proportion of anemic children under-3 has gone up from 74% to 79%. Nearly half of India's under-3 year children continue to remain underweight. India has the highest percentage (87%) of pregnant anemic women in the world.

There is a strong evidence of divergence in per capita consumption across states in the 1990s. Growth rates of per capita expenditure point to a significant increase in rural-urban inequalities at the all-India level, and also within most individual states. They conclude that rising inequality within states has dampened the effects of growth on poverty reduction.

So it was not surprising the employment generation has become not only the most important social-economic issue in the country, but also the most pressing political concern. The mandate of the 2004 general elections in India was clear indicator of this: the

people of the country decisively rejected policies that implied reduced employment opportunities and reduced access to and quality of public goods and services.

10.2 MNREGA: Main Features

The National Rural Employment Guarantee Act (NREGA), which has now been renamed as 'Mahatma Gandhi Rural Employment Guarantee Act (MGNREGA), notified on 7th September, 2005 by the Government of India. This Act aims at enhancing livelihood security of households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in a financial year to every household, whose adult members volunteer to do unskilled manual work. The choice of works suggested in the Act addresses the causes of chronic poverty like drought, deforestation and soil erosion etc., so that the process of employment generation could be maintained on a sustainable basis.

The Act covers all 615 rural districts of India, in 200 districts in its first phase in 2006-07, 330 additional districts in Phase II in 2007-08 and all the remaining rural districts were notified with effect from April 1, 2008 making Phase III of the Act.

The MGNREGA promises wage employment to every adult person who resides in any rural area and is willing to do casual manual work at the statutory minimum wage. The employment seeker has

to register with the Gram Panchayat for a job card that will be valid for a minimum of 5 years.

Different persons belonging to the same household shall share the same job card which is renewable. All applications must be for at least 14 days of continuous work. There is no limit on the number of days of employment for which a person applies, or on the number of days of employment actually provided to him or her. It is the responsibility of the State government to provide to every applicant within 15 days of receipt of his application. Else, it is liable to pay an unemployment allowance to the applicant at the minimum wage rate.

The Act provides 8 categories of works which can be undertaken i.e. water conservation and water harvesting, drought proofing (including a forestation and plantation) and land development on the private lands of SC/ST, Indira Awas Yojna (Indira Housing Scheme), and land reforms beneficiaries and Below Poverty Line (BPL) families, land development, flood protection and drainage works, providing all-weather connectivity in rural areas.

In this Act there is a provision to include any other work that may be notified by the Central Government in consultation with the state governments. For example the Government of India has now extended the provision of work on individual land of the small and marginal farmers. Under this programme the individual farmers

who possess less than 5 acres of land holdings; they can dig a pond a on their field.

Employment related work programmes, as means of poverty reduction, have a long history in India. The notion of the right to work is not new in India. Constitution of India, in the Directive Principles of State Policy, has emphasized that ensuring what is now called "decent work" for all should be a crucial focus of state policy. Thus Article 41 of the Directive Principles states that "The State shall within the limits of its economic capacity and development, make effective provisions 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. In India after independence several-employment oriented schemes were introduced. The government has consistently been introducing in past a large number of rural welfare programmes. Schemes such as Jawahar Rozgar Yojana, the Swarojagar Yojana, the Sampoorna Grameen Rozgar Yojana and the National Food for Work Programme have all seen somewhat similar fates. With huge amounts of leakages and the actual intended beneficiaries getting a minute proportion of the funds allocated for them, these schemes have far from achieved their intended goals. The failure of schemes for rural development can be attributed to various factors such as lack of awareness among the locals of their rights and entitlements, lack of a proper legal

enforcement mechanism to handle cases of fraud, lack of a physical auditing system and most importantly – inadequate implementation due to bureaucratic bottlenecks.

All these programmes were treated as top-down missions with little involvement of the local population and led to the involvement of a number of intermediaries between the government and the target group. Poor monitoring and lack of safeguards resulted in large-scale leakages and inefficiencies in the implementation of these programmes.III What makes MGNREGA different, is that it is one of the largest rights-based social security programmes in the world, which is open to all rural people who are willing to take manual work as unskilled workers.

The 'Right to Work' establishes in the Act makes it a distinctive and huge programme in terms of both scale of resources and the number of households demanding employment. Already the number of households demanding employment as per official estimates has increased from 21 million in 2006-07 to 34 million in 2007-08, 45.11 million in 2008-09 and 44.91 million in 2009-10 (up to Feburary 2010), respectively. Hence, there are huge expectations from the Act because it is believed that by providing employment and building the productive assets in rural areas the Act has the potential to transform the lives of the poor living in villages. The twin benefits of employment and creation of

productive assets are expected to reduce migration from rural areas.

The MGNREGA differs from all the other schemes in that the legal provision under this scheme to prevent corruption is much stronger and several steps have been taken to ensure greater transparency of operation. The most significant difference between the MGNREGA and the other schemes is that it provides the rural worker with The Right to Work.

10.3 The Role of National Human Rights Commission (NHRC)

The National Human Rights Commission ever since its inception has been concerned about the Right to Work with equality and dignity. The Commission examines and monitors the implementation of various provisions of the Minimum Wages Act and the Mahatma Gandhi National Rural Employment Act, besides reviewing the policies and programmes particularly pertaining to women.

11. CONCLUSION

The 'rights approach' to development has received a good deal of attention in recent years. The notion is attractive, but its practical implications are often far from transparent. India, however, is one country where the rights approach to development seems to be taking shape within specific but non-negligible domains.[36]

The present discussion and debate on the right to work has its origin in the promises the National front made in its election manifesto released on the eve of the general election to the 9th Lok Sabha.

The Fundamental Rights section, Part III of the Indian Constitution reflects some of the basic human rights of all people. Article 14 guarantees equality before law and equal protection of the law, while Article 15 prohibits discrimination on the grounds only of sex amongst other forms of discrimination. Article 15 (3) provides for special provisions to be made for women and children. Article 16 prohibits discrimination in matters of employment. Article 16 (4) provides for reservation of appointment or posts in favour of any backward class of citizens which in the opinion of the State may not be adequately represented in the services of the State. Article 19 (1) (g) gives the right to freedom to practice any business, trade or occupation and Article 21 guarantees the right to life and personal liberty.

[36] http://www.righttofoodinindia.org/data/wsfrtw.pdf

In addition are the provisions in Part IV as I mentioned earlier. While Article 38 speaks of the promotion of welfare of all the people Article 39 (a) speaks specifically of right to an adequate means of livelihood for men and women equally. Article 39 (d) addresses the issue of equal pay for equal work for both men and women (the Government of India went on to enact the Equal Remuneration Act in 1975 to fulfil this direction) and Article 39 (e) particularly directs the state to ensure that its policy secures that the health and strength of workers, men and women and children are not abused and that the citizens are not forced by economic necessity to take to vocations unsuited to their age or strength.

Article 41 adds strength to Article 39 (a) by stating that within the limits of its economic capacity and development the State should make effective provisions for securing the right to work amongst other things to its entire people. Article 42 is one of the hall marks of the Indian Constitution as it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore it directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief. It is in this context that the Government of India went on to enact the Maternity Benefit Act, 1961 which enables women in the labour force who have been employed for 160 days in a year to provide leave with pay and medical benefit.

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.

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