
CRITICAL ANALYSIS OF RIGHT TO WORK IN OUR CONSTITUTION

Pringle Singh, Kuldeep Kumar Yadav & Shashi Shukla, Amity University

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 judgments given by the apex court in relation to Right to earn livelihood and other essential rights related to it.

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

¹ AIR 1978 SC 597

INTRODUCTION

Right to work is one of the basic human rights which is inherited by every individual irrespective of their gender, caste, religion, etc. Duguit one of the eminent jurists opines that division of labour in society results into the cohesive force which binds the society. So if every individual in the society is doing some work hence contributing to the society in one or the other form then there is a binding force in the society created. Right to work although, not provided as a Fundamental Right in the Indian Constitution because of certain difficulties such as a huge population yet it has been provided as Directive Principle under article 41. As it has been already mentioned under article 37 that Directive Principles are fundamental in governance, they are no less than Fundamental Rights provided under Part 3 of the Constitution. Right to work under article 41 along with other DPSPs such as under Articles 42,43 and Article 45 and Article 21 provides that although this right could not be enforced in the court but it is a mandate upon the State to provide for work to every individual and not only work but work in good humane conditions.

Indian constitution is a social welfare document which continuously aims at the welfare of the people and is continuously working for the upliftment of the people of India. Socialism is one of the essential features of the Indian Constitution. It aims at providing social justice to every citizen from cradle to grave. However, there are certain inequalities and discrepancies which exist in society and socialism under Indian Constitution aims at removing all those inequalities and discrepancies. Right to work is such a concept that if denied to one according to his/her skills will enhance or promote such inequality in society. Right to work is a social and economic right which promotes the ultimate aim of the Constitution and promotes the growth of the nation for example Article 39 of the Indian Constitution provides that the State shall make an endeavour to prevent the concentration of wealth and if Right to work is denied there may be chances of accumulation of wealth in certain hands which will be against the purpose and policy of the Indian Constitution.

It is mandated upon the State to fulfil the guidelines provided in form of Directive principles and make them a priority while governing the Nation. The state has to play a proactive role to enforce such directives provided in Part 4 of the Constitution to promote the ultimate aim of the Constitution i.e Fraternity among the people and Unity of the nation.

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 riches and poor individuals in the nation. It also provides women employment by ensuring that one-third of the entire workforce 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 the 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 for the 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 in a huge loss as the workers 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 the 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 for a very long time. As per the Universal Declaration of Human Rights, 1948 (UDHR) everyone has the 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

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/>.

³ Universal Declaration Of Human Rights, Article 23

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, part III of the Constitution which is the fundamental rights also deliberates non-discrimination⁶ and equal opportunity in public employment.⁷ There are other Directive Principles that deal with rights which are also essential for better fulfilment of the right to earn a livelihood.

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

Article 43 also provides that the state through legislation or economic organization must provide the workers with 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 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

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

⁵ Constitution of India, Article 41

⁶ Constitution of India, Article 15

⁷ Constitution of India, Article 16

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 the 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, the Right to work became a fundamental right through judicial activism.

Article 21 is one of the most important rights 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 the Right to life is not just a merely physical existence but it includes the 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 21 also contains the **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 the 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 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, the Right to livelihood was considered a basic component of the Right to live with human dignity. To sustain a dignified life one needs to work and earn a living wage through which he can support his family too. This judgment, at last, recognized the Right to work as an essential right under Article 21.

In subsequent decisions, the apex court has recognized the Right to employment and given it

⁸ Constitution of India, Article 21

⁹ AIR 1981 SC 746

¹⁰ AIR 1986 SC 180

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 a 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 the right to livelihood and therefore right to work but it is not mentioned in 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 legislation 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 the 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 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 violates the official set of central and state laws.
- 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 the 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 the 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 sufficient resources for 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

¹¹ Sodhan Singh v. New Delhi Municipal Committee, AIR 1989 SC 1988

¹² (1993) 3 SCC 258

¹³ Delhi Development Horticulture Employees' Union v. Delhi Administration, AIR 1992 SC 789

¹⁴ 1985 SCC (3) 545

to people. In addition to the current Right to Work is additionally connected with the right to just and good conditions of work, and union-related rights. States are obliged to provide the workers with a healthy environment and conditions with which they work with a value of human dignity. It is the responsibility of the state to provide the workers with a 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 rights are provided to the workers in India and it is a great responsibility of us and the state to ensure that these rights are not infringed by anyone including the government. At present, there are many NGOs that work for the rights of 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 the International labour organisation and Fairlabour 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 missions which works for the workers. At present, there is 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 themselves 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.

CONCLUSION

In India, 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, the right to work and employment is one of the prime stepping stones 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

¹⁵ Constitution of India, Article 43 and 44

maintaining the privilege to work for the most unfortunate who are barely surviving on daily basis. This right will acquire more prominent security and confidence in 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.

Right to Work as provided under article 41 of the Indian Constitution is a mandate upon the State to provide its citizen with an opportunity to participate in the growth of the Nation. It is a mandate upon the State to continuously work according to the spirit of the Constitution and create such opportunities where the Directive Principles provided under Part 4 may be converted into Fundamental or Legal rights i.e. to make such conditions enforceable. So accordingly, for Article 41 if suitable conditions their right to work needs to be enforced and the State should endeavour to provide work to the people. Right to work under article cannot be read in isolation as it is a subjective concept attached to basic principles of the Constitution such as Socialism, economic justice etc.

The right to work under Article 41 along with other articles such as Articles 42, 43, 45 and Article 21 provides that the right to work under the Indian Constitution cannot be any or every work. According to the Indian Constitution, it should be interpreted as the right to work with just and humane conditions where other amenities are also provided with. It should be right for such work doing of which promotes the growth of an individual as well as of the Nation.