

## **RIGHT TO WORK AS FUNDAMENTAL RIGHT: ILLUSION OR REALITY?**

IN A democracy, welfare state concept always prevails as an important requirement. India, as the worlds' largest democracy, strictly adheres to the socio-economic welfare of the people as the prime task of the lawmakers of the state.

The Constitution of India enjoins upon the state, a duty to secure to its people basic social and economic rights for their welfare. The Constitution under part IV deals with the directive principles of state policy where they enjoin upon the state to make effective provisions for securing the "right to work"<sup>1</sup> and "right to public assistance in cases of unemployment".

It is very peculiar to note that the word 'right' is used only in article 41 in the whole of the chapter IV on the directive principles of state policy. Article 41 of the Indian Constitution is analogous to article 15 of Dr. Lauhterpacht's Draft of International Bill of Rights of Man. The law under this article is a social and industrial legislation. This article of the said draft has no application in the decision of a dispute between workers and employers.<sup>2</sup> It is a general direction, which the framers of the Constitution have given to the succeeding governments to see that in a welfare state there shall be no underserved want or unemployment. It may be observed that under certain circumstances, there is a duty upon the state government to find and secure work for all persons in the state.

The constitutional provision under article 41 may be read with article 43<sup>3</sup> which provides for minimum wage, living wage etc. This article can

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1 Art.41 of the Indian Constitution: "The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

2. *Radhakrishna Mills Ltd , v. Special Industrial Tribunal*, AIR 1954 Mad 686.

3. Art.43: "The State shall endeavour to secure, by suitable legislation or economic organisation (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 employment 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".

Art.43A: "The State shall take steps, by suitable legislation (or) in any other way, to secure the participation of workers in the management of undertakings, establishments (or) other organisations engaged in any industry".



be split into two parts; firstly, the state shall endeavour to secure, by suitable legislation or economic organisation 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 secondly, the state in particular shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. This article also shows the special concern of the Constituent Assembly for the welfare of the workers. These provisions do not countenance any distinction between industries in public and private sectors with regard to service conditions of labour.

The duty of providing work to all able-bodied persons is cast upon the state. Unfortunately, no remarkable progress seems to have been achieved despite the government's awareness to the alarming problem of growing unemployment in the country. It is needless to state that unemployment among the educated and uneducated masses is constantly in the rise at an alarming rate.

In the Constitution, article 41 is placed under the chapter on directive principles of state policy. No doubt, it is one of the novel features of Indian Constitution to include a chapter on directive principles of state policy as an integral part of the Constitution. Commenting on the nature of the two parts, part III (fundamental rights) and part IV (directive principles of state policy) Sri B.N. Rou, architect of Indian Constitution observed that "there are certain rights which require positive action by the state and which can be guaranteed only as far as such action is practicable, while others merely require that the state shall abstain from prejudicial action."<sup>4</sup>

For example, right to work cannot be guaranteed except that the policy of the state is to be directed in that direction for the better life and liberty of the person<sup>5</sup>. The directive principles are guidelines to the Parliament, the state legislatures, the union and the state executives and also to local bodies and other authorities, to formulate their legislative and administrative policies in such a way that social and economic interests of the Indian people are well protected.<sup>6</sup>

Article 41 enjoins the state to make provisions for providing the right to work, of course, to the capacity and development of the country and

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4. B.N. Rou's address to the Indian Council of World Affairs, August 10, 1949 as quoted by Shiva Rao, B.

5. Art.37: "The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

6. N.U. Paranjape, *The Role of Directive Principles under the Indian Constitution*, 23 (Central Law Agency 1975).



within the limits of its economic capacity. Most of the constitutional directives in the matter of protection and welfare of workers have been followed up through central and state legislatures except for the right to work. Right to work as required by article 41, especially in the industrial field has been ensured by the increase in employment opportunities and programme of workers education which the government has undertaken through a semi-autonomous board that runs with the co-operation of all the employers and workers organisations. No doubt that the egalitarian principle of democracy envisages not only the concept of one man one vote, but also the equal and effective right of each and every man to live and to develop his personality in accordance with the levels of freedom, equality and justice.<sup>7</sup>

In the Constituent Assembly, desiring the debate H.V.Kamath observed while referring to draft articles 34, 32 and 31 “I am happy that articles 34, 32 and 31 have been incorporated in this part dealing with directive principles of state policy. They will provide a new charter, the charter of a new life for the exploited and disinherited and the under-privileged and they will provide the basis or the framework for the blue print of economic and social democracy in our country”.<sup>8</sup>

Whatever the objective of the framers might be, it is difficult to understand how a state can make provision to secure right to work. If some of the relevant provisions of the Constitution are observed, article 19 (1) (g) guarantees to all the citizens of India the right to practice any profession or to carry on any occupation, trade or business that is subject to certain reasonable restrictions<sup>9</sup> that can be imposed in the interest of general public. Article 21 guarantees the right to life and personal liberty. The Supreme Court has held that the right to life includes the right to livelihood.<sup>10</sup> Thus it gives an understanding that deprivation of right to work, which is a livelihood amounts to the deprivation of right to life.

Article 39<sup>11</sup> under clause (a) provides that “the state shall direct its policy towards securing right to an adequate means of livelihood for citizens, men and women equally.” A growing controversy, debates and discussions are now being diverted on the issue whether ‘the right to work’ should be made a fundamental right? Of course there is some meaning in referring to the intention of the framers of the Constitution while incorporating article 41, that they might have given the idea to the

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7. Sudesh Kumar Sharma, “Right to work: An assessment of constitutional policy and ethos” 1 *KUJLS*, 191 (1998).

8. VII CAD 533-34.

9. Art. 19 (2).

10. *Olga Tellis v. Bombay Municipal Corporation*, 1985 3 SCC 545.

11. One of the directive principles of state policy.



present legislators to make it a fundamental right.

But referring to practicalities and realities, second thought is required before materializing the proposal of making 'right to work' a fundamental right. Once the right to work is made a fundamental right, the government would be required to provide gainful work opportunities to all those who are willing to work. Then every individual would be entitled to approach the courts to enforce the right. There are millions of unemployed people in India and it is not possible for the courts to provide employment through writs to those unfortunate unemployed.

Besides it would become difficult to define 'work' and 'employment' and it would not be possible to assess whether to allot work or employment in public sector, private sector or in organized and unorganized sectors. It is impracticable to fix criteria to provide various types of works. Proper institutional mechanism also should be established to provide employment. Insurance will become necessary till gainful work opportunities are created. This requires fundamental changes in the economic policy and budgeting and planning. Several socialist countries have recognized the right to work, but they have not given the individual the right to approach the courts for the enforcement of that right.<sup>12</sup>

No doubt providing right to work is a welcome factor. But at the same time it is very important to keep the practical difficulties in implementation in mind. Distributive justice to the society is more important than the fundamental right of a single individual. Giving 'right to work' the status of fundamental right is not feasible and it is more appropriate and justified to retain it as the directive principle of state policy.

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12. *Supra* note 7 at 196.

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