



Social Security for Informal Workers in India: A Judicial Approach

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ABSTRACT

Social security is a dynamic concept being a dynamic subject no rigid limit can be laid down for all time to come. It varies from time to time and country to country. The growth and development of national economy will profitably affect the social security scheme. Social security may provide for the welfare of the persons who become incapable of working by reasons of old age, sickness and invalidity and are unable to earn anything for their livelihood. It has been considered essential for workers, though with the development of the idea of welfare State its scope should be widened to cover all sections of society.

According to Beveridge, social security means the security of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident to provide for retirement through age, to provide against loss of support by the death of another person and to meet exceptional expenditure such as those connected with birth, death and marriage. Primarily social security means securing of income upto a minimum, but the provision of an income should be associated with treatment designed to bring the interruption of earnings to an end as soon as possible.

Particularly the people in the informal sector are not covered by any type of social security protection, i.e. either by a contribution based insurance scheme or by any social assistance scheme. The extension of formal social security programs cannot be the simple answer to satisfying the social protection needs of increasing number of workers and their families outside the formal sector. New institutions and forms of social security will have to be developed to meet the specific security needs of this group. It is therefore attempted in this dissertation to suggest some kind of social protection to these groups and administrative arrangements there for. Many authors have defined social security by many ways. For our understanding, we consider the social security as the continuous economic support to a human being for his or her social well being- at least in the evening years of his/her life.

A Judicial Contribution to unorganized workers in India is very far reaching in India. Some of the following landmark cases which have provided some solace given to the unorganized workers need to be dealt.

KEYWORDS: Unorganised Labour, Bonded Labour, Legal Aid.

Under clause (4) of Article 19, 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. An organization it has 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*, 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* the services of the appellant were terminated under Railway Service Rules for his being a member of 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 form 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 with dignity and the Unorganized Workers: A Judicial Interpretation:

Right to life, includes right to the means of livelihood which make it possible for a person to live. 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* 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* 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 digni-

ty", 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.

In *State of Maharashtra v. Chandrabhan* 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* 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."

In *Delhi Development Horticulture Employee's Union v. Delhi Administration*, 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 Jawahar 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 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*, 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 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 willfully absented from duty continuously for more than 8 days without leave or prior permission from the management and, 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.

Right to Work as a Constitutional Commitment for, inter alia, Unorganized Workers and the Judiciary:

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.

In *State of Maharashtra v. Manubhai Pragaji Vashi* the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39A provides "equal justice" and "free legal aid". It means justice according to law. In a democratic policy, governed by rule of law, it should be the main concern of the State to have a proper legal system. The crucial words are to "provide free legal aid" by suitable legislation or by schemes" or "in any other way" so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These words in Article 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial vast number of persons trained in law are needed." Legal aid is regarded in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The need for a continuing and well organized legal education is absolutely necessary in view of the new trends in the world order, to meet the ever-growing challenges. The Legal education should be able to meet the ever growing demands of the society. This demand is of such a great dimension that sizeable number of dedicated persons should be properly trained in different branches of law every year. This is not possible unless adequate number of well equipped law colleges are established. Since a sole Government law college cannot cater to the needs of legal education in a city like Bombay it should permit private colleges with necessary facilities to be established. For this, it should afford grants-in-aid to them so that they should function effectively and in a meaningful manner. For this huge funds are needed. They should not be left free to hike the fees to any extent to meet their expenses. In absence of this the standard of legal education and the free legal scheme would become a farce. This should not be allowed to happen. The Court therefore directed the State to afford grant-in-aid to them in order to ensure that they should function effectively and turn out sufficient number of law graduates in all branches every year which will in turn enable the State to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. Article 21 read with Art. 39A casts a duty on the State to afford grants-in-aid to recognized private law colleges in the State of Maharashtra, similar to the faculties, viz. Art, Science, Commerce, etc. The words used in Art. 39A are of very wide importance. The need for a continuing and well organized legal education is absolutely essential for the purpose. The State of Maharashtra had denied grants-in-aid of the private recognized Law Colleges on the ground of paucity of funds. The Court held that this could not be the reasonable ground for denial of grant-in-aid to such colleges. Other Aspects under the Indian Constitution. 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.

In *Raja Kulkarni v. The State Of Bombay* held, that the above provisions did not infringe the fundamental right of the workers to freedom of speech and expression and to form associations or unions under Article 19(1) (a) and (c) of the Constitution. The classification of unions as "representative and "qualified" according to the percentage of membership and giving the right to unions with a membership of not, less than 15 per cent. alone to represent the workers was a reasonable classification, and did not infringe the rule of equality before the law.

In view of the above, it can be established that the India Judiciary has contributed its might in protection and promotion of social security for workers in several and those who are employed in unorganized sector specifically. However, the aggrieved workers from the unorganized sector have limited capacity to approach the court for seeking Justice.

Therefore, cases covering the issue of social security of workers of this sector resolved by the Indian Judiciary are in negligible number. But, whenever a chance is given the Indian Judiciary has done commendable job protecting the interest of working class. Great humanists and

hampions of social justice like Justice Gajendra gadkar, Justice P.N Bhagvati, Justice V.R. Krishna Iyer can never be forgotten by the working class for their contribution which is immense to the working world.

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