

Constitutional Proclamations pertaining to the Welfare of the Informal Sector Workers in India

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The informal sector comprises of workers who are vulnerable, oppressed and socially and economically exploited. The nature of the work makes the workers to toil day and night in order to secure their livelihood under exploited conditions of employment which include more number of hours of work, lack of basic amenities such as facilities for drinking water, leisure, rest rooms and weekly rest. In the developing economy of the State like India with large informal segment of labour force, the State is required to strictly adhere to the ideologies of social-economic justice enshrined in the Constitution of India in order to ensure welfare of the informal workers. Hence, this paper is an attempt to analyze the concept of welfare and identify welfare provisions as enumerated in the Indian Constitution which are more relevantly pertaining to the informal sector workers with the help of judicial pronouncements.

[Keywords : Welfare, Social justice, Constitution of India and Informal sector workers]

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1. Introduction

India is the second largest populous country in the World with an estimated labour force enumerating 3.492 billion persons.¹ Overall the labour force has increased from around 2.322 billion in the year 1990 to 3.492 billion by the year 2020.² There is tremendous expansion of labour force in India in 30 years. In this humongous size of the labour force 80.8 per cent of the work force belongs to informal sector.³ The era of Globalization and urbanization has contributed to the remarkable growth of informal sector and informal workers. The process of globalization lead to the integration of the domestic market with the larger world market this resulted in system of outsourcing and sub-contracting of the workers as an alternative to the full-time employees to perform certain jobs such as cleaning, catering and watch and ward. These workers fall under the category of casual workers and are excluded from the definition of “worker” or “workman” and thus fail to comply with the requisite minimum eligibility period for securing social security benefit as a result although they have become part of larger world market but have become vulnerable due to the of absence of protections or security in their work as they do not fall under the direct contract of employment.⁴ Hence, the transitional direction is not from informal to formal but it is from formal to informal.

The informal sector comprises of workers who are skilled, semiskilled and unskilled, illiterate, vulnerable, oppressed, socially and economically exploited. The nature of the work makes workers to toil day and night in order to secure their livelihood under exploited conditions of employment which include more number of hours of work, lack of basic amenities such as facilities for drinking water, leisure, rest, rest rooms and weekly rest. Hence, in the developing economy of the State with large informal segment of labour force, the State is required to strictly adhere to the ideologies of social-economic justice enshrined in the Constitution of India in order to ensure welfare of the informal workers.⁵ Therefore, the purpose of this research paper is to discuss and identify the relevant provisions under the Constitution of India ensuring welfare to the workers of the informal sector in the light of judicial pronouncements.

2. The Informal Sector Workers : Definition and Characteristics

The Second National Commission on Labour in its Report (2002) defined Informal Sector as “The term ‘informal’ per se, denotes the informal nature of work in the activity concerned, irrespective of the actual number of workers employed, and irrespective of whether it is within the purview of the requirements for registration.”⁶

The National Commission for Enterprises in the Unorganized Sector (NCEUS) in its Report (2007) (hereinafter referred as ‘the Commission’) defined informal sector workers as “all those who are working in the unorganized sector and the workers employed without any employment security and social security to be provided by the employers.”⁷ Further, the Commission has identified certain characteristics of the informal sector, firstly, absence of employment security i.e. there is no safeguard against arbitrary dismissal; secondly, lack of work security i.e. there is no protection against illness and accidents at the place of work; and thirdly, absence of social security such as health care, maternity benefits employment injury benefits, invalidity and pension benefits etc.⁸ The presence of any one or more these characteristics in an employment can be identified as informal sector.

3. The Concept of Welfare under the Constitution of India

The concept of welfare suggests the state of well-being and wholesomeness of a mankind. The workers in India are protected under various ideologies enshrined in the Preamble to the Constitution namely, socialist (socialism) and justice - social and economic. The idea of welfare has been embodied in various provisions of the Indian Constitution. There are implicit and explicit welfare obligations on part of the State in the Constitution. The Preamble embodies the ideals and philosophy of Social and Economic Justice in order to involve State in social welfare activity actively.

In India, workers are protected under the socialist⁹ ideology which envisages providing social and economic justice for its

citizens. The object of the Indian conception of socialism with democratic governance is to promote life with human dignity by creating opportunities for the development of each individual.¹⁰ Social justice ensures the maintaining balance between individual's right and social control. It involves in ensuring the accomplishment of the legitimate expectations of an individual under the existing law of the land and also ensuring the benefits there under and further, guarantying the reasonable protection for the encroachment or violation of the right conferred under the law of the land.¹¹

The concept of social justice is said to be a very wide term covering within its sphere everything ranging from the general interests of the minorities to the eradication of poverty and illiteracy. It is not just related to the observation of the principle of equality before law and the independence of judiciary but also related to the eradication of massive social evils like pauperism, unemployment and starvation and focus on the welfare of the people at large.¹² Economic justice indicates absence of discrimination among the people on the basis of economic factors. It means observing equality principle of reward of equal pay. As observed by Lownstein the economic justice will be of no value if the Constitution does not promise 'bread and economic security the man yearns for'.¹³

Hence, the social and the economic justice demands employment, substantial minimum wage in accordance with prevailing law on Minimum Wages, co-operation and harmony between labour and the capital, just and human conditions of employment and other incidental benefits with an object to improve the standard of living of the labour and people in general of the country.

The concept of welfare in the matter of labour indicates faring and doing well for a labour community. Welfare is a broad concept when it comes to the workers, "it connotes a condition of well-being, happiness, satisfaction, conservation and development of human resources".¹⁴ It is "the process of improving the health, safety, general well-being and the development of skills and efficiency of the workers than the minimum set standards".¹⁵ Labour welfare includes all those facilities that has been enumerated by the ILO in its Resolution of 1947 which has been cited by the Committee on Labour Welfare, "such facilities and amenities as adequate canteens, rest and

recreation facilities, sanitary and medical facilities arrangements for travel to and from and for accommodation of workers employed at a distance from their homes, and such other services, amenities and facilities including social security measures as contribute to conditions under which workers are employed.”¹⁶

4. Welfare Provisions relating to Informal Sector Workers under the Constitution of India

The protection afforded and welfare measures guaranteed to the labour in the Constitution of India is the basis of labour jurisprudence in India. Directive Principles of State Policy and the ideologies in the Preamble promote socio-economic justice and welfare of the workers of informal sector. This is necessary to make their life meaningful and enable them to live with human dignity. The principles of Policy have been set forth in Part IV of the Constitution for the guidance of the State in promoting welfare of the people.¹⁷

The State can promote the welfare and secure social order by cherishing the ideologies of Social, economic and political justice.¹⁸ The Apex Court in the case of *Consumer Education and Research Centre v. Union of India*¹⁹, expanding the theme of social justice under Article 38 of the Constitution concluded that provision of medical aid is essential to ensure life of the workman meaningful, purposeful and dignified. The State is bound to provide opportunities and facilities to ensure the growth of children in a healthy manner and to protect youth from exploitation.²⁰ Therefore the Supreme Court directed the State to employ every adult member of the house in a mine, factory or in any hazardous employment.²¹

The State is required to secure the health and strength of workers and protect from abuse of the same due to economic necessity under Article 39(e) of the Constitution. In *CESE Ltd. v. Subhash Chandra Bose*²², the Supreme Court held that, health and strength of the workers is integral part of right to life. Under Article 39(d) the State has to ensure equal pay for equal work for men and women as a result the Equal Remuneration Act, 1976 has been enacted by the Parliament to implement Article 39(d). Under the Act the provision has been made for payment of equal remuneration to women and men for the same work or work of similar nature. The

principle of “equal pay for equal work” under Article 39(d) has assumed the status of Fundamental Right having regard to the equality principle in Article 14 and 16 of the Constitution.²³ The Act is equally applicable to informal sector workers. In *Daily RC Labour, P and T Dept. v. Union of India*²⁴ the apex Court held that, the state cannot deny the minimum pay in pay scales to casual labourers and such denial amounts to exploitation of labour.

Article 42 of the Constitution requires the State to secure just and humane conditions of work and maternity benefits. Further, Article 43 requires the State to endeavour to secure work, a living wage, and conditions of work to all the workers, agricultural, industrial or otherwise, by suitable legislation or economic organization in order to ensure a decent standard of life and employment of leisure and social and cultural opportunities. ‘Conditions of Employment’ is a significant aspect in the contract of employment as it covers the whole aspects of terms and conditions of employment namely the tenure, wages, hours of work, leave, holidays, rest, over time wages and other social security and welfare amenities. In the industrialized employment the right to decent working conditions is the outcome of the right to work and the right to adequate wages.²⁵ This right enables a worker as said by H. J. Laski in his book entitled ‘An Introduction to Politics’, “towards attaining significance for himself beyond then getting of his livelihood”²⁶. Hence, reasonable working hours, holidays with pay, rest and leisure, and some other necessary facilities are important elements for living a decent life in a society. Apart from above significance of leisure which reduces fatigue, it aids in maintaining good health and further leading to development of individual’s personality.²⁷ In *Bandhua Mukti Morcha v. Union of India*²⁸ the Supreme Court held that, right to live with human dignity read in Article 21 of the Constitution derives its life breath from the Directive Principles of State Policy and particularly from Articles 39 clause (e) and (f) and Articles 41 and 42 of the Constitution.

5. Conclusion

The Directive Principles of State Policy run as subsidiary to the Fundamental Rights²⁹ under Part III of the Constitution. The Directive Principles of State Policy in Part IV of the Constitution also

indicate the basic principles of governance. The above discussed Articles clearly demonstrate that the aim of a welfare State in securing the social justice and social welfare to the working class has been achieved. Article enumerated in Part IV of the Constitution aid the State in achieving Social and Economic Justice promised in the Preamble to the Constitution by working for the promotion of the welfare of the people. Provision for living wage for workers, just and humane conditions of work, raising the level of nutrition, standard of living and improvement of health of workers etc., are specific duties imposed on the State to formulate its policy of governance which in turn promote the concept of social justice. Article 37 lays down that the Directive Principles in Part IV are not enforceable through court of law, however these provisions have been used to enlarge the scope of the fundamental rights guaranteed in Part III of the Constitution particularly Right to equality and right to life and personal liberty.

The Directive Principles pertaining to the informal sector workers will merely remain a pious hope if it's not translated into action and this will in turn adversely affect the rights and living standards of informal sector workers. It is evident that the judiciary over the years in its various decisions incorporated the spirit that the essence of Part IV in the Constitution can be realized or achieved within the framework of scope of the fundamental right spelt out in Part III. More relevantly the Supreme Court in *Francis Coralie v. Delhi* (AIR 1981 SC 746) right to life enshrined in Article 21 does not imply the bare animal existence but needs certain minimum requirement to live a life as a human being in a Democratic Welfare Country like ours. Thus the rights guaranteed under Part IV of the Constitution for labour in India are vital for a dignified life of labour as read under Article 21 of the Constitution.

Footnotes

1. *World Bank Data on Total Labour Force*, retrieved from <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN> last accessed on 13.01.2021.
2. *World Bank Data on Overall Labour Force*, retrieved from <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN> last accessed on 13.01.2021.
3. *Economic Survey 2019-2020*, Government of India, Ministry of Finance Department of Economic Affairs, New-Delhi, 287.

4. Tzehainesh Tekle, "Labour law and worker protection in the South: An evolving tension between models and reality", Tzehainesh Tekle (ed.), *Labour Law And Worker Protection In Developing Countries*, Geneva : ILO, 2010, 3-4.
5. Jeemoi Unni and Uma Rani, "Social Protection for Informal Workers: Insecurities, Instruments and Institutional Mechanisms", *Development and Change*, March 2003, 1.
6. *The Report of II National Commission on Labour*, 2002, 599.
7. *The Report of the Task Force on Definitions and Statistical Issues by the National Commission for Enterprises in the Unorganized Sector (NCEUS) in the Year 2007*, 13.
8. Ibid.
9. The ideology of 'socialist' was introduced into the constitution through the Forty-second Amendment of the Constitution of India in 1976.
10. Justice R. C., "Words and Phrases in the Preamble Judicially Defined", Rohan Thawani (ed.), *Lahoti, Anundoram Borooh Law Lecture, Preamble - The Spirit and Backbone of The Constitution of India*, 1st ed., Lucknow: Eastern Book Company, 2004, 80.
11. Bakhshish Sing, *The Supreme Court as an Instrument of Social Justice*, New Delhi : Stirling Publication Pvt. Ltd., 1976, 17.
12. Alan Watson, *The Digest of Justinian*, Vol. 1, Philadelphia : University Of Pennsylvania Press, 1998, 183.
13. Dr. D. C. Jain, *Economic Justice and Indian Constitution*, (1971) 2 S.C.J. 26.
14. *Report of the Committee on Labour Welfare*, Ministry of Labour, Employment, and Rehabilitation, Government of India, 1969, 5.
15. Bhatnagar, S. C., "Improving the Effectiveness of a Multipurpose Worker", *Journal of Family Welfare*, 1982, 98.
16. *Report of the Committee on Labour Welfare*, Ministry of Labour, Employment, and Rehabilitation, Government of India, 1969, 8.
17. Shiva Rao, *Framing of the Indian Constitution, Select Documents*, New Delhi : Government of India Press, 1967, Vol. II, 175.
18. See Article 38 of the Constitution of India, 1950.
19. AIR 1995 SC 923.
20. See Article 38 Clause (e) and (f) of the Constitution of India, 1950.
21. M.C. Mehta v. State of Tamil Nadu AIR 1997 SC 699.
22. AIR 1992 SC 990.
23. Grih Kalyan Kendra v. Union of India AIR 1991 SC 1173.
24. AIR 1987 SC 2342.

25. See Article 21 of United Nations Universal Declaration on Human Rights, 1948.
26. H. J. Laski, *An Introduction to Politics*, London : George Allen and Unwin Ltd, 1939, 37.
27. International Labour Organization, "Repercussions of a reduction in hours of work", *International Labour Review*, 1956, 4.
28. AIR 1984 SC 802.
29. State of Madras v. Champakam Dorairajan, 1951 AIR 226, para 10. ★