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ii.

i.

**ii. Megha Middha**

i. *Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar*

ii. *Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

V.

vi.

vii.Dr. Samrat Datta

viii. *Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



ix.

Dr. Namita Jain



14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

x.Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



xi.Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

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RIGHT TO WORK UNDER INDIAN CONSTITUTION

AUTHORED BY - ABHISHEK AWASTHI

Framer of the Indian constitution first of all wright down the preamble of the constitution which secure the economic social and culture right of every citizen and shows the unity of India.¹

The Preamble declares-²

We, The People of India having solemnly resolved to constitute India into a [Sovereign, Socialist, Secular, Democratic, Republic]³ and to secure to all its citizens;

Justice, social, economic, political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity and integrity of the nation;

The preamble to the constitution secures social, economic and political justice to all citizens of India. The same resolve is more elaborately repeated in DPSP which, among others, specifically require the state to minimize the inequalities in income and to eliminate inequalities in status, facilities and opportunities as well as to direct its policy towards ensuring that "the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good" and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. At one time, FRs were having primacy over DPSP. But in recent times, some DPSP have transformed into and become an integral part of the named FRs under part III. Therefore, the sanction of the

¹ J.N. Pandey, Constitutional Law Of India 30 (Central Law Agency, Allahabad, 2015)

² Ibid

³ The Constitution (42nd Amendment) Act, 1976, Available At:

<https://www.gktoday.in/academy/article/constitution-42nd-amendment-act-1976/> Accessed On 04 April, 2023

state or the judiciary is needed for the enforcement of DPSP.⁴

The Indian Constitution is unique in its contents and spirit. The constitutional scholar Granville Austin, in his magisterial work⁵, States that probably no other Constitution in the world “Has provided so much impetus towards changing and rebuilding society for the common good”. Though borrowed from almost every constitution of the world, it has several salient features that distinguish it from the constitutions of other countries. Social justice is the idea of creating a society or institution that is based on the principles of equality and solidarity, that understands and values human rights, and that recognizes the dignity of every human being.⁶ Feeling of social justice is a form of relative concept which is changeable by the time, circumstances, culture and ambitions of the people.⁷

Social inequalities of India expect solution equally. Under Indian Constitution the use of social justice is accepted in wider sense which includes social and economic justice both. The makers of the constitution who were well known to the use and minimalist of various principles of justice wanted to search such form of justice which could fulfill the expectations of whole revolution. Social justice found useful for everyone in its kind and flexible form. Although social justice is not defined anywhere in the constitution but it is an ideal element of feeling which is a goal of constitution and it is the foundation stone of Indian Constitution.⁸

In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society.

In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen’s Compensation Act, the Employees Insurance Act, the Employees Provident Fund and Miscellaneous Provisions

I.⁴ J. Adinarayana, Right to Work as a Fundamental Right in India: An Overview, Available At: <http://Web.A.Ebscohost.Com> (Accessed On 16 March 2023)

⁵ Austin Granville, Working a Democratic Constitution: The Indian Experience, Oxford University Press (2003)

⁶ Zajda J., Majhanovich S., Rust V. (2006) Education and Social Justice :ISBN 1-4020-4721-5

⁷ V.R. Iyear Krishna, Social Justice- Sunset or Dawn, Eastern Book Co; 2nd edition (2008) at 53

⁸ Social Justice And Indian Constitution, Available At:

<http://Ijlljs.In/Wp-Content/Uploads/2015/01/D04.Pdf> Accessed On 04 April, 2013

Act and the Shops and commercial Establishments Act enacted by different States.⁹

The preamble itself says: “We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist and democratic Republic and to secure to all its citizens-Justice, social, economic and political.” Clearly, social justice in all its forms and to all citizens was regarded as fundamental to the set-up which our founding fathers prescribed for the country; it is mentioned on top of the other equally sound concepts.¹⁰

The words, “Socialist”¹¹, “secular”, “democratic” and “republic” have been inserted in the preamble. Which reflects it’s from as a “social welfare state.” The term ‘justice’ in the Preamble embraces three distinct forms- social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs, and OBCs) and women. Economic justice denotes on the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as ‘distributive justice’. Political justice implies that all citizens should have equal political rights, equal voice in the government.¹²

Under Indian Constitution the use of social justice is accepted in wider sense which includes social and economic justice both. As stated by Chief Justice Gajendragadkar, “In this sense social justice holds the aims of equal opportunity to every citizen in the matter of social & economical activities and to prevent inequalities”.¹³ The Constitution of India does not completely devoted to any conventional ideology as - Equalitarian, Utilitarian, Contract Arian or Entitlement theory. Dedication of constitution is embedded in progressive concept of social justice and various rules of justice such as Quality, Transaction, Necessity, Options etc. are its helping organs.¹⁴

⁹ *Harjinder Singh V. Punjab State Warehousing Corporation* (Civil Appeal No. 587 Of 2010)

¹⁰ Supra Note 6

¹¹ Supra Note 3

¹² Supra Note 6

¹³ P.B. Ganendragadkar, *Law, Liberty And Social Justice* (Asia Publishing House , 1965).

¹⁴ Supra Note 4

To accept right to equality as an essential element of justice, Indian Constitution prohibits unequal behavior on the grounds of religion, race, caste, sex. The term 'equality' means the absence of special privileges to any section of the society, and provision of adequate opportunities for all individuals without any discrimination. The Preamble secures at all citizens of India equality of status an opportunity. This provision embraces three dimensions of equality- civic, political and economic.¹⁵ But the question is how to determine inequality?

In India it is not easy to determine inequality. Equality is movable concept which has many forms and aspects. It cannot be tightened in traditional and principles circle. Equality with equal behavior prohibits arbitrariness in action.¹⁶

I. Fundamental Right And Right To Work:

In view of securing to all its citizens social justice Indian Constitution provides some Fundamental rights in Part III some of which are available to all persons and some are enjoyable only by the citizens of India. Further, to realize the goal of social justice the constitution also provides some direction to the State in the form of Directive Principles of State Policy and lays down that the state shall direct its policy towards securing these objectives.¹⁷

The courts are now taking leading part in the design of administration of many state services including services for mentally ill and retarded, for prison populations, for public welfare recipients, and for abused children and other dependent persons. With that end in view the Supreme Court of India evolved a new mechanism of public interest litigation or social interest litigation in the early eighties. In the fifties and sixties the role of judiciary more or less remained as a sober manifestation of the movement for social justice based on progressive values. While other institutions have lost their progressive shine the judiciary remains a uniquely situated instrument for social justice, perhaps the only effective force for challenging the institutions of the welfare state.¹⁸

The Supreme Court of India has given a principal and dynamic shape to the concept of social justice. Social justice has been guiding force of the judicial pronouncements. The judiciary has given practical shape to social justice through allowing affirmative governmental actions are

¹⁵ M Laxmikanath, Indian Polity, (Mcgraw TestPrep, 5th edn., 2016).

¹⁶ Supra Note 4

¹⁷ Dr. Saroj Bohra, Social Justice and Indian Constitution, Available at: <http://ijlljs.in/wp-content/uploads/2015/01/D04.pdf> (Accessed On 02 April 2023).

¹⁸ Ibid at 5

held to include compensatory justice as well as distributive justice which ensure that community resources are more equitably and justly shared among all classes of citizens. The concept of social justice has brought revolutionary change in industrial society by charging the old contractual obligations. It is no more a narrow or one sided or obscure concept. It is founded on the basic ideal of socioeconomic equality and its aim is to assist the removal of socio-economic disparities and inequalities.

This judicial activism sharing the passion of Constitution for social justice was rejuvenated with the Maneka Gandhi case in which fundamental right of personal liberty has been converted into a regime of positive human rights unknown in previous constitutional diction. Thereafter, gradually the Supreme Court, particularly some socialist justices tried to explore social justice in the Fundamental Rights and Directive Principles of State Policy. In this way the courts try to force the government to realize the new concept of social justice in the cases of Sunil Batra (right against torture); Bandhua Mukti Morcha (right against bondage); Peoples Union for Democratic rights (right against bondage); M.C. Mehta (right against environmental pollution), Upendra Baxi (right to human dignity), Sheela Barse (right to legal aid); many others. In these cases the judges maintain that in a developing society judicial activism is essential for participative justice and the bureaucrats as well as the elected representative will have to face the judicial admonition and pay the penalty if the people in misery cry for justice.¹⁹

In his recent judgment Rituparna Sarkar Dutta vs The State Of West Bengal & Ors²⁰ Calcutta high court said that, it is clear that although Art. 19(1)(b) of the Constitution guarantees the fundamental right of every citizen to hold peaceful assembly or processions, the same is not an absolute right. Such right can be curtailed by imposition of reasonable restrictions in the interest of law and order and the general public. Just as Art. 19(1)(b) guarantees a fundamental right Art. 19(1)(d) also guarantees a fundamental right of every citizen to move freely throughout the territory of India. Art. 21 have been interpreted by the Courts to guarantee the fundamental right to livelihood. No citizen or group of citizens can exercise one fundamental right so as to adversely affect or impinge upon some other fundamental right of another citizen. Thus, it cannot be gainsaid that the right to hold peaceful assembly, rally, and procession cannot be exercised in a manner which would curtail other person's rights to free movement and right to livelihood.

¹⁹ Ibid

²⁰ WP 568 of 2015 with WP 1130 of 2015

II. Directive Principle of State Policy And

Right To Work:

There are two parts to this 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 fulfill 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.²¹

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. National Front's election manifesto shows no signs of such recognition of limits of state's economic capacity. It confidently asserts: 'It is well within our means to generate socially productive employment on a scale necessary to convert the right to work into a reality.'²²

The reference to cottage industries in article 43 suggests that the framers of the constitution thought that promotion of cottage industries was at least one means to secure, to all workers, work, a living wage, and conditions of work ensuring a decent standard of life and full enjoyment of leisure, etc. After 40 years, the drafters of National Front's manifesto seem to hold the same position when they propose that 'production of basic consumer goods will be reserved for cottage and small industries.'²³

New elements in National Front's manifesto are the proposal to introduce all over the country 'new EGS' and an alternative strategy of social and economic development which accords primacy to development of agriculture and allied occupation's and to investment on building up infrastructure of essential physical and social services in villages and town. These are elaborated in the approach to the Eight Five Year plan (1990-1995) which the planning commission released in May 1990. We shall turn to them in due course.

²¹ INTRODUCTION, RIGHT TO WORK AND POVERTY, Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/10029/6/06_chapter%201.pdf (Accessed on 04 April, 2013)

²² Ibid

²³ Ibid

III. Equal Pay For Equal Work

‘Equal pay for Equal Work’ has not been secured as a fundamental right, but has been held to be deductible from Articles 14, 16 and 39 (d). It has been held that this principle of equal pay for equal work might be applied to cases of unequal scales of pay based on no classification or irrational classification. Denial of equal pay for equal work becomes irrational classification within Article 14. When the difference in duties difference in pay; difference in duties justifies discrimination in pay then writ can be used to enforce the principles of equal work if Article 14 is infringed.²⁴

In making a comparison the Authority should look at the duties generally performed by men and women. Both men and women work at inconvenient times, there is no requirement at all those who work, e.g. at night, shall be paid the same basic rate as those who work normally day shifts.

Thus, a woman who works in a day cannot claim equality with a man at a higher basic rate for working nights if, in fact there are woman working in nights at that rate too, and the applicant herself would be entitled to that rate if she changed the shifts. This Article has been described as having the object of securing a welfare state and may be utilized for construing provisions as to fundamental rights.

A statutory corporation must comply with Article 39 and charge only fair prices;²⁵ the right to livelihood was not given much importance earlier.²⁶ However in *Olga Tellis v. Bombay Municipal Corporation*,²⁷ the Supreme Court has declared it to be a part of the right to life guaranteed by Article 21. The Court lay down that the Directive Principles contained in Articles 39 (a) and 41 should be regarded as equally fundamental in understanding and interpreting the meaning and content of Fundamental Rights.²⁸

However, the rule as enshrined in Article 39 (d) would not be applicable where the employees belong to separate cadres for which separate minimum qualifications are prescribed and separate selection is made.²⁹

²⁴ Ibid

²⁵ *O.N.G.C. V. Association* AIR 1990 SC 1851

²⁶ *Re Sant Ram*, AIR 1960 SC 932

²⁷ AIR 1986 SC 180

²⁸ *Supra* Note 4

²⁹ *V.C.G.B. Pant University V. Sr. Kewala Nand* AIR 1998 SC 332.

Equal justice and free legal aid under Article 39A the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislature or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

An important impact of article 39 A read with article 21 has been to reinforce the right of a person involved in a criminal proceeding to legal aid. The article has been thus used to interpret the right conferred by section 304 of the Code of Criminal Procedure, 1973.³⁰

Legal aid may be treated as part of the right created under Article 21; in a suitable case, Supreme Court may direct District judge to arrange legal aid. Article 39A promotes justice on the basis of equal opportunities. It imposes an imperative duty upon the State to provide free legal aid to the poor. It is with a view to enable the poor litigant to have an easy access to a Court of Law to invoke legal right and to secure him equal protection of laws against his well-to-do opponent, that the scheme of affording legal aid and assistance to the poor has been conceived.³¹ It has now been settled that legal aid constituted a part of the right to personal liberty guaranteed under Article 21 and was enforceable by the Court.³²

The Government should set up a “suitor’s fund” to meet the cost of defending a poor or indigent.³³ The Court held that although the mandate in Article 39A is addressed to the Legislature and the Executive, yet the Courts, too, are bound by the mandate contained therein. The Court ruled that it cannot issue a writ of mandamus to enforce Article 39A and the social obligation of equal justice and free legal aid has to be implemented by suitable legislation or by formulating scheme for free legal aid. In pursuance of this suggestion, Parliament passed the Legal Services Authorities Act 1987.

IV. Just and Humane Conditions Of Work And Maternity Relief

Under Article 41, it is expected to the state that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education

³⁰ Hussainara v. Home Secretary, State Of Bihar, AIR 1979 SC 1369.

³¹ Justice V.R. Krishna Iyer, Processual Justice To The Peoples (Universal Law Publishing - An imprint of LexisNexis (2015)

³² Supra note 4 at 12

³³ State Bank v. N.S. Money, AIR 1976 SC 1111.

and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underserved want. Under Article 42 the State shall make provision for securing just and humane conditions of work and for maternity relief. This Article exhibits the concern of the framers of the Constitution for the welfare of the workers. The Courts may not enforce the Directive Principles as such. But, they must interpret laws so as to further and not hinder the goals set out in the Directive Principles.³⁴

i. Child Care Leave:

Introduction of child care leave in respect of Central Government employees as per recommended in the sixth Central Pay Commission, women employees having minor children may be granted CCL by an authority competent to grant leave for a maximum period of 730 days during their entire service for taking care of up to two children, whether for rearing or to look after any of their needs like examination, sickness etc. Hence Earned Leave availed specifically for this purpose only should be converted. Child Care Leave shall not be admissible if the child is eighteen years of age or older. On recommendations of sixth pay commission, the CCL was announced to help women employees to take better care of their children and family.

1. Child Care Leave can be granted to women employees having minor children below the age of 18 years, for a maximum period of 2 years (i.e. 730 days) during their entire service, for taking care of up to two children whether for rearing or to look after any of their needs like examination, sickness etc. Child Care Leave shall not be admissible if the child is eighteen years of age or older.
2. The Conditions regarding spell of CCL, imposed upon by the Government are that it may not be granted in more than 3 spells in a calendar year and that CCL may not be granted for less than 15 days.
3. As in the case of Earned Leave, we can prefix or suffix Saturdays, Sundays, and Gazetted holidays with the Child Care Leave. Under no circumstances can any employee proceed on CCL without prior approval of the Leave sanctioning authority.
4. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

³⁴ Supra Note 4 at 13

V. Union, State and Concurrent Lists And Right to Work

Part-XI of the Constitution of India deals with the relations between the Union and the States. Article 246 defines the scope of the Union and State Legislatures in making laws in accordance with separate lists of prescribed under Schedule-VII of the Constitution. List-I is the Union List, List-II is the State List and List-III is the Concurrent List. Union Legislature, Parliament has the exclusive power to make laws pertaining to the subjects mentioned in List-I. These are applicable throughout the country. State Legislatures have the exclusive power to make laws pertaining to the subjects mentioned in List-II. These are applicable only within the territorial jurisdiction of the respective states. In respect of List-III both the Parliament and the State Legislatures have power to make laws. However, in the event of any conflict Union Legislature will prevail over the State Legislature.³⁵

Item No. 9 of the State List and Item Nos. 20, 23 and 24 of the Concurrent List relates to old age pension, Social Security and Social Insurance, and economic and social planning. In the Constitution of India, entry 24 in list III of schedule VII deals with the "Welfare of Labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits. Further, Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security.³⁶

Under Article 246 of the Indian constitution, issues related to labour and labour welfare come under List –III that is the Concurrent List. Exceptional matters related to labour and safety in mines and oilfields and industrial disputes concerning union employees come under Central List. In all there are 47 central labour laws and 200 state labour laws. The three main acts that are the cause of contention are the Industrial Disputes Act (1947), the Contract Labour (Regulation and Abolition) Act (1970) and the Trade Union Act (1926).

VI. Conclusion

Article 41 of the Indian Constitution provides that “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.” (Article 6 of the ICESCR) Article 38

³⁵ Ibid at 104

³⁶ Ibid at 105

states that the state shall strive to promote the welfare of the people and article 43 states it shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right 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.³⁷

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. In the case of *K. Rajendran v. State of Tamil Nadu*³⁸ 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 (nonpermanent) 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:³⁹

In *Bandhua Mukti Morcha v. Union of India*,⁴⁰ a PIL by an NGO highlighted the deplorable condition of bonded laborers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labor legislation, including the Bonded Labour

³⁷ RIGHT TO WORK, Available at:

<https://www.civilserviceindia.com/subject/Law/notes/fundamental-right-work.html> Accessed On 04 April, 2023

³⁸ AIR (1982) 2 SCC 273

³⁹ Supra note 65

⁴⁰ AIR(1984) 3 SCC 161

(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 laborers, 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 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.⁴¹

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*⁴² 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

⁴¹ Supra note 65

⁴² AIR (1997) 6 SCC 241

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 center of economic power should have no right to be heard when it is sought to demolish that center of economic power National Textile Workers Union v. P. R. Ramakrishnan⁴³



⁴³ AIR (1983) 1 SCC 249