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Social, Economic and Political Justice to the Employees: Constitutional Perspectives

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ABSTRACT

Employees are considered to be the main pillars of any organization and society at large. The protection of this group is the need of the hour and modern society's progress depends directly on the growth of this group. The dream of just social order would be a far-fetched dream and it could not be realised until inequalities are removed and legal dues of each and everyone is provided for in order to create a welfare society enshrined under the Constitutional mandate. Therefore, this paper is an attempt and primarily focuses on the legal and constitutional protection provided to the employees by our Indian Constitution and other legislations.

Keywords- Fundamental Rights, Directive Principles of State Policies, Supreme Court's Verdict

INTRODUCTION

Work is the external manifestation of an individual's physical or mental labour. It is the realisation of the efforts made by an individual, in response to stimuli - which may be external or internal. Employment, on the other hand, is conceptualised in the sense of a superior-subordinate relationship. In other words, the notion of 'director' and 'directed' is inherent in employment and it is this link that brings together the employer and the employed. According to this calculus, the employer would be the director – the one who would be defined, within the bounds of law of the land, the goals and objectives for the organisation. The employee, on the other hand, would be responsible forrealising the goals by using the organisational resources, while remaining within the bounds of the governing legal paradigm of the country. In other words, the employee is not allowed to use any and every resource or method, but only those which have the sanction of the law. The employee, if using extra-legal or illegal means to achieve the organisational targets, would be opening the flood gates of trouble and would be at the receiving end of the wrath of the State. Likewise, the employer is also bound by the covenants of law and is expected not to step outside the legal parameters in his functioning as the director of organisational resources.

It can therefore be observed that laws related to organisational functioning also define the general tone and temper of the employer-employee relations in the sense that the rights of the employee are the duty of the employer and vice-versa. It should be noted that the terms 'employee' and 'employer', have been used in a generic sense and no conceptual difference is to be read into it.

Constitutional Mandate

Fundamental Rights and Directive Principles of Policies

In India, the Constitution is the Suprema Lex, which provides the shadow, within which everything which is called law or every other idea which is designated as having the 'force of law' has to function. The laws related to labour management, under which the employer-employee relations come, have also to subscribe to the constitutional scheme. In this context, the scope of employee rights, vis-à-vis, their organisational membership is guided in light by the provisions of Fundamental Rights and Directive Principles of the State Policy. Within Fundamental Rights, articles 14, 15, 16 and 21, whereas in Directive Principles articles 38, 39, 39A, 41, 42, 43, 43A and 47 are of extreme importance.These articles, thereforeentail the duties of the State as it is the duty of the State to promote the welfare of the people, by securing and protecting a social order in which justice social, economic and political shall inform all the institutions of the national life; to make effective provision for securing the right to work, education and public assistance in cases of employment, etc., subject to limits of its economic capacity to make provision for just and humane condition of work and for maternity relief; to endeavour, to secure by suitable legislation or economic organization to all workers work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, to promote cottage industries on an individual or cooperative basis in rural areas, and to raise the level of nutrition and the standard of living and improve public health etc[1].

The evolutionary history of the human race in general and that of Indian society, in particular, has demonstrated that the principle of Laissez-faire has been gradually discounted and the premium on the principle of community development is increasing.Narrow individual interestshave become secondary tothe broader interests of the community

[1] DPSPs, under Part IV of the Constitution of India

and society which have gained primacy. This represents a shift from classical individualism to modern individualismand as a testimony to this reality is the Indian Constitution where this modern trend in social and political philosophy is well reflected[2].

A well-known fact is that Directive Principles of State Policy, though are not strictly enforceable by courts, still they have a directory value and are considered fundamental in the governance of the country. This being said the courts have to find a balance between the Directives and Fundamental Rights.The courts therefore while responding to the cries for the enforcement of fundamental rights of citizens,would peruse through the Directive Principles with the aim that while arriving at the notion of justice, the reasoning behind these principles is maintained. Fundamental rights along with the directive principles constitute the Conscience of the Constitution[3] because Fundamental Rights aimfor political democracy, whereas the Directives have socio-economic democracy in their sight. In other words, both complement one another and provide strength to one another. Furthermore,without the true implementation of the Directive Principles, the dream of a welfare State as contemplated by the Constitution would be a far cry. This view gets reflected in observations of Chinnappa Reddy, J. in Randhir Singh v. Union of India[4], with respect to the concept of 'equal pay for equal work in service matters:

> "It is true that the principle of 'equal pay for equal work is not expressly declared by our Constitution to be a fundamental right. Article 39(J) of the Constitution proclaims 'equal pay for equal work for both men and women as a Directive Principle of State Policy. . . . Directive Principles, as has been pointed out in some of the judgments of this Court, have to be read into the fundamental rights as a matter of interpretation .... Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principle 'equal pay for equal work' is deducible from those Articles."

Similarly, in Daily Rated Casual Labour v. Union of India[5] it has was held that the daily rated casual labourers in the Post & Telegraph Department, engaged in work similar to the work done by the regularised workers of the department should be provided with minimum pay, equal to the minimum payas defined in the pay scale of the regular workers including D.A.. At thesametime, daily rated casual labourers would not be entitled to increment benefits. In other words classification of employees as regular employees and casual employees, resulting in the payment of less than minimum pay is violative of Articles 14 and 16 of the Constitution. It also violates Article 7[6] of the International Covenant of Economic, Social and Cultural Rights, 1966. It can be observed that though the directive principle contained in Articles 38 and 39 (d) are non-enforceable, still they can be used to strengthen the argument by the aggrievedto prove that they have been subjected to discrimination.

Coming to article 39 which requires the State policy efforts towards the realisation of the right to

1. Adequate means of livelihood, to both men and women, in equal proportions;
2. Common good to be the criterion for the distribution of ownership and control of the material resources of the community.
3. Ensuring that the economic system should not result in the concentration of wealth and means of production to the common detriment.
4. Another aim for the State to strive for is the realisation of equal pay for equal work for both men and women.
5. To protect the health and strength of workers and ensure that want of economic prowess does not push them to take up work and employments which are unsuited to their age or strength.
6. The children and youth are protected against exploitation and areprovided with opportunities and facilities for their healthy developmentin afree and dignified environment. In M. C. Mehta v. State of Tamil Nadu[7], the court by invoking article 39 held that due to the hazardous nature of the job, the employment of children in the match

[2] State ofBihar v. Kameshwar, AIR 1952 SC 252
[3] Granville Austin, The Indian Constitution: Cornerstone of a Nation, Pg. 50, reprint edition, Oxford University Press, 1972
[4] (1982) 1 SCC 618
[5] (1988) 1SCC 122
[6]The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:(a) Remuneration which provides all workers, as a minimum, with:(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;(b) Safe and healthy working conditions;(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays
[7] 1991 AIR 417

factories directly connected with the manufacturing process of matches" and fireworks cannot be allowed.However, children can be employed in the packaging functions that too in an area having a safe distance from the place of manufacturing to avoid exposure to accidents.Similarly, in another landmark judgment, related to cracker manufacturing factories, in M. C. Mehta v. State of Tamil Nadu, famously known as Child Labour Abolition case, the Supreme Court held that children below the age of 14 years are not suitable for deployment in any hazardous industry, or mines or other work, therefore they cannot be employed in such locations. The Court through a PIL under Art. 32 of the Constitution was appraised about the violations of the rights of children as guaranteed under Art. 24 owing totheir engagement in Sivakasi Cracker Factories and appropriate directions were sought to be issued to the Governments in this regard.

Article 41 as enshrined in Part IV deals with the right to work. According to it, "the state shall, within the limits of its economic capacity and development, make provision for securing the right to work….."[8]. The article is in line with the sentiment echoed in article 23(1) of the Universal Declaration of Human Rights, 1948, which says, "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment"[9].

However, it should be noted that article 41 is not justiciable[10], as it is a part and parcel of the DPSPs. However the Supreme Court, by taking into account the text and contextof the Preamble to the Constitution, in a case[11], has held that the right to work emanates from the right to livelihood, which on multiple occasions has been declared to be an implied fundamental right under article 21. In other words, a non-justiciable DPSP has been made an implied fundamental right, via liberal interpretation of article 21.

The apex court in this context has made the following observations in Daily Casual Labour v. Union of India[12]:

(a) Alikearticles 36 and 37, article 41 is mandatedfor the Legislature and the courts should adopt a policy of liberal interpretation oflegislation or subordinate legislation the aim which is to advancethe objectivesof article 41.

(b) Job security is an important parameter in the context of the grand goal of socio-economic justice.

(c) Discriminatory wage policy for same kind of work would not be tolerated and the court would in such a case issue suitable directions.

The Supreme Court held that the right to life includes the right to livelihood and that the latter is an integral component of the former. That right to livelihood cannot be made hostage to the whims and fancies of individuals in authority[13]. Income provides a base for many fundamental rights and when work or occupation is the onlymedium of income generation the right to work becomes a fundamental right[14].

According to Article 42, the state shall make provisions for securing just and humane conditions of work and for maternity relief[15]. The text of the Universal Declaration of Human Rights, 1948, in Article 23(3) also says that everyone who works has the right to just and favourable remuneration incurring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection[16].

This principle of just and humane conditions of work is also applicable toinmates of prisons.Meaning thereby that convicts andunder-trial prisoners are not to be subjected to such indirect forms of punishment[17].

The notion of a just and fair condition of work has also been a source to accord dignity and respect to the idea of motherhood. For example,the provision in the Air Corporation Act, which when invoked would terminate the services

[8] Article 41, Constitution of India
[9] Article 23(1), UDHR, 1948
[10] D.D.H.E.U. v. Delhi Admn., (1992) 4 SCC 99
[11] Jacob v. Kerala Water Authority, AIR 1990 SC 2228
[12] (1998) 1 SCC 122
[13]Dr. DDBasu, Commentary on the Constitution of India, Pg 4116 (LexisNexis Butterworth Wadhwa, Nagpur, 8th revised, updated and enlarged edition, Vol 3, 2011)
[14] Delhi Transport Corporation v. DTC Mazdoor Congress, AIR 1991 SC 101
[15] Article 42, Constitution of India
[16] Article 23(3), UDHR, 1948
[17] Patnaik v. State of A.P., AIR 1974 SC 2092

of an airhostess in the event of her first pregnancy was declared to be unreasonable and arbitrary and reeking of unfairness[18].

The dream of just social order would be a far-fetched dream and it could not be realised until inequalities are removed and legal dues of each and everyone is provided for.In this context, the first step should be towards the provisioning of what is rightful to the female population of the society. The workplace of women, where the female population participates in the process of personal development as well as national development has the focus of attention in this regard. Women should betreated with respect and dignity at their respective workplaces and in doing so the type and nature of the duties, responsibilities and the place of work cannot be cited as a reason for excuse.

\Dignity and respect should be accorded to the lactating mothers or pregnant women who are part of the workforce of an organization. Motherhood being the most crucial phase and most importantphenomenon in the life of a woman should be appreciated with sympathy and respect, given the fact that the position of mother is extremely superior in Indian culture and traditions. Therefore the employer has to factor in the physical and psychological difficulties which a working woman who is either pregnant or is raising the child after birth. The Maternity Benefit Act, 1961, in this regard, aims to provide certainbenefits to working women in a manner that they may overcome the state of motherhood honourably and not at all being under the apprehension of being chastised for her absence during confinement[19].

According to article 43, the state shall endeavour to secure by suitable legislation or economic or organisation or 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 in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas[20].

"Everyone has the right to rest and leisure"[21], which is the notion enshrined in The Universal Declaration of Human Rights in article 24. It can therefore be observed that article 43 imbibes the spirit of article 24 of the UDHR.

Invocation of Article 43 has led to the following types of legislation:-

a. Those standardising minimum wages[22], and therefore restricting the freedom of contract to employers[23] with the aim to insure a living wage to workers
b. Those condemning unfair labour practices and demanding appropriate state action on such practices
c. Those ensuring minimum bonus to workmen[24]
d. Those related to the liberation and rehabilitation of bonded labour[25]

The most important contribution of article 43 is with respect to what is called a living wage. The simple meaning of a living wage is such a quantum which is able to sufficiently satisfy the demands of food and other necessary items. That a living wage, for a male earner, should be able to secure not only the bare minimum of food, clothing and shelter but also benefits like education for the children, health protection, and social assistance against misfortunes like old age. In other words, when compared to a fair wage, a living wage should come at par with a fair wage when it comes to the provisioning of essentials but should also be able to provide small comforts of life as well as protection in old age and evil days[26]. Minimum wages can be termed as living wages which ensure not only their physical subsistence but also the maintenance of health and decency[27].

Article 43 has been held to be constitutionally valid. That the conditions placed by it are intra vires of the constitution for itplaces restrictions upon freedom of contract by the minimum wages fixed under minimum wages act. Apart from this, it places reasonable restrictions on the freedom of trade, as a result of it[28]. Dr S K Agarwala[29] has summed up the

[18]Dr. D DBasu, Commentary on the Constitution of India, Pg 4123 (LexisNexis Butterworth Wadhwa, Nagpur, 8th revised, updated and enlarged edition, Vol 3, 2011)
[19] Ibid
[20] Article 43, Constitution of India
[21] Article 24, UDHR,1948
[22]Bejoy Cotton Mills v. State of Ajmer, AIR 1955 SC 33
[23] Crown Aluminium Works v. Workmen, AIR 1958 SC 30
[24]Jalan Trading Co. v. Aney, AIR 1979 SC 233
[25]BandhuaMuktiMorcha v. Union of India, AIR 1984 SC 802
[26] Supra Note 19
[27] Ibid
[28]Unichoyi v. State of Kerala, AIR 1962 SC 12
[29] Former Professor in the Lucknow University and AMU and Poona University

proposition in this regard and has compiled the following principles by analysing the various judgements of the Supreme Court[30]:-

1) Securing of living wages to workers which would be guaranteeingthe physical subsistence as well as maintenance of health and decency.
2) Taking account of all important factors and then finding different categories of wage structures.
3) Formulation and implementation of the statutory minimum wagelegislation should be the aim of the state which would be in line with the doctrine DPSPs.

Article 43A informs that 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[31].

According to the Supreme Court in Gujarat Steel Tubes case[32], this article provides a novel world viewof industrial relations. It ensures discharge, reinstatement, and right to back wages on reinstatement. Furthermore, this article is an appreciation of the simple fact that the workers have a special status in the socialist pattern of society. Apart from this, the article recognises the notion that labour is not a commodity and therefore the workers are not to be considered as mere vendors of labourbut should be treated as active producers of wealth, much like those who supply the capital[33]. Article 43A and the preamble when read in the light of thedoctrine of natural justice, make it crystal clear that if in the proceeding for winding up of a company the views of the workers are not taken into account then it will amount to grave injustice as it would be a one-sided and unilateral decision of the management and the workers would bear the brunt of it because winding up would lead to termination of their services[34].

CONCLUSION

It can therefore be observed that the constitutional scheme provides the strength and power to the three organs of the state to take the cause of the workers and employees forward. The overall framework in this regard is laid down by the constitution by providing the workspace where the legislature will be making the law, the executive will be implementing it and the judicature would be adjudicating upon it. It should however be noted that what all are referred to as worker safeguards or employee safeguards in academic and legal discourse is a broad construct involving a multiplicity of factors, where the most important being the factor of time. What all was considered important in the field of employee welfare and safeguard a century ago will not be relevant now and the things considered good today will be found wanting a decade later. The bottom line is that employee safeguard is an important area of the socio-economic makeup of the society which is constantly evolving. Therefore the nature of government intervention has to take note of this reality.

[30] Supra Note 19
[31] Article 43A, Constitution of India
[32] AIR 1980 SC 1896
[33] National Textile Workers' Union v. Ramakrishnan, (1983) 1 SCC 228
[34]Ibid