Chapter-VI

Conclusions and suggestions
Article 21 of the Constitution of India purports to say that life cannot be taken away except according to the procedure established by law. This is one aspect of right to life. An equally important aspect of that right is the right to livelihood, because no person can live without the means of living. Livelihood is indispensable to keep the body and soul together. Depriving him of the basic means of livelihood means slow killing due to starvation. This is much against the spirit of the Constitution where right to life embedded in the Directive Principles of the State Policy. The worth of human life is more than the worth of the animal life. Right to life means the right to live decently as a member of a civilized society¹. Thus, right to live with human dignity is the fundamental right of every person². The founding fathers of Indian Constitution envisaged and ensured a just society. The social order to be the one, where would be gainful employment to every one, leading to prosperity, individual liberty and justice, the state to create necessary conditions in respect of economic and social development in order to build up such an order. Thus, the concept of social justice is enshrined in our Constitution. Equality before law³, prohibition of discrimination⁴, opportunities in public employment⁵, right to life⁶, are the fundamentals on which one can build the concept of social justice, similarly, concept of the

³ Article 14
⁴ Article 15
⁵ Article 16
⁶ Article 21
material resources, power to acquire property for public purposes, grant of living wages and conditions of work, go to lay the foundations of economic justice.

Indian Constitution is adopted by the people of India to constitute India into Sovereign, Socialist, Secular, Democratic Republic, Justice-Social, Economic and Political, equality of status and of opportunity. These are the reflections of the aspirations of Indian people in the freedom struggle. The aspirations of Indian People are mentioned in the Part-IV of the Constitution under Directive principle. The Supreme Court held that Equal pay for Equal Work as assumed the character of Fundamental Rights. The latest decision of the Supreme Court reported is one of the important decisions. It held comprehensively about the Articles under part-IV of the Constitution and about the social justice and equality.

The Supreme Court held that the Right to Economic equality is a Fundamental right are languishing and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in Indian civilized democratic setup so that every individual would strive constantly to higher level. The effects of unemployment is dangerous feature to Indian society. It may be noted that the "education is given by the parents and the student who complete the education feels frustrated and despair and discouraged and also dejected. It is also to be noted

7 Ceiling on land holdings
8 Article 43
9 Article 39 (D) of Part-I of the Constitution
10 1982 SC-876
11 AIR 1997 SC 645
12 AIR 1995 2834, 1996 (4) JT (SC) 555
that there is no security for the children of employers. The person is constrained to follow unfair methods in acquiring the wealth for safeguarding his children. The youth educated and uneducated whose services were not utilised for the welfare of the nation are easily attracted towards the negative tendency of regionalism, created hatred among the sections of people. Therefore, it is in the interest of the nation that the manpower of millions of Indian should be used for the development of India. Every citizen of India should be secured of livelihood, which can be done by providing work. All the resources of India should be channeled to guarantee the work to everyone and all the evils of negative tendencies, such as corruption, nepotism, hatred among Indians in the name of religion, region, and caste will he eliminated. There is a tendency of thinking that the guarantee of work may lead people to eliminate. This aspect of the issue has to be tackled by raising the consciousness of the citizen that is having the right over the means of production and resources of India like any other citizens and also duty to work for the nation.

Chief Justice Chandrachud vehemently defended the right to livelihood in 1986 in Olga Tellis Case. His Lordship propounded that the right to life provided in Art. 21 includes the right to livelihood. His Lordship observes that the sweep of the right to life conferred by Art 21 is wide and far reaching. Thus right to work is indispensable component of right to live. A man without any work cannot earn and live. Thus the work provides means of livelihood, which in the language of Chief Justice Chandrachud, makes a person possible to live. It is in this view that store that the right to live

13 AIR 1986 SC 180
includes right to livelihood and also right to work. These two rights must be deemed to be integral components of right to life. In the light of his Lordship's unequivocal findings, we expect that the unemployed who are suffering from hand to mouth or from half starvation's can, by affirmative action, compel the state to provide adequate means of livelihood or work. But his Lordship dissuaded them holding that they are not entitled to compel the state because the right to adequate means of livelihood incorporated in Part IV\textsuperscript{14} and right to work incorporated in Article 41 are non-justifiable and unenforceable fundamental rights. Right to work is recommendatory in character in the Directive Principles of State Policy without absolute enforceability.

Even though it is a burdensome to the State to ensure employment to all the workforce in the country, the government has to develop viably appropriate strategy to alleviate poverty through workable employment guarantee schemes. The scope of recent employment guarantee enactment\textsuperscript{15} must be revamped and expanded in the context of LPG\textsuperscript{16} where there is imminent threat of mass unemployment in the recent boom of technological advancement and outsourcing. While accent being laid on rural employment for 100 days in a year, the urban unemployed must be taken into active consideration in the employment guarantee schemes that are mostly slum dwellers both in organized and unorganized sectors of labour. Realising the significance of human resource, the UNDP's\textsuperscript{17} Report\textsuperscript{18} of Human

\textsuperscript{14} Article 39(a)
\textsuperscript{15} NEGA
\textsuperscript{16} Liberalization, Privatization, Globalization
\textsuperscript{17} United Nations Development Programmes
\textsuperscript{18} Human Development 1999
Development 1999 requires stronger policies to protect and promote human development—literacy, education, training, preventive health, gender justice and so forth. Empirical research also has consistently demonstrated the importance of accumulating human capital as a pre-requisite for rapid sustained growth in living standards. The acquisition of formal education and improvements in health standards definitely increase labour productivity. It also empowers them to get themselves liberated from poverty through their own efforts.

India is a signatory to most of the ILO19 Convention and international labour standards are reflected in the laws of the country. Besides, courts in India invoke these standards to interpret legislative provisions; there is a strong trade union movement, often militant, at least in the organised sector compelling employment practices to conform to the letter and spirit of the laws. On the top of it, the courts have evolved a labour jurisprudence which is worker-friendly and human rights respectful. The unorganized farm sector, of course, is a different where standards are flouted and exploitation persists. Under the Indian Constitution the State is obliged, within the limits of its economic capacity, to make effective provision for securing the right to work and to offer public assistance. Central and State legislatures should protect the interests of all classes of workers and removing certain exploitative practices in labour relations. They cover the entire range of employment related rights, employment derivative rights, non-discrimination and equal treatment rights. The argument is that any financial burden placed on the state governments would jeopardize the whole project, because state

---

19 International Labour Organization
governments are not financially strong. It is also argued that the central government cannot pass an Act that unilaterally imposes a financial burden on the state governments. Implementing such an Act would require conformity with Acts in individual states, and this could lead to long delays. On the other hand, full funding from the central government could lead to a breakdown of accountability: state governments would be free to relax work norms, raise wage rates and hire en masse, without any restraint so as to ensure the enforcement of right to work in accordance with the Constitutional principles.

To overcome the legal hurdles confronted by the labour force in the context of right to work is only part of DPSP\textsuperscript{20} and not at all a fundamental right, the only feasible course of action is to handle the issue on a broad based spectrum of human rights perspective. Utter poverty due to unemployment consequent on deaths due to hunger should be viewed with humane considerations rather than unnecessary rumpus over the dichotomy between fundamental rights and DPSP. The whole concept of human rights is based on the premise that there are certain human values which do have universal application. These include such basic aspects of human existence as the right to life and freedom from arbitrary detention, torture or fear. The declaration\textsuperscript{21} reflects the philosophy of modern welfare state— the right to social security, right to work, equal pay for equal work, right to form and join trade unions, right to rest and leisure and so on. Human rights are essential components of humanism. So far, human rights are generally seen as prevention of abuse by the state. As people are moving towards, the human beings are poised as worthy entities deserving respect, fair treatment and social justice. The very

\textsuperscript{20} Directive Principles of State Policy of Constitution of India

\textsuperscript{21} Universal Declarations of Human Rights in 1948
fact that human rights are identified with 'claims' and 'entitlements' points to their denial and violation across the world. Countless people around the world suffer from hunger, disease and lack of opportunity. They are also denied the enjoyment of basic economic, social, cultural, civil and political rights, which are of paramount importance for the full realisation of human dignity. Human rights are supposed to be the rights that one holds merely by virtue of being human beings. The whole concept of human rights is a modern idea. This idea got crystallised in the 1948 Universal Declaration of human rights. We now find a thrill among the people all the world over to conceive themselves as a part of something bigger, to identify with each other and to demand that they should be recognised as human beings, irrespective of caste, creed, race, sex domicile or citizenship. Right to work is at the core of all human rights though work jurisprudence developed rather independently of human rights discourses. Because 'work' was perceived as a means of earning a livelihood, work was taken as a necessary part of survival strategy. When work was taken as a commodity and exploited by those who employ people, conflicts arose and justice was sought in terms of improving conditions of labour. The ILO\textsuperscript{22} endeavoured to define, protect and promote human rights in the working world. According to Universal Declaration of Human Rights\textsuperscript{23}

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

\textsuperscript{22} International Labour Organization
\textsuperscript{23} Article 23
- Everyone, without any discrimination, has the right to equal pay for equal work.

- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

- Everyone has the right to form and to join trade unions for the protection of his interests.

The process of change in the right to work can be brought about by appropriate measures of judicial activism, transparent executive and effective legislature. Ad hoc measures like State sponsored employment guarantee schemes are not at all permanent panacea because these are all temporary palliatives offering no solution. This is due to lack of clarity over the concept of right to work and live. All the existing definitions of right to work are inadequate and elusive. A precise definition in the light of human rights can offer a permanent solution. Right to live with human dignity in human rights perspective needs a radical change to save the lives of dying labour by developing meticulous strategies and working modalities towards the realization of right to work.

Lack of transparency and accountability has hampered the Indian economic development at all levels. The problem of poverty persists because of a number of leakages in the system. New laws have to be evolved to ensure more accountability. Bodies like the Planning Commission, which have little use in framing macroeconomic policies in the era of free markets,
should be modified into new constitutional bodies which can hold governments accountable for their failure to implement development programmes. India is facing many serious problems like inflation, unemployment, poverty, disease and hunger, energy crisis, population explosion, illiteracy, Proliferation of nuclear weapons, Kashmir issue, tension with neighbouring countries, violence, terrorism, religious fundamentalism, abuse of human rights, threats to democracy, environmental degradation, AIDS, drug abuse. Not only India, many other South Asian countries were also facing the same problems. The following conclusions make the point clear to understand the concept of right to work.

• The dearth of legislations relating to right of work and ignorance of work related laws; illiteracy and the lack of dignity of labour were the main reasons for the stress in the working-class people in India.

• The impact of LPG and the preponderance of strictures laid down by the international agencies like IDBR, IMF and imperialistic tendencies of Western world is so great that India cannot afford to loose employment opportunities in this caste based employment structure. The ancient caste corridors of work must be safeguarded so as to protect and promote the interests of the working class.

• Poverty, illiteracy and population explosion have the unholy relationship among them. This being the reality, it is not only surprising but also disheartening to note that first decade of reforms did not succeed in reducing the poverty. Thus ignorance of work related

---

24 International Bank for Reconstruction and Development
25 International Monetary Fund
laws, illiteracy and the lack of dignity of labour was the main reason for the stress in the working-class people in India.

Globalisation has intensified the marginalisation of the labour who have been the poor victims of capitalism. This is true especially in the unorganised sector which consists of small units; the workforce in these units is small. The workers do not ventilate their grievances. The situation becomes further aggravated because the large majority of these workers are poor, ignorant and illiterate, unaware of their rights; and has meagre wages at starvation level. It has gone from generations to generations. Thus globalisation, privatisation, liberalisation and advent of new technology have a greater influence on the workflow and workfare of the working class.

- Invasion of capitalistic ideas and power by Foreign Direct Investments, World Bank Loans threatens the workforce by their secret manifestos.

- The planning and policy issues on wages influenced by many other economic variables—incomes, costs, productivity, prices, consumption, investment and so on. The police applicable to them have major influence on wages.

- Inclusion of Right to work under the Directive Principles of State Policy, making government as less burden and irresponsible due to unjusticiable nature.

- Enforcement of the right to work and implementation of the programmes have no meaning particularly in the unorganised sector where all round social security system is built up.

- There is no indication as yet that the unemployment problem will be given the top priority and all government economic policies would
have converge on the central point of generation of productive employment. Thus economic non-viability is also another impediment for realisation of right to work.

- In the content of globalisation and the consequent increasing informalisation of the labour force is under growing pressure from the trade unions working the unorganized sector workers, home workers.

- Most of the failures of the state come about because of poor implementation, which is the result of weak and non-existent institutions. Implementation need to be improved. Thus Failure of government schemes for eradicating poverty and unemployment problems without proper planning and implementation of the government.

- Even with the presence of an efficient public sector and a cooperative sector meeting social obligations, many of the problems cannot be resolved unless there is coexistence of a private sector and induction of foreign capital in essential sectors in which large technological gaps exist. Thus under the peculiar conditions of our economy, the Indian economic system is bound to be a juxtaposition of various moulds and not a single rigid mould.

- Under multidimensional system the process of planning, coordination and consolidation has great relevance. This relevance is all the more increased when there are efforts in India to have mindless globalisation, liberalisation and privatisation affecting particularly the interests of the poor. Thus Privatisation and closing of public sector undertakings co-operative societies has direct impact on the literates as insecurity to the employment. Similarly the invasion of Capitalistic
ideas and power by FDI\textsuperscript{26}, World Bank Loans threaten the workforce by their secret manifestos.

- The two important rights, namely the citizen's right to an adequate means of livelihood guaranteed under Art. 39(a) and the right to work incorporated in Art.41 of the Directive Principles, and held unequivocally that the principles contained in Art.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 and 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. Thus inclusion of Right to work under the Directive Principles of State Policy, making government as less burdensome due to unjusticiable nature.

- In this regard, one can say that labour rights constitute one of the well developed areas of human rights law and perhaps the most advanced among social and economic rights. Nonetheless, when it comes to specific situations, right to work displays lack of adequate conceptualisation in terms of corresponding duties and clear implementation strategies. In India, even today i.e., after 10 years of implementation of economic reforms, millions of human beings have to barter their souls for a glass of clean drinking water. It is because of the fact that our 'priorities' hither-to were not realistic. Thus enforcement of the right to work and implementation of the programmes have no meaning particularly in the unorganised sector.

\textsuperscript{26} Foreign Direct Investments
where all round social security system is not built up. Similarly the power structure at the local level are not able to benefit for the economic freedom for enforcing the right to work.

SUGGESTIONS

- Work should be provided proportionate to the educational qualifications, technical skills and other related criteria.
- Right to work should be ensured through liberal interpretation of right to work rather than the legal technicalities.
- Legislature, executive and judiciary must proceed with conceptual clarity while dealing the issue of right to work.
- National Rural Employment Guarantee Act 2005 may be renamed as *National Employment Guarantee Act* and be applicable to urban-educated-unemployed masses too.
- Legislations relating to work must promote and protect the interest of the persons working in both organised and unorganised sectors.
- Women-specific legislation relating to work shall be made so as to encounter the problems faced by the women at workplace. The State should see that all the provisions of such legislations shall be implemented in letter and spirit.
- Legislature should take initiative to redefine the scope of right to work in human rights point of view.
- The planning strategy gave too many responsibilities to the state and the reform strategy had sidelined the state from its functioning. There is a need to reform the functions of the state only through the
constitutional reform. The constitution can do little directly for poverty alleviation but it can do a lot indirectly by reforming and strengthening the role of the state in the quest for poverty alleviation and human development.

- The constitution must improve accountability through stricter laws as well as ensure that decentralisation of government authority takes place as fast as possible.

- The state would also need to evolve new laws to govern the new market economy and to ensure its smooth and efficient functions. Poverty can be, and must be, tackled using three strategies simultaneously; economic growth, human development and anti-poverty programmes.

- Since right to life and livelihood are universally considered to be human rights, the right to work may be recognised as a fundamental right. The legislature may take initiative to make an explicit provision under Part III of the Constitution of India.