Chapter-I

Introduction
CHAPTER I
INTRODUCTION

"Political, legal, philosophical, religious, literary, artistic development is based on economic development, one and only cause which always assert work."  

.......................... Frederic Engels

I. GENERAL

The society in which we are living in is dynamic and changing day by day. Man, just as the society he lives in, is inseparable from nature with which he constantly interacts. Man cannot exist without providing for his primordial, natural, biological needs, the need for food, clothing, and shelter and so on. Nature cannot provide everything that man needs in a readymade form. Much has to be produced by man himself that means the man has to work.

Work has always been a domain of exchange between man and nature. The content of work may remain the same at different stages in man's history. However the essence of man's attitude towards work differs on the social form. It remained as a means of satisfying social needs and as a prerequisite for the development of man's abilities.

The transformation of work into man's prime and vital need is grounded on the far-reaching changes in the material and technical basis of

1 Frederic Engels
labour, in socio-economic relations and people's psychology and conscience. The schedules and methods of work which would match the biological rhythm and temperament of each person will have a greater opportunity for their all-round development.

As man is born free, he has also the freedom to work or not to work. The only force that may propel him to work may be the compulsions of his circumstances. A man has to earn money to lead certain position amongst his fellowmen and in society. Work is the most important factor in the evolution of world civilization. Historically, there are five socio-economic formations. The primitive-communal, slave-owning, feudal, capitalist and communist, the first phase of which is socialism. The socio-economic formation is a certain type of society, an integrated social system operating and developing according to its specific laws on the basis of a given mode of production. It is changing and developing all the time. Transition from one socio-economic formation to another means a deep social upheaval which takes place in the form of revolution. Just as the slave-owning society yielded ground to feudal society, and the latter to capitalistic society, the latter as a socio-economic formation. This is a socio-historical and law governed process of development of human society. Cognition of the progressive character of social development is of great practical significance, for it gives working people optimism and confidence in their victory.
It is only under socialism that it turns into the main stimulus for the development of social humanism and optimism. If a person is not engaged in any work, the effects are damaging and indescribable. The physical sufferings which accompany it are bad, but the mental agony is worse. If a person is not useful to the society, he nurtures a feeling that he is unwanted by the society, and turns to be unsocial, anti-social, anti-national, criminal and so on.

Over the centuries, people have been yearning for freedom, justice and a happy life. The finest and noblest of men, who saw the suffering and humiliation of the common folk and the injustices they were subjected to, could not put up with the order of things that generated all those iniquities.

Many doctrines and many social ideals were created and many means and ways were suggested for their realisation in the name of freedom and justice for the common will. However, none of them provided working people with a compass that would show them the only correct path to a society whose hallmarks would be free labour, peace, liberty, equality and social justice.

Work has been variously lauded by economists and rulers, philosophers and poets, preachers and teachers. Even a person who has more than enough means and wealth to live happily and luxuriously has to work

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only to be respected in society. Idleness is condemned universally and vehemently. Work alone gets one, some status economic as well as social. In the present economic and political context in India, the impact of the policies of globalisation and liberalisation has made strong in the lives of the people in the third world. Globalisation has intensified the marginalisation of the labourers 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. Customs and traditions further pull them backward resulting in exploitation of these workers.

If a person makes a person possible to live, then the right to live includes right to livelihood and also right to work. These two rights must be deemed to be integrated components of right to live. They are not entitled to compel the State because, the right to adequate means of livelihood incorporated in the Constitution and right to work also incorporated which are non justiciable and unenforceable in the Indian Constitution.

4 Article 39 of Indian Constitution
5 Article 41 of Indian Constitution
The Universal Declaration of Human Rights is one of the most important documents of 19th century. On 10th December, 1948, the General Assembly adopted and proclaimed the Declaration of Human Rights. It acquired a degree of authority and became a part of international law as a common standard of achievement for all people and all nations.

According to Universal Declaration of Human Rights

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

6. Dayal Kishan - ‘All Human Rights for All’, Law and Justice Vol: 4-7,
7. Article 23
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay\(^8\). Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control\(^9\). (2) motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Labour Organisation, one of the main bodies of United Nations, during the past two decades has extended its activities in two other directions which inevitably enlarged the scope of work and thus generated work policy. The first one is Tripartite World Conference on Work & Employment in 1976, A programme of action linked full employment with the satisfaction of basic needs. In 1984, ILO embarked on research, field projects and stressed the importance of the informal sector as a source of employment concerned not only work carried out within an employment relationship but also of earning a living, including self-employed work. In recent years, the informal economic sector of many countries has created more jobs than the formal sector which truly fulfilled the research works of ILO\(^10\). Thus ILO principles have been remarkably consistent in their commitment to a global approach to social progress.

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\(^8\) Article 24  
\(^9\) Article 25 (1)  
\(^10\) Principles of ILO
The ILO declaration on fundamental principles and rights at work aims to ensure that social progress goes hand in hand with economic progress and development. The declaration is a promotional instrument - and a reaffirmation by the ILO's government, employer and worker constituents of central beliefs set out in the organization's constitution. Adopted in 1998, the declaration commits member states to respect and promote principles and rights, whether or not they have ratified the relevant conventions. The Constitution of India enjoins upon the State, a duty to secure to its people basic social and economic right for their welfare. The duty of providing work to all able-bodies persons is cast upon the State. These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. The declaration makes it clear that these rights are universal, and that they apply to all people in all states - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.

This commitment is supported by a follow-up procedure. Member states that have not ratified one or more of the core conventions are asked each year to report on the status of the relevant rights and principles within their borders, noting impediments to ratification, and areas where assistance

may be required. These reports are reviewed by the committee of independent expert advisers. In turn, their observations are considered by the ILO's governing body.

The declaration and its follow-up provide three ways to help countries, employers and workers achieve the full realization of the declaration's objective. Firstly, there is an annual review composed of reports from countries that have not yet ratified one or more of the ILO conventions that directly relate to the specific principles and rights stated in the declaration. This reporting process provides governments with an opportunity to state the measures they have taken towards achieving respect for the declaration. It also gives organizations of employers and workers a chance to voice their views on progress made and actions taken. Further, the global report each year provides a dynamic global picture of the current situation of the principles and rights expressed in the declaration. The global report is an objective view of the global and regional trends on the issues relevant to the declaration and serves to highlight those areas that require greater attention. It serves as a basis for determining priorities for technical cooperation. Technical cooperation projects, the third way to give effect to the declaration, are designed to address identifiable needs in relation to the declaration and to strengthen local capacities thereby translating principles into practice.

The declarations principles and rights are gaining wider recognition among organizations, communities, and enterprises. These fundamental principles
and rights provide benchmarks for responsible business conduct, and are incorporated into the ILO's own tripartite declaration of principles concerning multinational enterprises and social policy. The guidelines for multinational enterprises emphasize the principles and rights found in the ILO declaration and the global compact promotes them as universal values to be achieved in business dealings around the world. A growing number of private sector codes of conduct and similar initiatives also refer to the fundamental principles and rights at work. The economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions; Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development; whereas ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation; Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair
share of the wealth which they have helped to generate, and to achieve fully their human potential; Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles; Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the constitution of the organization and to promote their universal application;

A right to work law guarantees that no person can be compelled, as a condition of employment, to join or not to join to pay dues to a labor union. The right to work is neither "anti-union" nor "pro-union." It is a matter of individual freedom. The right to work principle affirms the right to work where they want and for whom they want without coercion of any kind to join or not to join labor unions, or to support them in any way. Unions, after all, are private organizations.

The Nobel Laureate\textsuperscript{12}, in a comment on the ILO Report of 1999 commented that certain basic rights whether legislated or not are the part of the decent society and go beyond new legislation to other social, political, and economic actions. The rationale for labour laws is founded on the recognition

\textsuperscript{12} Sen. Amartya
of unequal power relationship between workers and employers. The need for labour legislation also originates from the fact that labour is treated as a commodity and the market forces cannot take into account the value of freedom, equality, economic security and dignity essential for building a civil society.

Inculcating values of equality, excellence and pluralism through Human Rights movements can play a vital role in social mobilization and in achieving the goals of social justice for all in the present scenario of intensification of competition and operation ideology of neo-liberalisation.

1.2 SIGNIFICANCE OF THE PROBLEM

Right to work is obviously not a single concept, but it is a complex aggregate of normative standards like freedom of assembly, freedom of expression, right to livelihood, right to life and right to dignity and so on. Right to work is at the core of all human rights developed independently because of labour and work.

The right to work is closely related to poverty in the economy. It also raises the question of the economic model appropriate for the exercise of the right. India has adopted a progressive social justice and human rights oriented approach towards work-related rights. Work related rights assumed significance rate in an under-developed economy. Today with economic
liberalisation and structural adjustment policies, the status of labour rights is under constant threat.

Right to work as a fundamental right raises many issues. It needs a careful examination. Removal of poverty, unemployment and backwardness is possible through effective legal measures. The totality of these conditions are to be considered. Poverty alleviation programmes are not impressive due to wrong identification of targets due to corruption and favouritism. All employment output goals are said to be conflicting due to capital intensive technology.

Since 59 years of our freedom, the inclusion of right to work in the directive principles of the Constitution has not yielded the desired results. Many people made sacrifices in the freedom struggle to see that all Indians live a happy and dignified life. Right to Work as a fundamental right would really turn out to be in raising the banner of socialism under the constitution, socio-economic policies and growth strategies subsequently adopted to widen socio-economic disparities.

1.3 OBJECTIVES OF THE STUDY

In India much prior to the constitutional guarantees came into being and independent of the constitutional process, several rights relating to work

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13 Justice, Dr. K. Ponnaiah, President, Forum for Right to Work AP
got into Indian Labour Law and practice. In this regard one can say that labour rights constitute one of the well developed areas of human rights law, the most advanced among social and economic rights.

To make effective provision for realising the right to work in true spirit the Indian Constitution and State must obliged to offer public assistance by securing a living wage for all workers\(^1\), Securing humane conditions of work and maternity relief\(^4\), Securing adequate means of livelihood\(^6\), equal pay for equal work for both men and women\(^7\), promoting health and strength of workers\(^8\). But these are the obligations of the state adopted in the constitution as part of the Directive Principles of State policy\(^9\). To overcome all these legal hurdles and impediments the only course that is democratically feasible and to be pursued is to mobilise the public opinion for the transfer of this right to work as a fundamental right under the ambit of human rights.

Hence an attempt is made.

\(\triangleright\) to examine the right to work in theoretical and philosophical dimensions.
\(\triangleright\) to evaluate whether the incorporation of right to work is a fundamental right under Indian constitution.

\(^{14}\) Article 43  
\(^{15}\) Article 42  
\(^{16}\) Article 39-A  
\(^{17}\) Article 39-D  
\(^{18}\) Article 39-E  
\(^{19}\) PartIV of the Constitution
to assess whether the concept of right can be used as a major tool for poverty eradication or not.

to examine the right to work as an important obligation on the government.

to examine the potential of generating gainful employment for the entire labour force through a right kind of employment strategy.

Right to Work as fundamental right is feasible constitutionally and possible democratically is a question for the close examination. Our country is not only democratic but also socialistic one. Thus a careful research is needed in implementation of right to work as a fundamental right.

In addition to the questions, the researcher also kept the following objectives in mind.

➢ To analyse the Constituent Assembly debates along with constitutional provisions.

➢ To examine the Pros and Cons of making this right as a fundamental right.

➢ To analyse the record of the Indian Judiciary in the protection and promotion of human rights during the 50 years.

➢ To analyse the obligations of accessing constitutional right to reservations in employment particularly women and weaker sections.

➢ To examine the work of people exposed to a great deal of undeserved, unwanted suffering and violence
To study the State's greater efficiency and accountability in the administration of anti-poverty programmes.

To study all the economic concepts relating to the labour force, wages and factors affecting the working environment.

IV. METHODOLOGY ADOPTED

The title is selected with a great interest to explain the concept of work under human right perspective in particular in the present day context. In the legal research the most suitable method is the hypothetico-deductive method. The nature of the problem being a socio-legal, it is not possible to study it by purely experimental method. The analysis of the legal texts within the framework of both national and international concepts pertaining to right to work. Although the study is primarily a legal exploration, the legal discourse is located within historical developments and contemporary situations and therefore acquires an interdisciplinary flavour. Hence doctrinaire method is used for the study because law is a social science, and the problem at hand deals with the socio-legal and economic dimensions of right to work. This topic needs a legal research in an analytical manner based on statutory material and judicial decisions, policy oriented, sociological, economical interdisciplinary materials and doctoral one.

The relevant material is collected from primary and secondary sources. Material and information are also collected from both vertical and horizontal sources. This is collected from law books, journals, judgements of Supreme
Court and High Courts, reports of economic magazines, labour commissions, committees, National Human Rights commissions, ILO and recommendations of Agencies, Forums, Documents. Periodicals, Reports and relevant matters published in news papers, books, related to the disciplines like Economics, Human Rights and Sociology. For effective implementation of the analysis the material was collected and analysed in a suitable model.

V. HYPOTHESIS

The researcher has taken up the concept to consolidate the important dimension and to give comprehensive idea about the problem. After a constant study the researcher has formulated the following hypothesis:

- Dearth of legislations in certain aspects 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.
- Globalisation, Privatisation, Liberalisation and advent of new technology have a greater influence on the workflow and workfare of the working class.
- Lack of proper planning and implementation of the schemes towards eradication of poverty and unemployment is leading to non-realisation of the right to work.
- Privatisation and closing of public sector undertakings co-operative societies has direct impact on the literates as insecurity to the employment.
- Invasion of capitalistic ideas and power by Foreign Direct Investments. World Bank Loans threatens the workforce by their secret manifestos.
- Improper implementation of the five year plans in promoting employment to the primary and secondary sectors to develop.
- 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.
- The power structure at the local level is not able to benefit for the economic freedom for enforcing the right to work.
- Economic non-viability is also another impediment for realisation of right to work.

VI. REVIEW OF THE LITERATURE

Literature in connection with the present problem, is received from the earlier studies, published books, reports, periodicals journals, newspapers relating to the concept of work in India and also in other countries. The Review is done mainly on the economic concept to the present judicial decisions in particular to stress the need of right to work as a fundamental right in an expanded scope.
Justice Krisha Iyer V.R in his book entitled *Human Rights and the Law* 1984 with refreshing fearlessness and passion for socio-legal betterment explores men and matters, issues and themes, displaying a deep commitment to working community. The author has rightly examined the interaction of law and social change in the context of Indian legal system. He has gone beyond and written with zeal and amazing originality on a panorama of subjects. The work on human rights is a combination of stimulating scholasticism and sparkling style.

Agarwal, HO in his work, *Implementation of Human rights Covenants* 1983 examines international standard for the protection of human rights and then compares them with that of Indian standards. In this regard, it throws light upon how there is a difference of theme reality. It enumerates those fundamental rights, which have been enshrined in Part III of the Indian Constitution. Besides this, it also enlists those rights which are available to the citizens of India by liberal interpretation of Article 21 which otherwise are not specifically mentioned in the Constitution.

Pandey JN in his work *Constitutional law of India* 2000 throws light upon the institutional framework of the Indian government. It gives the legal interpretation of rights guaranteed in the *fundamental rights*. This book is helpful to understand judicial pronouncements regarding the fundamental rights.
Jain MP in his book, *Indian Constitution* 1978 has devoted his energies to explain the legal interpretation of various provisions of the Indian constitution. It also helped the researcher to systematize the judicial decisions relating to right to work.

Bhajwa GS in his work *Human rights in India, implementation and violations* 1997 gave very detailed account of implementation and violations of human rights in India. This book objectively evaluates the constitutional measures adopted by India for implementation of human rights choosing the Universal Declaration of Human Rights and the international covenants in human rights as the principal yardstick of compliance. It also evaluates the role of judiciary for implementation of human rights in India.

Dhusia. BK in his book entitled *Making right to work fundamental* 1990 has given a detailed account of the legal and socio-economic implications relating to the right to work. This work is a combination of stimulating scholasticism and sparkling style. The author has rightly examined the boosting of self employment as the only way to realise right to work towards development.

Chandra Mowli. V in his book entitled *Right to work Why make it fundamental?* 1992 has emphasised the significance of fundamental rights, like the abolition of untouchability, of forced labour and of child labour, deserve our special attention in order to understand the degree of implementation or enforcement of right to work. According to author inclusion of the right to work under fundamental rights is of importance not because it is very easy of
solution or implementation in the near future but because it is the very cornerstone i.e. Constitution.

Basu DD in his book entitled Human Rights for poor people 1990 has clearly explained the significance of right to work under the provisions of the Constitution. He explained the importance of right to work under the Directive Principles of State Policy spelled under Article 41. According to the author the moment right to work is listed in fundamental rights, it becomes justiciable. It means any individual can go to the court under the writ jurisdiction and get this fundamental right enforced.

David Feldman in his book entitled Human Dignity as a legal value 1997 explained that law recognises that dignity is an important value which may generate duties on public authorities to provide assistance to those who would otherwise be left destitute. This work is useful to understand the onerous responsibility on the government and its public authorities stipulated under the Constitution.

Hemalatha Devi. Varanasi, Sayed Maswood, and Yuvakumar Reddy. bonds in their work entitled Right to work as fundamental right: Illusion or reality? Explained that the Constitutional provision under Article 41 may be read with Article 43 which, provides for minimum wage, living and wage. According to the authors no doubt providing right to work is a welcome factor. But at the same time it is very important to keep the practical
difficulties in implementation in mind. Distributive justice to the society is more important than the fundamental right of a single individual.

Mahendra K. Premi in his book entitled *Right to work - A demographic perspective* 1989 presented certain demographic perspectives in respect of right to work by considering the sex and age composition, and educational attainment of the unemployed persons by rural and urban residence. According to him it is not that the Constitution has till now been silent on right to work, article 41 has laid down that the State shall, within the limits of economic capacity and development, make effective provisions for securing the right to work, to education, and public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underserved want. This book covers not only right to work, but also right to education, and a right to public assistance in case of unemployment, old age, sickness, and disablement, but it is within the limits of economic capacity of the state. This work is useful to understand the importance of right to work within the constitutional limits.

Justice Dr. K. Punnaiah in his work entitled *Right to work as a fundamental right* 1998 emphasised that equal importance shall be given to right to livelihood, because no person can live without the means of living, that is the means of livelihood. If the right to livelihood is not treated as part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. According to him the harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of
the Constitution. This matter is very useful to define that right to work as the basic feature of the Constitution of India.

Madhava Menon. NR in his article entitled Right to work Some relevant question to be considered 1998 mentioned that right to work is obviously not a single legal concept. It is a complex aggregate of normative standards some of which are nothing but classic freedoms such as freedom of assembly, freedom of expression while others are obligations-oriented commitments on the part of the political establishment. According to him if one were to look at the Statute Book, one finds the situation equally promising in respect of labour rights. Central and State legislatures have been over-active in protecting the interests of all classes of workers and removing certain exploitative practices in labour relations.

Gerard Oonk in his book entitled Right to work: Western development assistance and employment guarantee in India 1990 has gave a detailed account about the need for guaranteed employment for agricultural labourers in India, the employment guarantee scheme, western aid and so on. This work is useful to understand the need and importance of the work towards realisation of right to livelihood.

Maithreyee Krishnaraj in her book entitled A positive approach to human rights 2000 wrote that human rights are the essential component of humanism. They are yet to be articulated in practice as positive entitlements that enable human life for a human person, that gives an opportunity to grow
and develop to his or her fullest potential. This make us to understand the essence of humanism under the concept of human rights.

Lin SAY in his book entitled *Quality of life in developing countries* 2001 has given the comparative analysis of the welfare indicators and also explained the levels of living to the satisfaction of needs or wants in certain well defined and quantifiable aspects of the total life situation. According to him the demographic indicators can sometimes become substitutes for welfare indicators proper. Welfare indicators are observable and measurable phenomena which contain information about the degree of satisfaction of human needs. This gives us clear understanding about the comparative picture.

Chakradhara Rao.K in his book entitled *Right to work* 1997 explained that right to work is a tool to provide employment for all. According to him even after long years of independence India is unable to utilize human resources.

VIII. SCHEME OF THE STUDY

The researcher has designed the work to carry out the objectives of the study easily and effectively. The researcher extensively studied the literature available on the topic in an analytical, historical and descriptive mode. The entire study is divided into six chapters.
First chapter covers the introduction, significance of the problem, objectives of the study, methodology adopted, hypothesis, review of literature and scheme of the study.

The Second Chapter deals the origin and development of work from Karl Marx to the present stressing the attitude of work under social concept, work stress and satisfaction.

The Third Chapter brings the human right concept of right to work in the context of work value, quality, dignity and its development in Indian and other countries.

The Fourth Chapter deals with the Constitutional, legislative and judicial analysis of right to work concept in India featuring Constituent Assembly debates, Constitutional provisions, work in pre-industrialisation era to present including planning periods.

The Fifth Chapter covers economic feasibility of right to work in an extended scope under the impact of poverty, privatisation and the recent trends of employment policies and wage policies.

The Sixth Chapter brings out the conclusions and suggestions with a hope that they might be useful to the legislature and executive to implement the laws effectively and the judiciary to interpret the true intentions of the legislature.