CONCLUSIONS AND SUGGESTIONS.

The present study is in depth critical and an enriching study in the field of, ‘A Study of Fundamental Rights to Occupation in India.’ The research scholar has analyzed the constitutional, international, national legal provisions and social economic scenario on the same along with the stand of the various other countries on the different fields of work. The in depth study, when analyzed, has revealed significant findings, which can be summarized as follows.

(a) **Major Findings of the study**

1. A large number of children in India are found to be employed in unorganized sector mainly due to legal restrictions on the employment of children in organized sector, in bidi industry and match boxes manufacturing units, most of the work is done outside the factory premises that is, in the dwelling houses of the workers where the law fails to protect the children form exploitation. In hotels, dhabas, the child workers live in most unhygienic conditions, work beyond the prescribed working hours, not fed properly and are subjected to all sorts of abuses and maltreatment thereby causing various physical and mental hazards. In other working places, in their ‘back breaking jobs’ the children become susceptible to all sorts of occupational diseases like tuberculosis, bronchitis, skin diseases, eye problems, cancer and deformities in the various organs of the body.

2. The world over, more and more countries are adopting a liberal attitude towards the spheres of work available to women by including them as part of combat fighting on international borders. But in Indian defense services, the woman is still part of way of allied services only and are not allowed to serve the country by way of combat soldier even today. At many places in India the women who dare to venture out of the houses are subjected to mental and physical harassment and torture, while commuting to their place of work, they step into male preserve. In fact relatives of women fear ostracisation if the women happens to be doing night shift in small towns, or ventures in to male preserve as motor mechanics or working at petrol pumps. The male colleagues instead of co-operating misguide about the skills and being themselves apparently insecure about their own position, complain to the senior officers about minor goof ups. Educational opportunities and effective protection are some of the important aspects necessary for the women to survive and earn their livelihood. It is observed that the women’s role often changes as they become the main bread earner, the caretaker for their families especially where their husbands
cannot do the work because of frustration, depression and increased family tensions as in J & K resulting from being subjected to terrorism for more than two decades. But while meeting with me the financial need of the family, women have to enter the outside labour market which is also not tolerated by the male section of the society and the terrorist groups in J & K, as it is difficult for them to accept the changing role of the women, whereby they coerce the women to be in veil at public places, or to give up police force jobs.

3. In view of the emerging trend of welfare of society especially in the field of health, increasing number of countries throughout the world, are implementing ban on smoking without seriously giving a thought on the issue of the fate of employees working in the manufacture of cigarettes. It is to be borne in mind that the ban has social economic fallouts and for a tobacco control law to be successfully implemented it must be accompanied by alternative income modes for those dependent on tobacco.

4. The majority of illiterate, minors, rural workers, rural women especially in the hinterland are forced to take up one or the other menial jobs or work as bonded laborers, for they are not aware of the rights available to them in books, the legal provisions, and as a result they are helpless in case of their exploitation and the silent tacit consent further encourages the employers to mete out cruelties in terms of meager wages insecurity of jobs, absence of labour welfare schemes. Women are not aware of their rights leave alone their participation in power.

5. There is absence of will of the part of the authorities to implement the welfare laws and schemes meant for uplifting of labour class, handicaps, and women. There is non-implementation of the statutory provisions of the equal opportunities act in respect of physically challenged persons despite repeated direction and mandatory statutory provisions.

6. The educated urban workers are able to dictate their terms because of the force of their organizations as trade unions. Their employers have to listen to them because of their being organized and otherwise there being lack of supply of working hands as against the demands in the urban industrial areas and the agile media in the urban areas who with the help of NGOs has helped to bring in light various atrocities being committed on the workers.

7. The occupational accidents and ill-health are a major cause of poverty. A very small number of workers in the organized sector receive compensation for
accidents. If a worker is killed the family may receive some compensation and where
the union demands it, a family member may get a job but the vast majority of workers
or their families receive no compensation. Clearly workplace–related accidents and
diseases place a huge, preventable burden on poor people and the country.

8. None of the major ILO convention dealing with occupational safety
and health (OSH) has been ratified in India. An ILO mission provided the government
with new, comprehensive draft legislation on health and safety after the Bhopal gas
tragedy, however, the government tinkered with the factories Act, ignoring other
industries and the ministry of environment and forests, since the Bhopal disaster of
1984 there have been more than 100 instances of gas leaks in industries, which have
caused more than 7,000 deaths

9. The multinational companies are the profit making ventures at global
level, are hell bent upon stepping into the shoes of the European trading companies
who had intruded India a few centuries ago. The state governments in collaboration
with the MNCs also become insensitive to the problems of general public. As in water
 parched state of Rajasthan, the government has permitted coca cola to install water
plant even when it draws hundreds of gallons of water, and all wells and ponds in the
area have dried up ruining the agriculture based economy of the area. Further the
government sanctioned a beer distillery in the said area. Booming bottled water
industry is draining the aquifers and other water resources, contributing to pollution as
there is immense waste of plastic and energy if one considers the numbers of bottles
made and transported and disposed of. The MNCs shrug their shoulders on the issue
of high level of pesticides residue found in water, claiming that their products meet
government norms and pesticide residue in ground water anyway is a national
problem.

10. The exploitation of the employees in private sector is much more in
comparison to that found in public sector. In latter segment the sole major exploitation
today is non-release of due salaries to the regular, permanent employees also for years
at stretch, due to illegal, unauthorized divergent of public funds to arrange lavish
state dinners, frequent foreign trips for the ministers. The regular employees of state
run corporations also are not getting salaries for years at a stretch forcing the
employees and their family members to commit suicides.

11. There is no law to encourage and govern the active participation of the
private employees in the implementation of any welfare schemes if at all framed for
their employees. In India there is absence of a clear linkage between CSR and profitability, which is the principle barrier to the implementation of labour welfare schemes.

12. The private entrepreneurs successfully manage to twist the laws, find loopholes, which are left unplugged, resorting to black-marketing, adulteration of food items hoarding.

13. There is no effective law to curb Cyber crimes at the national or international level. The fear of being on wrong side of the law for showing greed, keeps the victims of internet frauds away from approaching the police.

14. The laws to check the manufacturing of fake CDs, cassette players other electronic items currency notes, medicines, drugs etc is not having deterrent effect on the persons who are in it with the aim of becoming rich overnight. There is no social awareness to boycott such product for the consumers believe that the genuine manufacturers are insensitive by keeping the prices of their products beyond the reach of the common man.

15. The adverse effect of terrorism in states of north east India, J & K are seen on the tourism, and other avenues of earning livelihood is writ large with no encouraging re-bounce from the central or state authorities. terrorism in Kashmir is affecting adversely the means of earning livelihood of the boatmen. It has a disastrous effect on the tourism and travel industry of Kashmir and in turns that of India. Kashmir’s youth failing prey to anti-depressants, several youngsters in the strife-torn state have become “addicted” to sedatives and-depressant drugs. Addiction is directly related to continuing violence and rising unemployment.

16. The extortion and kidnapping for ransom industry thrives on the rivalry between business lobbies. Underworld gangs and the business community have a murky, link, helping each other grow with the blessings of gangsters-turned-politicians, whereby in many states in India the business line between the underworld and politicians is fast disappearing. People in the business of liquors, lottery and railway contracts give regular ‘agency’ (protection money) –which can be anything between Rs 1 lakh to Rs 5 lakh a month –to gangster turned politicians and in turn get contracts and muscle men for protection against their business rivals and underworld threats of extortion.

17. The government lacks clear and timely communication with the farmers whereby the agriculturists are groping in the dark about the supply of
sufficient water for the crops, guidance and availability of best type of seeds, electricity, fertilizers, price for their crops resulting in the farmers getting stuck in the vicious circle of taking loan from the moneylenders and banks with no source to repay and farmers from committing suicides proves to be eyewash as the daily wage of Rs 117 is not enough to sustain the large families.

18. The government in India is reluctant to move with the modern times and lags-behind from European countries, south East Asian where the prostitution has been legalized in the interest of the sex workers India is still reluctant even to oscillate between the two poles of prostitution being legal or illegal. Law in the Netherlands has protected prostitution for two centuries. The principle applied is the same for being a sales person, irrespective of it being for an item as vacuum cleaners or your own body.

19. The large number of mushrooming NGOs is more interested in grabbing funds from various sources, spending them in an unaccountable manner in view of the sympathy they are able to muster in the name of work to check child labour help AIDs/STDs patients many NGOs are financially corrupt and provide minimum services to the women and girls. The rescued child labourers after their rescue from the scene of exploitation in carpet weaving industries, bangle factories, matchbox factories, are made the flag bear of the crusade for the cause of childhood, by the NGOs. Though their story raise million as the global march against child labour spread awareness about the atrocious conditions of child workers in India and other parts of Asia but even after all the globetrotting, there is no effort to rehabilitate them whereby life after rescue is no better than life at factory.

20. The hundreds of crores of rupees granted to the various government agencies, after the direction from the apex court for the cleansing of polluted rivers-Ganga, Yamuna have yielded no positive results. State governments despite spending crores of rupees on setting up plants to treat effluents from industries before discharging them into river have reached nowhere. The CETPs were non-functional due to lack of funds; a few were out-of-order due to technical snags. It is noted that not only is there a complete and total waste of funds, running into hundreds of crores of rupees but also the purpose for which plants were ordered, has been negated.

21. The social values tolerance for others compassion for the helpless, needy are fast reaching a diminishing point in the Indian society. People are becoming self-centered and want to be overnight rich even at the cost of sacrificing the social
values. The flesh trade is not just about struggling models striking deals in plush hotel rooms, or women from poor families caged in ramshackle red light area’s houses. But there are some women treat the business like just another job with the approval of their husbands and the latter and relatives turn to next day to bail the women out when arrested. Investigations have revealed that the husbands would send their wives to the brothel for a couple of months. After the expiry of the ‘contract’ period the husband would come and take his wife back. Most of these people belong to lower middle class families, with tailoring shops or other such businesses.

22. The res commecium activities are growing because of lack of coordination in the functioning of excise department, police department and corporation bodies. Further there are complaints of each department at the state level and inter-state level trying to outmaneuver the others to grab the credit for catching the small fishes. Big ones are not caught because of lack of coordination amongst these very agencies.

23. More and more people are reluctant in taking up sports as a career option for their children but find no harm in following brain drain theory even at the cost of the nation’s money spent on the higher education of their children.

24. The defense services at officer level do not hold any charm for the upper and middle class societies today, where nuclear families having one son as the only child in majority of case or otherwise following small family norm, do not want to bargain the life of their chiraag in lieu of few privileges and comfortable disciplined lives. But the large families of rural background in India still consider it to be matter of pride to have their family males enrolled as soldiers (fauji) in army as the villagers still perceive it as one of the best career prospects for any Indian male.

25. Illegal migrants from neighboring countries as Afghanistan, Pakistan, Bangladesh, Sri Lanka manage to obtain an illegal entry into India, they sneak in the country in the garb of being a refugee and carry out illegal activities as drug trafficking, flesh trade terrorism organ trafficking, etc. India is facing this severe problem, and the national law dealing with the status of refugees will allow government to clearly distinguish between an illegal migrant and a refugee. The presence of the desired law on refugees (who till date are dealt with under the foreigners act only ) will clarify the border guards and other in charge of safeguarding our border that asylum seekers need to be treated differently from illegal migrants.
26. There is hardly any law to check the flow of migrants from backward states to metropolitans in India. Moreover there is lack of cooperation amongst various government bodies to organize the settlements mushrooming in the cities as a result of daily flow of migrants from backward States, resulting in increasing burden on the water, sewage and other facilities available in cities which in turn increases the pollution in the cities.

27. The internally displaced persons have acquired a serious concern today. These are the people who have not crossed any international border but have been displaced owing to natural calamities like earth quakes, cyclones, deforestation, construction of big dams, and terrorism as in the case of Kashmiri pundits etc. No specific regime has been evolved for the protection of such people who are deprived of protection by their own government in their own country, though it is a fact that many of such displaced persons take up to committing robbery, theft, in nearby areas, flesh trade, drug trafficking, organ trafficking.

28. Judicial decisions, Statutory provisions are not implemented with full effect, for instance while many circus owners want to surrender the wild animals as they have no use for them and keeping them is a financial resources drain, the government has thrown up hands saying it has no place for them. Since the ban on performance of 5 species of animals-lions, tigers, leopards, bears, monkeys in 1998, government had set up five rescue centers to house the animals seized from circuses.

29. A massive increase in population since 1770A.D. which has reached 1 Arab and 21 crores according 2011 census and the resultant developmental activity is the biggest cause of deforestation in the Sunder bans West Bengal where the greenery has shrunk form by 5,363 sq km between 1780 sq.k.m.in 2011.

30. As a result of the illegal prawn farms being run by the State’s elite eating into the mangroves in State of Orissa, the extinction of the mangroves seem imminent as the easy money provided by the illegal prawn farming provide a strong lure to the state’s bureaucrats and politicians who reportedly reap rich profits. Little wonder is that the government is unable to take punitive action The point being made is that Wild life trade is as large as drug trade. Zoos are the biggest poachers for they purchase the animals from illegal traders and are not the ones bred in the zoos. The peacocks are poisoned and killed for their feathers. The irony is that killing peacocks was a crime, possessing their feathers were not. Not a single person has been indicted of poaching till date. Turtles, butterflies are being smuggled out of the country. As a
result of continuing smuggling of insects, certain species have become instinct in Rohtang Pass. The practical aspects are not taken into consideration as in the case of Chilka lake Orissa – the biggest water lake in Asia. Since it is difficult to keep an eye, forget about tightened security, Poachers are supplying exotic bird meat by drugging the migratory birds at Chilka Lake making poaching a flourishing business.

31. The industries owners turn a cold shoulder to the demand of environmental safety and protection even when their unregulated industrial development are the root cause for their industrial effluents being emitted in the aquatic environment. Typical floating materials are oils and gases released from petrochemical and automobile plants. The tanning processes and paper and pulp manufacturing discharge colouring wastes into fresh water. The industrial effluents may contain suspended matters as organic or inorganic form. Chemical substances present in the Industrial wastes cause physical and chemical pollution of the water. Acids and alkalis discharged from different industrial units disturb the physical composition of water by raising the acidity or alkalinity balance, Soluble salts of heavy metals such as lead, mercury, cadmium, zinc copper, nickel,. Arsenic released in sufficient quantity are highly toxic and hazardous, industries extract raw materials from nature and discharge pollution to the environment.

32. The factors as casteism, religion, regionalism, nepotism play a major role in the quality and quantity of work available and assigned to the Citizens of Socialist, Secular, and Republic India even in the 21st century.

33. Reasons for people being neck deep into illegal trade activities are the irresistible urge to be overnight rich and leave behind the relatives, neighbours, and friend circle in ostentatious way of living. Having an upper hand in the way of leading life is a compulsion in the higher echelon of society today whereby the need to get more and more by hook or crook takes firm root in the lives of millions of citizens. Race and religion are also at the root of the violation of law.

34. Trial of case of trafficking does not target towards prosecuting and punishing people involved at every stage of trafficking starting from the person who originally approaches the victim or her family. The prosecution is extremely superficial as the only person perhaps prosecuted besides the victim is the woman who runs the brothels. All other persons like the pimps, touts, middleman and the primary traffickers who are important elements in this huge illegal network are not even touched by the prosecution. Moreover, in almost all the cases, the accused
invariably get bail and the sessions judge dealing with the case does not question the nuances and the tricks used by the traffickers. An interesting aspect was disclosed about the methodology that the traffickers adopted to ensure that victims who are rescued are back into the trade.

35. The cyber crime cell in the metropolitans is understaffed. Out of a total workforce of the police officers, for instance in Mumbai, there are only 1.5% are deployed in the cyber crime cell. Another problem is that most of police personnel are not familiar with computers, so tremendous effort is required for training and orienting them on various aspects of detection, investigation and prosecution of cyber crimes. Additionally, cyber crimes are covered under civil procedures, which take a longer time to deliver justice. Domain name issues are presently covered by legal norms applicable to intellectual properties, including trademarks. Abuse of chat rooms, cyber stalking, misappropriation and misuse of credit card numbers are just a few of the many other loopholes which are still not addressed by IT Act. When the Act was announced way back in 2000, market watchers across the world called it revolutionary. But ten years on, the Act has remained static while the rest of the world has changed. Moreover, many corporate resist filing cases in cyber crimes, because there is no clear understanding of the legal implications. India has also witnessed cases of cyber stalking, cyber harassment and cyber defamation. However, as there is no specific law or provision under the IT Act, a number of these cases are either not registered or are registered under the existing provisions of Indian Penal Code—which are ineffective and do not cover the said cyber crimes.

36 Interestingly, the government allows betting on horse racing on the pretext of it being a matter of skill, but at the same time cricket betting is banned. There is a paucity of reliable data on revenues/turnover in the gambling industry since much of turnover is in the illegal market. Estimates suggest that the paper and online lottery markets are worth fifty thousand crore rupees and two thousand crore rupees respectively. The annual turnover from horse racing is one thousand crore rupees. But from ‘Single-digit’ lottery or Patta games to betting on politics, the illegal market is large and varied. The Cricket World Cup 2011 and T/20 IPL -4, 2011 cricket series stakes reportedly ran into thousand of crore rupees. The stakes on May 2009 general election are estimated to be even higher at about fifty thousand to ninety thousand crore rupees and assembly elections in April/May 2011 in five states have estimated to reach more than general election 2009. Much of gambling in India, therefore, is in
the illegal market. The first and foremost benefit from legalizing gambling will be revenue generation for states.

(b) CONCLUSION

The rule of presumption in its American form was pressed for the commendation of the Supreme Court of India. In Kheyeri Tea Co. v. State of Assam, Justice Gajendragadkar, court’s decision in Saghir Ahmad’s case, was willing to hold that since freedom guaranteed to the individual is not absolute and its contents must be determined by reading Article 19(1)(g) and Clause (6) of Article 19 together, it can perhaps be said that the initial presumption cannot be rebutted merely by showing that the freedom under Article 19(1)(g) has, prima-facie been invaded, as such the court should assume that the restrictions imposed are reasonable and in the interest of the general public unless the contrary is shown. The framers of the Constitution of India decided not to include the ‘due process’ Clause in the Constitution. Hence, it was not necessary for them to include the concept of ‘Police Power’ in the constitution. This distinction between the constitutions of the United States of America, gave Indian Constitution a far more certainty than the American Constitution. Further American Constitution is based on the doctrine of ‘Separation of Powers’ unlike India. Moreover, social conditions and habits of the people are different. The doctrine of Police Power has no place in Indian Constitution, so also the doctrine of immunity of instrumentalities and political question have no place in Indian Constitution. The doctrine of ‘Immunity of Instrumentalities’ was first propounded by Marshall, CJ. But it was later rejected in the United States itself. It was also not accepted by the Privy Council.

The Naturalists believe that unjust law is no law and must not be obeyed. This encourages disobedience to law, which in turn leads to chaos and anarchy. Another problem that arises is the question as to who decides, ‘what is “unjust” law?’ The violator of the law always has justification for breaking the law. Poverty, social negligence, rape led to raise of ‘bandit queen’ Phoolan Devi.

What is required is, a legal system based upon natural and fundamental principles but which may be modified or interpreted in the light of social requirements. As Stammler suggested that law needs to be tested regularly in the light or the community’s prevailing moral ideals. Salmond criticizes natural law by contending that attitudes to moral propositions, unlike attitudes to logic (e.g., If A=B, B=C then A=C) vary with time, place and culture and this makes it difficult to
contend that such propositions are self-evident. Salmonds argues that modern western Europeans society does not accept the ancient Greek view (enunciated even by Aristotle – a naturalist) is justifiable.

Dworkin insists that rights ought not to be violated by the State even though it can be shown on policy grounds that the community as a whole would be better off in such a circumstance, e.g., as in the case of the right to publish some kinds of pornography. An appeal to the common good would not, in itself, provide the justification for the removal of an individual freedom. (Finnis reminds us that we ought not to say that the exercise of human rights is subject to the common good, ‘for the maintenance of human rights is a fundamental component of the common good’.) The problem may be in the definition of ‘common good’ – essentially a highly – subjective and emotive concept. Finnis sees a deep significance, therefore, in the right of individuals ‘to be taken into respectful consideration of what the common good requires’. Here is a restatement of the concern for human dignity, which is at the basis of much jurisprudential discussion of ‘fundamental human rights’.

Dr. A. Laminate while enumerating the guidelines to be followed before the Supreme court should decide to overrule a precedent concludes that no general principle can be laid down “nor is it possible to foresee in advance all the possible cases in which the decision to overrule an unwelcome precedent may be made to match entrenched social expectations as to judicial duty to protect the values of certainty, predictability, uniformity and continuity in the law” Dr. Laxminath concludes in his book that state decision has never been a stumbling block in creative development of Indian Law.

The legal development discussed earlier, about the Freedom of Occupation-a Fundamental right in the light of relation of Article 19 (1) (g) with various other Articles including Articles 21, 25-30, 301-307 of the Constitution has been influenced by the political, social, economic scenario in the country whereby there are many seemingly grey areas of oscillating dimensions having acquired monetary figures parallel to the national economy, in circulation at their command. The Authorities prefer to maintain stoic silence about the said challenges, which have assumed the status of black economy. The illegal activities are dumped under the wrap because the moment they crop up. It becomes further clear to one and all that the legal provisions framed to curb them are devoid of teeth, to check them not to mention of uprooting them.
From the commencement of the constitution in 1950, the supreme court of India pronounced judgments not only on the provision of constitution, constitutional amendments but innumerable Acts of parliament and state legislature in relation to the above rights and limitations set on them. Leaving aside the professions and trade/business in narcotic, flesh trade drugs gambling etc. the court interpreted the various rights which were changed by legislation providing for nationalization of property business, trade and industry, mines, minerals, public utilities etc. This was carried on by Articles 13(4), 19(6) Articles 31A, 31B, 31C, 31D, 300A, 302, 304, 305 schedules 5 and 6 to the constitution.

Beginning from Nehru to mid eighties, the economy of the nation as planned the government presuming it to cover the entire spectrum of book, public, and private employment, property, trade, business, commerce and business was (socialist) command economy. It created huge public sector industries utilities and services. The state also controlled the private sector through permits and license quotas. The public sector produced huge losses and corruption. The state also resorted to large-scale nationalization of industries, insurance, mining petroleum, electricity, transport etc. Most of the leading judgments of court revolved round “property” cases involving the interpretation of article 368.

During the Pre- emergency days the court in matters of property swung from one extreme to another i.e. state cannot touch the fundamental rights (Golaknath), to the other extreme (Keshavananda), state can abridge the right. In the realm of interrelation of the fundamental rights there was watertight compartmentalization. Post emergency the court started reading articles 19 and 21 together, even in the matter of independence of judiciary the court held extremely diametrically opposite stands. In the field of judiciary’s supremacy and being independent, we have covered the distance from Sankalchad’s case to S.P. Gupta’s case to S.C. Advocate-on-record Association v Union of India to in re Presidential Reference.

Surprisingly, there is one area where the Court has not changed its stance and interpretation though the Sate has changed its stance from one extreme to other. This is the sphere of Economic Policy where the Court did not interfere from 1950 till today. This area has direct bearing on the present subject of inquiry because since the mid 80’s certain political circles have started questioning the command economy of State, guided economy of huge public sector and Nationalization. Late Shri Rajiv Gandhi began expressing doubts about continuing the public sector, which was
irredeemably making losses and breeding corruption. Though the opposition parties opposed his philosophy of encouragement to private sector, once in power the Union Government under Shri V.P. Singh (1989) propounded Common Minimum Programme, which envisaged disinvestments of Government shares in Public Sector Undertakings. The Government set up a Disinvest commission in 1991. The commission was to select Public Sector Undertakings (PSUs) to be disinvested, and fix its value and with a help of a global financial buyers. Now UPA Government brought changes in the Commission’s functions and structure by making it as an advising body; the Government will send names of PSUs to the Commission seeking the latter’s opinion and evaluation and then this would go for disinvestments. Disinvestment criticism was directed against the loss making PSUs; therefore, the informed sections of the society as well as the common man were under the impression and belief that only loss making PSUs will be disinvested. But to everybody’s surprise the Government started disinvesting profit-making PSUs too.

The offloading of shares by Government takes many forms. Sometimes the offloading is done while there is a private party in a joint venture where the government is the major shareholder. This was the case of Maruti Uydog Ltd., which was a blue chip company. The Government had majority share exceeding 51% and had the power of management and proportionately Suzuki Japan had proportionately less number of directors on the Board. As years passed, the Foreign Partner Suzuki successfully forced Government of India to offload more shares in its favour and also made the Government to accede to it the management. This case illustrates 3 leading economic doctrines which are guiding the economic policies of the government;

1. Privatization: (with varying degrees of shares in favour of private persons, be it Indian or foreigner individuals or corporate persons as in the case of Suzuki).
2. Liberalization: that is the State is loosening its grip on the management of the PSUs and allowing private partners/shareholders to some extent of management.
3. Globalization: India along with more than 100 countries of the world has accepted in principle that trade barriers between the countries be broken, open the market to all nations, equalizing the tariffs all over the world, permit, foreign investments and set up shop (industry) cultivate lands, respect common laws of Copyrights, Patents Designs etc and accept the adjudication
of disputes by the adjudicating mechanisms of the World Trade Organization.\(^{21}\)

The Government of India during last two decades accepted these economic doctrines and followed the directions of World Bank and became a member of World Trade organization. It has opened its customs barriers and now foreign goods are following into India and many items are preferred to indigenous goods thereby hitting hard the trade commerce and industry. Such a situation has resulted in closure of local industry.

The policy of disinvestments has been challenged before the Supreme Court in the following notable cases. In Delhi Science Forum & Ors. V. Union of India & Ors\(^{22}\) The petitioners challenged the validity of the decision to grant license under the Telegraph Act 1885 to non-government companies to establish, maintaining and working of telecommunication system of the country. The petitioners ground of challenge was that telecommunications was a sensitive service which should always be within the exclusive domain and control of the Central Government to undermine situations will be parted by way of grant of license to non government companies and private parties. The Court objected this content and observed: “that national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by parliament and the representatives of the people on the floor of the parliament can challenge and question any such policy adopted by the ruling Government.”

The court referred to R.K. Garg v. Union of India & Ors\(^{23}\) in which the petitioner challenged unsuccessfully a law enacted by Parliament and held at page 413 as follows: “What has been said in respect of legislations is applicable even in respect of policies which have been adopted by parliament. They cannot be tested in Court of law. The Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions, which may be shared and believed by the citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament, which has approved such policies. Privatization is a fundamental concept underlying the question about the power to make economic decisions, the new telecom policy was placed before the Parliament and it shall be deemed that the same
approved it. This Court cannot review and examine as to whether the said constitutional bar in adopting such policy can certainly be examined by the Court.”

The most important case on this subject till date is BALCO employees Union (Regd.) v. Union of India & Ors24 where a full Bench of B.N. Kirpal, Shivraj Patil, P. Venkatarama Raddy, JJ not only examined the non interference of the court in the Economic Policies of the government but also explained the legal effects of disinvestments in terms of constitution and other laws. In this case, the Government of India appointed an evaluation committee headed by Additional Secretary (Mines) who arrived at total value of the Company at Rs. 1008 crores and Rs. 514.4 Crores for 51% shares which were to be offloaded. When bids were called and opened the bid of Sterlite Company was the highest at 551.5 crores the question before the Court was as to whether such a decision (to disinvestments in favour of Sterlite Industries Limited) is amenable to judicial review and if so within those parameters and to what extent. The Supreme Court referred to, all the earlier cases in which State was involved in economic financial policies and the court refrained from interference. The Court referred to this aspect in R.K. Garg’s and Delhi Science Forum25 case and Narmada Bachao Aandolan’s26 case. “It is now well settled that the courts, in exercise of their jurisdiction will not transgress into the field of policy decision. Whether to have an infrastructure project or not and what is the type of project and how it is to be executed are part of policy making process and the courts are ill equipped to adjudicate on a policy decision.”

The Court went on to explain at Para 47, “Process of disinvest is a policy decision involving complex economic factors… in matters relating to economic issues, the Government has, while taking a decision, right to trial and error as long as both trial and error are confide within limits of authority. There is no case made out by the Petitioner that the decision to disinvest BALCO is in any way capricious, arbitrary, illegal, or uninformed. Even though the worker may have an interest in the manner in which the company is conducting it’s business, in as much as it’s policy decision may have an impact on the workers rights, nevertheless it is an incidence of service for and employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant having the protection of not only Article 14 and 16 and also Article 311 of the Constitution has no absolute right to stay in service. For example apart from cases of disciplinary action the services of cases of government servants can be terminated if posts are
abolished. If such employee cannot make a grievance based on Part III of the Constitution an Article 311, then it cannot stand to reason that like the Petitioners a government employees working in a company which by reason of judicial pronouncement may be regarding a state for the purposes of Part III of the Constitution can claim a superior or a better right than a Government servant and impugn it’s change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision, that by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.”

The Court further held that Para 49, "The government could have run the industry departmentally or in any other form when it chooses to run an industry by forming a company and it becomes its shareholders then under the provision of the companies act as a share holder. It would have a right to transfer its shares, when persons seek and get employment with such a company registered under the companies Act it must be presumed that they accept the right of the directors and the shareholders to conduct the affairs of the company in accordance with law and at the same time they can exercise the right to sell their shares.”

Based on this ratio, the policy of disinvestments of BALCO was upheld. Now it is clear that if an aggrieved individual trader or a business man brought an action under Article 19 read with Article 21 the fate would have been the same, the workers were fortunate in that the BALCO, management gave an undertaking to the court that it will not retrench workers. The court at Para 60 held that due to change of majority shares the management has become private but that did not change the employer or the nature of employment.

To attract the investors and prospective buyers the government started policy of removing all casual labour from PSUs to paint of lesser pay and pension liabilities. The court has observed the change in the policy of the state and has trimmed its definition of state and its instrumentalities so that such instrumentalities are measured on new parameters and not try by earlier one set in the case of Ajay Hasia. Status of workman is redefined that when an industry is brought under Article 12 and also redefined master and servant relation between principal employer and the contract labour. It was held that a particular industry can be brought under Article 12 by applying the test, whether the undertaking is carried on by virtue of conferment of
power or permission by the central government and not whether the undertaking concerned fails with in the meaning of state under Article 12. The court has defined that where a work man is hired through a contractor there exists a master and servant relationship. But where a work man is hired in or in connection with the work of an establishment to produce a given result or the contractor supplies workmen for any work of the establishment unless the contractor is mere camouflage, the workman cannot be treated as an employee of the principal employer. It is needless to say that as the definition of instrumentalities are becoming increasingly definitive the number of citizen to be protected by law will become lesser hence low conviction in all charge sheet cases.²⁸

Yet in another case of Pradeep Kumar Biswas V. Indian Institute Of Chemical Biology,²⁹ it is held that a body cannot be said to fall under Article 12 if it falls under any one of principles laid down in Ajal Hasia case³⁰ i.e. whether on facts a body is financially and administratively dominated by or under the control of government and this control must be particular to that entity. Keeping in view all these new rules in employment as well as business industry it is clear that rights under constitution and law have shrunk to a great extent.

Added to this phenomenon is the opening of profession to foreign professionals which will also affect the means of livelihood. The court has also outlawed the strike by industries institution and profession. The case of lawyers is a unique one in that the legal profession has been opened to foreign professionals and the court has banned strike by laweyers³¹

The researcher critically analyses the vicious circle drawn, should right to work be based on global trends because European nations have legalized prostitution, therefore we should also legalize because women are engaged as bar tenders in a large number of cities world wide. therefore we should also… is this the criteria as it reflects non-compliance with a changing world order which sees the liberated women holding on her own in all walks of life. Is it not that such sensitive issue of allowing the employment of women as bar tenders needs societal acceptance and threadbare discussion. Again, is it that a 21st century metropolis attempting to be counted among the leading capitals of the world is still caught in the time warp of obsolete laws and outdated mindset? But is it that by preventing women from being employed as bartenders the government is working against what it talks about – about empowering the women and ensuring more representation for them in Parliament.
The Government, leaders encourage jobless youth to get self-employed in innumerable employment opportunities created through a series of programme in agriculture, cottage and small scale industries, instead of pinning hopes on already scarce white collar government jobs. The unemployed youth is lured away by terrorist’s fronts, mafia gangs in the name of money.

The concept of human right varies from country to country, state to state and society to society. However, its basic concept flows from ‘right to happiness’. The right of happiness is close to right to equality. Equality before law and equal protection of law has formed the bedrock of several human rights decisions delivered by the courts.

The judiciary of India has all along taken an activist role in interpreting different constitutional rights on the anvil of the International Conventions, Protocols and Charters relating to human rights. It has not only referred to and quoted extensively from International Charters, Conventions and Protocols but also from the Indian values of human rights and interpreted constitutional and other relevant laws accordingly.

As UNO stated the combination of underdevelopment, globalization and rapid change poses particular challenges to the international human rights regime. The pursuit of development, the engagement with globalization, and the management of change must all yield to human rights imperatives rather than reverse. “ILO called for the global partnership between governments. Employers and workers to provide decent jobs for the poor because work is the best root to elevate a poor from his poverty but unfortunately no government has passed any legislation for employment to out the poverty.

The Supreme Court in Kapila Hingorani v. State of Bihar while dealing with expansion of the right to life and personal liberty contained in Article 21 of the Constitution of India noticed the observations of Field, J. in Munn v. Illinois (1877) 94 US 113) which was in the following terms:

“Something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.”

Pursuant to globalization of the economy, India has also opened its doors. Whether one likes it or not, the policy of globalization has come to stay. It is being seen as a new era in which people everywhere are increasingly subject to the
disciplines of the global market. We have to accept the challenge of globalization and learn to compete with the best in the world.

To achieve this, the promotion of human development and the preservation and protection of human rights proceed from a common platform. Both reflect the commitment of the people to promote freedom, the well-being and dignity of with the increase in capabilities of human beings as also the range of things they can do. Human development is eventually in the interest of society and on a larger canvas; it is in the national interest also. As a human right, human development finds its echo in several areas as for example in excellence in professional education, be it the study of medicine, engineering or law. Progress and development in these fields will not only give a boost to the economy of the country but also result in better living conditions for the people of India.

The promotion of human rights of special groups, such as women, ethnic minorities, immigrants, and poor people are sometimes seen as a threat to their own values or interests. This divisiveness in value breeds opposition to human rights for all. Even in times of great prosperity, societies have failed to ensure a life of dignity for all their members - and often displayed indifference or outright hostility to members of other societies.

Today, with impressive achievements and a significant unfinished agenda in human rights and human development, the struggle continue for realizing and securing human freedom in seven areas:

- Freedom from discrimination – for equality.
- Freedom from want – for a decent standard of living.
- Freedom for the realization of one’s human potential
- Freedom from fear with no threats to personal security.
- Freedom for injustice.
- Freedom of participation, expression and association.
- Freedom for decent work – without exploitation.

A rights-bases approach to development is making human right an integral part of development policies and processes. At the national level, the importance of looking at development goals and policies from a human rights perspective is increasingly recognized. The human rights perspective is also assuming growing importance in development cooperation-bilateral and multilateral.
Socio-economic justice can be realized by each and every workman when the judicial orientation shifts from private law principles to public law interpretation harmoniously infusing the interest of the individual entrepreneur and the paramount interest of the society.

Can the policy of Globalization stand the scrutiny of our Constitutional mandate? Is not an economic policy advocating globalization (in LPG-Liberalization, Privatization, Globalization) a blatant violation of the Constitutional mandate given to the State under Part IV of the Constitution that has Distributive justice as its essence and fairness and equality as its reigning paradigm. Economic justice is a prerequisite of attaining social justice. Votaries of globalization have very clear views; the state should keep away, leaving the entire space to market forces. Capitalism is considered to be not only part of the natural order but also the guarantor of economic efficiency. Hence, in the clash between the State and the Market, the market has emerged victorious and crushed the very spirit of the preamble of Indian constitution. As a result of this the state is increasingly withdrawing from the social sector, thereby giving a severe blow to the egalitarian spirit of the Indian constitution. This living hell created by capitalism is integral part of the world economy. World history is a testimony to the gross inequalities that a globalize policy has brought about. It has promoted that welfare of the section of the society at the ruthless expense of another by putting “profits before people” and serving the interest of the capitalist class at the cost of the labour class. Given that socialism is a part of the basic structure of the our Constitution and that a policy based on globalization is manifestly against socialism, it would be interesting to see the reaction of one and all if the Supreme Court were to dismiss the government at the Centre on grounds that by pursuing policy of globalization, the Union has failed to preserve one of the principal features of the basic structure of the Indian Constitution. Exploitation is the essence of the capitalist system, with all the human degradation that goes with it. The multinational depend upon cheap labor in the ‘third world’ as much as cheap labor in the west. For them a world without regulation and trade unions is the ideal world for making profits. The threat of “globalization” to which all countries must bow down is used to intimate and break the resistance of workers to capital.37

A globalize free market is premised on the notion of comparative advantage. In a borderless world, each individual national economy is supposed to gain from global trade by focusing on areas where it has inherent advantages. The West has
consistently invoked this argument to force a reluctant developing world to dismantle trade tariffs and open up their markets. But on the question of food and agriculture, it has just as consistently, refused to renounce its own protectionism American farmers get full protection for they receive billion dollar in subsidies, which not only allowed them to beat back exports from the far more efficient cotton producers from West Africa, but also corner a 40 percent share of the world market. Cotton is an example, from sugar to coffee; the story is similar across the market. Massive farm subsidies that not only keep the prices of primary commodities artificially depressed but also deprive the farmers of Asia and Africa of global market access. In view of the above legal and political scenario in our country, it is clear that the Legislature is in the best position to understand and appreciate the need of the people as enjoined by the Constitution to bring about social economic reform especially for the upliftment of the backward and weaker sections of the society and for the improvement of the citizens of the country. The Court will, therefore, interfere in this process only when the statute is clearly violative of the rights conferred on the citizens under Part III of the Constitution or when the Act is beyond the legislative competence of the Legislature or such other grounds. Individualism is subordinate to Collectivism in Indian Society, hence even today and in future we cannot give any priority to claims of individual rights at the cost of welfare of the society in terms of trade, occupation. But again, who will bring panacea and when for the educated young generation of today, which has nothing but frustration at hands. Moreover Right to work whether or not includes right to work with dignity. Especially in the case of government servants who have no alternative but to meet the tantrums of their bosses and carry on their domestic chores also. But dose the Rights to work not require safe commuting system which is the duty of the Government again. Is the Government not bound to ensure the supply of safe and potable drinking water to the passengers? Denying justice to the lowest and last person in remote village is a denial of natural justice and Fundamental Rights. The Gram Naylorayas Act 2008 is envisages justice and through Gram Naylorayas. Purpose of the Act is to provide access to justice at the grass roots level to the citizens at their doorsteps and to ensure that opportunities for securing justice and justice is not denied to any citizen by reason of social, economic or other disability and matter connected to it. Sec 3 of the Act provide that State Government after consultation with High Court may establish Gram Naylorayas for every Panchayat. Gram
Nayalayas established under this Act shall be in addition to the courts established under any other law.

The interpretation to Right to Life by the Supreme Court has given an understanding that deprivation of right to work, which is a livelihood amounts to the deprivation of right to life. But due to the practicalities and realities involved, it is impossible to materialize the proposal of making ‘right to work’ a fundamental right as that will require the government to provide gainful work opportunities to all those who are willing to work. Several socialist countries have recognized the right to work but they have not given the individual the right to approach the courts for the enforcement of that right. But in India, Fundamental rights being justifiable, every individual would be entitled to approach the courts to enforce the right and since there are millions of unemployed people in India, it is not possible for the court to provide employment through writs to all those unfortunate unemployed. It will affect the character of the whole chapter on Fundamental Rights and what we understand by judicial review today will become meaningless. Hereafter one of the major concerns of the High Courts and the Supreme Court would become the giving of orders to facilitate unemployed people with suitable jobs.

Besides it would become difficult to define ‘work’ and ‘employment’ and it would not be possible to assess whether to allot work or employment in public sector, private sector or in organized and unorganized sectors. It is impracticable to fix criteria to provide various types of works. Proper institutional mechanism also should be established to provide employment. Insurance will become necessary till gainful work opportunities are created requiring fundamental changes in the economic policy and budgeting and planning. In a state where there is a democratic system of near full employment should be first established. This is what has happened in the developed countries the west like England, France, Sweden, etc. Therefore, mere legislation will not solve the problem. Moreover, in a country like India where there exists mass unemployment, any attempt to introduce unemployment insurance means the creation of a new class of idle people who live on doles given by the State. In due course they will create vested interest in claiming these doles and doing no work even if work is available for them.

Only when the society is in a position to ensure employment to the bulk of the people the state can think in terms of establishing unemployment insurances. We should first create more wealth before thinking in terms of distributing wealth.
Creation of more wealth and simultaneous distribution on an equitable basis should become the basic policy of a developing society to ensure increasing employment opportunities.

Right to work as a Fundamental Right has been the fashion of all socialist countries and their Constitutions. The history of the evolution of this right culminating in its inclusion in the Constitutions of the erstwhile USSR and China and other socialist countries which emulate them, offers no guidance as to its applicability or adaptability to the Indian context. One thing, however, has been abundantly clear. As “right to work” will merely ensure that state cannot interfere if a citizen chooses to work and this really does not bring about any new right or improves the already available rights to citizens.

Distributive justice to the society is most important than the fundamental right of a single individual. Giving ‘right to work’ the status of fundamental right is not feasible as senior advocate Shri K.K. Venugopal did not think it necessary to include the right to work in the Constitution at all, as it is more by way of protecting the right to work rather than providing work as a fundamental right. The “right to life” in the Constitution does not merely the right to breathe but also to decent living conditions implying the right to livelihood. This means either a job or unemployment dole, legal luminaries opine that, the country’s jurisprudence gave more powers to the state to ensure justice and yet the state had failed in its basic commitment to this mandate. By discussing the subject now, we are telling the state that we do not trust the ‘right to work’ in the Directive Principles. The ‘right to livelihood’ in Article 21 is not enough. However, there are many obstacles which stand in this process.

(1) It is difficult to set out guidelines to determine ‘eligibility criterion’ to provide employment to all. The basic problem is, whether right to work is confined only to educated unemployed persons or it includes all uneducated unemployed also as in the case of illiterates in rural areas. The phrase ‘unemployment’ also needs a careful study to cover the categories of unemployed. It does not confine only to the people who do not obtain employment but also covers the persons who were out of the employment because of various reasons e.g. quitting a job because of ill-health.

(2) The less number of jobs available in the public sector poses a serious problem because most of the unemployed persons prefer to work in the departments of Government rather than in the private sector. The main reason of this trend is that
the public employment is well safeguarded by fair principles of law and in recent times it is also termed as a new form of property.\footnote{39}

(3) The limited economic resources of the State cannot provide ‘full employment’ in the present economic system. The complex nature of economic and political problems related to the concept of “Right to work” denotes that it is not a ‘bare right’ to be protected but requires the State to allocate more funds to make it a reality. As a general right, the ‘right to work’ is effectively safeguarded by the Constitution but the new thinking on “Right to work” primarily intends to give job guarantee to every one according to one’s ability and skill. Though MGNREGA Scheme that makes the 100 days mandatory employment to the unemployed hands in rural area has failed to meets desired goal for lack of proper instrumentalities and implementation.

While earlier the Courts had taken the stand on Rights – Rights are bestowed, recognized and protected by the State; they can be cancelled by legislation. There cannot be any area of rights outside the purview of the state and its legal organs, because no right can be recognized as ‘absolute’. It is stressed that the liberty of the subject is a regulated freedom. It is not an abstract or it is absolute, who are killed serving the nation their family’s livelihood must be protected.\footnote{40}

Mukherjee, J., in A.K. Gopalan v. State of Madras\footnote{41} observed, “There cannot be any such thing as absolute and uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interest of society. On the other hand, social control which exists for public good has got to be restrained, lest is should be misused to the detriment of individual rights and liberties. Ordinarily, every man has the liberty to render his life as he pleases, to say what he will, to go where he will, to follow any trade and occupation or calling at his pleasure and to do any other thing which he can lawfully do without any hindrance by any other person. On the other hand, for the very protection of these liberties the society must arm itself with certain powers. What the Constitution therefore attempts to do by declaring the rights of the people is to strike a balance between individual liberty and social control.”

One has to pay regard to the modern socio-economic ways and civilized living in which livelihood is earned by different ways and methods. Our primitive means of
living are almost banned by a civilized society. Under the circumstances one has to earn his livelihood by the means approved by the society and its laws and in doing so if through some force or agency one is denied the right to livelihood, then he is definitely justified in claiming right to livelihood under Article 21. Moreover the courts, over the years, have circumscribed their protection to right to work only to the cases where a person is deprived of right to livelihood because of unjust and unfair procedure. That means that the pre 1978 (Menaka Gandhi v. Union of India) position of narrow interpretation of fundamental rights still persists in the field of protection of means of livelihood. It is categorically stated that it is an ‘obligation of the state’ to secure to the citizens an adequate means of livelihood and the right to work.

It is necessary to emphasize that civil-political rights and economic-social right are intimately related. There is no inherent conflict between them. The doctrine that repression of basic human freedom is necessary for fulfilling socio-economic rights and that one must be sacrificed to the other is a pernicious doctrine, propagated by those who desire despotic power over fellow human beings. Ideally speaking these sets of rights are complementary to each other, neither being superior or subordinate to the other. Together they form the core of the essential human rights which inherit in every human being. Yet, operationally and in actual practice, priorities are inevitable and it is not diabolical to suggest that there should be a greater emphasis on basic human rights which are crucial for ‘human survival and fair trial. However with the leave of court asking leading question during trial is not against the fair trial. John Milton had said in Aeropagitica in an impassioned plea for freedom,

“Promiscuous reading is necessary to the constitution of human nature. The attempt to keep out evil doctrine by licensing is like the exploit of that gallant man who thought to keep out the crows by shutting his park gate. Lords and Commons of England, consider what nation it is where of ye are; a nation not slow and dull, but of a quick, ingenious and piercing spirit. It must not be shackled or restricted. Give me the liberty to know to utter and to argue freely according to conscience, above all liberties.”

In the Investment Aid case of 1954 the German Constitutional Court declared: “The image of man in the Basic Law is not that of an isolated sovereign individual. On the contrary, the Basic Law has resolved the tension between the
individual and society in favour of coordination and interdependence with the community without touching the intrinsic value of the person.”

We spend millions trying to fight criminal activities that would not persist if there was no money to be made from the activity, and the money would be better spent elsewhere. Now it is time to recognize it socially acceptable, however it is distasteful to some but the younger generation are quite aware of the action and risks they are taking in earning the money. Legalizing drugs, prostitution, Casinos, Liquor, Right to strike, Occults would remove a portion of inmates from our prisons that are not criminals, who know the risks they are taking, and are prepared to accept the consequences. Who are we to judge in a free society? There will be a huge outcry from the public over this plan, but it is time to remove the power from the drug dealers.

When political reality and social factor changes, the law has no option but to recognize the new reality, Howsoever it may be illegal and tainted in its origin or unconstitutional in its existence. The infamous Dred Scott decision of the US Supreme Court in the late 19th century imparted legal validity to the pernicious practice of slavery. Liversidge and Anderson’s decision by the British House of Lords during World War II did the same for some indefensible executive action in respect of detention. In the Sixties, Pakistan Supreme Court legitimized extra-constitutional coups by military dictators by invoking Austin’s Grundnorm. Back at home the infamous ADM, Jabalpur case has not been specifically overruled in any subsequent judgment.

Justice Chandrachud observed in Fundamental Rights case “What is fundamental in the governance of the country cannot surely be less significant than what is fundamental in the life of the individual.. The freedom of a few has them to be in order to ensure the freedom of all. If the state fails to create conditions in which fundamental freedoms could be enjoyed by all, the freedom of few will be at the mercy of the many and then all freedoms will vanish

A beginning has to be made covering all those who were left off-small and marginal farmers, self-employed, rural artisans, domestic servants, transport workers, sex workers. Poverty anywhere is threat to prosperity everywhere. Economically backward areas, unemployed youth, painful retirement and struggling old age, low employment opportunities in farming are time bombs waiting to explode.
Therefore, to conclude, with the primitive means of livelihood almost banned in a civilized society, and State falling to discharge its obligation of securing adequate means of livelihood and right to work to its citizens, further not forgetting that thought ideally civil, political, economic and social rights are intimately related and complementary to each other. Though practical priorities are inevitable and one cannot forget that when political reality and social factors change, law has no option but to recognize the new reality how so ever distasteful, for the truth is bitter.

(c) SUGGESTIONS

The study has proposed certain suggestions after observing the major findings, which may be taken into consideration by the international community, government of India, authorities concerned, for ensuring a legal means of livelihood to one and all. These suggestions can form a base for further study and formulating laws or policies in this direction.

1. Courageous leadership, proper enforcement machinery is needed from governments, who are primarily accountable for ensuring that child trafficking is criminalized and children are effectively protected from this form of exploitation.
   * Further after the completion of the education, the child should be given an opportunity to undergo some vocational or technical training.
   * There should be a uniform definition of Child Labour for all legislation relating to employment, of, children and a ‘child’ should be construed as a person below 15 year of age.
   * There are 10,000 children below the age of 14 year in stitching footballs in the district of Jalandhar Punjab and 1,350 of them are full-time labourers. There should be mass awakening whereby the people should refuse to purchase the products made by child labor. The negative publicity over the issue of child labour adversely affects the business because the major overseas buyers like Adidas, Mitre and Umbro today are customers who feel socially responsible and do question the Indian manufacturers who supply, for instance, football, bats to the foreigner collaborators, about working conditions to ensure there is no child labour in the sports goods industry.
   * If we stop recruiting new child workers now, child labour can disappear in a decade
2. Educated citizens including college students, retired persons, women, elder citizens, philanthropists, industry/corporate sector, NGOs, educational
institutions including teacher-training institutions and other agencies should be
mobilized to appeal to “each one-adopt one” Every family should adopt one child of
it’s domestic help or driver or gardener, not literally, but to fulfill the educational
needs of the child.

3. Instead of having piece-meal child legislation, there should be an
Integrated and Uniform Code on Children covering all aspects relating to their rights,
their implementation and also for their enforcement.

4. The ILO Minimum Age convention should apply to all persons below
the age of 18 years to secure the effective abolition of child labour. In India this
would require the amendment of Article 24 of the Constitution which prohibits
employment of children below the age of 14 years only to factories, mines or other
hazardous occupations. It is necessary to raise the age limit to 18 years, both through
constitutional amendment and complementary national legislation to make our
standards, policies and practices in this domain conform to ILO norms.

5. There should be review and update of the legislation and policy on
child labour and all laws should be integrated together and a Child Code of India and
the Child Labour Code of India should be framed.

6. To spread the Employees Provident Fund umbrella, it is suggested that
the Employees Provident Fund Organization must be allowed to enter areas like
banking, housing development finance, infrastructure financing, insurance business,
real estate, mutual funds, call money market operations which give decent trading
corporation for government securities and other debt papers.

7. There is need to Set up a framework to support an individual
retirement account scheme for the unorganized sector.

8. There is need to develop a civilized method of resolving disputes
without jeopardizing the public interest, public welfare and the national economy. The
number of employees in the service industries is very small compared to the very
large number of those in other services. Should there be a real conflict of interest; the
majority should not be allowed to suffer. There is need to evolve as mechanism for
resolving disputes involving large numbers of employees in a civilized manner
instead of resorting to strike which subjects large number of people to inconvenience.
In this regard the practices and procedures followed in Britain and Australia can be
combined and a mechanism can be evolved which will prevent strikes in essential
services even while allowing collective bargaining. This new system can be given a
trial for a period of five years and then reviewed. Its main objective will be to ensure that public essential service agencies render service without interruption.

9. The privatization of a nationalized concern, or restructuring of a nationalized concern may not be an industrial dispute or a Trade dispute to be resolved under this procedure. Strikes which question the political decision of the Government, taken in Parliament, have to be totally banned. Parliament is the only place where political decisions could be questioned. Issues on liberalization, privatization have to be decided only in Parliament, by the members elected by the public, and not by the worker in an industry who form only a small segment of the public. It will not be parliamentary democracy if what Parliament decides is sought to be reversed by a minuscule portion of the population, at their work places, or in the streets.

10. Over the years, in its pursuit of an egalitarian social order, India has tended to deliver social justice through quota, rather than more muscular empowerment. Provisions of jobs has been to be enough proof of the state’s devotion to social democracy, instead of a lengthier, more complicated agenda to enable vast sections of the dis-privileged to make confident bids for employment i.e. quality education and training that would render almost irrelevant the state’s paternalistic role in ordering jobs for the backward classes has hardly been given any attention. The need is for affirmative action in employment. Companies, especially those in the consumer and service sectors, must know that client and buyers today are becoming increasingly socially aware. To be socially responsible is part of winning the trust of consumers. But each company, each industry, has its own compulsions, its won negotiating room in balancing merit with rainbow work places. But if the government provides quality education and vocational training, at least that seeming gap between the merit and representation would be erased.

11. Trade unions must lobby hard for a comprehensive piece of safety legislation and for its enforcement. Until then they must use the legal system in the same way as the environmental movement has. State Pollution Control Boards were useless institutions until the courts began getting involved through Public Interest Litigation. It should be worth following a similar approach with State-level Factory Inspectorates. There are a few activists and labour-oriented NGOs that have done some good work. If unions took up safety in earnest, a lot can be done. More than one lakh workers die every year in accidents at work, which is equivalent to Bhopal gas
disaster every month. The extent of occupational diseases is massive but unrecognized. The management controls the workplace, decides the product and controls the work process. It is up to the management to take primary responsibility to ensure that the workplace is safe. One of the problems identified was the non-availability of fire-fighting equipment in factories -72 per cent of the incidents of fire spread for this reason. This is a basic, low-cost precaution and a matter that is entirely in the hands of management. Eight out of 10 textile factories do not have adequate fire-fighting equipment.

12. Both the Union and State governments have a role to play in improving industrial safety, which they neglect. The Union government should lay down a framework of legislation and the State governments should make more detailed rules. Enforcement of the Factories Act, construction laws and safety in minor ports are the responsibility of the State governments. The Union government is wholly responsible for safety in mining and at major ports.

13. International cooperation is the principle of customary international law, which is to be respected by each and every state. The principle is also recognized by the UN Charter in Articles 1 (3); 2 (5); 11 (1); 55 and 56. National borders do not exist when it comes to cyberspace and Cyber crimes as child pornography. Similarly, No nation can fight the problem of illicit drug trafficking it is a global menace alone, for it requires cooperation and coordination between different countries. These problems are not the unilateral concern of one state, but are a subject of International law. Therefore, UN should develop a mechanism whereby states should have a binding obligation to cooperate with each other in solving these problems.

14. The Developed countries, as per the various surveys and studies, are responsible for the depletion of ozone layer, rising sea water level, and global warming. These countries should realize that they have much higher responsibility to come forward and solve the problem created in the world by them mainly.

15. Global companies believe in making CSRs important a stamp as the ISO 9000. Enlightened corporate see it in their best interest and they give back not merely by writing cheques, but offering time, space and skills. The Global companies headquartered in the United States have a common vision for philanthropy as the US culture makes it impossible to do business unless corporations reach out to their stakeholders through philanthropy. There are indices which grade the performance of the companies as good corporate citizens. This is often used by investors and customers
for making decisions. In India the absence of a clear linkage between CSR and profitability is the principle barrier. The new generation of business leaders are required to wake up as the desire to be a good corporate citizen is for a must for an improved brand image.

16. It is in the rural sectoring that widespread poverty, underemployment, malnutrition, lack of access to healthcare and oppressive social customs that bear down heavily on women and children create a social landscape of appalling misery. It is here that a major action plan should be launched to create additional jobs to enhance incomes of those at the bottom rung of the social ladder and to create the physical and social infrastructure of a vibrant economy. The Research scholar recommends that through MGNREGA works may be extended from 100 days to 300 days in a year and similar statute must be enacted for the urban unemployed workable people.

17. The river inter linking project would not only provide water for the assured irrigation in drought prone areas, but also reduce the probability of sweeping floods and the resultant heavy loss of human and animal lives, crops and property. The prime objective of this project is irrigation and flood control and the prime beneficiaries would be farmers in drought prone regions making our livelihood on single crops and low yields. Moreover this project would provide large scale employment in remote backward areas where the labour intensive requirements of the river linking project will be met by these very farmers incorporating food for work into the programme would provide further benefits and help resolve the issue of surplus stocks as well.

18. Studies after studies have established that the government subsidies just do not reach the poor. Most of them are absorbed in the delivery system or reach wrong targets. Abolishing subsidies and using the money for direct investment in rural infrastructure is the sensible thing to do.

19. For one thing. There is lack of coordination among various government agencies who believe in acting on the principle of passing off the buck as in the case of failure to check. Liquor bars open after prescribed hours, both excise department and police blame each other. Moreover, every one cries on pollution, without highlighting that there should be cycling tracks, parking stand for the cycles at the city centers, shopping malls, neighborhoods markets. Bicycles don’t need fuel, don’t cause pollution, require less space, but the urban planners are concerned only
with high speed lanes and vehicles. The elements to be taken into consideration are efficiency, equity, environment and energy. Even in the case of encroachers on roads, pavements, the police officers regret the lack of coordination between the police and municipalities. There is no survey with the police about encroached spaces to be removed, nor is there common policy on encroachers. The list differs as per the civic body’s own priorities, in the garb of tehbazari rights. Further the hawkers in subways in a busy commercial area of metropolitan cities manage to earn anything between Rs 800-1700 in a day. The Civic authorities watch helplessly as its enforcement department raids these subways everyday, but the hawkers run away only to come back later. Also, the contract to maintain these subways is given to a private agency. To a certain extent, it is also responsible for the hawkers. Removing the hawkers is the responsibility of the police also. This illustration again highlights the problem of lack of coordination amongst various agencies.

20. The government bodies need to keep pace with the changing nodes of advertising and promotion used by tobacco industry and alike, that seek to circumvent the law in various manners, whereby the laws need to be revised and updated at the earliest in a manner that possible misuse of internet is also kept out.

21. Similarly the police so far had been dealing with heinous crimes like murder, dacoity, and rape. But the emerging trend suggests that the offences under the Copyright Act are the crimes of future. It is important that the Police gears it self to fight these more effectively. The police should be given chance to interact with lawyers and learn more about the economic offences and legal procedure.

22. There has to be a support system that enables street vendors to earn a living as well as maintain the city scrapes. The task should not be left to the civic body alone but the town-level committees comprising traffic police, municipal officials, civic activists and hawkers’ representatives should be involved in the regulation process.

23. The irregularities in the process of issuing licenses can be curbed if the town-level committees provide photo-identity cards to hawkers to remove the very basis of harassment, eviction and extortion of “hafta”. Further there should be provision of facilities as public toilets. Easy credit, insurance, electricity connections, water connections for hawkers. The hawkers can be charged a monthly fee for the various services.
24. Outlawing discrimination at work has failed to eliminate the practice. Stereotypes and biased institutions have resisted deceased of legal efforts and police measures undertaken by governments, workers and employers. Laws banning discrimination are indispensable. Effective enforcement institutions, positive action, unbiased education. Training and employment services and data to progress are required as mix of policies and instruments to do away with workplace discrimination.

25. Job security must be provided especially to women and youth, who often have jobs that are especially vulnerable to economic shocks. Unemployed workers pushed into informal jobs in search of work faced even more uncertainty due to the sector’s near total lack of unemployment and social security coverage.

26. Skill and vocational training Programme should be organized to enhance the development and to provide basic life skills to the children, minor girls who are rescued from the clutches of exploiting employers/pimps are require to be rehabilitated.

27. The organizations and NGO’s should help the Government in planning and implementation of various programmes for children, women, rural workers, prostitutions.

28. Social and cultural practices and beliefs which perpetuate gender based violence can only be overcome by actively challenging their validity and usefulness in today’s context.

29. There is need for the Educational institutions to adopt policy on sex harassment as done in the case of Delhi University as part of DU Ordinance XV which describes sexual harassment and disciplinary action and the constitution of the committee. For the safety of women at work places it is suggested that

   * In primary schools itself, the children should be taught to respect women
   * Ban on advertisements for friendship clubs, massage parlors
   * Parking lots should have 24 hrs securities
   * Patrolling vans should have women constable also.

30. Conditions for women can be improved by implementing labour rights, ensuring equal pay for equal work, upgrading women’s skills so that they benefit as production moves from low to high technology. Women need retaining, targeted measures for entrepreneurial training, better to credit and resources, family friendly
policies as better sick leave. Most of the families today are nuclear families where the couple is working. Therefore there should be crèches at work place of the working women so that, for instance, the large number of women lawyers who otherwise are compelled to leave practice and stay back at home to take care of their young babies, are able to overcome this handicap. Same is true of the women judges, Magistrates, judicial officers and administrative staff contributing to setting the male female ratio wary in the legal and other profession.

31. Cyber theft, cyber stalking, cyber harassment and cyber defamation are presently not covered under the I T Act 2000; these crimes need specific provisions to enable the police to take quick action.

32. There should be clear briefs on how the I T Act 2000 will apply to any offence, and how action will be taken against any person who has committed the crime outside India as otherwise jurisdiction problems are likely to arise.

33. The law under Information Technology Act 2000 is now covered under civil procedure, making the enforcement process slow. This deters companies from approaching the cyber crime cell, if the law is covered under criminal procedure, the process could be faster.

34. The Information Technology Act, 2000, needs amendment for handling domain name issues and related concerns such as cyber squatting, which so far are covered by legal norms applicable to intellectual properties trademarks.

35. The success of the Drugs and Cosmetics Act can be judged from the fact, that according to a WHO statistic 35% of all fake and sub-standard drugs are produced in India, making her the largest producer of spurious or substandard drugs. The reason is obvious-the provisions are not deterrent enough. The only remedy therefore, is to amend section 32 of the Drugs Act, empowering police or other investigating agencies like CBI to institute prosecution in suitable cases. Moreover, the manufacturer and distribution of spurious drugs should be punishable by death for without a punishment as death, the spurious drugs industry will keep growing as profit margins are huge, often touching 1000 percent.

36. In the 21st century, when medical science has touched new heights and the drugs are getting more complex and potent, the use of spurious drugs can at times be life threatening. How can then cosmetics, which are nothing but a mere preparation to enhance beauty, be treated at par with drugs? It would be more appropriate to have an Act, which is solely dedicated to the drugs.
37. In the alternative, Drug Related Crime can be checked for medicinal purposes, if we as a country legalize drugs, and facilitate its supply through our hospitals, will ensure many positive changes as it will no longer be lucrative to the dealers.

38. In the transport sector, in many countries of the world, independent regulators have been set up to ensure healthy development of the industry, promote competition and ensure adherence to legal provisions. A similar regulatory authority is necessary for India. This authority could be an independent statutory regulatory authority, outside the government, along the lines of the Telecom Regulatory Authority or Central Electricity Regulatory Commission.

39. There should be national permits for all inter-State operations. This will have the advantages

(i) the time consuming process of issuing counter-signature permits will be removed.

(ii) Payment of MV tax by the operator at one counter will save time.

(iii) This will protect the interests of operators who ply in less than three States.

40. The State Governments should work out a rehabilitation package to rejuvenate the farming system and appropriate social support system including schooling, housing and pension to the family members of the farmers who commit suicides.

41. It will be better to have FDI (Foreign Direct Investment) in agriculture, industry and services rather than allowing foreign institutional investors to invest in our capital market of mutual fund market. FDI in all the three sectors of economy would lead to creation of assets as well as employment.

42. Agriculture as a state subject has resulted in mass scale suicides of farmers. It is better to have a national policy on agriculture providing for broad contours of the development of the agriculture sector for the next 10-15 years. For instance, there are many restrictions on the movement of agricultural product within the country. Though we are party to WTO agreement yet we have not done anything to prepare our farmers for international competition. As many small countries with only one crop a year are able to give us tough competition as their per hectare productivity is much higher than the per hectare productivity in India. Also, the government should arrange for proper storage facilities for agricultural produce so
that the cost the harvest waste is minimized and the farmers get relatively higher prices for their produces.

43. The social level attempts to bring down the evils as consumption of liquor are required at a massive scale. For instance all the women in a village can seize the initiative by imposing fines on people consuming or selling liquor or gambling. Further in a case of sati, the government financial aid to the Panchayat of village where sati takes place should stopped to penalize the villagers for abetting sati. The villagers in turn will vent their anger on the sati’s family by boycotting them. In fact, after economics sanction if such villagers abetting sati, go to neighbours villages or towns for work, they should not be allowed even to work in the projects going on in the nearby villages. The social sanctions have positive impact as chances of repetition become dim appeal of sati still has a certain religious feelings and primordial instincts. Remain alive there is chance of such incidents being repeated in the country. Human right activists and women’s movement can contribute a lot to ensure that the practice of sati is vanquished and obliterated from the fact of India for ever. The electronic media and print media should play a positive role to bring about awareness and create a consciousness against this evil practice.

44. Instead of giving alms to beggars or distribute clothes and food, the charity minded people need to donate to social organization who make sure of using the money sensibly. But before donating one must check the antecedents of an organization and visit it periodically to find out if funds are being mobilized judiciously.

45. Consumer demand for only BIS certified products can force all the manufactures to come under the quality net.

46. Increasing internet penetration, exposure of children to pornography and pedophiles using the net as a tool, calls for need to sensitize people towards the issue and recommendation of suggestive laws for India to combat the menace. The Indian legislation does not provide any law concerning child pornography. The maximum punishment one can face under the Indian Penal Code for conducting sexual abuse can solve the problem. The Cyber Café Associations should extend cooperation with the local police by registering the details of each customer. The children should be not being allowed in enclosed cubicles in the Internet cyber cafe.

47. Constitutional provisions need to avoid inter-State rivalries and tensions. The European Community came into existence with a focus on allowing free
movement of goods. Initially, the coverage of goods was limited. But the benefits of free movement motivated broadening of the coverage until we now have not only a common market, but an economic union. In all federations as attempt is made through constitutional provisions to create and preserve the national economic fabric to remove and prevent local barriers to economic activity, to remove the impediments in the way of inter-state trade and commerce, and thus to make a country as single economic unit so that economic resources of all the various units may be utilized to the common advantage of all. Article 302 is a part of Article 301 so provision of Article 302 should be merged in Article 301. The free flow of trade, without geographical barriers, is a sine qua non for economic prosperity, nationally as well as internationally. The European Union has accordingly removed barriers among countries. It is time that India removed barriers within the country. In this connection, the Supreme Court has said in Prag Ice & Oil Mills. “In the ultimate analysis, the mechanics of price fixation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of operators, the procession basis of price fixation has to be accepted in the generality of cases as valid.” In the area of the regulation of trade and commerce, the judiciary has hitherto laid more stress on social control and has devalued the individual interest of the trader of the manufacture. So far, the tenor of court cases by and large has been to expand the area of social control over trade and commerce and correspondingly to reduce the scope of protection and safeguard to individual interest. In this area, the courts have shown much deference to the legislative and administrative judgment. Hitherto, the judicial approach appears to have been very much colored by the prevailing philosophy of a socialist pattern of society in the country. But, it remains to be seen, whether, in course of time, this judicial attitude will undergo a change in view of the toning down of the socialist rhetoric and the contemporary philosophy of liberalization and privations.

48. India could constitute a regulator on the lines of the United Kingdom, where the Gaming Board for Great Britain is the regulatory body for casinos, bingo clubs, gaming machines and all local authority lotteries to ensure transparency and fair play in the gambling industry and also address the social costs associated with gambling. The first step of the Regulating Authority should be to improve profit margins; otherwise net revenues will not outweigh the social costs. What is required is a reasonable payout with the least possible administrative cost. Increased profit
margins will result in increased revenue generation. But at the same time it should be constitutionally mandatory that gambling profits should be used for public goods (enhancing social welfare), otherwise all proceeds will go into the coffers of profligate states.

The present product portfolio in the gambling market is limited. This could be extended to include betting exchanges, casinos and gaming machines, betting on sports, political outcomes or wars, films, weather or on celebrities. Transparency and counter-party guarantees will help bring the illegal market into the legal ambit. The use of a separate trading platform of the existing stock exchanges could be envisaged for this purpose. Casinos and gaming machines may also be introduced. This segment will primarily cater to the upper middle and rich class.

But today’s laws address neither the economic nor the social costs. The development of a gambling industry in India requires a three-pronged strategy: reforming the existing gambling (that is, lottery) market and legalizing the present illegal market (introducing new products), while introducing stringent and overarching regulations. The following restrictions can be brought into picture as Legal betting should be open only for majors, it should be in monetary form only; An Upper limit on betting can be set depending on the annual income of the better, which would be proved by the income tax returns and pay and income certificates from proper and legal source.

(ii) The betting traders can be required to submit their income returns and can be asked to pay proper taxes on the same.

(iii) A separate administrative department can be set up to issue licenses to the betting traders and only license holders should then be allowed to carry on this activity.

The whole scenario should always be open to scrutinization by agile and sharp legal and administrative eyes.

49. In most of cases of arrests made after raids on brothels, young girls who are less than 18 years are forced into the trade. As a matter of practice when a young girl is rescued from a brothel or from any form of prostitution, she has to be treated as a victim of the crime and if she is a child as defined under the Juvenile Justice Care and Protection Act, 2000, she has to be produced before the Child Welfare Committee as a child in need of care and protection. The Committee
thereafter is under a statutory obligation to ensure that the girl gets properly rehabilitated.

50. There has to be a support system that street vendor to earn a living as well as maintain the city scrapes. The task should not be left to civil body alone but the town-level committees comprising traffic police, municipal officials, civic activists and hawkers’ representatives should be involved in the regulation process.

51. The irregularities in the process of issuing licenses, can be curbed if the town-level committees provide photo-identity cards to hawkers to remove the very basis of harassment, eviction and extortion of “hafta” Further there should be provision of facilities as public toilets, easy credit, insurance, electricity connections, water connections for hawkers. The hawkers can be charged a monthly fee for the various services.

52. The IT Act does not take into account the possibility of the Net being used for smuggling weapons of endangered species. The government needs to come out with a definite policy which can be effectively implemented.

53. There should be provisions for using wire taps and new visa arrangements for “potentially trafficked persons on the lines of Australia Government which has created a 23 member “mobile strike team” within the Australian Federal Police to investigate trafficking and sexual servitude. Legislation will be tightened to “comprehensively criminalize trafficking activity” and amendments made to allow investigators to intercept telephone calls to in investigate trafficking offences.

54. The Kidney rackets can be checked if the identity of the donors is verified. It is necessary to procure the evidence of the residence from the donors and examine the cases individually to ascertain as to what extent was money a motivating factor. In the case of transplantation of organs from the live donors, the doctors must satisfy themselves that the consent has been given without undue influence of any kind including the offer of a financial or material benefit.

55. Prostitution flourishes anyway. Why is it insisted to keep it under wraps? In fact the prostitution is already legal in numerous nations worldwide. It flourishes in India also. The situation makes sex-workers victims of AIDS and human vultures who feed on the income they generate. A positive response to legalizing the prostitution will make the testing of sex-workers mandatory and increase awareness about unprotected sex, AIDS, STDs which could both affect the profession. Perhaps the prostitutions will get better working conditions also then. The Naturalists believe
that “immoral law is no law”; it propagates that any law made by man who is not in
conformity with the principles of natural law should be resisted and removed. The
basic tenets of morality and justice (Natural law) serve as guidelines for the law-
making bodies of the nations to incorporate such principles in legislation, or at least
not to enact anything contrary thereto. But the question that may be raised is: What is
morality? Who decides what is or is not moral? What is or is not moral a relative
matter and it is difficult to lay down absolute principles.

56. There is need for Anti-Trafficking Network for the rehabilitation of the
children of the prostitutes and other sex workers as even the young boys are
vulnerable to sexual exploitation. Rehabilitation of the children will also have positive
affect on the prostitutes who can at least then hope to wriggle out of the evil if the
future of their children is in safe hands.

57. A compelling goal for sustainable development will be to further
integrate environmental energy and economic policy to provide “win-win” situations.
The parameters to help the work attain sustainable development and protect the
environment at the same time include – Population stabilization. The Governments of
different countries need to lay stress not only on the protection and improvement of
environment but also on population control.

58. There is need for efficient use of natural resources, waste reduction,
pollution prevention, integrated environmental systems management, refining market
economy, perception and attitude change, social and cultural changes.

59. A holistic environmental management framework for environmental
related problems and their solutions should be adopted.

60. There should be creative combination of regulation, incentives and
penalties to guide consumer, industry, and market place.

61. Research and development initiatives need to be emphasized for the
utilization as well as development of energy efficiently and renewable energy
technology.

62. In environmental matters, justice can be best imparted by availing the
services of Ecologist, Scientists, and Technocrats (professionally competent) as
expertise as the courts lack environmental expertise, resulting in delay in justice.

63. Effective implementation of environmental legislation is required.
Mass media should cooperate and assist in bringing legal awareness.
64. Plants or industries well equipped with pollution control instrument should be located away from population, where population is scarce.

65. Law breakers in environmental matters should be treated harshly and heavy exemplary penalties should be imposed on them on the lines of The Public Liability Insurance Act, 1991 which has introduced a scheme for ‘Industrial disaster fund’ where interim relief is to be given by the Collector in the form of an compensation in case of death or injury caused by industrial accident to the victims of pollution.

66. Reverse the ever increasing wastage and toxicity, by adoption of environmentally sound, economically feasible and new sustainable technologies and discontinue the practice of continuously overlooking the depletion of natural resources and environmental damages until the latter acquires alarming proportion.

67. Power plants either in public or private sector mainly use coal for generation of electricity and during the course of this process; there is accumulation of various by-products such as bottom ash, boiler slag and fly ash. 30% to 40% fly ash is used in manufacture of cement, brick and as soil conditioner there is a need to store the rest of fly ash in such a way as to have minimum damage to air, water and soil bodies.

68. The environment today is endangered from industrial pollutants, indiscriminate deforestation, vehicular emission, noise etc. Today is the need for Global Environment movement. The World Meteorological Organization by coordination of its meteorological studies with health studies conducted by WHO can evolve some standards for stratosphere, with cooperation of International Civil Aviations Organizations.

69. The control of the use of oceans for the deliberate waste disposal could be best negotiated by framing regulations by International / Intergovernmental Maritime Consultative Organization in consultation with WHO, FAO to guide it regarding health and food aspects. These two though are recommendatory bodies can evaluate environment periodically and influence public opinion in favour of the required action.

70. There is much to be gained by exchanging information, experiences with respect to environmental control measures. We need to go back to the Asian way of living with nature as against the European or American way of exploiting the environment.
71. The steps to check the River pollution can generate employment – Instead of fencing of River Yamuna to save the river from getting polluted, which involves high cost, Government should motivate the people through a specially launched campaign to submit all Puja offerings in specially set up collection centers. These offerings may be turned into manure at a site set up at the banks of River Yamuna after sprinkling river water. This will create employment. One person at the beginning of bridge can be deputed to collect offerings.

72. In genera, quality regulations have too many loopholes, and are not strictly enforced in truck industry. In the transport sector, in many countries of the world, independent regulators have been set up to ensure healthy development of the industry, promote competition and ensure adherence to legal provisions. A similar regulatory authority is necessary for India. This authority could be an independent statutory regulatory authority, outside the government, along the lines of the Telecom Regulatory Authority or Central Electricity Regulatory Commission.

73. Despite All the judgments, laws and international conventions on Wetlands, The basic problem is that India’s domestic laws do not directly address the protection of wetlands as a specific issue. Central legislation is urgently required to sustain this crucial aspect of our environment.

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CONCLUSIONS AND SUGGESTIONS

1. Annexure, D
2. AIR 1964 SC 925.
5. Pathumma v State of Kerala (1978) 2 SCC1
6. A.G. for British Columbia v A.G. for Canaa,1924 AC 222(P.C.)
7. Taking Right Seriously (1978)
8. Lecture Notes-L.B. Curszon Jurisprudence- Cavendish Publishing Limited (Page 243-244)
9. Laxminath Dr. A. Precedent Chapter 5 pp. 88-90
10. Laxminath Dr. A. Precedent Chapter 8 pp. 197
12. Ibid
13. Ibid
15. Menaka Gandhi vs UOI; AIR 1978 SC 597
16. Sankalchands case; AIR 1977 Supreme Court 2328
17. S.P. Gupta& Ors. Vs. UOI; AIR 1982 SC 149
18. 4 SCC 441
19. AIR 1999 SC 1
20. It was one of the main planks of Janta Dal Party manifesto that it would amend the constitution of India to make Right to works as fundamental Right but it became reality under UPA government in 2005 when govt. brought NREGA by giving 100 days works guarantee.
21. Art 301 Provides for free flow of trade and commerce throughout the country. Globalization is for free flow of trade and commerce throughout the signatory courtiers.
22. 1996 (2) SCC405.
23. 1981 (4) SCC 457
24. 2001(4) LRI 675
25. 1966 (2) SCC 405
27. Ajay Hasia v. Khalid Mujib; AIR 1981 Supreme Court 487
28. Annexure- E
29. 2002 (2) Supreme Court Cases 11
30. 1981(1) SCC 722
31. Harish Uppal (Ex.-Capt.) v Union of India (2003) 1 KLT 192
33. Vishaka v. Sate of Rajasthan; AIR 1997 SC 3011.
34. But though the international Covenants stress upon right to strike, the Supreme Court of India has delivered the judgment of T.K. Rangarajan v Government of Tamil Nadu;
35 JT 2003 (5) SCI.
37 Globalization and the Indian constitution; The Contradiction within by Shubhankaran, India Bar Review Vol. XXVIII(1) 2001
38 India through NREGA 2005, the Act guarantees 100 days works in a year.
39 Charles A. Reich, The New property (1964) 73 Yale L.J. p 733
41 AIR 1950 SC 27
42 AIR 1978 SC 597
44 Morality, obscenity and censorship by Madhavi Divan: Journal section The supreme Court cases (2003) I SCC (J) and Aeropagitica by John Milton writer of famous Epic, the Paradise Lost.
46 (1942) AC 206
47 AIR 1976 SC 1207
48 AIR 1973 SC 1461
49 Para 2134; Supra.
50 Education for all children of the age of 6 to 14 is a fundamental right under article 21 A [(86th Amendment) Act, 2002] and Right to Education Act 2009.