

## RIGHT TO WORK

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*Right to work has come out to become a very important aspect part in everyday life. It is evoked in various circumstances in our society. 'What is Right to work?' is a very important question and a detailed analysis of this is necessary. There are also certain rights contained within it they are rights at work, labour and employment rights, and the right to livelihood. Various International convents and organizations are at work here to specify and enforce these rights. In India, Olga Tellis v. Bombay Municipal Corporation is the case through which the right to work got recognised under the ambit of fundamental rights. This case would be discussed along with the application of the right to work and its related rights in India. Labor and Employment laws in India will be briefly mentioned. In the end, conditions where these rights are violated and remedies that can be claimed are discussed. This article is focused on being brief and informative regarding the "Right to Work".*

**Keywords:** Right to Work, Labour Rights, Right to livelihood, Olga Tellis v. Bombay Municipal Corporation.

### WHAT IS RIGHT TO WORK?

The right to work is a very broad term. Conceptualizing it in a confined way is not possible and also not viable. It needs to be understood in its general sense and later derives interpretations that are needed according to the circumstances. Understanding it in its general sense would require first delving into the meaning of "work" which again is not finalized, but still, some concepts need to be discussed to optimize and ascertain their utility.

There is a very significant truth that earning a living is a very important aspect in our life. For gaining this living what we do is "work". In today's world work is something that is done to basically earn monetary gains which then can be exchanged for other necessities. But this understanding raises some basic questions. Is work restricted to wage labour only or does this extends to self-employed persons? Or activities of indigenous groups? These questions need not be answered as we will focus on the base concept that- "it is something done to earn one's living." Here special emphasis needs to be laid on the term "earn". We are not talking in terms

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of providing this standard but instead providing the opportunity to “earn” this standard through work. And this is the right to work. Work is, therefore, performing particular activities to satisfy the needs of society and their group.

## DEFINITION

In The International Covenant on Economic, Social and Cultural Rights Part III, Article 6, the right to work is recognized, where it includes the right of everyone to have the opportunity to gain his or her living by work which he freely chooses or accepts.<sup>1</sup> The covenant also defined the measures to be taken by a State Party for achieving the full realization of the right including technical and vocational training programs, policies, and techniques to achieve steady social, economic, and cultural development and productive employment under conditions safeguarding the fundamental political and economic freedoms to the individual.

The Universal Declaration of Human Rights states in Article 23.1<sup>2</sup> that everyone has the right to work, the right to free choice of employment, the right to protection against unemployment, and the right to have favourable conditions of work. The African Charter on Human and Peoples' Rights, Organisation of African Unity also recognized the right in its Article 15:<sup>3</sup> It states that every individual has the right to work under equitable and satisfactory conditions and should receive equal pay for equal work.

Journal of Legal Research and Juridical Sciences

The UN Committee on Economic, Social, and Cultural Rights (CESCR) in its General Comment 18 provided detailed guidance to States regarding their obligations toward the right to work. The Committee also illustrated that the right includes the interrelated and essential features<sup>4</sup>: of Availability, Acceptability, and Accessibility. States must ensure the availability of required services to help in identifying opportunities and finding work. Under Acceptability and quality come many factors; these are the right to choose work, favourable and safe conditions of work, and the right to form unions. Three key factors: information accessibility, non-discrimination, and physical accessibility are important to provide greater accessibility.

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<sup>1</sup> ICESCR, adopted 16 Dec. 1966, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc A/6316 (1966), 993 UNTS 3, entered into force 3 January 1976, art. 6

<sup>2</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 23

<sup>3</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

<sup>4</sup> UN [Committee on Economic, Social, and Cultural Rights \(General Comment 18\)](#)

There should be no restrictions on gaining and distributing information regarding employment opportunities. No discrimination in any form must be allowed.

## **RIGHTS AT WORK OR LABOUR RIGHTS**

Rights at Work and Labour Rights are very closely related to the right to work. These rights are for the protection of the person who sells his or her labour. These rights include the right to dignified working conditions, the right to work that is freely chosen or accepted (forced labour) the right to adequate remuneration, the right to equal pay for work of equal value, the right to equal treatment, the right to the limited workday, right to remunerated periods of rest, and the right to safe working conditions. The International Labour Organization (ILO), a specialised agency of the UN is responsible for maintaining and informing the international standards related to the right to work and also the related rights.

## **RIGHT TO WORK IN INDIA**

The right to work is not explicitly recognized as a fundamental right in the Indian constitution. It is present in The Directive Principles of State Policy under Article 41<sup>5</sup>. Right to Work, therefore, became a fundamental right through a judicial interpretation. The Hon'ble Supreme Court recognised it as a fundamental right inherent to the 'right to life' through its judgement in *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors.*

*Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545*

The case is due to a writ petition filed against the Bombay Municipal Corporation and the State of Maharashtra against their decision to forcibly evict the slum dwellers and demolish their dwellings. The Hon'ble Bench which decided the case consisted of Y.V. Chandrachud, C.J. and S. Murtaza Fazal Ali, V.D. Tulzapurkar, O. Chinnappa Reddy, and A.V. Varadarajan, JJ.<sup>6</sup> The writ petitions portrayed the circumstances of hundreds of thousands of people who live on pavements and in slums in the city of Bombay.

## **RIGHT TO LIVELIHOOD**

The Court observed that the right to life granted by Article 21 is wide in scope and far-reaching. It does not merely mean that life cannot be extinguished, another important facet of the right is

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<sup>5</sup> Constitution of India, 1950 art 41

<sup>6</sup> *Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545*

the right to livelihood as no person can live without a means of living. The simplest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point that he has an existential crisis.<sup>7</sup> Such deprivation would make life impossible to live. Deprive a person of his right to livelihood and you shall have deprived him of his life. There is a symbiotic relationship between life and the means of livelihood. People must eat to live and only a few can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. It was stated by Douglas, J. in *Baksey* [347 US 442, 472: 98 L Ed 829 (1954)] that the right to work is one of the most important liberties that people possess. It is so because it sustains and enables a person to live and the right to life is therefore an invaluable freedom.

### **RIGHTS CONFERRED UNDER DIRECTIVE PRINCIPLES OF STATE POLICY**

Article 39(a)<sup>8</sup> and Article 41<sup>9</sup> of the Indian Constitution together constitute the right to livelihood and work respectively. Article 39(a) prompts the State to devise its policies towards securing that the citizens have the right to a reasonable means of livelihood. Whereas Article 41 provides that the State must make provisions for the securement of the right to work in cases of unemployment and of undeserved want.

Article 37 provides that the Directive Principles are fundamental in the governance of the country, even if they are unenforceable.<sup>10</sup> The principles contained in Articles 39(a) and Article 41 must be regarded as equally fundamental in the interpretation of the meaning and content of fundamental rights. It sets an obligation upon the State to ensure the citizens an appropriate means of livelihood and the right to work, it is therefore not possible for the exclusion of the right to livelihood from the content of the right to life.<sup>11</sup> The State may not be compellable to provide adequate means of livelihood or work to the citizens but, any person, who is deprived of his right to livelihood and right to work except according to just and fair procedure established by law, can challenge the deprivation under the ambit of the right to life conferred by Article 21<sup>12, 13</sup>

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<sup>7</sup> *Ibid*

<sup>8</sup> Constitution of India, 1950 art 39(a)

<sup>9</sup> Constitution of India, 1950 art 41

<sup>10</sup> Constitution of India, 1950 art 37

<sup>11</sup> *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545

<sup>12</sup> Constitution of India, 1950, art 21

<sup>13</sup> *Ibid*

This is the landmark judgement in which the 'right to work' has been recognised and is now read along with the 'right to life' under Article 21 of the Indian constitution.

## **LABOUR AND EMPLOYMENT LAWS**

Some of the Important labour laws in India are-

Apprentices Act, 1961- The main purpose of this Act is to provide training to technically qualified persons in various trades. The aim is the promotion of new skilled manpower.<sup>14</sup>

The Employee State Insurance Act, [ESIC] 1948, is a social welfare legislation enacted primarily with the objective of providing benefits to employees in case of sickness, maternity and employment injury and also to make provisions for certain other matters included.<sup>15</sup>

Employees Provident Fund and Misc. Provisions Act, 1952- An Act to provide for the constitution of provident funds, pension funds, and insurance funds for the employees in the factories and related other establishments.<sup>16</sup>

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959- This act is regarding the compulsory notifications of vacancies ensued for employment exchanges.<sup>17</sup>

The Factories Act, 1948- This Act ensures adequate safety measures and promotion of the health and welfare of the workers employed in factories.<sup>18</sup>

The Industrial Disputes Act, 1947 came into existence in April 1947. The purpose of this act was to make provisions for the investigation and settlement of industrial disputes and also to provide certain safeguards to the workers.<sup>19</sup>

The Payment of Bonus Act, 1965: The payment of the Bonus Act provides for the payment of bonuses to people employed in certain establishments based on profits or based on production and for matters connected therewith.<sup>20</sup>

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<sup>14</sup> Apprentices Act, 1961

<sup>15</sup> The Employee State Insurance Act, [ESIC] 1948

<sup>16</sup> Employees Provident Fund and Misc. Provisions Act, 1952

<sup>17</sup> The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

<sup>18</sup> The Factories Act, 1948

<sup>19</sup> The Industrial Disputes Act, 1947

<sup>20</sup> The Payment of Bonus Act, 1965

Payment of Gratuity Act, 1972 provides for a scheme for the payment of gratuity to employees engaged in factories, plantations, railways, ports, companies, shops, mines, oilfields, or other establishments.<sup>21</sup> This Act enforces the payment of 'gratuity', a reward for long service, as a statutory retiral benefit. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years.<sup>22</sup>

The Workmen's Compensation Act, 1923, aims to provide workmen and/or their dependents alleviation in case of accidents arising out of and in the course of employment and inflicting either disablement or death of workmen.<sup>23</sup>

The Trade Unions Act, 1926 provides for the establishment of trade unions with a view to render lawful organisation of labour to allow collective bargaining. It also confers on a registered trade union specific protection and privileges.<sup>24</sup>

The Shops and Establishment Act is a state legislation, and each state has therefore framed its own Act and Rules for the Act. The object of this Act is to provide statutory obligations and rights to employees and employers within the unauthorized sector of employment, i.e., shops and related establishments.

## CONCLUSION

The primary aspect to be kept in mind is since it is the State which enforces fundamental rights, the same can only be claimed against the State and not against private institutions. So, the right to work can only be claimed against the State and not against a private institution. Analysing the Supreme Court ruling in *Olga Tellis*<sup>25</sup> case right to work is violated when a person is terminated from his job 'against the terms' of his employment. Termination from his job must be in violation of the laid down laws or when a person is excluded from being employed based on unfair, unjust and unreasonable criteria. Also, deprivation of his livelihood is in violation of the procedure established by law, according to the case in *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors.*

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<sup>21</sup> Payment of Gratuity Act, 1972

<sup>22</sup> *Ibid*

<sup>23</sup> The Workmen's Compensation Act, 1923

<sup>24</sup> The Trade Unions Act, 1926

<sup>25</sup> *Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545*

It is important to note that voluntary unemployment or unemployment due to a lack of jobs or lack of skills does not amount to a violation of the Right to Work. There are many situations where the Right to work of an individual is violated. In such a situation a writ petition can be filed either in the High Court of the respective State under Article 226 of the Constitution of India or in the Supreme Court of India under Article 32 of the Constitution of India. However, when the State takes action against a person who is engaging in an occupation, trade, or company that is illegal under the law cannot assert the "right to work." Living off on the proceeds of prostitution, gambling, and the like is therefore not protected under the "right to labour," for example.

All these laws act as a safeguard against the violation of the Right to Work. Right to work is very extensive as mentioned at the beginning of the article therefore all these acts are in conjugation with each other. The right to work is a very important right in today's world thus it should be safeguarded, and every individual must know about this right, and when in need they should invoke this right. Exploitation is a very grave concept; in every location and place, we can find situations where people are compelled to work in unfavourable situations. This is due to mostly lack of options. They need to earn their living so even if they are exploited, they have no other choice. At such a time right to work needs to be ensured and proper steps are to be taken. It is therefore a necessity to ensure proper access to people regarding their fundamental rights involving the right to work and employment rights.