



Protection Against Unemployment - A Fundamental Right? A Study In The Context Of Indian Constitution, Indian Judiciary & International Perspectives

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ABSTRACT

The Constitution of India aims at extemporizing the socioeconomic status of the individuals. It guarantees every citizen a *Right to Life* which is the basic right of all the Fundamental Rights, and directs the State to provide him or her livelihood adequate for leading a meaningful life. The Judiciary widened the extent of this *Right* by describing it as not mere leading a life but living with human dignity. Towards this direction, the *Right to Work* has been recognized as integral part of the *Right to Life* since it is the crucial component and indispensable element to be able to live, and to have a continuous improvement in the living conditions. However, for the last several years, the State is engaging workers through casual, contract, co-terminus, adhoc and outsourcing methods - impeding the efficiency of the laborers, demeaning their living, promoting litigious employment, and enhancing the unemployment rate. This has therefore become a serious social concern across the country where a large number of people are struggling for secured employment which is to be studied and addressed in the context of the Indian constitutional, judiciary and international perspectives. Recently, the Judiciary which is the protector of the Fundamental Rights is of the view that the system of "outsourcing" of *employment* is only a sham and a trick to avoid extending to the workers their legitimate work entitlements. This article is relevant to the Socio-legal research based on the Black-letter as well as Empirical studies which concluded that Protection Against Unemployment is a Fundamental Right under the *Right to Life in which the Right to Work is integrated*, and this is the high time for having a definite Employment Protection Legislation (EPL) to promote employment security in the country.

Keywords: Litigious Employment, Right to Work, Right to Life, Fundamental Rights, Protection Against Unemployment

INTRODUCTION

"Employment" or "Work" is required for every human for survival and progress. In the olden days of human society, the individuals were continuing the same vocations that their forefathers had, not only for survival but also to fulfill societal obligations forcibly and due to dire economic necessities as well. Bonded Labor System (BLS) also exists in the society during Kingdoms and Zamindaris realm, wherein the laborers alongside of family members were required to work at lesser wages for decades, in return of the debts taken from the landlords by their relatives in the previous generations. The State's role in those days was entirely focused to protect the interests of the rulers but not towards safeguarding the interests of the workers even at minimum. The rulers employed people mainly for two purposes, one was "laborers" to improve their wealth and the other one was "soldiers" to protect their kingdoms from rivalries. These servants were not having any ambitions except 'sustenance' thinking themselves that they born to serve their masters, and the rulers were thinking that they born to govern and enjoy themselves, under which circumstances the services of these workers were severely exploited.

Though the situation was not so much dissimilar during the initial days of pre-independence, the British rulers were forced to lay foundations towards workers evolution in India through many labor welfare legislations including Factories Act, Industrial Disputes Act, Workmen's Compensation Act, Payment of Wages Act, Minimum Wages Act, etc. not only to govern the working conditions but also to safeguard workers' interests in case of work injury, retrenchment, lay off, etc. because of extensive workers revolution across the world, and also because of the freedom movement which helped for significant improvement in the workers' living standard in the latter part.

Further, the replacement of the "Welfare State" in place of British "Military State" brought a considerable transformation in the workers' status of living in India with the relative changes globally. Besides protection of the workers' rights under various legislations enacted in the British regime and adopted or amended from time to time in the post-independence era, such as rights to – safe working conditions, equal treatment in equal situations, minimum wages, timely payment of wages, gender equality and protection against discrimination, workers' participation in decision making, wellbeing in case of maternity, disability, sickness, old age, protection against contract employment etc., the additional rights of the workers as citizens of India under constitutionally preserved human rights such as rights to – life in which 'right to work' is integrated, equal opportunities in public employment, equality before law at all levels, freedom of expression and association, protection against prejudice and exploitation, etc. for leading a life with human dignity, have been guaranteed by the Indian Constitution with a compulsion on the State to safeguard these rights without any discrimination in any manner that helped momentous worker evolution.

However, in the recent past, under the coverage of social transformation, increased population, augmented laborcosts, and enhanced demand for skills and employment, the private sector establishments and even the state- controlled establishments which are expected to be the model employer, are currently preferring 'litigious, temporary and unsecured employment' by hiring laborers on casual or adhoc or contract/ fixed-term or co- terminus or outsourcing basis; laying a source again for invention of BLS and concentration of wealth in few hands against statutory regulations, constitutional provisions, and judiciary perspectives which is leading to large exploitation of the workers services.

Besides, temporary employment makes the workers as long-term unemployed or underemployed or working poor¹, makes their life demeaning, and leads to corruption and human trafficking². The Institute for Human Development (IHD) reports that most of the individuals in Delhi were largely forced to begging due to loss of jobs and unemployment out of which 52% are the new entrants, 60% are between 18-59 years age group³. In the mid-2021, the Apex Court has opined that the unemployment and economic necessities force the people to begging to eke out their livelihood⁴. It is evident that unemployment exists in a large-scale in almost all the States in egalitarian India as the creation of job opportunities has been very slow. The unemployment rate (UER) rose to a sixteen-month high in December 2022⁵ whereas it was 7.83 in April 2022⁶. Though the same was declined in Jan 2024 slightly from previous 16 months, it was increased among the youth between the age group of 20-24 years from 43.65% in July-Sep period to 44.49% in Oct-Dec 2023. The EUR among the individuals comprising the age group of 25-29 years registered an increase from 13.35% in July-Sep period to 14.33% in Oct-Dec 2023⁷.

Needless to say that the number of unemployed is increasing every month as the number of job losers are added to this category extensively as their employment is not protected. The unemployed youth is struggling for job calendars⁸; some sector of employees are struggling for better wages⁹; some sector of employees are struggling for post-retirement welfare measures and demanding for restoration of old pension scheme¹⁰; some other

¹ Editor, *Unemployment protection*, SOCIAL PROTECTION HUMAN RIGHTS

² Chibuzor Obi Jude, et al., *Human trafficking reduction through corruption prevention in Nigeria*, 2 (1) IJID (Jun., 2019).

³ Ambika Pandit, *Delhi: Job loss during pandemic led many to beg*, THE TIMES OF INDIA (Aug. 10, 2021).

⁴ Editor, *A ban on begging is no solution*, DHNS (Aug. 4, 2021)

⁵ Anup Roy, *India unemployment rate surges to 16-month high, CMIE data shows*, BLOOMBERG NEWS (Jan. 2, 2023).

⁶ Editor, *India's unemployment rate rose to 7.83% in April, shows CMIE data*, BUSINESS STANDARD (May 2, 2022).

⁷ Editor, *Unemployment rate in India (2008 to 2024): Current rate, historical trends and mor*", FORBES INDIA (Feb. 2, 2024)

⁸ Editor, *Kurnool: Unemployed youth demand government to release new job calendar*, HANS NEWS SERVICE (Jun. 22, 2021)

⁹ Prasad Nichenametla, *Pay revision agitation: Govt employees go for pre-strike show of strength in Vijayawada*, DHNS (Feb. 3, 2022).

¹⁰ Chandigarh News, *Government employees protest in Shimla, seek restoration of old pension scheme*, Hindustan Times (Mar. 4, 2022 updated Aug. 14, 2022).

sector of employees are worried for *secured employment* and demanding for regularization of their services¹¹; some other sector of employees are fighting for parity and demanding for equal remuneration for equal value of work¹²; some outsourcing employees are protesting for legitimate benefits and timely payment of salaries by the agencies employed them¹³. Moreover, the State's look into privatization of Public Sector Units (PSUs) such as Visakhapatnam Steel Plant is making every worker worry about their job security and prosperity¹⁴, in view of private sectors' main aim is business rather than workers' welfare.

Since the current change affects the working class severely, *in turn* adversely impacts the industrial harmony and peace, and crashes the productivity and socioeconomic progress of the nation, the challenges are discussed here in this study in the context of the Indian Constitution, relevant Social Security Legislations, Indian Judiciary and International perspectives so that the State may review and reframe policies for individual and societal development through promotion of employment security and protected employment.

NEED OF THE STUDY

Because of India's having divergent cultures, religions, races and castes, employable opportunities and resources are to be accessible to everyone equally and fairly. The Constitution requires the State to - guarantee that every citizen without prejudice is offered alike opportunities in public employment, secure wages adequate for a comfortable life¹⁵, secure freedom in not accepting any work that does not suit to age and ability due to economic necessities, and guarantee that every child is grown healthily.

This study aims to highlight the need of the State securing *protected work* for everyone with fair wages and apt living conditions for workers constant evolution; and to confirm whether the right to an uninterrupted employment is an integral part of the right to life in which the right to work is a part. For the convenience of the research, the study has been focused on the - Status of the workers employed through co-terminus, tenure-track and outsourcing methods; Relevant Indian Constitutional Provisions requiring the State to ensure a decent standard of living of the citizens through equality, empowerment, and justice; Important Indian Legislations on Social Security; Perspectives of the Indian Judiciary towards protection against unemployment; and International Perspectives towards promotion of Employment Security & Guaranteed Employment.

RESEARCH METHODOLOGY

The researcher collected information in two ways, one is by studying the available legal documents, scholars' publications, print media reports, and decisions of the Judiciary; and the other one is by conducting empirical study through well-structured questionnaires and personal interviews of the temporary workers with focus on contract and outsourced workers engaged through contractors in public and private establishments, besides collection of information under RTI Act and discussion with experts in the relevant area.

COMPREHENSIVE STUDY

The State started allowing contract-based employment and employment through a private agency termed as "Outsourcing of employment". It has instituted a *Hire and Fire* policy which is a need-based requirement and has been engaging and terminating the employees accordingly. As and when the need arises, the State has been recruiting manpower either on contract basis or through private contractors for a fixed term on fixed wages without any social security measures, and arbitrarily removing them from service leading to severe hardship and mental agony to the employee and his or her dependents depriving them of their *right to life* as discussed below:

Status of the workers employed through co-terminus, tenure-track and outsourcing methods

Information collected from the employees working in the State and State-aided institutions

From the responses of these employees, it is understood that they were selected following rigorous Rules and Regulations as for permanent staff. Their qualifications and the job descriptions are comparatively similar to the staff recruited on permanent basis but they do not have any facilities as enjoyed by the permanent staff. Further, they are not entitled to any other social security benefits such as House Rent Allowance (HRA),

¹¹ Editor, *Punjab Agricultural University, Ludhiana, contractual staff intensify stir for regularization of services*, The Tribune (Dec. 2, 2021).

¹² Editor, *Outsourced HP workers protest, CM says panel formed to redress their grievances*, The Times of India (Mar. 15, 2022).

¹³ V. Raghavendra, *Pay revision: contract employees to stage statewide protest today*, THE HINDU (Feb. 7, 2022).

¹⁴ Editor, *GHMC outsourced workers protest for salaries*, THE HINDU (Feb. 16, 2021).

¹⁵ Editor, *AP govt urged to oppose Centre's privatisation of Vizag steel plant*, TELANGANA TODAY (Feb. 7, 2022).

¹⁶ Aarsha, *Constitutional Provisions which guarantee protection to labour laws*, LEGAL SERVICE INDIA.

Dearness Allowance (DA), Leaves, Increments, Royalty, Gratuity, Bonus, etc to which their co-workers appointed on permanent basis are enjoying. Moreover, the women employees were not given the benefit of the maternity relief. There is a disparity and discrimination among the permanent staff and the staff recruited on contract or outsourcing basis in every aspect including wages, working conditions, privileges, and respect. Though there is a requirement of work demanding continuance of their services, they are shown as discontinued in order to escape from making them permanent. In fact they are forced to work during the break period without payment of wages. Some of them were considered for renewal with a break between two terms in a consecutive year. There are instances that few of their colleagues were replaced with new members according to the 'will and wish' of the appointing authorities. It appears that a lot of corruption took place in such appointments. Payment of wages and contribution towards provident fund and state insurance is irregular. They are not allowed to utilize the medical service that is available within the institute's dispensary in emergency cases also. Yet, after putting 10 years of work and fulfilling the requisite eligibility criteria as stipulated by the judiciary in the *State of Karnataka v. Umadevi* case, their cases are not considered for permanent appointment against regular vacancies. Most of the employees are continued into service with the intervention of judiciary and the cases are pending for final disposal for several years because of non-filing of counters by the State and also due to the overload on the judiciary. Few employees state that they were reluctant to approach the judiciary as felt expensive and doubting speedy justice. Because of misinterpretation of the legislative norms and judiciary perspectives by the executive agencies, these employees are not under the coverage of protective employment.

Information collected from the employees working in Non-State organizations

These respondents state that they are paid fixed monthly emoluments and that they are forced to work for 7 days in a week. Their working hours are irregular. The Managements are disinclined in implementation of employee welfare schemes. They are treated as bonded labor. The women employees are also not entitled to any maternity relief benefit or they do not have any child care facilities within their organizations. The information also reveals that fixation of consolidated salary varies from individual to individual even in equal circumstances. Also, security towards post-retirement living of the employees and their dependent family members is not assured. Their work becomes mechanical and their knowledge and potentiality are demoted due to lack of motivational distinctiveness in the unprotected employment. Though the terms of the employment contract are solely in favor of one party i.e. the employer, they are forced to accept the terms and execute the contract due to their financial constraints which is against the principles of Contract Act and natural justice. Subsequently they are losing their jobs on the expiry of the contract term besides losing skills, physical fitness and age which are making them ineligible for seeking alternate employment.

The respondents also state that, due to meager wages and irregularity in payments by the employers, they are unable to - eke out the minimum livelihood, provide nutrient food to their children for healthy growth, meet the children educational requirements, and cater to the health needs of the dependents. Their children are forced to discontinue their studies, and seek employable opportunities in unorganized sector to support the family livelihood where their services are severely exploited and the children are subjected to cruelty. Their other disabled dependents are also forced to work for lesser wages under humiliation. It has been noticed that the executive agencies are negligent towards ensuring implementation of social security legislations to these workers by employers and that these employees are leading a pathetic life inspite of the constitution's objective of achieving every individual's decent standard of life.

Information collected from the Public Information Officers of the State and State-aided institutions

This information reveals that the employments are governed by the principles as laid down by the State Executive Agencies as amended from time to time. The appointments for contract employment are made through precise selections in a transparent manner. The tenure of appointment is purely need-based and co-terminus whereas the emoluments are fixed. Such employees are required a notice period or payment in lieu thereof vice-versa in case of their prior termination before expiry of the contract period. The contracts are purely against fixed-term which may be renewed based on the employment requirement and performance of the employee. Such staff is not entitled to any other allowances as entitled to, by the permanent staff. Their working conditions are slightly indifferent from the permanent staff. These employees neither conferred with any right to maintain parity along with the other regular employees nor with any right for regularization of their services. There is also no definite law for their rehire.

With respect to the outsourcing of employment in the state-aided institutions, the information reveals that the State may reduce the cost by outsourcing of certain employable activities like security, house-keeping, computer maintenance etc. Such employees are paid fixed remuneration set at the minimum in the time scale related to the relevant category of employees working for the same value of work. The departments which engage such employees are required to sternly monitor and ensure timely disbursement of remuneration to the employees by the outsourcing agency. These employees are protected by the Provident Fund and the Insurance

Acts against contribution equally borne by the employees and the outsourcing agency, which is to be remitted by the outsourcing agency directly into the credit of the employees account. Their leaves and other working conditions are governed by the outsourcing agency where the control of the public agency engaged their service is limited.

Relevant Indian Constitutional Provisions requiring the State to secure a decent standard of living of the citizens through equality, empowerment and justice

In the context of India becoming an independent nation, the Constitution accorded utmost priority to socioeconomic empowerment of every individual irrespective of race, religion, caste, culture and gender. Towards this direction, it has given freedom to the individuals to have their own professions within its ambit, and also put an obligation on the State to secure sustenance and development of every individual through equal opportunities in all spheres of rights including education and employment. It gave every citizen enforceable Fundamental Rights (FRs) such as Right to Equality¹⁷, Right to Freedom¹⁸, Right Against Exploitation¹⁹, Right to Freedom of Religion²⁰, Educational and Cultural Rights²¹, and Right to Constitutional Remedies²². The *Right to Equality* guarantees every citizen equality in every aspect of life including opportunities in public employment, respect, equal protection of laws and equality among equals²³ under equal circumstances. The *'Right to Life'* guarantees that he or she is not deprived of own life or liberty except with the law established procedure²⁴. It further prohibits human trafficking, begging and forced labor and guarantees every citizen protection against exploitation and its implications^{25,26}.

Further, the Constitution has issued certain Directives to the State to endeavor welfare of the people²⁷; to secure proper means of livelihood; to secure payment of equal amount for equal work without any bias including gender discrimination; to ensure that employees' health and strength as well as children's young age are not mistreated, and that they are not coerced by economic necessity into occupations that are not suitable for them; and that the children are provided with opportunities and facilities to grow in a healthy manner and that the adolescents are safeguarded from exploitation, moral and material desertion^{28, 29}; to ensure that opportunities are not denied for reasons of disabilities or economic necessities to any citizen for securing justice^{30,31}; to make provisions effectively within its economic capacity and development; to protect the rights to education, employment and public support in the event of unemployment, illness, disability, old age, or other unfavourable circumstances³²; to ensure maternity leave and reasonable and humane working conditions³³; to provide work and appropriate wages for dignity living³⁴; to guarantee a decent level of living, complete enjoyment of free time, and access to social and cultural possibilities³⁵; to employee participation³⁶; and to increase the nutrition level, improvise public health and raise living standard^{37,38}. In addition, the India accepted the provisions of the *'Right to Work'* of the Universal Declaration of Human Rights (UDHR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁹.

¹⁷ The Constitution of India, Art. 14 to 18.

¹⁸ *Id.*, Art. 19 to 22.

¹⁹ *Id.*, Art. 23 and 24.

²⁰ *Id.*, Art. 25 to 28.

²¹ *Id.*, Art. 29 and 30.

²² *Id.*, Art. 32 to 35.

²³ Hari Bharadhwaj, *Equal Pay for Equal Work* LEGAL SERVICE INDIA.

²⁴ *Supra* note 18, Art. 21.

²⁵ *Right against Exploitation* (Articles 23 & 24) - Indian Polity. Byju's Exam Prep.

²⁶ *Supra* note 18, Art. 23 and 24.

²⁷ *Id.*, Art. 38.

²⁸ *Id.*, Art. 39.

²⁹ *Certain principles of policy to be followed by the State*. Constitution of India.net, Available at: *Constitution of India.net* (last visited Mar., 28, 2023).

³⁰ *Supra* note 25, Art. 39-A.

³¹ Constitution of India.net, *Equal Justice and Free Legal Aid*.

³² *Supra* note 18, Art. 41.

³³ *Supra* note 18, Art. 42

³⁴ Circle of Rights Economic, Social & Cultural Rights Activism A Training Resource, *Justiciability of ESC Rights-the Indian Experience*, Available at: <http://hrlibrary.umn.edu/edumat/IHRIP/circle/justiciability.htm#16bo> (last visited Mar., 28, 2023).

³⁵ *Supra* note 18, Art. 43.

³⁶ *Id.*, Art. 43-A.

³⁷ *Id.*, Art. 47.

³⁸ Supreme Court of India, *Maniben Maganbhai Bhariya v. District Development Officer Dahod @ Ors.* Civil Appeal No. 3153 of 2022.

³⁹ Puja, *Right to Work – Meaning, Features and the Indian Constitution* IAS EXPRESS (Feb., 20, 2021).

In light of the aforementioned constitutional provisions and acceptance of the Universal Declarations and Covenants, it can be said that the State must manage to ensure that individuals, both men and women, have better employment for comfortable and dignified life; otherwise, the right to life and other inclusive fundamental rights that are guaranteed to them are denied, and the person in that situation is treated as having been deprived of those rights. Similarly, the Constitution has enshrined certain fundamental duties⁴⁰ to which every citizen is to strive towards contribution to the society.

Analysis of the Important Indian Legislations enacted towards Promotion of Employment and Employment Protection under Social Security Law

In general, social security policies offer a decisive step to achieve state's objectives by enhancing working and living conditions, and providing protection from long-term unemployment and uncertainty (Siefert, 2015)⁴¹. Towards this direction, the Indian State has taken measures for promotion of employment and social security to some extent but review is needed to ensure complete protection against unemployment and adequate standard of living in view of the social transformation due to industrialization and globalization.

The social security system in India which has been evolved from the Joint Hindu Family system lost its existence on the disintegration of joint family system. This has increased the workforce in the unorganized sector which constitutes around 93% whereas the social security programs coverage is incredibly miniscule⁴². Further, all the social security laws such as *The Workmen Compensation Act 1923*, *The Industrial Disputes Act 1947*, *The Employees' State Insurance Act 1948*, *The Employees Provident Funds and Miscellaneous Act 1952*, *The Maternity Benefits Act 1961*, *The Payment of Gratuity Act 1972*, etc help the workers to some extent only but do not protect them against unemployment fully.

The Right to Work (RTW) has been prominent in India because of the "Employment Guarantee Scheme" which was initiated by the Maharashtra State in 1973 and later scaled to national level in the form of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in the year 2005 that promises 100 days of guaranteed wage work in a year to every rural household adult members who volunteer to work in the projects of unskilled tasks such as drought protection, irrigation, water conservation, roads and sanitation^{43, 44}. Though it sets out as a good instance for a rights-based plan which combines work promotion and social protection for the rural people⁴⁵, it guarantees only 100 days of employment per household per year. In view of these specific objectives, the scope of this Employment Guarantee Act is very limited and the coverage is inadequate. This scheme is making the workers as long-term unwaged.

Similarly, The Domestic Workers Act 2008 is a regulatory Act to control the tracking of women and children, and payment and working conditions to the domestic workers working in the unauthorized sector. Similarly, The Employee Relations Act 2019 which is called as Domestic Workers (Remuneration) Regulations 2019 covers the domestic workers remuneration in employment, but do not guarantee these workers protection from long-term unemployment.

The employment generation schemes such as Training Rural Youth for Self-employment (TRYSEM) initiated in the year 1979 for handling unemployment issue in rural areas which was later merged into Swarnajayanti Gram Swarozgar Yojana in 1999; Pradhan Mantri Rozgar Yojana (PMRY) launched in 1993 for providing sustainable work opportunities to the educated unemployed youth; Jawahar Rozgar Yojana (JRY), an employment generated scheme initiated in 1989 which was later renamed as Jawahar Gram Samrudhi Yojana (JGSY) in 1999; Swarnajayanti Gram Swarozgar Yojana (SGSY), a self-employment scheme targeting the rural vulnerable launched in 1999 by integrating the Rural Development Program (IRDP) and allied schemes etc were meant employment for a definite period with fixed wages that do not guarantee long-term employment and appropriate wages for adequate living.

⁴⁰ *Supra* note 18, Art. 51-A.

⁴¹ J. Gayathri and Dilshad Shaik, *A critical Analysis on Social Security Measures for the Protection of Workers in India* 24(2) JOURNAL OF UNIVERSITY OF SHANGHAI FOR SCIENCE AND TECHNOLOGY 404-415 (2022).

⁴² Ministry of Labour & Employment, *Unorganized Worker*

⁴³ Martin Ravallion, *Guaranteed employment or guaranteed income* 115 WORLD DEVELOPMENT 209-221 (Mar., 2019).

⁴⁴ Press Information Bureau, Ministry of Labour & Employment, Govt. of India, *Employment Guarantee Scheme* (Aug., 6, 2018)

⁴⁵ Isabel Ortiz, Foreword in *National experiences in building social protection floors: India's Mahatma Gandhi National Rural Employment Guarantee Scheme* ILO Cataloguing in Publication Data (2015) ESS Paper No.49, Ellen Ehmck.

The Prime Minister's Employment Generation Program (PMEGP) which is a credit connected support program launched in 2008 by amalgamating the two plans namely, the Prime Minister's Rojgar Yojana (PMRY) and the Rural Employment Generation Program (REGP)⁴⁶; National Urban Livelihoods Mission (DAY-NULM) launched in 2013 by substituting the Swarna Jayanti Shahari Rozgar Yojana (SJSRY) targeting the downtrodden sections of the urban society to reduce their poverty by enabling them to access skilled-wage self-employment⁴⁷; Pt. Deen Dayal Upadhyaya Grameen Kaushalya Yojana scheme (DDU-GKY) lunched in 2014 which originated with special programs for rural poor youth under National Rural Livelihoods Mission (NRLM)⁴⁸; National Career Service (NCS) Project launched in 2015 to connect employment seekers and employers - are also some of the important social security schemes in India towards promotion of employment security but because of their limited scope, all these schemes could not curb the growth of the unemployment rate in the country. The National Skill Development Policy 2015 notified for promotion of skill expansion, Startup India Initiative 2016 introduced for encouraging the young talented, and Pradhan Mantri Kaushal Vikas Yojana (PMKVY) 2016-20 for improving self-employment⁴⁹ could not have any impact on menacing the problem of unemployment growth in India.

Perspectives of the Indian Judiciary towards Employment Protection and Social Security Law

The perspectives of the Indian judiciary are that the State shall secure social order and living wages through employment to all the citizens as it is a mandate for every citizen to contribute towards the state's progress. The right to life (RTL) is included a 'right to live with human dignity⁵⁰'. The equal pay for equal work (EPEW) is a constitutional goal which it depends on the similarity of the duties discharged between the employees. Payment of lesser wages for the same work is demeaning that constitutes an act of exploitative enslavement. The State shall ensure implementation of social security legislations as legitimate rights of the employees. The view of the judiciary is that the outsourcing of employment is a sham. The views of the judiciary are more clearly outlined as below:

The RTW is utmost valuable freedom that every citizen possesses. The citizen do certainly has this right to earn income necessity for living. To Work means to eat and to live⁵¹. The RTW is integrated in the right to live (RTL) and both are interdependent⁵². Though the RTW is a directive on the State under Article 41, it has become an integral part in the right to life through judicial intervention⁵³. The EPEW is not a vested right but it is a constitutional goal^{54,55}. However, it can be depicted through interpretations on equality before law, protection against discrimination and equal opportunities in public employment⁵⁶. Payment of lesser wages for the same work is shameful. An employee in a welfare state shall not be paid lesser wages than others for performing the same duties. It demeans and strikes human dignity. A person is compelled to work for lesser wages at the expense of his self-respect and dignity to live and to make his or her family live. Payment of unequal wages is a forceful act which constitutes enslavement and exploitative and it is undoubtedly cruel and coercive because it results in involuntary subjugation⁵⁷.

The perspective of the Supreme Court is that the Payment of Gratuity Act (PGA) is one of welfare legislations like Minimum Wages Act (MWA) and Employee State Insurance Act (ESIA) to secure employees socioeconomic justice during old age⁵⁸. The State shall have to voluntarily pay the gratuity amount to him for his entire service together on a daily wage and regular basis, rather than forcing him to approach the Court to get his legitimate claim. It is truly ill-fated that the real claim of the employee was denied by the State and dragged him in

⁴⁶ Prime Minister's Employment Generation Programme (PMEGP), available at: https://www.kviconline.gov.in/pmegpeportal/pmegpeportaltutorialdoc/PMEGP%20guidelines_pmegpeportal.pdf (last visited Mar., 28, 2023).

⁴⁷ DAY-NULM, available at: <https://nulm.gov.in/> (last visited Mar., 25, 2023).

⁴⁸ Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY), Available at: https://rural.nic.in/sites/default/files/RTI_DDUGKY_05112021.pdf (last visited Mar., 28, 2023).

⁴⁹ JK Shah Classes, Available at: [https://www.jkshahclasses.com/images/FYJC_Mar_20/ECO%20CHAPTER%207%20-SOLUTION%20\(2\).pdf](https://www.jkshahclasses.com/images/FYJC_Mar_20/ECO%20CHAPTER%207%20-SOLUTION%20(2).pdf) (last visited Mar., 28, 2023).

⁵⁰ *Maneka Gandhi v. the Union of India* 1978 SCR (2) 621.

⁵¹ *Douglas J in Baksey v. Board of Regents*, 347 M.D. 442 (1954), para 79.

⁵² *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors*

⁵³ Tissy Annie Thomas, *Right to work under the Indian Constitution*. ipleaders, Jun. 16, 2018 (last visited Mar. 28, 2023).

⁵⁴ *State of Haryana and Another v. Haryana Civil Secretariat Personal Staff Association*

⁵⁵ *State of Madhya Pradesh v. R.D. Sharma*, at para 14.

⁵⁶ Hari Bharadhwaj, *Equal Pay for Equal Work* LEGAL SERVICE INDIA.

⁵⁷ *State of Punjab v. Jagjit Singh*, at para 55.

⁵⁸ *Maniben Maganbhai Bhariya v. District Development Officer Dahod & ors.*, at para 7.

unproductive litigation for many years⁵⁹. The employees of the local bodies where ten or more persons are employed, the Payment of Gratuity Act shall apply. Pension and gratuity are meant for the benefit of the employees⁶⁰. The ESI Act is a social welfare legislation conferring certain benefits to the employees in case of illness, motherliness and work injury. It shall be made applicable to all the organizations irrespective of the number of employees at any point of time so that the Act would achieve legislative purpose without doing resentment to the language of the enactment⁶¹.

The verdict of the Telangana High Court is that the outsourcing system is a sham. The Court held that engaging the employees through intermediary agencies or contractors is contrary to law and is a violation of fundamental rights of equality, equal opportunities and life guaranteed by the Indian Constitution and it is also a contempt of the directions given in *Uma Devi* case which mandates periodic regular recruitment to sanctioned posts. The outsourcing system is only a sham and a ruse to avoid extending to the employees their genuine service entitlements. The presence of intermediary agencies and or contractors has to be ignored. Such employees are entitled to be considered for regularization of their services⁶². The Allahabad High Court intended training of the officers who have been conferred with the reviewing or appellate authority to enable them to discharge their statutory obligations appropriately while passing provisional or final orders under the relevant Acts and Rules to ultimately benefit the people who are litigants before such authority⁶³.

The Delhi High Court is of the view that it is mandated for the State to secure basic social security for every individual. But it has not managed to provide the same to all citizens, as is evident from witnessing the existence of begging⁶⁴.

Promotion of Employment Security & Guaranteed Employment: International Perspectives

The study on this fragment has been made in two parts which has some limitations. The first part has been an analysis of the vital instruments of International Labor Organization (ILO) and the other part focuses on the policies that exist in other countries. This is mainly to understand the nature and scope of the employment security available in modern capitalist countries like United States of America (USA) and United Kingdom (UK); communist countries like China and Cuba; socialist country like Russian Federation.

Important Instruments of International Labour Organization

In pursuit of promoting a meaningful and respectable work for all men and women and fulfilling its objectives of lasting peace and progress through equal voice of employees, employers and governments, the International Organization has set standards in the form of recommendations to follow and conventions to adopt by the member-States, some of them as relevant are discussed in this study.

Recommendations

The ILO has recommended the state parties to ensure that a worker is not to be terminated from employment without a notice period and a reasonable amount of time off with pay and allowances or compensation in lieu thereof to seek other employment. It endorsed that workers shall be protected against unjustified termination and against the socioeconomic hardship inherent in the loss of employment⁶⁵; Priority is to be given to a worker whose employment has been terminated on economic, technical, structural and such other similar nature, if the employer again requires a worker to perform the same activities, and devising a criteria for rehiring, retention of seniority rights⁶⁶; All the socioeconomic plans, policies and programs are to promote prolific and liberally selected employment. They need to aim ensuing unbiased opportunities and treatment for all workers with respect to work and career prospects. In addition, the States are to adopt measures to help the people having difficulties in finding lasting employment. The States are also required to devise policies based on the socioeconomic objectives and employment objectives. The States may implement an employment policy in consultation with the representatives of all the stake holders including workers, employers and affected persons⁶⁷; a national policy is to be adopted in order to protect the workers effectively⁶⁸; extension of social security to as many people as possible in accordance with the principles laid down in Convention No. 102 of

⁵⁹ *Netram Sahu v. State of Chhattisgarh*, at para 19.

⁶⁰ *Karnataka High Court, Chief Executive Officer v. Shri S N Kalegowda*, at para 14.

⁶¹ *The ESI Corporation v. Radhika Theatre*, at para 2.1.

⁶² *G. Srinivasa Chary, v. The State of Telangana*, at para 49.

⁶³ *Pankaj Kumar v. State of U.P. and 3 Others*, at para 2.

⁶⁴ *Harsh Mander & Anr. v. UoI & Or*, at para 29.

⁶⁵ The ILO, R119 - The Termination of Employment Recommendation, 1963 (No. 119).

⁶⁶ *Id.*, R166 - Termination of Employment Recommendation, 1982 (No. 166).

⁶⁷ *Supra* note 65, R169 - The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

⁶⁸ *Id.*, R198 - The Employment Relationship Recommendation, 2006 (No. 198).

1952. This Recommendation affirms the social security as a right which works as a tool for prevention and reducing the poverty, inequality, social exclusion and social necessities for development and continuous progress. The States must aid the transition from unofficial to official employment⁶⁹; and the States are to ensure respect of all fundamental rights, international labour standards and rule of law⁷⁰.

Conventions

Unlike the recommendations, the Conventions of the ILO are strictly binding on the member-States. The ILO conventions mandate that the States shall endorse definite employment policy and make sure a productive work for all who seek work, to use his or her skills to which he or she is well-suited, without any discrimination in any form. The International Labour Conference (ILC)-1974 recorded that the promotion of employment security is an essential part in the right to work⁷¹. The ILC-1982 has reiterated the requirement of having a definite fund for social security at the contribution of the employer; requirement of the notice period to the employee or compensation in lieu thereof, calculated on the basis of wage level and tenure of service rendered by the employee, to be paid by the employer to the employee, unless he is guilty of serious misconduct⁷². The ILO also mandates that protection is to be given to the employees from unemployment by making provisions for periodical benefits in employment. It has recognized the importance of combining social protection with the socioeconomic policies. The States shall ensure protection of a minimum of 85% of the total employees which includes apprentices also⁷³. The States shall assure the establishment of basic requirements for the nine branches of social security measures, including medical care, medical assistance, maternity benefits, invalidity benefits, survivors' benefits, unemployment aid, old-age benefits, and employment injury benefits. It has been envisioned that making adequate provisions for these benefits through proper administration is the primary responsibility of the State. It has backed the State's obligation to guarantee these benefits through specific programs⁷⁴. The States shall have enough control over private employment agencies to ensure ample protection for the workers on wages, working conditions, associations, collective bargaining, social security schemes etc⁷⁵. The States shall also ensure promotion of equality in employment by private employment agencies through affirmative action plan. The States shall have to take measures so that the private sector has fair selection methods. Work contract should be in written format with clear mention of terms & conditions of employment a copy of which is to be provided to the employee before the commencement of work assignment. No employee is imposed with any penalty for his or her accepting employment in any other enterprise⁷⁶. The States shall recognize that the child labour is caused due to poverty and to be alleviated through education. The States shall take effective steps to secure prohibition of child labour on urgent basis⁷⁷.

Covenants, Universal Declarations and Charters

The States shall also ensure promotion of equality in employment by private employment agencies through affirmative action plan. There are some other important international instruments that are relevant to employment security are: The RTW is included the right of every person to gain work for his or her living. This right must be included technical training, professional guidance and program development and appropriate steps to protect this right⁷⁸. The Law shall protect the right of every person from arbitrarily deprived of life⁷⁹. Every person is to be protected against unemployment, inappropriate wages and inadequate working conditions⁸⁰. The objectives of the Contracting Parties must be recognizing highest stable employment; protecting the workman's effective earning in the occupation; and maintaining a free employment service to all workers through appropriate training, guidance and rehabilitation, in order to ensure successful exercise of the RTW. The RTW is intimately linked with many allied liberties such as right to - work with dignity, equal pay, equal treatment, equitable compensation, safety at workplace⁸¹. There is a need to secure execution of well-suited social protection laws implemented for the advantage of all the employees working in every sector, including floors, with the support of the Universal Social Protection Partnership (USP2030)⁸². Freedom of

⁶⁹ *Id.*, R202 - Social Protection Floors Recommendation No. 2012 (No.202).

⁷⁰ *Id.*, R205 - Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

⁷¹ *Id.*, C122 - Employment Policy Convention, 1964 (No. 122).

⁷² *Supra* note 65, C158 - Termination of Employment Convention, 1982 (No. 158).

⁷³ *Id.*, C168 - The Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168).

⁷⁴ *Id.*, C102 - The *Social Security (Minimum Standards) Convention*, 1952 (No.102).

⁷⁵ *Supra* note 65, C181 - The *Private Employment Agencies Convention*, 1997 (No. 181).

⁷⁶ *Id.*, C188 - The *Private Employment Agencies Convention* 1997 (No. 188). (1997)

⁷⁷ *Id.*, C182 - The *Worst Forms of Child Labour Convention*, 1999 (No. 182).

⁷⁸ The International Covenant relating to Economic, Social and Cultural Rights, Art. 6

⁷⁹ The International Covenant on Civil and Political Rights (ICCPR), Art. 6.

⁸⁰ The Universal Declaration of Human Rights, Art. 23

⁸¹ The European Social Charter, Art. 1.

⁸² The United Nation's Sustainable Development, Goal 1.3 as part of the 2030 agenda.

seeking employment and working in any State is a right of every citizen⁸³. However, it is regrettable that inspite of the appreciation of the above recommendations, ntions and declarations, a large number of people do not have a meaningful employment because of lack of positive connotation in the form of a guaranteed work⁸⁴.

Employment Security Law in various countries

Almost all the countries across the world recognized the significance of the human resources, and gave priority for the benefit of the workers by enacting legislations on promotion of employment security in the form of minimum wage, working hours, working conditions, occupational safety, equality, leaves, health care, special policies for women employees, prohibition of employment discrimination, etc. for the socioeconomic development of the citizens which are similar to India. But longer and momentous employment to the individual is not protected in any country.

The United States of America (USA): The Employment Law in the USA is mostly governed by Fair Labor Standards Act (FLSA) 1938. It is applicable for all the employees including part-time workers employed in public and private sector agencies⁸⁵. It ensures that every American worker shall receive a minimum wage for his or her work. The other legislations meant for social security in employment are: The Affordable Care Act (ACA) 2010 promised health insurance. The Social Security Act 1935 requires the State to provide jobless benefits to the persons unemployed for reasons beyond their control. The Occupational Safety and Health (OSH) Act 1970 mandates all the public and private employing agencies to secure their employees work and workplace free from dangers. The State under this Act assures the men and women workers, and authorizes implementation of the defined standards with respect to safe and nourishing working conditions⁸⁶. The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) 2000 assures medical benefits against cancer related illness to the workers who are exposed to radiation and provides compensation under Radiation Exposure Compensation Act (RECA)⁸⁷. The Federal Employees Compensation Act (FECA) 1916 requires the employing agencies payment of compensation to the employees for the disability or death resulting from personal injury. The Act facilitates payment of death gratuity to the surviving family members, medical services along with initial medical benefits in case of injury and or disability on duty, professional rehabilitation, etc⁸⁸. The Black Lung Benefits Act 2000 secures medical benefits to coal miners. This protects the coal miners against total disablement by pneumoconiosis that arises out of coal mine work. The Act also facilitates death benefits to the survivors of the coal mine workers⁸⁹. The Employee Retirement Income Security Act (ERISA) 1974 which is regulated by the Employee Benefits Security Administration (EBSA) of the Department of the Labor, is an important legislation in the USA that offers pension to the retirees and the participants of the plan. It has been enacted to safeguard the employees interests like retirement and healthcare plans. It requires the sponsors and the administrators to ensure of fiduciary responsibilities. Any American working anywhere including a Limited liability Company or nonprofit organization is covered under this Act. However, the employees of the religious institutions are not covered⁹⁰.

United Kingdom: The main law relating to the promotion of employment in the United Kingdom is the *Equality Act 2010* which was superseded the Equal Pay Act of 1970. The State is under strict obligation to secure both the men and women workers equal treatment with respect to the terms and conditions of employment in case of equal value in terms of effort or skill. The significance of this Act is reducing the

⁸³ The EU Charter of Fundamental Rights, Art. 15.

⁸⁴ MCR Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* 195 (1998).

⁸⁵ Office of Financial Management, Washington Government, *Fair Labor Standards Act (FLSA)*, Available at: [https://ofm.wa.gov/state-human-resources/compensation-job-classes/compensation-administration/fair-labor-standards-act-flsa-washington-minimum-wage-act-wmwa/fair-labor-standards-act-flsa#:~:text=The%20Fair%20Labor%20Standards%20Act%20\(FLSA\)%20is%20a%20federal%20law,%2C%20state%2C%20and%20local%20governments](https://ofm.wa.gov/state-human-resources/compensation-job-classes/compensation-administration/fair-labor-standards-act-flsa-washington-minimum-wage-act-wmwa/fair-labor-standards-act-flsa#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20is%20a%20federal%20law,%2C%20state%2C%20and%20local%20governments) (last visited 28 Mar., 2023).

⁸⁶ United States Department of Labor, *OSH Act of 1970*, Available at: <https://www.osha.gov/laws-regs/oshact/completeoshact> (last visited 28 Mar., 2023).

⁸⁷ Office of Environment, Health, Safety & Security, US Department of Labor, Available at: <https://www.energy.gov/ehss/energy-employees-occupational-illness-compensation-program> (last visited 27 Mar., 2023).

⁸⁸ Office of Workers' Compensation Programs, US Department of Labor. *Federal Employees' Compensation Act*, available at: <https://www.dol.gov/agencies/owcp/FECA/regs/statutes/feca#8101> (last visited 30 Mar., 2023).

⁸⁹ US Department of Labor, *Black Lung Program*, available at: <https://www.dol.gov/agencies/owcp/dcmwc> (last visited 27 Mar., 2023).

⁹⁰ Pallavi Dadhich, *What is Employee Retirement Income Security (ERISA) Act of 1974?*, EBIZFILING (Nov. 25, 2022).

socioeconomic inequalities, increasing equality of opportunities, harmonizing equality law, prohibiting victimization and eliminating discrimination. The other important employment security legislations in the UK are: *The Employment Rights Act 1996* (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 protects workers against detriment in certain health and safety circumstances. The worker is not to be subjected to any loss for his or her absence because of his reasonably serious or impending danger⁹¹. This Act sets out the employee rights in case of unfair and arbitrary dismissal or termination, joblessness and parental leave. This legislation is an advanced legislation which puts together all the prominent social security laws such as Contracts of Employment Act 1963, Redundancy Payments Act 1965, Employment Protection Act 1975, and Wages Act 1986 at one place⁹². *The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000* and *The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002* are also other outstanding legislations enacted in the lines of the European Union's Fixed-term Work Directive 1999 (99/70/EC) on workers' rights. According to this law, an employer cannot treat a part-time or temporary employee less favourably than a full-time coworker with regard to the terms of the contract or in any other way by acting intentionally or unintentionally⁹³. *The National Minimum Wage Act 1998* requires the State to make effective provisions for a minimum wage to the persons employed in agriculture and allied purposes. The employer shall not pay less than the national minimum wage to the person employed by him⁹⁴. *The Working Time Regulations 1998* grants employees the right to 28 days of paid holidays per year as well as breaks from work to limit lengthy working hours. *The Pensions Act 2008* aims at encouraging large number of people to build up a pension income to supplement the State's pension scheme. It directs that every employer must put certain staff into a workplace pension scheme and shall contribute towards it. All eligible employees who are not already registered in any pension plan will be enrolled automatically in one of their employer's pension plans or a personal account plan. Employers are required to enroll all eligible workers in workplace pension plans and to contribute a minimum of 3% to those plans.⁹⁵ *The National Insurance Act 1946* guarantees various social security benefits such as unemployment benefit, widow benefit, sickness benefit to everyone (excluding married women) and confer a right to pay a weekly contribution for entitlement of pension at the age of 60 for women and 65 for men. A lump sum amount is also paid to the mothers on the birth of each child⁹⁶.

People's Republic of China: The China on August 30, 2007 has adopted the *Employment Promotion Law*⁹⁷ in order to effectively promote employment and liaison between economic enlargement and employment expansion. In this law, it is clearly indicated that the State shall have to put expansion of the employment towards socioeconomic development, implement proactive policies for employment and upholds guidelines to enable the workers to choose employment on their own will, and that the government shall expand employment through various channels for synchronization and stability of society⁹⁸. The worker is having a right to employment and to choose job according to will and wish and that the worker shall not be subjected to any kind of discrimination⁹⁹. The government is responsible for creation and expansion of employment for constant development economically and socially, to include goals in the national plans, and to prioritize formulation of medium and long-term planning and annual work plans for promotion of employment¹⁰⁰. The government shall also have to have a regulatory mechanism to control the human resources, improve the employment services, strengthen the vocational education & training and provide employment aids¹⁰¹. All the employing

⁹¹ Editor, UK | The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order, 2021, SCC ONLINE BLOG (Mar. 24, 2021).

⁹² Net Lawman, *Employment Rights Act 1996* (Sep. 2022).

⁹³ UK Legislation Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI 2002/2034, *Explanatory Note*.

⁹⁴ National Minimum Wage Act 1998, Chapter 39.

⁹⁵ Rachel Morris, *Pensions Act 2008*, Russell-Cooke Solicitors (Jan., 2010). Available at: <https://www.russell-cooke.co.uk/media/2027/the-pensions-act-2008-jan-2010.pdf> (last visited 29 Mar., 2023).

⁹⁶ Editor, *The National Insurance Act 1946*. THE HEALTH FOUNDATION, Available at: [https://navigator.health.org.uk/theme/national-insurance-act-1946#:~:text=The%20National%20Insurance%20Act%201946%20received%20royal%20assent%20on%201,to%20pay%20a%20weekly%20contribution.\(last%20visited%2030%20Mar.,%202023\).](https://navigator.health.org.uk/theme/national-insurance-act-1946#:~:text=The%20National%20Insurance%20Act%201946%20received%20royal%20assent%20on%201,to%20pay%20a%20weekly%20contribution.(last%20visited%2030%20Mar.,%202023).)

⁹⁷ The International Labour Organization, *Employment Promotion Law of the People's Republic of China*, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/76984/81380/F1735089926/76984.pdf> (last visited 28 Mar., 2023).

⁹⁸ Employment Promotion Law of the People's Republic of China, 2007, Art. 2.

⁹⁹ *Id.*, Art. 3.

¹⁰⁰ *Id.*, Art. 4.

¹⁰¹ *Id.*, Art. 5.

units shall grant guarantee for legal rights and advantage of the workers¹⁰². The government shall arrange special employment fund in the budget to be used for employment, training, social insurance and guarantee fund for micro loans at discounted interests for minor-profit projects, and to support the public employment services¹⁰³. The State shall have to improve an unemployment insurance scheme to ensure the basic living of the unemployed persons and promote their employment¹⁰⁴. The State is to encourage private sector in the form of offering tax benefits, to increase employment and support all unemployed including disabled persons to get suitably employed or protected¹⁰⁵. Policies for both rural and urban employment are to be devised and implemented¹⁰⁶. The State is to create a fair enough employment environment, eliminate favoritism, frame policies and take appropriate steps to aid people who face difficulties in getting employment¹⁰⁷. The State shall ensure equal rights for women on par with the men¹⁰⁸, and that the employing unit shall not stipulate any conditions in the employment contract of females restricting them from marriage and having children¹⁰⁹. The Government should establish and improve an employment aid system, giving priority to support and help the persons who have difficulties in finding jobs, more particularly the persons who cannot achieve employment after continuous unemployment for a certain time period¹¹⁰. The state shall have to further ensure that at least one member in every urban family needs employment¹¹¹. The Government at all levels shall establish target responsibility including examination and supervision of subordinate departments for promotion of employment¹¹².

Cuba: Though there are fundamental obstacles of very low wages, non-participation in the wage policy setting, and restriction for forming trade unions, employees in Cuba have a set of employment protections that most of the developing and developed countries do not have. There is a legitimate framework conferring the workers' rights for vacation, parental leave, working hours, working conditions, health care, pension, unemployment support and employment retraining, adjudication of the grievances through labor courts¹¹³. The Cuba has encouraged self-employment since 2010 to update its socialist economy. The policies of the State and the tax benefits contributed greatly to the remarkable development of the self-employment in Cuba¹¹⁴. The employment rights in Cuba are mostly governed under the Right to Social Security Act (RSSA) 1983 under which right to social security is granted to every person to protect him from unemployment, disabilities, old age and the situations out of his control that makes him or her either physically or mentally impossible to earn for a living¹¹⁵. The State shall have to assure and ensure adequate protection to every employee who is unable to work due to illness, disability or age¹¹⁶. Similar protection is guaranteed to the family in case of death of the employee. Protection against occupational disease¹¹⁷ and protection against health in the form of free medical services¹¹⁸ have been guaranteed. The Law also guarantees cash pensions with the contribution of the production units to the worker or dependents as the case may be, in the cases of death, disability, motherhood, retirement and service related injuries. Employees are not required to contribute towards the retirement fund¹¹⁹.

Russian Federation: The Russian Federation on 26 February 2019 has adopted seven unemployment benefits, viz. medical care, sickness, old-age, injury, maternity, disability and survivors benefit, as enlisted in the Social Security (Minimum Standards) Convention No. 102 (1952). All the policies are aimed to ensure a dignified life and progress of the citizen. The State guarantees social security measures and protects the work and health of the family by way of assured minimum wages and government pensions¹²⁰. The basic rights of

¹⁰² *Id.*, Art. 8.

¹⁰³ *Id.*, Art. 15.

¹⁰⁴ *Id.*, Art. 16.

¹⁰⁵ *Id.*, Art. 17.

¹⁰⁶ *Id.*, Art. 20.

¹⁰⁷ *Id.*, Art. 25.

¹⁰⁸ *Supra* note 98, Art. 27.

¹⁰⁹ *Id.*, Art. 28.

¹¹⁰ *Id.*, Art. 52.

¹¹¹ *Id.*, Art. 56.

¹¹² *Id.*, Art. 58.

¹¹³ Geoff Thale and Clay Boggs, *Labor Rights and Cuba's Economic Reforms* WASHINGTON OFFICE ON LATIN AMERICA (Dec. 2013).

¹¹⁴ Mario A. Gonzalez-Corzo and Orlando Justo, *Private Self-Employment under Reform Socialism in Cuba* 32(2) THE JOURNAL OF PRIVATE ENTERPRISE 45-87 (2017).

¹¹⁵ The Right to Social Security Act 1983 of the Cuba, Art. 1.

¹¹⁶ *Id.*, Art. 47.

¹¹⁷ *Id.*, Art. 48.

¹¹⁸ *Id.*, Art. 49.

¹¹⁹ Charter XI, *The Right to Social Security, The Situation of Human Rights in Cuba*, Seventh Report

¹²⁰ Constitution of Russian Federation (CRF), Art. 7.

the workers including protection against unemployment, guaranteed statutory duration of work time shall be secured^{121,122}.

Another key legislation pertains to Russian Federation is *The Labour Code of the Russian Federation* that governs the Russian Employment Law. It protects the employee by implementing complicated procedures for termination. Contract appointments are not permitted under normal circumstances. Special protection is also given to dependents of the employees. Fortification of employee rights is equally guaranteed to all the workers irrespective of nationality but with limited citizenship restrictions in specific areas of the economy¹²³. The State is further under obligation to ensure equal wages to the employees for their work of equal value. The State shall also ensure timely fulfillment of the directives by imposing fines for violations of the laws. The State is further made responsible to ensure social insurance, job-related safety and health requirements of the employees¹²⁴. The mutual obligations of the workers and the employing agencies are to be included in the written contract document with respect to the wages, working conditions, occupational safety, etc¹²⁵. For termination of the employee on a fixed date on the expiry of the contract, the Employee must be communicated in written format of the termination of the contract at least three days prior to the termination¹²⁶.

The Russian Federation regularly reviews its employment legislations. Still they are measured more bureaucratic, outdated and not meeting the industry requirement. In Russia, it is a common rule that employment agreements are open-ended. Fixed-term contracts shall be permissible in very limited cases. The duration of such fixed-term shall not exceed five years. Extension of fixed-term contract entails the risk as open-ended. The employers are at liberty to set contractual rules at minimum within the purview of the law¹²⁷.

CONCLUSION & SUGGESTIONS

From the above comprehensive study, it is concluded that there are realistic difficulties in India for the enforcement of the *right to work* because of the fiscal burden on the State to secure protection against unemployment to huge number people. However, the State which is committed for its own Constitution as well as the international legitimates, cannot escape from its duty to show its sincerity in putting efforts towards creation of secured employment opportunities commensurate with the rising population and to provide a decent life to them. The State is spending large amount of tax-payers hard-earned money towards unusual free financial aid schemes making the people lazy and incapable which is also unjust and unfair; and if this amount is diverted for creation of employment opportunities, and utilization of the physically and mentally not challenged manpower resources at the best, it can serve three objectives: firstly, socioeconomic development of the individual; secondly, socioeconomic development of the country; and finally, saves a large amount of resources spent against free schemes which can be utilized for other endeavours of the State. Lack of adequate employment opportunities may force the innocent and talented people to eke out begging for their existence. It may also direct the people to human trafficking and such other illegal activities for their survival. Hence, the State may explore all the possibilities for employment generation even in the form of inviting investments by giving tax concessions to attract national and multinational companies to cater to the large-scale employment requirements but with appropriate controlling mechanism over the employment agencies towards securing the social benefits of the employees and the nation's sovereignty. Also, the State can encourage self-employment programs largely with financial support and tax benefits. The knowledge and talent hidden in the unemployed people thus can effectively be utilized by the State for the socioeconomic development of the country. The State has to manage securing basic social security by providing protected employment for every individual as it is mandated for it¹²⁸ and recognize and make everyone to recognize that no citizen including a beggar should not become an unwarranted burden on the State's financial resources but should compulsorily contribute to the State's progress^{129,130}.

It is also concluded that the Contract or Outsourcing Employment is the other form of bonded labor system where the services of such employees are severely exploited. The system is leading to blatant misuse of power for illegal gains by the executive agencies where the public exchequer is shattered much. The State shall strive

¹²¹ *Id.*, Art. 37.

¹²² Vladislav Egorov, *National Labour Law Profile: Russian Federation* ILO

¹²³ Anna Berlina, *Russian Federation: Employment Law Overview Russia 2021-2022* L&E Global, Sep. 21, 2021

¹²⁴ *The Labour Code of the Russian Federation*, Art. 22.

¹²⁵ *Id.*, Art. 41 and 45.

¹²⁶ *Id.*, Art. 79.

¹²⁷ Pepeliaev Group, *Employment Law Overview Russia 2021-2022*

¹²⁸ *Harsh Mander & Anr. v. UoI & Or.*, at para 29.

¹²⁹ *Brijesh Arya v. Municipal Corporation Of Greater Mumbai & Or.*, at para 10.

¹³⁰ Special Correspondent, *Beggars should also work for country: Bombay HC*, THE HINDU (Jul 3, 2021).

towards securing post-retirement living of these workers and dependent family members by recognizing the constitutional goal of welfare state. If there is no security to the employment, the employees may hesitate to put best of their productivity due to fear of discharge from employment¹³¹ that adversely impacts the nation's economy. Moreover, the unguaranteed employment and inadequate wages, facilities and privileges encourage the employees to dishonesty and concentration of wealth which are to be prevented in the larger public interest. In the absence of the protection from unemployment by the State, child labor and human trafficking spread across the society. The State should be so serious and candid in ensuring healthy growth of the children, protection of the youth, utilization of the bright and efficient manpower resources for sustenance and development of the society. The State should not cause the human society to miss ample opportunities of utilizing innovative knowledge hidden in such human resources. The expenditure intended to save out of the contracting or outsourcing of employment is not worth enough to compare it with the *right to live* with human dignity of the employees. The State can prioritize justifying and regularizing the services of these employees working purely on temporary basis as on date as a one-time measure, and abolish the co-terminus/ contract-based employment system from now onwards as illegal, and ensure protection of employment to all.

It is further concluded that privatization or outsourcing of government activities may, not only lead to the loss of democratic norms embodied in the administrative and constitutional law, but also may lead to large-scale fraud, blatant misuse of power, misappropriation of public funds; harm to the privacy and security of the data and sovereignty of the State more particularly when the outsourcing system is introduced in defence services. The control of the government over whistle-blowing and privacy of the government records would automatically shift to the hands of the private contractors. The public would lose the constitutional and administrative law protection once they are dealt with the private contractors doing outsourced government work¹³². Furthermore, the State's policy of recruitment through contract or outsourcing employment methods may facilitate the illegal entry of the persons into the government service, and thereby depriving of the right of equal employment opportunities to the other people which is contrary to the constitutional goals. Besides, huge public money is going to the hands of the intermediary private agencies which are not contributing for the public cause, through the Outsourcing or Contract Employment system.

It is also concluded that the Contract or Outsourcing Employment is the other form of bonded labor system where the services of such employees are severely exploited. The study also concludes that the underemployment or unprotected employment deprives the fundamental rights of the people that enormously increase the burden of the Judiciary also inspite of its well settlement of law, when its intervention is sought for by the affected people to safeguard their fundamental rights in case of denial by employers. The India has mostly adopted the international covenants, treaties and declarations as well as enacted various legislations in the lines of its rich constitutional lines for protecting the interests of the employees of both the public, private and unorganized sectors which are very similar to the developed countries. However, adequate knowledge of constitutional provisions and legislations, seriousness and honesty are required in implementation of these policies. The State Executive Authorities are accordingly required to be trained to properly understand the intent of the legislative body and perspectives of judiciary for effective accomplishment of these social security schemes and reduce the burden of the judiciary as well as save time, money and public resources.

It is also just and necessary to conclude that the disparity in wages and payments is affecting the capacity-building and potentiality of the workmen. It is also a denial to the right to equality and right to equal employment opportunities guaranteed to the workman by the Constitution. Hence the State shall ensure parity at all levels on par with the regular workers. Unsecured employment is further a clear denial of fundamental rights granted by the Constitution under Article 21, the *right to life* in which the *right to work* is integrated. It is also depriving the right to life of the dependent family members of such employees. Under these circumstances, it should become the enforceable right of every individual in India irrespective of race, religion, caste, culture and gender to have work for living and constantly leading a decent life along with the dependent family members, within the purview of the Indian Constitution.

It is also necessary to train an individual, and to make him work mandatorily unless otherwise his physical condition does not allow, not only for his self-sustenance but also to fulfill the fundamental duty stipulated by the Constitution to endeavor towards distinction in all spheres of individual and collative activities so that the nation constantly rises to upper levels of achievement. Protected employment may reduce various illegal activities and crime rate. Corruption, Human Trafficking and such other illegitimate professions may be controlled through guaranteed employment with appropriate wages and facilities. Besides, the State shall have

¹³¹ Anurag Singh and Rashi Jeph, *Should There Be a Fundamental Right to Work?*, THE JOURNAL OF INDIAN LAW AND SOCIETY BLOG

¹³² David H. Rosenblood and Suzanne J. Piotrowski, *Outsourcing the constitution and administrative law norms* 35 (2) AMERICAN REVIEW OF PUBIC ADMINISTRATION 103-121 (2005).

to ensure livelihood and health of an individual whose physical condition does not allow him or her for undertaking any employment.

The State should have a review and ensure an appropriate controlling mechanism to improve the living status of the human resource working in the private sector. It is the normal duty of the State to adhere to strict implementation of social security laws in every sector. The social security under the *right to life* in which the basic right to work is integrated should complete¹³³ when protection against unemployment is made as fundamental right and enforced at law. This is the high time for having a definite Employment Protection Legislation (EPL) in the country on review of all the existing employee security laws in accordance with the international standards that endeavours the constitutional goals, and to consider Protection Against Unemployment as a Fundamental Right under Right to Life in which Right to Work is an integral part.

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¹³³ Pavlina Tcherneva, et al *Guaranteeing the right to decent work* GREEN EUROPEAN JOURNAL (Mar. 4, 2021)