CHAPTER - VI

CONCLUSION AND SUGGESTIONS

Stand up, be bold, be strong. Take the all responsibilities on your own soldiers, You are the creature of your destiny, All the success and dreams are within yourself, Therefore make your own life.

Swami Vivekanand

Constitutional Courts are forums of principles. Development of constitutional law takes place when jurisprudential expansion\(^1\) of the contours of the rights enumerated in Part III of the Constitution and Part IV of the Constitution is undertaken. Jurisprudential development embodies evolving concepts like inter-generational equity in environmental laws, modern ultra-virus doctrine based on rule of law, the precautionary principle in environmental laws, the polluter pays principle in environmental laws and the bare minimum provision principle in resource allocation disputes (socio-economic rights). Since such jurisprudential expansion of law is an on-going process from time to time, we need to revisit constitutional values like welfare rights. That is the reason why we have selected the theme of this lecture to be "Refraining of Welfare Rights under the Indian Constitution".\(^2\)

SUSTAINABLE DEVELOPMENT

Environment is a national asset. It cannot be treated as an asset to be exploited by the Govt.(s) for revenue purposes. It incorporates the principles - "Polluters Pay" and "Precautionary" principles. Its object is inter-generational. These come under the doctrine of "sustainable development" which ensures inter-generational equity (better quality of life for present and future generations). Between 1927 (when the Indian Forest Act came into

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\(^1\) Hon'ble Shri S.H. Kapadia, Chief Justice of India at the First Lecture of the Justice Krishan Iyer Lecture Series at The Gateway Hotel, Ernakulam, Kerala on 1\(^{st}\) November, 2010.

\(^2\) Reframing of Welfare Rights Under the Indian Constitution/Law...http://indialawyers.wordpress.com/2010/12/14/reframing_of_welfare
and 1980 (when the Forest Conservation Act came into force), "forests" were treated as assets to be exploited for revenue. However, with the enactment of the Forest Conservation Act, 1980, "forests" are to be preserved. The object is to protect "nature" on which our survival depends.

Natural resources are brought into Article 21 by invoking the doctrine of Public Trust. Thus, "precautionary principle", as an aspect of doctrine of sustainable development, is no more a political principle but a constitutional principle in our jurisprudence. This is what I call as "development of law".

The consequence of such an interpretation is that absence of legislation is no hurdle. It is important to note that when a right in the form of basic human value or where the concept is given recognition of a constitutional value, constitutional adjudication principles steps in which is much wider in its ambit as compared to norms under administrative laws. Lastly, I believe that "laws" constitute response to life. The doctrine of "sustainable development" is all about balancing of rights. Conflict arises - when principles intersect.

Substitution of "environmental capital" by "man-made capital" is impermissible once environment is read into Article 21. The basic human needs must be taken not as window dressing but as a window into the decisions themselves.

RIGHTS-BASED APPROACH

The question is - how far should the courts be prepared to go, directly or indirectly, to adopt a principled "rights - based approach" in order to force authorities to meet the welfare needs of the claimants? The answer lies in Protecting the Poor. Poverty is the violation of human rights. The basic touchstone of the jurisprudence of the Supreme Court should be that "all persons are entitled to a minimum, not necessarily equal, level of provision with respect to certain public goods". The "judicial equality" be reawakened by sensitivity not to equal access but to a quite different sort of value or
claim which might be called "minimum welfare". The paradigm shift should be from "discrimination" to "deprivation", that is, in non-satisfaction of basic needs as and when they occur without which right to life of dignity in Article 21 can never be achieved. Although discrimination and deprivation often go together, the two concepts differ as follows:

1. The remedy for deprivation does not lie in "equalization" of circumstances which remedy is sought in the case of discrimination.

2. On "the minimum welfare" view a State's duty to the poor is not to avoid unequal treatment but to provide basic human needs. These basic needs "must be taken not as a window dressing but as a window into the decisions themselves".

3. The minimum welfare view if laced with wealth discrimination then it will cloud our understanding because a doctrine against wealth discrimination would be too broad. In that doctrine, there would be difficulty in distinguishing the needs of the poor from the claims of non-poor who may suffer wealth discrimination when compared to the rich. Further, discrimination against poor may generate false hopes. Thus, justice able welfare rights should respond to claims of deprivation rather than discrimination. Welfare rights would be justifiable relatively when conceived as claims of minimum provision rather than as claims of wealth discrimination. This is what I mean by "Refraining of Welfare Rights".

In September 2000, the member States including India in the UNO unanimously adopted Millennium Declaration. We have eight enumerated goals including minimum level of medical assistance, potable drinking water, reduction of poverty through minimum wages and reduction in unemployment as well as through implementation of employment guarantee schemes, universal primary education, gender equality, empowerment of
women, combating HIV/AIDS and environment sustainability. The basis of these goals, if carefully analyzed, is based on the doctrine of discrimination in terms of material deprivation. This is where Reframing of Welfare Rights as a concept comes in.

Thus, by emphasizing "deprivation", Courts do not issue normative declarations of welfare rights or injunctions to create new welfare programmes. Instead, the Court plays an interstitial role within an existing legislative scheme, invalidating those eligibility criteria which are unrelated to basic needs of the complainant. In attacking the ills of poverty, claims of wealth discrimination are better understood as claims of material deprivation - that is, claims of inadequate rather than unequal provision of certain basic goods. Thus, we need to articulate "welfare rights" in material deprivation, not unjust discrimination. This will provide an enduring insight and objective criterion on protecting the Poor. This is what I mean by saying "Reframing of Welfare Rights".

Go from village to village; do well to humanity and to the world at large. Go to hell yourself to buy salvation for others. 'When death is so certain, it is better to die for a good cause. Regarding constitution there is a need to refresh law for increase of protection of workers in general. Also Indian Constitution is providing the following as Article 14 of the Indian Constitution explains the concept of Equality before law. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. Dr. Jennings puts it as, "Equality before the law means that among equals the law should be equal and should be equally
administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence" It only means that all persons similarly circumstance shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same.-

Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. In *Randhir Singh v. Union of India* the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification. This decision has been followed in a number of cases by the Supreme Court.

In *Dhirendra Chamoli v. State of U.P* it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. Accordingly, it was held that persons employed in Nehru Yuwak Kendra in the country as casual workers on daily wage basis were doing the same work as done by Class IV employees appointed on regular basis and, therefore, entitled to the same salary and conditions of service. It makes no difference whether they are appointed in sanctioned posts or not. It is not open to the Government to deny such benefit to them on the ground that they accepted the employment with full

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3 Lawyers Club India Article: Labour Rights under the Indian Constitution http://lawyersclubindia.com/articles/print_this_page.asp?articl…
4 AIR 1982 SC 879
5 AIR 1986 SC 172
knowledge that they would be paid daily wages. Such denial would amount to violation of Article 14. A welfare State committed to a socialist pattern of society cannot be permitted to take such an argument.

*Daily Rated Casual Labour v. Union of India*\(^6\) it has been held that the daily rated casual labourers in P & T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus D.A. but without increments. Classification of employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights 1966. Although the directive principle contained in Articles 38 and 39 (d) is not enforceable by virtue of Article 37, but they may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination:

Denial of minimum pay amounts to exploitation of labour. The government cannot take advantage of its dominant position. The government should be a model employer. In *F.A.I.C. and C.E.S. v. Union of India* the Supreme Court has held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, and as such it will not be violative of the principle of equal pay for equal work, implicit in Article 14. The Court said, Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference.

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\(^6\) (1988) 1 SCC 122.
Equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of the right. Accordingly, the court held that different pay scales fixed for Stenographers Grade I working in Central Secretariat, and those attached to the heads of subordinate offices on the basis of recommendation of the Third Pay Commission was not violative of Article 14. Although the duties of the petitioners and respondents are identical, their functions are not identical. The Stenographers Grade I formed a distinguishable class as their duties and responsibilities are of much higher nature than, that of the stenographers attached to the subordinate offices.

Article 19 (1) (c)

This Article speaks about the Fundamental right of citizen to form an associations and unions.. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization. It as an organization of permanent relationship between its members on common concern matters. It thus includes the right to form companies, societies, partnership, trade union, and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In Damayanti v. Union of India⁷, The Supreme Court held that "The right to form an association", the Court said, "necessarily implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association

⁷ (1971) 1 SCC, 678.
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without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association”.

Article 21

The sweep of the right to life, conferred by Article 21 is wide and far reaching. 'Life' means something more than mere animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right of life.

In Maneka Gandhi's case the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view the Court in Francis Coralie v. Union Territory of Delhi said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it,
namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. In *State of Maharashtra v. Chandrabhan*\(^8\) the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

### Article 23

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. "Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes. Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms.

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\(^8\) AIR 1983 SC 803.
of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will.

RIGHTS OF MIGRANT LABOUR

The word decent means accepted moral standards, decent work; it shows an acceptable quality of work, let us say, workers are pleasant at work places and they are satisfied from any type of work due to decent conditions of life as well as decent working conditions of labour. It shows various types of freedoms and rights for men, women and children in order to maintain dignity of human life in the society, in other words, development of society, workers, as per labour standards.

RIGHTS OF WOMAN EMPLOYEES

There are a number of cases in which the Supreme Court helped to advance the rights of women and strike down those laws or practices that were discriminatory. Though, this may not be true in the case of all women workers. One of the earliest challenges came from Ms. Muthamma (who died only recently), a senior Indian Foreign Service Officer. In 1978 she filed a writ petition stating that certain rules in the Indian Foreign Service (Recruitment, cadre, seniority and promotion) Rules, 1961 were discriminatory. The rules in fact provided that no married woman would be entitled as of right to be appointed to the service. In fact a woman member
was required to obtain permission of the government in writing before her marriage was solemnized and that she could be required to resign if the government was satisfied that due to her family and domestic commitments she was unable to discharge her duties efficiently. The Supreme Court struck down these rules on the ground that they violated the fundamental right of women employees to equal treatment in matters of public employment under Article 16 of the Constitution.

Similarly in *AIR India v. Nargesh Mirza*, the discriminatory regulations of Air India were challenged. The regulations did not allow the Air Hostesses to marry before completing four years of service. If anyone of them got married within that period that she had to resign and if she got married after four years but became pregnant after that she still had to resign. If she neither got married before the four year period was over or married only after the four year period and did not become pregnant she could only continue in service till she attained the age of 35. These provisions were challenged in this case, while the Supreme Court did not accept all the contentions. It, in fact, said that Air Hostesses were a separate category and therefore those regulations could not be termed discriminatory. It was a reasonable classification as in their situation both in spirit and purport the classes were essentially different. It, however, regarded the provision relating to pregnancy as being manifestly unreasonable and arbitrary and therefore violative of *Article 14*.

In *Mrs. Neera Mathur v. Life Insurance Corporation of India* the Supreme Court recognized the right to privacy of female employee. Mrs. Neera had been appointed by the LIC without them knowing that she was pregnant. She applied for maternity leave and when she returned thereafter she was terminated. The reason given was that she had withheld information

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9 (1981) 4 SCC 335
10 AIR 1992 SC 392.
regarding her pregnancy when she had filled their questionnaire. The Supreme Court on perusing the questionnaire was hocked to find that it required women candidates to provide information about the dates of their menstrual cycles and past pregnancies. It considered them to be an invasion of privacy of a person and violative of Article 21 which guarantees right to life and privacy. It, therefore, directed the LIC to reinstate Mrs. Neera and to delete those columns from its future questionnaires. In this case the petitioner drew the attention of the Court to the Equal Remuneration Act (25 of 1976) Section 4. The Supreme-Court upheld her contention and stated that the employer was bound to pay the same enumeration to both male and female workers irrespective of the place where they were working unless it is shown that the women were not fit to do the work of the male stenographers.

In *Ram Bahadur Thakur (P.) Ltd. v. Chief Inspector of Plaktations* a woman worker employed in the Pambanar Tea Estate was denied maternity benefit on the grounds that she had actually worked for only 157 days instead of the required 160 days. The Court, however, drew attention to a Supreme Court Decision(1982(2) LLJ 20) wherein the Court held that for purposes of computing maternity benefit all the days including Sundays and rest days which may be wage less holidays have to be taken into consideration. It also stated that the, Maternity Benefit Act would have to be interpreted in such a way as to advance the purpose of the Act therefore upheld the woman worker's claim. One of the most important decisions of the Supreme Court is *Vishaka and Ors v State of Rajasthan*. This was a writ petition filed by several non-governmental organizations and social activists seeking judicial intervention in the absence of any law to protect women from sexual harassment in the work place. The Court observed that every incident of sexual harassment is a violation of the right to equality and right to life and liberty under the Constitution and that the logical consequence of
sexual harassment further violated a woman's right to freedom to choose whatever business, occupation or trade she wanted under Article 19 (1) (g). The Court further held that gender equality included protection from sexual harassment and right to work with dignity which is a basic human right. Therefore in the absence of domestic law, the Court referred to the CEDAW and its provisions which were consistent with the provisions of the Indian Constitution and therefore read those provisions into the Fundamental Rights interpreting them in the broader context of the objective contained in the Preamble.

While these cases demonstrate the instances in which the Supreme Court stepped in to safeguard the fundamental human rights of women there are several instances where such rights are brazenly violated. The women workers most vulnerable to this are those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors women, generally, tend to be employed in the lowest paid, most menial tasks using the least technology. Women often work in labour intensive sectors. It is almost like they are working in a different segment of the labour market from that of men one that is invariably lower paid. There are even instances in some sectors of women being paid less than men for even the same work for example in the tea plantations, construction, agriculture etc. These women do not even get the Maternity Benefit. This is mostly because of the fast that their employment is temporary, poor enforcement of the Act and the inability of these women to fight for their rights. It is estimated that only 1.8% of the workforce is covered by the statutory provisions. In some of the states like Andhra Pradesh, Karnataka and Gujarat efforts are on to extend the maternity benefits to agricultural workers. While in Kerala the boards that look after the welfare of the cashew workers, coir workers and handloom weavers have also begun to provide maternity benefit.
Similarly the provision of the Factories Act of 1948 for creches in factories where more than 25 women are employed does not extend to the unorganized sector. Thus, excepting for the crèches run under the Social Welfare Boards or voluntary agencies there is little help in this regard for women in this sector. Considering that majority of the women workers are in the organized sector there is urgent need to ensure that the discrimination against women is ended and that the State take immediate steps to ensure the implementation of many of its progressive welfare legislations for workers extends to women workers in the unorganized sector. Some gains have been made but there is still a long way to go. The most important task is to ensure the implementation and enforcement of existing laws and enacting new legislation to ensure that women are not dissuaded from joining the labour force or forced to endure these indignities. Right to strike every right comes with its own duties. Most powerful rights have more duties attached to them. Today, in each country of globe whether it is democratic, capitalist, socialist, give right to strike to the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country. Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances it is necessary that countries who seeks foreign investment must keep some safeguard in there respective industrial laws so that there will be no misuse of right of strike. In India, right to protest is a fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the industrial dispute Act, 1947.
In India unlike America right to strike is not expressly recognized by the law. The trade union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach of common economic law. Now days a right to strike is recognized only to limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions. The right to strike in the Indian constitution set up is not absolute right but it flow from the fundamental right to form union. As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions.

In the *All India Bank Employees Associations v. I. T.*\(^{11}\) the Supreme Court held, "the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 but by totally different considerations." Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

In *Mineral Miner Union v. Kudremukh Iron Ore Co. Ltd.*\(^{12}\), it was held that the provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. If meanwhile the date of strike specified in the notice of strike expires, workmen have to give fresh notice. It may be noted that if a lock out is already in existence and employees want to resort to strike, it is not necessary to give notice as is otherwise required.

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\(^{11}\) AIR 2002 SC 2279.

\(^{12}\) AIR 2006 SC 977.
The working classism in disputably earned the right to strike as an industrial action after a long struggle, the relevant industrial legislation recognizes it as their implied right\textsuperscript{13}. Striking work is integral to the process of wage bargaining in an industrial economy as classical political economy and post-Keynesian economics demonstrated long ago in the analysis of real wage determination. The right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of response expression by the working people, wherever the employer-employee relationship exists, whether recognized or not. The Apex court failed to comprehend this dynamic of the evolution of the right to strike. In \textit{Gujarat Steel Tubes v. Its Mazdoor Sabha}, \textit{(AIR 1980 SC 1896)} Justice Bhagwati opined that right to strike is integral of collective bargaining. He further act that this right is a process recognized by industrial jurisprudence and supported by social justice. Gujarat Steel Tubes is a three-judge bench decision and cannot be overruled by the division bench decision of \textit{T.K. Rangarajan v. Government of Tamilnadu and Others}\textsuperscript{14}. In the Rangarajan case the court had no authority to wash out completely the legal right evolved by judicial legislation. The scheme of the Industrial Disputes Act, 1947 implies a right to strike in industries. A wide interpretation of the term 'industry' \textsuperscript{26} by the courts includes hospitals, educational institutions, and clubs and government departments. Section 2 (q) of the Act defines 'strike', sections 22, 23, and 24 all recognize the right to strike. Section 24 differentiates between a 'legal strike' and an 'illegal strike'. It defines 'illegal strikes' as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23. The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are legally

\textsuperscript{13} \textit{Bank of India v. T. S. Kelawala}, (1900) 4 SCC 744.

\textsuperscript{14} MANU/SC/0541/2003.
recognized. Further, Justice Krishna Iyer had opined that "a strike could be legal or illegal and even n illegal Bangalore Weter Supply and Sewage Board v. A. Rajappa\textsuperscript{15} strike could be justified one". It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right o strike. The statutory provisions thus make a distinction between the legality and illegality of strike. It is for the judiciary to examine whether it is legal or illegal. Is the total ban on strikes post-Rangarajan not barring judicial review which itself is a basic structure of the Constitution? The workers right to strike is complemented by the employers' right to lock-out, thus maintaining a of powers between the two. However, the Rangarajan judgment, by prohibiting strikes in all forms but leaving the right to lock-out untouched, shifts the balance of power in favour of the employer class.

The Court, in opining that strikes 'hold the society at ransom', should have taken into account that the number of man days lost due to strikes has gone down substantially during the last five years. Whereas there has been a steep rise in the man days lost due to lock-outs, due to closures and lay-offs. In 2001, man days lost due to look-outs were three times more than those due to strikes. In 2002 (January-September) lockouts waited four times more man days than strikes. Who is holding the production process to ransom? The Apex court preferred to overlook the recent strike by the business class against the value added tax and also the transport companies' strike against the judicial directive on usage of non-polluting fuel, both of which created much more chaos and inconvenience to the common people. It is submitted that the court came to a conclusion without looking at the industrial scenario in the present times. Should the apex court not consider banning closures, lock-outs, muscle-flexing by the business class etc., which not only put people to inconvenience but also throw the

\textsuperscript{15} AIR 1978 SC 548.
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workers at risk of starvation? Besides the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 also recognizes the right to strike. Sections 18 and 19 of the Act confer immunity upon trade unions on strike from civil liability. Of the Directive Principles of State Policy enshrined in Part IV of the Constitution, Article 51(c) provides that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another.

Article 37 of Part IV reads as under: Application of the principles contained in this Part.- The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Concluding the Rights Available to the labour under the Indian Constitution While on the one hand it has to be remembered that a strike is a legitimate and sometime unavoidable weapon in the hands of labour, it is equally important that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that any kind of demand for a 'strike' can be commenced with impunity without exhausting the reasonable avenues for peaceful achievement of the objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect the labour to wait after asking the government to make a reference. In such cases the strike, even before such a request has been made, may very well be justified.

In Syndicate Bank v. K. Umesh Nayak16, Justice Sawant opined: "The strike, as a weapon, was evolved by the workers as a form of direct action during their long struggle with the employer, it is essentially a weapon of last resort being an abnormal aspect of employer-employee relationship and

16 (1994)71 LLJ 836 (SQ).
involves withdrawal of labor disrupting production, services and the running of enterprise. It is a use by the labour of their economic power to bring the employer to meet their viewpoint over the dispute between them. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well being of the society as a whole. It is for this reason that the industrial legislation, while not denying for the rights of workmen to strike, has tried to regulate it along with the rights of the employers to lockout and has also provided machinery for peaceful investigation, settlement arbitration and adjudication of dispute between them. The strike or lockout is not be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demands. Such indiscriminate case of power is nothing but assertion of the rule of 'might is right'. Thus, initially, employees must resort to dispute settlement by alternative mechanisms. Only under extreme situations when the alternative mechanisms have totally failed to provide any amicable settlement, can they resort to a strike as a last resort.

DOMESTIC WORKERS IN INDIA

Most domestic workers are from the marginalized sections of society and a large number of them are migrant workers. Workers range from full-time to part time workers skilled and unskilled workers. The Draft National Policy on Domestic Workers as recommended by the Taskforce on Domestic workers provides a definitions of a domestic workers as “For the purpose of this policy the ‘domestic workers’ means a person who is employed for remuneration whether in cash or kind in any household through any agency or directly other on a temporary or permanent part time or full time basis to do the household work but does not include any members of the family of an employer. Types of domestic workers based on the hours of work and nature of employment relationship.
The domestic workers can be:

a. Part time worker i.e. worker who works for one or more employees for a specified number of hours per day of performs specific tasks for each of the multiple employees every day.

b. Full time workers i.e. workers who work for a single employee every day for a specified number of hours normal full day work and who returns back to her/his home every day after work.

c. Live in workers i.e. worker who works full time for a single employer and also stays on the premises of the employers or in a during provided by the employer which is close or net to the house of the employer) and does not return back to her/his home every day after work.

SIZE AND SIGNIFICANCE

While no reliable statistics determine the number of workers in the sector, the data analysis of the NSSO (61st Round, 2004-05) reveals an approximate figure of approximately 4.2 million domestic workers in the country. The contribution of the workers in this sector is rarely computed within the economy.

WORKING CONDITIONS

No formal contracts ensuring an employer-employee relationship, lack of organization, poor bargaining power, no legislative protection, and inadequate welfare measures with no provision for weekly holidays, maternity leave and health benefits are the some of the key issues that need to be addressed. This lack of regulation has led to countless violations of domestic workers' rights, including working hours ranging between 8 and 18 hours and the absence of any job security. Domestic workers invariably

17 Workers in India/WIEGO http://wiego.org/informal_economy_law/domestic_workers_india.
represent the more marginalized communities in society. Prejudice and bias related to social status is reflected very strongly at the workplace for many domestic workers. Female domestic workers, especially those who live in their employer's home, are vulnerable to sexual abuse.

**WAGES**

Wages for the domestic workers are determined by factors such as tasks performed, hours of work, their social status, skills (or the lack of it), the need for flexibility and other labour market conditions. There are ongoing debates over the norms for setting wages. These debates include several tricky issues such as whether the wage ought to be time rated or piece rated, in kind, hourly or weekly, part-time or full time; based on house size or persons per household, over time: adjusted for boarding, include medical care and other necessities and multiplicity of employers. For more information, see Background Note on Domestic Workers.

**LAW AND POLICIES**

Several states have attempted a variety of approaches to protect the rights of Domestic Workers. Tamil Nadu included domestic workers in their Manual Workers Act and created a separate board for them while Maharashtra is actively considering a law for them, with draft bills under discussion. Maharashtra has published a code of conduct. Under Section 27 (A) of the Maharashtra State Public Service Conduct Act, 1997, the Maharashtra government prohibits government employees from employing children below 14 as domestic workers. Such rules can be found in the rule books of 18 other state. Karnataka has notified minimum wages for domestic workers and Kerala has followed suit. The Government of India has amended the Central Civil Service Conduct rules to prohibit Civil Servants from employing children below the age of 14 as domestics. The latest in a
series of efforts to address the concerns of Domestic Workers are the two draft bills brought out in 2008 by the National Commission for Women and the National Campaign Committee of Unorganized Sector Workers also in 2008.

**ORGANISATION AND VOICE**

Organizing domestic workers has been a huge challenge as the workplace is inaccessible and multiple, marked by a high rate of attrition and instability. As a result, the demand for the better wages or working conditions through an organized union has been weak and scattered. A strong and well organized work force has been pivotal in ensuring progressive policy and legislation, while simultaneously enabling better enforcement of existing legislations.

**PLATFORM OF DEMANDS**

Some of the specific demands of domestic workers are:

1. Recognition of domestic workers as workers.
2. Decent working conditions, including specified working hours, leave, paid holidays, protection against harassment, social security and access to benefits.
3. Regulation of recruitment and placement agencies.

**LABOUR CONFERENCES AND PROTECTION OF WORKERS’ RIGHTS**

Lack of priorities, omissions, negligence and discrimination are letting labourers down. The recently-held State Labour Ministers' Conference in New Delhi shows that our governments have manifestly failed in meeting the obligations to end job insecurity, exploitation and poverty, especially of the unorganised labourers. They have been unsuccessful in implementing the basics of social security schemes, including skill building, at both state and
national levels. Despite expressions of concern and statements of good intent in the previous Indian Labour and State Conferences, there have been no concrete actions. Violations of labour rights\textsuperscript{18}, unjust and unfair conditions of employment, and suppression of trade unions are treated as ‘inevitable’ ills that can continue as an unfortunate reality of life. These are not a result of lack of resources. Rather, lack of priorities, omissions, negligence and discrimination by governments and other players are letting laborers down and out, more so in these times of economic recession.

**UNORGANISED SECTOR LABOUR**

One of the agendas placed in the Central and State Labour Ministers' Conference concerned the Unorganised Workers' Social Security Act. The conference also reflected on contract and construction workers, skill development and employment. ESIC schemes and child laborers. According to a survey conducted by the National Sample Survey Organisation (NSSO) in 2004-05, the total employment in both the organised and the unorganised sectors in the country was 45.9 crore, of which 2.6 crore was in the organised sector and 43.3 crore (about 94 per cent) in the unorganised sector. There has been a huge deficit in the coverage of the unorganised sector workers, in matters of labour protection and social security. After a long, time-taking process, the Unorganised Workers' Social Security Act came into force in May 2009. The act provides for the definition and the registration of unorganised, self-employed and wage workers. It also offers the formulation of different social security schemes by Central and State governments, the constitution of a National Social Security Board at Central and State levels, and the setting up of workers' facilitation centres. Social security schemes have been mentioned in the areas of life and disability cover, health and maternity benefits, old age protection, provident fund, 

\textsuperscript{18} \textit{Workers Rights / Law Resource India} \url{http://indialawyers.wordpress.com/category/workers_rights}
employment injury benefits, housing, educational schemes for children, skill upgradation, funeral assistance, and old age homes.

The Labour Conference however brings out the fact that except for the constitution of the National Social Security Board, nothing has moved as yet. No social security scheme has actually been determined on the ground. Instead, the board has constituted a sub-committee to suggest various schemes. There has been no initiative on the registration of unorganised workers. Under the Act, State governments are required to frame State Rules, constitute a State Social Security Board and register the workers. However, there is not much to report at the State level. The conference thus spoke in a diffused way: "The Hon'ble Labour Minister has also written to the State Labour Ministers in this regard. A copy of the Unorganised Workers' Social Security Act, 2008 and Rules framed under there has been sent to the State Governments.'

It is in the area of contract labourers particularly that the apathy of government is glaringly visible. While no precise estimate of the number of contract workers in the country is available, they constitute a substantial segment of the 132.68 million casual workforce component (according to the 61st Round of the NSSO, corresponding to 2004-05), other constituents being various flexible labour categories like casual (hired for fixed hours, mostly on piece rates), temporary (employed for fixed term), badli (employed in textile mills as substitutes for regular workers), apprentices, etc. The Indian Labour Conference constituted a Task Force some time ago to examine the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and to suggest amendments in it for the protection of workers. However, despite six meetings in this regard, no consensus could be arrived at, as there were divergences of views.
The report of the Task Force does recognise the problems, but has not provided any clue for finding solutions to them. Our governments have now resigned to a situation of wide and increasing prevalence of contract laborers in the organized and the unorganized sectors; ‘It was becoming increasing evident that in view of the changing global economic environment, contract labour had come to stay.’

The Union Minister of Labour and Employment Mallikarjun Kharge, and the Minister of State Harish Rawat, both had to mention the inevitability of contract labourers in their speeches, at a forum which is primarily meant for the defence and expansion of labour rights.

**BRING GAMES WORKERS UNDER LABOUR LAWS**

The Delhi High Court on Wednesday directed the state government to register the 17,000-odd labourers working on Commonwealth Games projects and provide them all facilities under labour laws concerned. A Division Bench comprising Chief Justice A P Shah and Justice Rajiv Sahai Endlaw also directed the government to constitute a four-member committee to look into registration of workers. This would entitle them rights such as insurance cover, issuance of minimum wages and pay slips, medical facilities, electricity, and clean drinking water among others. The committee will comprise a labour commissioner, labour secretary, a former UN ambassador and a person associated with National Human Rights Commission (NHRC). The committee has been directed to hold its first meeting on Monday — chalk out its plan of action and inform the court. The court's directives came while hearing a Public Interest Litigation filed by the NGO People's Union For Democratic Rights, which based its contentions on two surveys that found these workers live in dangerous and deplorable conditions with no access to basic sanitation and health facilities. The NGO also contended these laborers are paid lower than the stipulated wage.
Appearing for the NGO, senior lawyer Colin Gonsalves requested the Bench that the government must provide wages to them under provisions of the Contract Labour Act and that workers should be issued proper identity cards along with hygienic conditions in camps, regular supply of power and water among other basic facilities. The NGO's petition was against the Sports Authority of India and agencies in charge of construction of Games projects — Delhi Development Authority, Central Public Works Department, New Delhi Municipal Council, Municipal Corporation of Delhi and the Delhi Metro Rail Corporation.

"You are in too much of haste," the Bench told government counsel Najmi Waziri. "We are not disputing that preparations have to be done for the Games at appropriate time but in the process we cannot allow workers' rights to get affected. You must ensure all workers are registered." The court has sought a report by March 17.

**MINIMUM WAGE FOR ALL WORKERS, ALL JOBS IN UNORGANIZED SECTOR**

In a fresh attempt to ensure minimum wage for all 34 crore workers in the unorganised sector, the labour ministry has proposed changes in the Minimum Wage Act to allow each job — besides those listed by the Centre and the states — to be covered by the Act. The amendment, to be introduced in the forthcoming Budget Session, proposes that every worker be paid the higher of the two — lowest wage fixed for an unskilled worker or the National Floor Level Minimum Wage — for "any employment other than that covered in the Schedule". At present, the Centre and states are empowered to notify any job in the Schedule only when the number of employees is 1,000 or more. There are 45 jobs identified in the Centre's agricultural and non-agricultural lists while states have as high as 1,596."With the proposed inclusion of "any other employment' in the Schedule, the provision in Section 3 (1A) restricting addition of employment
in the Schedule to 1,000 workers or more becomes infractions. Hence, it is proposed to be deleted,” says the Cabinet proposal which has the consent of the law ministry. In September 2007, the UPA government dropped a proposal for a national minimum wage for all jobs and retained only social security provisions while introducing the Unorganised Sector Workers' Social Security Bill. On an average, unorganised sector workers do not earn more than Rs 50 per day while the national floor of minimum wage, last revised in November, is Rs 100. There are over 34 crore workers in this sector of which around 22 crore are in the agricultural sector.

These include home-based workers, employees in household enterprises or small units, agricultural workers, labour on construction sites, domestic work, and other forms of casual or temporary employees, including teachers. While pushing for a minimum wage, the ministry has proposed uniform wage for adult, adolescent, children and apprentices as a differential wage rate provide a cover to the employer to short-change temporary workers. The wages would have to be revised every two years if a state does not provide a dearness allowance that is reviewed every six months. States which give special allowances fully linked to the consumer price index would have the freedom to fix the floor wage every five years. The proposed changes would levy heavy penalty on cheating employers. The fine is proposed to be raised to Rs. 5,000 from current Rs. 500 with the possibility of a six-month jail. For the second offence, fine would be up to Rs. 10,000 or one year imprisonment or both. Those who violate the provisions of the Act — that is do not maintain employment register, do not provide employment card or salary slips – would be fined Rs. 5,000 fro the first offence and upto Rs. 10,000 for subsequent contraventions.

To sum up, the Constitution of India provides for special treatment of women, guarantees equality and prohibits discrimination. The government of
India has been strengthening various laws focused on women and children. This has been more visible since the Beijing CEDAW Conference. The recent years have been witness to some landmark interpretations and directives related to Violence against Women. Despite the constitutional mandate of equal legal status for men and women, the same is yet to be realized. The *dejure* laws have not been translated into *defacto* situation for various reasons such as illiteracy, social practices, prejudices, cultural norms based on patriarchal values, poor representation of women in policy-making, poverty, regional disparity in development, lack of access and opportunity to information and resources, etc. The ground situation more or less remains the same.

Most of the laws come with various institutional machinery. Partnership between various stakeholders and active role of NGOs, these institutions need to be in existence in order for the law to be effective. Also the policies and programmes made at the top takes a long time to percolate to the bottom and there is an urgent need of sharing information and resources.

The awareness on laws and access to justice remains dismal. At the district and the state level sensitivity on women rights among judicial officers, administration and the police is very low. This leads to a situation where the implementation of the law becomes difficult. Recently India has increased its budgetary support for the implementation of various laws on violence against women and it becomes increasingly more important for the organization like Shakti Vahini to work on governance specially related to women and children issues. The National Legal Research Desk (NLRD) has been instituted to strengthen the implementation of the laws related to Women and Children in India. NLRD focuses on documenting the recent changes in the law, collect and compile the Recent Landmark Judgments of the Supreme Courts of India & the High Courts and ensure wide scale
dissemination of the same through the government and the non government machinery. The NLRD will work with Law Enforcement Agencies, Police Academies, Judicial Agencies, Government Agencies, Statutory Agencies, NGOs, Civil Society and Mass Media on promoting Access to Justice for Women and Children. The NLRD website is a knowledge Hub for compilation of all Laws, Judgments and Resource materials on Violence against Women and Children in India. In the first phase (2012) it will focus on the laws related to Human Trafficking, Domestic Violence, Juvenile Justice, Rape Laws, PCPNDT Act, Honour Crimes and Victim Compensation.

**SUGGESTIONS**

In this context the following suggestions are made with a view to effectively implementing the systems. The coverage of all labour welfare legislations should be widened. The multination corporations and industrial units in special economic zones must be made accountable in ensuring the labour rights. The protection of workers’ rights in case of termination of employment should be made stringent and the coverage should be expanded. The present system of multiple schemes under diverse heads, including the ad-hoc heads should be avoided. All sections of workers, whatever is the economic condition, should be given social assistance and or social insurance. When they get income, compulsory methods should be adopted to make sure that they invest money in social security plans so that the government will not be burdened at the time of their misery. For those who are not in a position to invest money, government should come forward with assistance programmes and more stress should be given to rehabilitate and re-equip them.

As recommended by second National Commission on Labour a comprehensive social security system is a welcome step, but not in the sense
as it is proposed. The recommended arrangement for comprehensive social security is just to compile various existing programmes of different ministries and departments. In other words, the recommended comprehensive system is for integration of the exiting programmes in the organized sector. This may not serve the purpose. The system should streamline the existing system under different enactments and avoid multiplicity and also should cover all workers, formal and informal. The benefits should be clearly defined and delivered at the benefit of the recipient. The system should be made more user friendly and should not be traumatized whatever be the economic strategies. In such a system, the workers will become more confident and efficient to compete and contribute to the prosperity of the country than ever before. For this objective a single administrative authority should be framed under a comprehensive and well structured legislative framework to recognize and declare social justice as a right.