CHAPTER – II

HISTORICAL BACKGROUND

During the twentieth century a new branch of jurisprudence known as Industrial Jurisprudence has developed in our country. Growth of new jurisprudence is a development of mainly post-independence period although its birth may be traced back to the industrial revolution. Before independence it existed in a rudimentary form in our country. Development of New Jurisprudence can significantly be noticed not only from increase in labour and industrial legislations but also from a large number of industrial law matters decided by the Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families. Those who are affected indirectly constitute a still larger bulk of the country's population. This branch of law modified the traditional law relating to master and servant and had cut down the old theory of laissez pure based upon the 'freedom of contract' in the larger interest of the society because that theory was found wanting for the development of harmonious and amicable relations between the employers and employees. Individual contracts have been' in many respects substituted by a standard form of statutory contract through legislation and judicial interpretation. The traditional right of an employer to hire and fire his workmen at his will has been subjected to many restraints. Industrial Tribunals can by their award make a contract which is binding on both the parties creating new right and imposing new obligations arising out of the award. There is no question of the employer agreeing to the new contract, it is binding even though it is unacceptable to him. The creation of new obligations is not by the parties themselves. Either or both of them may be opposed to it, nevertheless it binds them. Thus, the idea of some authority making a contract for the workmen and employer is a strange and novel idea.
and is foreign to the basic principle of the law of contract.¹

Similarly there is change in the concept of master and servant. One who invests capital is no more a master and one who puts in labour is no more a servant. They are employer and employees, the former may hire them; latter but he can no mere fire them at his will. The interest of the employees is in many respects protected by legislation. Both are now parties in the enterprise, without one yielding to the higher status of another but as co-sharer in the partnership. Even the right of labour participation in the management has been given legislative recognition to the utter despair of the capitalist. Most of the benefits claimed by a workman are not part of his, bargain with the employer when the latter employed him or are not due to them on account of any contract but of status". The industrial society all over the world has been moving during the present century from contract to status and this status is a politico-socio-economic juristic status.

What were the factors that lead to this departure from the old theories of the law of contract, and the law of Master and Servant? Industrialization in India, as in other countries, brought with it some new socio-economic problems. Those who control the industry have a natural tendency of multiplying their wealth and if this tendency is not checked the rich grows on richer and the poor becomes poorer day by day. The gap between the rich and the poor ultimately grows on to this extent that it develops into two distinct classes in any industrial society, a few of whom are 'Haves' and others are 'Have-nots'. This economic disparity leads to a struggle between 'Haves' and 'Have-nots', the latter

¹ Industrial Arbitration May involve of an existing agreement or the making of a New one, or in general the creation of new obligation or modification of old one’s….Ludwig Teller, Labour disputes and collective bargaining Vol. 1p 536
exploited. Although this situation continues for some time and it had continued to be so in our country too, but gradually the workmen realized that they could put a better fight if they get united. This realization was closely followed by a period of industrial unrest leading to strikes and lock-outs. In conditions so disturbed the world has witnessed the horrors of the two world Wars resulting in spiral rise in the cost of living. With the rise in the cost of living there has been consistent demand from labour for increase in wages. Democratic ideas have also grown simultaneously with the growth of industrialization in our country. These democratic ideas have pleaded for and have also helped in mass awakening and consciousness for greater power amongst the working class. Out of the struggle between workers, demanding for better share in the production and profit of the industry and the employers' hesitation to part with it beyond a certain limit, have grown the recognition of certain principles which are considered to be fundamental in almost all developed countries of the world. The basic principles are:

1. The right of workmen to combine and form associations or unions.
2. The right of workmen to bargain collectively for the betterment of their conditions of service.
3. The realization that economic struggle is inevitable because it is but natural that labour would agitate for better conditions.
4. A shift from the doctrine of "laissez faire" to a "welfare state".
5. Tripartite consultations i.e., solution of the industrial or labour disputes through the participation of workers, employers and the Government.
6. The State can no more be a neutral onlooker but must interfere as the protector of the social good.

7. Minimum standards must be guaranteed through State legislation.

The concept of industrial jurisprudence in our country developed only after independence. Until independence the change in attitude of the government and the benevolent labour legislation only aimed at amelioration of the conditions of labour and it could hardly be said to be a deal in social justice to the working class.

**POSITION UNDER INDIAN CONSTITUTION**

**Rights of Workers**


**Article 14**

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. As Dr. Jennings puts it, "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

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2 Layers club India.com/…labour right…
Historical Background

32 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 Raiulhir Singh v. Union India3 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 Dhiremlra Chamoli v. State of U.P4 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 knowledge that they would be paid daily wages. Such denial would amount

3 AIR 1982, SC 879.
4 AIR 1986 SC 172.
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*\(^5\) 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 Article 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 determination.

Denial of minimum pay amounts to exploitation to labour. The government cannot take advantage of its dominant position. The government should be a model employer. In *FAIC and CES v. Union of India*\(^6\) 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. Equal pay for equal work is a concomitant of Article 14 of the

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\(^5\) (1988) 1 SCC 122.
\(^6\) (1998) 3 SCC 91.
Historical Background

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.

In _Gopika Ranjan Chawdhary v. Union of India_\(^7\) the Armed Forces controlled by NEFA were recognized as a result of which a separate unit known as Central Record and Pay Accounts Office was created at the headquarters. The Third Pay Commission had recommended two different scales of pay for the ministerial staff, one attached to the headquarters and the others to the battalions/units. The pay scales of the staff at the headquarters were higher than those of the staff attached to the Battalions/units. It was held that this was discriminatory and violative of Article 14 as there was no difference in the nature of the work, the duties and responsibilities of the staff working in the battalions/units and those working at the headquarters. There was also no difference in the qualifications required for appointment in the two establishments. The services of the staff from Battalions units are transferable to the Headquarters.

In _Mewa Ram v. A.I.I. Medical Science_\(^8\) the Supreme Court has held that the doctrine of equal pay for equal work is not an abstract doctrine.

Equality must be among equals, unequals cannot claim equality. Even if the duties and functions are of similar nature but if the educational

\(^7\) AIR 2002 SC 1346.
\(^8\) AIR 2006 SC 447.
qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of equal pay for equal work would not apply. Different treatment to persons belonging to the same class is permissible classification on the basis of educational qualifications.

In *State of Orissa v. Balaram Sahu*\(^9\) the respondents, who were daily wagers or casual workers in Rengali Power Project of State of Orissa in appeal claimed that they were entitled to equal pay on the same basis as paid to regular employees as they were discharging the same duties and functions. The Supreme Court held that they were not entitled for equal pay with regularly employed permanent staff because their, duties and responsibilities were not similar to permanent employees. The duties and responsibilities of the regular and permanent employees were more onerous than that of the duties of N.M.R. workers whose employment depends on the availability of the work. The court held that although equal pay for equal work is a fundamental right under Article 14 of the Constitution but does not depend only on the nature or the volume of work but also on the qualitative difference as regards reliability and responsibility. Though the functions may be the same but the responsibilities do make a real and substantial difference. They have failed to prove the basis of their claim and in such situation to claim parity with pay amounts to negation of right of equality in Article 14 of the Constitution. However, the Court said that State has to ensure that minimum wages are prescribed and the same is paid to them.

**Article 19 (I) (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

\(^9\) AIR 2009 SC 784.
public order or morality or the sovereignty and integrity of India. The right of association presupposes organization. It is an organization or permanent relationship between its members in matters of common concern. 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 India*\(^9\), 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 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".

In *Balakotian v. Union of India*\(^11\) the services of the appellant were terminated under Railway Service Rules for his being a member of Communist Party and a trade unionist. The appellant contended that the termination from service amounted in substance to a denial to him the right to form association. The appellant had no doubt a fundamental right to form association but he had no fundamental right to be continued in the Government service. It was, therefore, held that the order terminating his services was not in contravention of Article 19(1)(c) because the order did not prevent the appellant from continuing to be in Communist Party or trade unionist. The right to form union does not carry with it the right to achieve

\(^9\) (1971) 1 SCC 678.
\(^11\) AIR 2011 SC 968.
every object. Thus the trade unions have no guaranteed right to an effective bargaining or right to strike or right to declare a lock out. Right to life, includes right to the means of livelihood which make it possible for a person to live.

**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 v. Union of India*\(^\text{12}\), 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 right to live with human dignity.

Elaborating the same view the Court in *Francis Coralie v. Union*

\(^\text{12}\) AIR 1978 SC 578.
Territory of Delhi\textsuperscript{13} 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 comingling with fellow human being. In \textit{State of Maharashtra v. Chandrabhan}\textsuperscript{14} 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.

In \textit{Olga Tellis v. Bombay Municipal Corporation}\textsuperscript{15} popularly known as the 'pavement dwellers case' a live judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court said: "It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of 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 livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41

\textsuperscript{13} AIR 1981 SC 746.  
\textsuperscript{14} AIR 1983 SC 803.  
\textsuperscript{15} AIR 1986 SC 180.
require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

In *Delhi Development Horticulture Employee's Union v. Delhi Administration*\(^\text{16}\), the Supreme Court has held that daily wages workmen employed under the Jawahar Rozgar Yojna has no right of automatic regularization even though they have put in work for 240 or more days. The petitioners who were employed on daily wages in the Jawahar Rozgar Yojna filed a petition for their regular absorption as regular employees in the Development Department of the Delhi Administration. They contended that right to life, include the right to livelihood and therefore, right to work. The Court held that although broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and therefore right to work but this country has so far not found feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly therefore it has been placed in the chapter on Directive Principles, *Article 41* of which enjoins upon the State to make effective provision for securing the same, "within the limits of its economic development". In *D.K. Yadav v. J.M.A. Industries*\(^\text{17}\). The Supreme Court has held that the right to life enshrined under *Article 21* includes the right to livelihood and therefore termination of the service of a worker without giving him reasonable opportunity of hearing in unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the challenge of *Article 14* and so it must be right, just and fair and not arbitrary, fanciful or oppressive. In the instant

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\(^{16}\) 789 SCR (1) 565.

\(^{17}\) (1993), 3 SCC 259.
case, the appellant was removed from service. By the management of the M/s. J.M.A. Industries Ltd.

On the ground that they had willfully absented from duty continuously for more than 8 days without leave or prior permission from the management and, therefore, “deemed to have left the service of the company under the clause 12(2)(iv) of the Certified Standing Order. But the appellant contended that despite his reporting to duty every day he was not allowed to join duty without assigning any reason. The Labour Court upheld the termination of the appellant from service as legal. The Supreme Court held that the right to life enshrined under Article 21 includes right to livelihood and 'therefore' before terminating the service of an employee or workman fair play requires that a reasonable opportunity should be given to him to explain his ease. The procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14, that is, it must be right, just and fair and not arbitrary, fanciful or oppressive. In short, it roust be in conformity of the rules of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. The Court set aside the Labour Court award and ordered his reinstatement.

**Article 39(a) and 41**

The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. Fix; State may not, by affirmative action, be compellable
to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right conferred under the Article 21.

In *State of Maharashtra v. Manubhai Pragaji Vashi*\(^{18}\) the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21. Article 39A provides "equal justice" and "free legal aid". It means justice according to law. In a democratic policy, governed by rule of law, H should be the main concern of the State to have a proper legal system. The crucial words are to "provide free legal aid" by suitable legislation or by schemes" or "in any other way" so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These words in Article 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial vast number of persons trained in law are needed." legal aid is regarded in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets; the need for a continuing and well organized legal education is absolutely necessary in view of the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever growing demands of the society. This demand is of such a great dimension that sizeable number of dedicated persons should be properly trained in different branches of law every year, 'finis is not possible unless adequate numbers of well equipped law colleges are established. Since a sole Government law college cannot cater to the needs of legal education in a city like Bombay it should permit private colleges with necessary facilities to be established. For this, it should afford

\(^{18}\) AIR 1995 SC 730.
grants-in-aid to them so that they should function effectively and in a meaningful manner. For this huge funds are needed. They should not be left free to hike the fees to any extent to meet their expenses. In absence of this the standard of legal education and the free legal scheme would become a farce. This should not be allowed to happen. The Court therefore directed the State to afford grant-in-aid to them in order to ensure that they should function effectively and turnout sufficient number of law graduates in all branches every year which will in turn enable the State to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. Article 21 read with Art. 39A casts a duty on the State to afford grants-in-aid to recognized private law colleges in the State of Maharashtra, similar to the faculties, *viz.* Arts, Science, Commerce, etc. The words used in Article 39A are of very wide importance. The need for a continuing and well organized legal education is absolutely essential for the purpose. The State of Maharashtra had denied grants-in-aid of the private recognized Law Colleges on the ground of paucity of funds. The Court held that this could not be the reasonable ground for denial of grant-in-aid to such colleges. Other Aspects under the Indian Constitution are laid down under Articles 21, 23, 24, 38, 39, 41, 42, 43, 43-A and 47 of the Constitution, are calculated to give an idea of the conditions under which labour can be had for work and also of the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

**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 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\textsuperscript{19}, decent work: it shows an acceptable quality of work, let us say, workers are pleasant at work

\textsuperscript{19} Layers club India.com/….//Labours_right
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 in the society, in other words, development of society, workers, as per labour standards.

Decent work refers to work wider than job or employment including wage employment, self employment and home working and is based on the core enabling labour standards viz, freedom of association, collective bargaining, freedom from discrimination and child labour. Besides, the word decent too involves some notion of the normal standards of society, lack of decent work therefore has something common with concepts of deprivation or exclusion, but of which concerned with social and economic situations, which do not meet social standards. Decent work is a broad concept which is related to overall development of the society and workers. Decent work is a way of capturing interrelated social and economic goals of development. Development involves the removal of unfreedoms such as poverty, lack of access to public infrastructures or the denial of civil rights. Decent work brings together different types of freedoms. Such as labour rights, social security, employment opportunities etc.

Therefore, there are four dimensions of decent work.

(i) Work and employment itself

(ii) Rights at work

(iii) Security

(iv) Reprehensive at work dialogue.

The problem of seasonalisation in agro-based industries can be found in a large number of countries. Firstly, we have to define seasonal factory,
seasonal factory is one which normally works for more than half the days of the year. The main feature of nearly all the seasonal factories is that the workers are still agriculturists and the great majority live in their village homes. The workers are generally quite unorganized and wages tend to be low. There are some of the important key questions; we need to seek answers like.

i. Who are the migrant workers?

ii. Why do they migrate from their native places?

iii. Where do they migrate?

iv. What is the status of migrant labour in respect of labour standards in India?

v. Do they know about their labour rights?

For the purpose of migration, some studies and reports have tried to seek answers of these questions, and they have discussed the problem of migrant workers in India. Agriculture is the main source of the population of India. Agriculture is the main source of livelihood on which the bulk of the rural populations in our country are depended. Which is itself largely dependent on the precipitation and distribution of rainfall: failure of rain and consequent failure of agriculture greatly reduce the purchasing power of this large segment of population, recurrence of such situation called as drought.

In India, droughts occur once in every five years in some parts of India, (MEDC. 1974), viz, West Bengal, Madhya Pradesh, Kerala, Costal parts of Andhrash Pradesh, some parts of Maharashtra state, like Marathwada east and west parts of Maharashtra, interior of south Karnataka, Bihar, Orissa, Rajasthan and other parts of India. At present. Cultivators, small and marginal fanners, agricultural labourers, landless labourers etc.
have to face the problems of natural calamities in India. According to some experts, drought is not caused by niggardliness of nature, but failure of the system properly plan and use the resources of land and water, he further emphatically stressed that water resources of India are colossal but they are seasonally, regionally distributed and very compressive water resources, planning is reduced to combat recurrent droughts and raving floods. However, the problem of chronic under employment in rural areas is thus essentially due to the event of a failure of seasons and lack of resources. At present about 27.5 per cent of the population is below the poverty line in India, (in which section of the society is unable to fulfill its basic necessities of life like food, clothes and shelter etc.).

The 1991 Census of India includes two other reasons for migration of people. Namely

(i) Business and

(ii) Natural calamities like drought, floods, and others.

However, Karl Marx (1958) also pointed out the problem of migrants in the agricultural and industrial fields, he says that this class of people, who migrate to industrial areas for several months, they live with camp, the contractor himself generally provides his army and he exploits the labourers in two-fold fashion as soldiers of industry, and he works with the help of labour gang system, which is cheaper than other work. Karl Marx further states that labour gang system is decidedly the cheapest for the land and factory owners and decidedly worst for the children and migrant workers.

Now, how can this difficult situation be tackled? How can the rural marginal farmers, landless and agricultural labour and migrants be saved out of this situation? The Royal Commission of Agriculture Report, 1927 pointed out that about 75 percent of the labour employed in large sugar mills in Bihar
and Orissa states, was composed of such type of migratory labour. This seasonal trend of labour force also found in other plantation areas in different parts of India. Rights available to the women workers Women in India form quite a large portion of the current labour force. The 1991 census states that it was 28.6% or 89.8 million. However, around 94% of women workers are in the unorganized sector. Most of the focus is on the 6% of the women who are in the organized sector where most of the laws apply and are better enforced. The Constitution of India was drafted in such a way as to ensure that all workers, men and women were equally protected by the law: The Directive Principles of State Policy which encapsulate the directives to the Government while formulating its policies are very clear about many of these rights. These Principles contained in Part IV of the Constitution have been read into Article 21 of the Fundamental Rights in Part III to safeguard and guarantee the workers their rights. However, with globalization and liberalization we see that more and more these rights have been eroded by both the Government and the judiciary through its interpretation and decisions in the cases that have come up before it since the 1990's. However, there are a few instances that demonstrate the ability and power that they possess to safeguard women's human rights if they have the inclination and commitment to ending discrimination in the work place.

Part III of the Indian Constitution reflects some of the basic human rights of all people. Article 14 guarantees equality before law and equal protection of the law, while Article 15 prohibits discrimination on the grounds only of sex amongst other forms of discrimination. Article 15 (3) provides for special provisions to be made for women and children. Article 16 prohibits discrimination in matters of employment. Article 16 (4) provides for reservation of appointment or posts in favor of any backward class of citizens which in the opinion of the State may not be adequately
represented in the services of the State. Article 19 (1) (g) gives the right to freedom to practice any business, trade or occupation and Article 21 guarantees the right to life and personal liberty.

In addition are the provisions in Part IV as I mentioned earlier. While Article 38 speaks of the promotion of welfare of all the people Article 39 (a) speaks specifically of right to an adequate means of livelihood for men and women equally. Article 39 (d) addresses the issue of equal pay for equal work for both men and women (the Government of India went on to enact the Equal Remuneration Act in 1975 to fulfill this direction) and Article 39 (e) particularly directs the state to ensure that its policy secures that the health and strength of workers, men and women and children are not abused and that the citizens are not forced by economic necessity to take to vocations unsuited to their age or strength. Article 41 adds strength to Article 39 (a) by stating that within the limits of its economic capacity and development the State should make effective provisions for securing the right to work amongst other things to its entire people. Article 42 is one of the hall marks of the Indian Constitution as it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore it directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief It is in this context that the Government of India went on to enact the Maternity Benefit Act. 1961 which enables women in the labour force who have been employed for 160 days in a year to provide leave with pay and medical benefit.

**Right of Women Employee**

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 feel, 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

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therefore violative of Article 14.

In *Mrs. Neera Mathur v. Life Insurance Corporation of India*\(^{21}\) the Supreme Court recognized the right to privacy of female employee. Mrs. Neera had been appointed by the IJC 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 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 remuneration 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.

**INTERNATIONAL STANDARD**

All peoples throughout all of human history have faced the uncertainties brought on by unemployment, illness, disability, death and old age. In the realm of economics, these inevitable facets of life are said to be threats to ones economy security.\(^{22}\)

**RADICAL CALLS TO ACTION**

The decade of the 1930s found America facing the worst economic

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\(^{21}\) AIR 2008 SC 1214.

\(^{22}\) [www.ssa.gov/history/briehistory3.html](http://www.ssa.gov/history/briehistory3.html).
Historical Background

The crisis in its modern history. Millions of people were unemployed, two million adult men ("hobos") wandered aimlessly around the country, banks and businesses failed and the majority of the elderly in America lived in dependency. These circumstances led to many calls for change.

The Social Insurance Movement

The social security program that would eventually be adopted in late 1935 relied for its core principles on concept of "social insurance." Social insurance was a respectable and serious intellectual tradition that began in Europe in the 19th century and was an expression of a European social welfare tradition. It was first adopted in Germany in 1889 at the urging of the famous Chancellor, Otto von Bismarck. Indeed, by the time America adopted social insurance in 1935, there were 34 nations already operating some form of social insurance program (about 20 of these were contributory programs like Social Security.

The Social Security Act

In early January 1935, the CES made its report to the President, and on January 17 the President introduced the report to both Houses of Congress for simultaneous consideration. Hearings were held in the House Ways & Means Committee and the Senate Finance Committee during January and February. Some provisions made it through the Committees in close votes, but the bill passed both houses overwhelmingly in the floor votes. After a Conference which lasted throughout July, the bill was finally passed and sent to President Roosevelt for his signature.

The Social Security Act was signed into law by President Roosevelt on August 14, 1935. In addition to several provisions for general welfare, the new Act created a social insurance program designed to pay retired workers age 65 or older a continuing income after retirement. (Full Text of President
Roosevelt's Statement At Bill Signing Ceremony).

**Major Provisions of the Act**

The Social Security Act did not quite achieve all the aspirations its supporters had hoped by way of providing a "comprehensive package of protection" against the "hazards and vicissitudes of life." Certain features of that package, notably disability coverage and medical benefits, would have to await future developments. But it did provide a wide range of programs to meet the nation's needs. In addition to the program we know think of as Social Security, it included unemployment insurance, old-age assistance, aid to dependent children and grants to the states to provide various forms of medical care.

**Trust Funds**

After Social Security numbers were assigned, the first Federal Insurance Contributions Act (FICA) taxes were collected, beginning in January 1937. Special Trust Funds were created for these dedicated revenues. Benefits were then paid from the money in the Social Security Trust Funds. Over the years, more than $8.7 trillion has been paid into the Trust Funds, and more than $7.4 trillion has been paid out in benefits. The remainder is currently on reserve in the Trust Funds and will be used to pay future benefits.

**First Payments**

From 1937 until 1940, Social Security paid benefits in the form of a single, lump-sum payment. The purpose of these one-time payments was to provide some "payback" to those people who contributed to the program but would not participate long enough to be vested for monthly benefits. Under the 1935 law, monthly benefits were to begin in 1942, with the period 1937-
1942 used both to build up the Trust Funds and to provide a minimum period for participation in order to qualify for monthly benefits.

**Medicare & Other Changes**

The decade of the 1960s brought major changes to the Social Security program. Under the Amendments of 1961, the age at which men are first eligible for old-age insurance was lowered to 62, with benefits actuarially reduced (women previously were given this option in 1956). This created an additional workload for the Agency as more beneficiaries entered the rolls. The number of people receiving disability benefits more than doubled from 1961 to 1969, increasing from 742,000 to 1.7 million.

The most significant administrative change involved the signing of the Medicare bill on July 30, 1965, by President Lyndon Johnson in the presence of former President Truman, who received the first Medicare card at the ceremony, Lady Bird Johnson, Vice-President Hubert Humphrey, and Mrs. Truman. With the signing of this bill, SSA became responsible for administering a new social insurance program that extended health coverage to almost all Americans aged 65 or older. Nearly 20 million beneficiaries enrolled in Medicare in the first 3 years of the program.

**The Social Security Advisory Board**

From the very beginning, the Social Security program has had the services of periodic Advisory Councils composed primarily of non-government members whose function was to represent the public at large in advising government officials on Social Security policy. The first such Advisory Council was convened in 1934 in support of the work of the Committee on Economic Security. Over the years, the Advisory Councils have been very influential in setting the agenda for changes in Social Security. The Councils were especially influential in shaping the pivotal...
Historical Background

1939 and 1950 amendments. Eventually, the tradition of periodic Social Security Advisory Councils was made a standard provision of the law, with a requirement that such a Council be appointed every four years. This law stayed in effect until 1994, when it was repealed as part of the legislation which made SSA an independent agency. The 1994-1996 Advisory Council was thus the final Council, signaling the end of a long tradition in Social Security. Under that 1994 law, the Councils are abolished and a permanent 7-member Advisory Board was formed to serve many of the same functions.

Repeal of the Retirement Earnings Test (RET)

On April 7, 2000 “The Senior Citizens’ Freedom to Work Act of 2000” was signed into law, eliminating the Retirement Earnings Test (RET) for those beneficiaries at or above Normal Retirement Age (NRA). (The RET still applies to those beneficiaries below NRA).

Social Security in the George W. Bush Administration

In his Inaugural Address, President George W. Bush announced his intentions to reform Social Security and Medicare. It must preserve the benefits of all current retirees and those nearing a retirement. It must return Social Security to sound financial footing. And it must offer personal savings accounts to younger workers who want them. On September 18, 2009, the President signed into law H. R. 3325, which became Public Law. The legislation extends, through fiscal year 2010, funding authorization for the Work Incentives Planning and Assistance Program and the Protection and Advocacy for Beneficiaries of Social Security program.

World Trade and Workers Rights to Link or Not to Link

The saddest thing about the confrontation which took place at Seattle

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23 This essay originally appeared in Economic and Political Weekly Vol. 35. No. 15, 8 April 2000, ppp. 1247-1254. and is reproduced here with the kind permission of Padma Prakash. Senior Assistant Editor.
in November-December 1999 was the absence of any voice speaking for
Third World workers, either among official delegates to the World Trade
Organization (WTO), or among the protesters outside. One reason could be
that it would be difficult for workers or their representatives from developing
countries to travel to Seattle. But at least a subsidiary reason is the failure of
trade unions from our countries to articulate a clear and consistent standpoint
which could be argued at such a forum. This is a lack we urgently need to
remedy.

Before we look more closely at the issues raised by the meeting, I
would like to make my basic standpoint clear. Very simply as I see it, the
present world system is a capitalist one, and capitalism is by its nature
exploitative and oppressive. I would like to see it replaced by a more
egalitarian, cooperative, compassionate and caring system. However, I do
not think that this end can be achieved without the active and conscious
participation of the vast majority of the world's working people. This is not
possible in the immediate future since these protagonists have a long way to
go before they can unite around such a common goal. We are therefore
constrained at the moment to work within the capitalist system in order to
create the conditions in which a revolutionary transformation of the world
system can take place. So the question which confronts us is: given these
constraints, what should our attitude be to the linking of trade agreements of
me WTO with workers' rights?

WHO ARE THE ACTORS?

Who were the main protagonists in the Seattle drama, and what were
their agendas? First and foremost, of course, were the various governments.
The agenda of each, to put it simply, was to get the maximum advantage
for domestic production; for example, to get maximum access to the
markets of other countries while giving away the least possible rights to protect its own sectors which it saw as being vulnerable. They were representing mainly the interests of business groups in their own countries; the extent to which other interests figured in their calculations varied. At one extreme was the US, which was forced by powerful domestic trade union and environmental lobbies to put labour and environment on the agenda. However much we may criticize Clinton's crude bid to win votes for the Democrats in the forthcoming US elections by threatening trade sanctions against countries violating minimum labour standards, we have to concede that at least he was treating labour as an important constituency. His proposal to involve 'civil society' in the form of NGOs in the WTO also represents a concession to mass movements in his country.

24 WTO: US wants working group on trade and labour, Economic Times, 1/11/99