
ENSURING LIVELIHOODS: A CONSTITUTIONAL ANALYSIS OF WAGE REGULATION IN INDIA

Geetha Lakshmi R, The Tamil Nadu Dr. Ambedkar Law University, Chennai

ABSTRACT

India's Constitution, adopted in 1950, serves as the foundation for the world's largest democracy. It establishes a framework for a federal republic with a parliamentary system, ensuring a balance between the central government and individual states. The document enshrines fundamental rights for all citizens, guaranteeing equality, and freedom of religion, speech, and assembly. It also prohibits discrimination based on caste, religion, or gender. Alongside these rights, the Constitution outlines Directive Principles, which act as guiding lights for the government to strive for social and economic justice. While not directly enforceable in court, these principles encourage policies that promote equal opportunity, fair wages, and a decent standard of living for all Indians. While the Constitution doesn't dictate specific wage levels, it sets the stage for legislation that promotes fair compensation. The Directive Principles encourage the state to ensure that workers receive just and humane conditions, including fair wages. This paves the way for minimum wage laws and regulations aimed at protecting workers' rights and ensuring a living wage.

INTRODUCTION

The early days of industrialization were marked by brutal working conditions for the working class. They toiled for incredibly long hours for meagre wages that barely covered basic necessities like food, clothing, and shelter. This exploitation thrived under the prevailing “laissez-faire” philosophy, which minimized government intervention and championed free enterprise. With little to no regulations, employers took full advantage. In response to these harsh realities, the working class waged fierce struggles to improve their lives. These struggles ultimately led to the development of important concepts like minimum wage and equal pay for equal work. However, legal protections for workers go beyond these specific concepts. The Constitution of India serves as the foundation for various labour laws. Any legislation deemed inconsistent with the Constitution or violating fundamental rights can be declared null and void¹, ensuring a legal framework that upholds the rights and well-being of workers.

CONSTITUTION OF INDIA

The world’s largest democracy, India, is a federal republic officially known as the Union of States. Established as a sovereign, socialist, secular, and democratic nation, India functions under a parliamentary system. The cornerstone of this system is the Constitution of India, meticulously drafted and adopted by the Constituent Assembly in November 1949. This document, which came into effect in January 1950, serves as the supreme law of the land, guiding the nation’s governance.² The Indian Constitution holds the title of the world’s longest written constitution. It’s a comprehensive document, featuring a preamble that sets the stage for the nation’s character, followed by 470 articles meticulously categorized into 25 parts, Twelve schedules and five appendices provide further detail, ensuring a thorough legal framework. Remarkably, this document remains a living document, having undergone 106 amendments since its enactment to adapt to the evolving needs of the country.³

DEFINITION OF WAGES

In general terms, wages means all remuneration (whether by way of salary, allowances,

¹ The Constitution of India, art. 13.

² Constitution of India available at <https://www.india.gov.in/my-government/constitution-india> (last visited on March 4, 2024).

³ Constitution of India available at <https://legislative.gov.in/constitution-of-india/> (last visited on March 4, 2024).

or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. The specific legislation available for protecting the workers and providing them the wages for the work done includes the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948. These are the two main legislations that are specifically designed to deal with provisions regarding the payment of wages that are been fixed to the workers and becomes due on the day agreed to the payment of wages. The supreme law of land ie., The Constitution of India provides protection to the labourers in receiving the wages. The protection can be seen under various parts of the Indian Constitution.

PREAMBLE OF THE CONSTITUTION

The preamble to India's Constitution serves as a cornerstone, outlining the nation's aspirations and the guiding principles envisioned by its architects. It establishes a roadmap for achieving social and economic goals, ultimately securing a multitude of rights for Indian citizens (and in some cases, foreigners). These rights encompass justice, liberty, equality, and fraternity for all.⁴ The document guarantees social, economic, and political justice for every citizen. Notably, the framers deliberately incorporated the concept of "Welfarism", placing a responsibility on the state to ensure the well-being of its people throughout their lives. This replaced the earlier "laissez-faire" approach and "hire and fire" policies, prioritizing socio-economic justice for all. To translate these ideals into reality, the Constitution's framers embedded them within both the Fundamental Rights (justiciable rights) and the Directive Principles of State Policy (non-justiciable principles).

WAGES AND FUNDAMENTAL RIGHTS

The basic rights that are guaranteed to Indian citizens by the Constitution of India are known as Fundamental Rights. Fundamental Rights were borrowed from the Constitution of the United States of America. The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and

⁴ M.P. Jain, *Indian Constitution Law* (Kamal Law House, 5th edn., 1998).

to preserve human dignity. There are six fundamental rights in the Indian Constitution⁵.

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

i. Right to equality

Article 14 is a cornerstone of Indian equality. It guarantees that everyone within India's borders is subject to the same laws and receives equal protection under them. This two-pronged approach prohibits discrimination (equality before law) and allows for tailored treatment to achieve true equality (equal protection). In simpler terms, those who are similar are treated similarly, while those with different circumstances may require different approaches to reach equal footing⁶. This principle extends to ensuring equal pay for equal work, even though it's not explicitly stated in Article 14 but has been upheld through court judgements based on this very idea of equality.

A landmark case, *Daily Rated Casual Labour v. Union of India*⁷, established that casual labourers in the P&T department doing the same work as regular employees deserved equal pay. The court ruled that they were entitled to the minimum wage in the regular pay scale, along with Dearness Allowance (DA), but not increments. This decision stemmed from Articles 14 and 16 of the Indian Constitution, which guarantee equality before the law and prohibit discrimination. Furthermore, it aligned with the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Right. The Denial of minimum pay amounts to exploitation

⁵ Fundamental Rights available at <https://knowindia.india.gov.in/profile/fundamental-rights.php> (last visited on March 7, 2024).

⁶ VN Shukla, *Constitution of India* (Eastern Book Company, 13th edn., 2017).

⁷ (1988) 1SCC 122.

of labour. The government cannot take advantage of its dominant position. The government should be a model employer.⁸

The Supreme Court in *F.A.I.C. and C.E.S. vs. Union of India*⁹ addressed the concept of “equal pay for equal work” within the framework of Article 14 of the Indian Constitution. The court acknowledged the principle but clarified that it applies to situations where the work is truly equal. Disparity in pay scales can be justified based on legitimate differences in responsibility, reliability, and confidentiality. The court emphasized that “equal pay must depend upon the nature of the work done”. While the core functions of two positions might be similar, the level of responsibility associated with them can be a crucial differentiator. The judgement highlights that true equality demands considering the totality of the work performed, not just its basic functions. Applying this principle, the court upheld the different pay scales for Stenographers Grade I working in the Central Secretariat compared to those assigned to subordinate offices. Even though their duties appeared identical, the court recognized the higher-level responsibilities borne by stenographers in the Central Secretariat, justifying their higher pay scale.

Article 15 - The article forbids discrimination in employment based on factors like religion, race, caste, sex, or place of birth. This ensures all citizens have an equal chance to get jobs based on merit. The article allows for reservations in jobs for disadvantaged groups facing historical oppression. This is seen as a way to create a more balanced workforce.

Article 16 - Ensuring a level playing field in government jobs, Article 16 of the Indian Constitution prohibits discrimination based on factors like religion, caste, or gender. It guarantees everyone a fair shot at public employment. However, the Article also recognizes the need for affirmative action. It empowers the government to create special programs to uplift disadvantaged groups.

ii. Fundamental freedoms

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights

⁸ S.N. Misra, *Labour & Industrial Laws* (Central Law Publication, 28th edn., 2013).

⁹ AIR 1998 SC 32.

such as¹⁰:

- Freedom of speech and expression.
- Freedom of assembly without arms.
- Freedom of association.
- Freedom to move freely throughout the territory of India.
- Freedom to reside in any part of the country.
- Freedom to practise any profession, or to carry on any occupation, trade or business.

From the above freedoms the workers possess the important right, ie., the right to form unions or associations¹¹. These trade unions or the workers union plays a crucial role in collective bargaining with results in regaining the rights and payment of wages and it helps to make demand for their protection at the work place. Workers' rights to free speech, assembly, association, and unionisation protect their efforts to advance their interests through self-organisation, picketing, or strike action. The Supreme Court has extended the meaning of this right to also include the right of the members to conduct meetings and the right to discuss their problems and put-forth their views in the case of *All India Bank Employees v. National Industrial Tribunal*¹².

iii. Right to Life

Article 21 is a cornerstone of Indian fundamental rights. It safeguards both your right to life and your personal liberty. This right to life isn't just about staying alive, but living with dignity. The concept of "personal liberty" is broad and includes many rights that allow you to make your own choices. However, the government can restrict these rights, but only if it follows proper legal procedures that are fair and just. Through court ruling, the definition of "life"¹³ has grown to encompass everything that makes life meaningful and fulfilling, not just

¹⁰ The Constitution of India, art. 19.

¹¹ The Constitution of India, art. 19(1)(c).

¹² AIR 1962 SC 171.

¹³ The Constitution of India, art. 21.

basic survival.

In *Olga Tellis v. Bombay Municipal Corporation*¹⁴ the Court interpreted “life” in Article 21 to go beyond just physical existence. They argued that without the ability to earn a living, a person's right to life is significantly compromised. This decision essentially recognizes that having the means to support oneself is fundamental to living with dignity, which is guaranteed by Article 21. The Court further highlighted existing articles in the Constitution that emphasize the state's responsibility to provide adequate means of livelihood and work opportunities, strengthening the argument for including the right to livelihood within the ambit of Article 21.

iv. Right against Exploitation

Under article 23 there are two prohibitions, **First**, it prohibits the trafficking of human beings, beggars, and other similar types of forced labour, and **Secondly**, that any infringement of the prohibition is punishable by law¹⁵. It also provides the following exemption.

EXEMPTION: Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.¹⁶

The Supreme Court in *Sanjit Roy v. State of Rajasthan*¹⁷ reinforces the importance of fair wages under Article 23 of the Indian Constitution. The court ruled that paying workers on famine relief projects less than the minimum wage violates this article. The judgment emphasizes that the state cannot exploit people's vulnerability during droughts or scarcity by offering wages below the minimum. Article 23 prohibits forced labour, and the court interpreted paying less than minimum wage in such situations as a form of exploitation. Regardless of their circumstances, anyone providing labour to the state deserves fair compensation as defined by minimum wage laws. This decision ensures that even during difficult times, workers are protected and receive a basic level of income to support them.

¹⁴ AIR 1985 SCC (3) 545.

¹⁵ The Constitution of India, art. 23 (1).

¹⁶ The Constitution of India, art. 23(2).

¹⁷ AIR 1983 SC 328.

A Supreme Court case, *Deena v. Union of India*¹⁸, ruled that making prisoners work without fair compensation violates Article 23 of the Constitution, which prohibits forced labour. Prisoners deserve reasonable wages for their work, and the court has a responsibility to ensure they receive them.

In *Bandhua Mukti Morcha v. Union of India*¹⁹, the Supreme Court held that it is the constitutional obligation of the Government under Article 23 to take appropriate steps to eradicate bonded labour system. In 1976 the Parliament enacted the Bonded Labour System (Abolition) Act, 1976 providing for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people.

WAGES AND DIRECTIVE PRINCIPLES OF STATE POLICY

India's Directive Principles of State Policy (DPSP) draw inspiration from the Irish Constitution of 1937, which itself stemmed from the Spanish Constitution. Article 45 of the Irish Constitution is considered the origin of this concept. The DPSP, outlined in Part IV (Articles 36-51) of the Indian Constitution, act as guidelines for the government. While not directly enforceable by courts, they hold significant weight in governing the country. The state is obligated to consider these principles when creating laws and policies with the ultimate goal of establishing a just society. These principles aim to foster social and economic conditions that enable a good quality of life for all citizens. These principles aim at providing social and economic justice and set the path towards the welfare state. The Directive Principles are classified on the basis of their ideological source and objectives. These are Directives based on:

- Socialist Principles
- Gandhian Principles
- Liberal and Intellectual Principles

The Indian Constitution outlines certain guiding principles for the government to strive towards, known as the Directive Principles of State Policy. These principles, though not enforceable by courts, play a crucial role in shaping a just and prosperous society. One such

¹⁸ AIR 1983 SC 1155.

¹⁹ AIR 1997 10 SCC 549.

principle focuses on ensuring fair treatment for workers. This involves creating safe and dignified work environments²⁰. It also recognizes the importance of supporting mothers by providing maternity relief, allowing them to balance work and childcare.

It also emphasizes worker empowerment²¹. It encourages the government to take steps that enable workers to participate in decision-making processes within their industries. This fosters a sense of ownership and potentially leads to improved working conditions and productivity. It addresses the overall well-being of the population²². The government is guided to prioritize initiatives that improve public health and raise the standard of living for all citizens. This includes ensuring access to nutritious food and promoting healthy lifestyles. In essence, these principles aim to create a work environment that is fair and respectful, empower workers, and ultimately contribute to a healthier and more prosperous society for everyone.

i. Equal pay for equal work

The Indian Constitution enshrines the concept of equality in multiple ways. The Preamble sets the stage for an egalitarian society, while Article 14 guarantees equality as a fundamental right. However, Article 39(d) takes a different approach, placing the concept of equal pay for equal work for men and women under the Directive Principles of State Policy. While not directly enforceable in court, these principles guide the government towards achieving a welfare state. To translate this ideal into action, the Equal Remuneration Act of 1976 was passed. This law ensures that men and women performing the same work or similar work receive equal pay, effectively prohibiting gender-based discrimination in wages. It's important to note that the framers of the Constitution, while emphasizing equality in pay, primarily focused on preventing discrimination based on sex or gender. This means the concept wasn't intended to address other potential wage disparity factors beyond gender. Although employers still have a general obligation to avoid gender-based discrimination in pay, the legal framework for equal pay in India has this specific focus.

In *State of UP v. J.P. Chaurasia*²³, it was held that equal pay for equal work is not an abstract doctrine but is not capable of mechanical application in every case of similar work.

²⁰ The Constitution of India, art. 42.

²¹ The Constitution of India, art. 43 A.

²² The Constitution of India, art. 47.

²³ AIR 1989 SC 19.

Thus, the judiciary by its dynamic interpretation transformed an unenforceable Directive Principle of equal pay for equal work into an enforceable fundamental right.

In *Randhir Singh v. Union of India*, through a 3 judge bench, it held that: The principle of 'equal pay for equal work', which meant equal pay for everyone irrespective of sex, was deducible from preamble and Articles 14,16 and 39(d) of the Constitution. The principle of equal pay for equal work was held to be applicable to cases of unequal scales of pay, based on classification or irrational classification, though both sets of employees (engaged on temporary and regular basis, respectively) performed identical duties and responsibilities

In *Supreme Court Employee's Welfare Association v. Union of India*²⁴, offered a nuanced view on the "equal pay for equal work" principle. The Court clarified that while this concept isn't directly guaranteed by Article 14 it can come into play if pay scales are discriminatory. Unequal pay only violates Article 14 if it creates unfair discrimination. The Court emphasized that even if people doing the same work receive different salaries, it's not a violation if the pay scale classification is reasonable and justified. The Court also avoided interfering with government decisions on pay scales. They acknowledged the government's responsibility to consider various factors when setting wages and limited their role to ensuring these scales don't result in arbitrary or unfair discrimination.

In *Mewa Ram v. A.I.I. Medical Science*²⁵ the Supreme Court has held that the doctrine of 'equal pay for equal work' is not an abstract doctrine. Equality must be among equals, unequal's cannot claim equality. Even if the duties and functions are of similar nature but if the educational 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 qualifications²⁶

ii. Right to living wage

The Indian Constitution, through Article 43, enshrines the ideal of a life of dignity and opportunity for all workers. This article goes beyond simply guaranteeing a job; it compels the

²⁴ AIR 1990 SC 334.

²⁵ AIR 1991 SC 2342.

²⁶ M.P Jain, *Constitution of India* (Lexis Nexis Law Publication 8th edn., 2015).

state to strive towards ensuring a “living wage” for all – agricultural, industrial, or otherwise. This living wage is not merely a means of survival but a tool for a decent standard of living. Wage also is to provide not just basic necessities like food, clothing, and shelter for his family²⁷. It should offer a margin of comfort, enabling him to invest in his children's education, safeguard against ill health, and fulfil essential social needs. Additionally, the concept encompasses measures of insurance against the uncertainties of old age.

The “living wage” goes hand-in-hand with the concept of a “decent standard of life” This encompasses not just material well-being but also leisure time and access to social and cultural opportunities. Ideally, workers should have the time and resources to pursue their interests, participate in their communities, and experience the richness of life beyond the workplace. By prioritizing a living wage and a decent standard of living, Article 43 seeks to create a society where work is not just a means to an end, but a path towards a life of dignity, security, and personal growth for all workers.

The Supreme Court in *All India Bank Employee's Association v. Reserve Bank of India*²⁸ offered a frank perspective on worker wages. Justice Hidayatullah recognized the ideal of a “living wage” that allows a decent standard of living, but admitted it remains an elusive goal. He compared it to a constantly receding horizon, always pursued but never fully grasped. The reality, he observed, is that most workers earn wages barely reaching the lower end of what's considered “fair”. This implies many struggles to meet basic needs comfortably. However, there's a positive side. Justice Hidayatullah acknowledged some employers pay significantly more than the average, offering a beacon of hope. This suggests progress towards a better future for workers, where the ideal of a living wage might be closer than it seems. Subba Rao, C.J. in *Hindustan Antibiotics Ltd v. Their Workmen*²⁹ has, however, struck an optimistic note that prosperity in the country would help to improve the conditions of labour, and standard of life of the labour can be progressively raised from the stage of minimum wage, passing through need-based wage, fair wage, to living wage.

The Supreme Court of India, in *Management Ore (India) Ltd. v. Chandi Lal Saha*³⁰, emphasized the importance of Directive Principles for public sector companies. These

²⁷ Indian Constitution and Labour Legislations available at [www.egyankosh.ac.in/bitstream/123456789/6907/1/Unit 5.Pdf](http://www.egyankosh.ac.in/bitstream/123456789/6907/1/Unit%205.Pdf) (last visited on March 10, 2024).

²⁸ AIR 1966 SC 305.

²⁹ AIR 1967 SC 948.

³⁰ AIR 1991 SC 520.

principles, enshrined in Part IV of the Constitution, guide the government towards creating a just society. The Court ruled that these companies must ensure a living wage, fair working conditions, and a decent standard of living for their workers. The company should strive to provide additional benefits like subsidized essential goods, healthcare, housing, educational opportunities for workers' children, and even retirement benefits. Social, cultural, and sporting activities are also encouraged.

In *State of Orissa v. Balaram Sahu*³¹ 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 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.

While the Directive Principles don't explicitly mention wages, they play a crucial role in achieving these objectives. Decent wages allow workers to access these benefits and contribute to a better quality of life. The remaining principles within the Directive Principles can be broadly categorized as either Gandhian principles or those emphasizing liberal and intellectual ideals

CONCLUSION

The Indian Constitution forms the bedrock for all laws, including those protecting workers. Any law violating these principles can be challenged and struck down. The Directive

³¹ AIR 2003 SC 33.

Principles, while not directly enforceable, guide the government in creating new labour legislation. The Constitution itself recognizes and protects workers' fundamental rights. The inclusion of labour laws highlights their importance for India's social, economic, and moral progress. It establishes legal frameworks and remedies to ensure workers are treated with dignity and not exploited. Additionally, the Directive Principles provide a roadmap for improving worker welfare, guaranteeing a decent livelihood, health, and well-being. In essence, the Indian Constitution offers a robust framework for safeguarding, promoting, and ensuring fair treatment of labour rights, a cornerstone for the nation's development.