



Research Article

Equal Pay for Equal Work: From Directive Principle to Enforceable Constitutional Right

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Abstract

The doctrine of Equal Pay for Equal Work has an important role in the Indian Constitution but it is not in the same form as it has been since the inception of the Constitution. It is a Directive Principle of State Policy which was part of the Constitution and was originally meant to be a guiding goal and not a legally binding obligation. However, the Supreme Court of India, over the years, has broadened the ambit of Articles 14 and 16, and introduced this concept as part of the constitutional equality of all citizens, thus giving it a judicial recognition. In this paper the author discusses the constitutional evolution of the equal pay doctrine, starting from its basic incorporation in the Directive Principles and how it has been developed as a constitutional obligation by judicial interpretation. It also examines the legislative framework of wage equality and considers some of the main doctrinal issues such as how to define comparable work, what are the legitimate bases for wage differentiation and the problems of implementation involving a growing trend of contractual and informal employment. Furthermore, the paper takes into account the international aspects of wage equality by examining how India's commitments under the International Labour Organization (ILO) conventions and the Convention on the Elimination of All Forms of Discrimination against Women have affected wage equality. While there has been significant judicial development, it asserts that the principle is yet to be implemented effectively because of lack of legislative backing, lack of robust enforcement measures and lack of robust wage transparency framework. The study ends by calling for ongoing judicial involvement, but also extensive legislative and administrative changes, in order to achieve a real pay equality.

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I. INTRODUCTION

The idea that people doing the same job deserve to be paid equally is based on the very idea of justice and fairness. But the process through which this idea has evolved in the Indian constitutional context has not been straightforward. When the Constitution was enacted in 1950, the idea of equal pay for equal work was included in the Directive Principles of State Policy under Part IV of the Constitution. Since this was meant only as guidance, and not a right, the Constitution-makers ensured that it was outside the purview of judicial review.¹ India's economic limitations in the post-independence period influenced the decision to keep socio-economic rights outside the scope of direct judicial enforcement. Nevertheless, in *Randhir Singh v. Union of India*, the Supreme Court held that the principle of equal pay for equal work forms part of the constitutional framework through Articles 14, 16, and 39(d), despite not being expressly recognised as a fundamental right.² It was a significant judicial advancement in understanding the meaning of wage equality in the Constitution. The courts essentially made it from a policy statement to a rule that was enforceable with the idea of equal pay for equal work and a constitutional guarantee to protect it. In this way, they established a constitutional framework as a basis for future decisions which further developed and advanced the idea of wage justice in the Indian legal system.

This topic is more important than ever these days. Even as the labour market in India has been expanding at a fast rate with greater number of contractual and non-standard types of jobs, it has been characterized by persistent wage gaps between different categories of workers in similar jobs and between males and females in the same category. The Code on Wages, 2019 is an important step towards consolidating and modernizing the legislation on wages and remuneration, but its implementation is still in its initial stages and the capabilities of its enforcement mechanisms are yet to be assessed. When such conditions exist it is important for the law and for labour policy to consider the role of the principle of equal pay for equal work as a constitutional objective rather than a right that is actually enforceable.

II. CONSTITUTIONAL FOUNDATIONS

A. The Architecture of Part IV: Aspirations Without Enforcement

India's constitutional structure does not place equal importance on all the rights listed therein. Instead, the Indian constitution places two classes of constitutional rights. The rights provided for in Part III are classified as Fundamental Rights which can be claimed judicially in case of violation. In relation to the Directive Principles of State Policy provided for in Part IV, these are only meant to guide the State in creating laws and policies. Though the Directive Principles are viewed as crucial for national governance, the Indian constitution clearly states

that these cannot be claimed judicially.³ The drafting of the Constitution consciously made the distinction between enforceable rights and Directive Principles because the social and economic changes required could not be brought about by mere judicial pronouncements alone. Instead, a continual process of legislation and administration was needed to achieve this end. Thus, Article 39(d), which provides for equal pay for equal work for both sexes, has been included in the Constitution only as an objective and not as a fundamental right that is enforceable in the courts of law. It may be noted that while its inclusion in the Directive Principles gave constitutional importance to this principle, it did not confer judicial enforceability upon it.

B. The Equality Provisions as the Gateway to Enforcement

Articles 14 and 16 of the Constitution provide the principal gateway through which the equal pay principle has been rendered judicially enforceable.⁴ Article 14 protects the right to equality by providing protection against the arbitrariness of the State, whereas Article 16(1) provides equal opportunity in matters of public employment. The rule of equal pay for equal work has been derived from these provisions by courts and means that persons doing same job will be equally treated. Such interpretation is based upon the principle of harmonious construction of Fundamental Rights and Directive Principles.⁵ The Supreme Court, in the case of *Minerva Mills Ltd. v. Union of India*, declared that a harmonious relationship between Fundamental Rights and Directive Principles is part of the basic structure of the Constitution. In other words, the Fundamental Rights cannot be abridged on grounds of Directive Principles of State Policy.⁶ At the same time, this principle requires that Fundamental Rights be interpreted broadly to effectively advance the objectives embodied in Part IV of the Constitution.

III. JUDICIAL EVOLUTION

A. The Foundational Judgments

Equal pay for equal work was established by the judiciary to be a fundamental concept in the judgment in *Randhir Singh v. Union of India*. This case saw Delhi Police drivers seeking equal pay with respect to drivers in other government departments doing identical tasks. The court ruled that equal pay for equal work is a constitutional aim, and any discrimination in salary could be violative of Articles 14 and 39(d) of the Constitution. Purposeful interpretation of Article 39(d) was made through its connection to the fundamental right to equality, whereby the constitutional obligation was expanded beyond what was enshrined as a Directive Principle that could not be enforced individually in itself. This was further reiterated in *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*,

³ INDIA CONST. art. 37.

⁴ INDIA CONST. art. 16(1).

⁵ *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645.

⁶ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

¹ INDIA CONST. art. 39(d).

² *Randhir Singh v. Union of India*, (1982) 1 SCC 618.

whereby equal pay was interpreted as an answer to unequal treatment in wages paid to female stenographers.⁷

The use of liberal and purposive interpretation of the phrase "same work or work of a similar nature" was done with the intention of ensuring that the objective of wage equality is achieved and not hindered by narrow interpretation. The case of *Daily Rated Casual Labour v. Union of India* extended the above principle to cover casual workers who are paid on a daily basis by the State.⁸ The Court declared that the State as an ideal employer owes its employees the responsibility to give them fair treatment. Casual laborers doing jobs similar to those of other employees shall be given the same salary. This decision clarified that the equal pay for equal work concept does not pertain only to women but is applicable wherever workers have equal functions.

B. Extension to Contractual and Temporary Workers

An important landmark in the judicial application of equal pay is *State of Punjab v. Jagjit Singh*, in which the Supreme Court ruled that daily wages and contractual workers doing the same work as permanent workers must be paid equally irrespective of their mode of employment.⁹ It was ruled that employees who do similar jobs should not earn differently based on how they have been hired since this would be discriminatory practice contrary to Article 14. This decision was important as it negated the common argument that regular and contractual employees can earn differently just based on their service conditions.¹⁰

It stressed that equality in wages can only be assessed based on the nature of the work involved rather than its nature as a relationship. The above point has been reiterated in *Gramin Sewa Sahakari Samiti v. State of M.P.*, where it was ruled that unequal wages paid for the same work would amount to violation of the right to equality as provided under Article 14 of the Constitution.¹¹ In light of these decisions, it is evident that the principle has developed from merely being an assurance of gender equality to becoming a constitutional directive for wage equality where there is substantial similarity of work.

C. The Two-Part Test and the Question of Comparability

The growth in cases involving unequal pay has led the court system to adopt a more methodical approach towards handling these cases. In the case of *State of Haryana v. Tilak Raj*, the Supreme Court decided that two things needed to be considered: first, whether the job performed by the workers required equal skills and effort; second, whether the differential pay was based on a logical classification for a valid

purpose.¹² This approach involves applying the constitutional doctrine of non-arbitrariness to wage fixing, enabling any unreasonable discrepancy in wages to be considered under Article 14. Nevertheless, implementation of this strategy can be difficult because courts understand that evaluating whether parity exists needs an accurate assessment of the facts, since identical job titles do not necessarily perform identical functions.¹³ In the case of *Surinder Singh v. Engineer-in-Chief, CPWD*, it was emphasized that the doctrine must not be applied in a strict manner, since the requirement of parity exists only in cases where employees have almost the same job roles and responsibilities.¹⁴ While such an adjustment in jurisprudence was certainly necessary to protect the proper scope of the doctrine, it also provided a means for some employers to hide their wage discrimination through distinctions in titles and job descriptions.

IV. LEGISLATIVE FRAMEWORK AND STATUTORY REINFORCEMENT

A. The Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 came into existence to give effect to the principle of equal pay for equal work enshrined in the Constitution. This act does not discriminate against any employee based on their sex, and provides equal terms of recruitment and employment to women employees.

Though very crucial, this act has had several problems in the past. The act's effectiveness has been hampered by poor enforcement, limited criteria for comparison of work, lack of clarity regarding wages, and remedial measures for enforcement agencies.¹⁵ The Act specifically aims at gender-related issues in pay and does not sufficiently address pay disparity caused by discrepancies in employment status, which has accounted for the vast majority of cases involving equal pay suits filed in Indian courts over the last thirty years.

B. The Code on Wages, 2019

The Code on Wages, 2019 repealed the Equal Remuneration Act, 1976 along with three other labour laws, reiterating the concept of equal pay and expanding its scope to cover a wider set of workers. Despite maintaining prohibition against discriminatory wage payments on the basis of gender, the Code has been blamed for its inability to enhance mechanisms for enforcing equal pay requirements. Though it rationalized labour law, it failed to include the advances made in equal pay jurisprudence.

Another important shortcoming of the Code is the lack of any requirement on employers to perform pay audits or provide wage information disaggregated by gender and employment. It

⁷ *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, (1987) 2 SCC 469.

⁸ *Daily Rated Casual Labour v. Union of India*, (1988) 1 SCC 122.

⁹ *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148.

¹⁰ *Secretary, State of Karnataka v. Umadevi*, (2006) 4 SCC 1.

¹¹ *Gramin Sewa Sahakari Samiti v. State of M.P.*, (2010) 9 SCC 336.

¹² *State of Haryana v. Tilak Raj*, (2003) 6 SCC 123.

¹³ *General Manager, Telecom v. A. Krishnamurthy*, (1997) 4 SCC 81.

¹⁴ *Surinder Singh v. Engineer-in-Chief, CPWD*, (1986) 1 SCC 639.

¹⁵ *Bhagwan Dass v. State of Haryana*, (1987) 4 SCC 634.

has been observed across many countries that such a step helps in identifying and correcting existing wage disparities.¹⁶This is not the case with the Indian legal structure, which leaves the onus on the workers to prove any claims that they make regarding discrimination. The problem that workers face in establishing pay discrimination is a lack of information regarding other workers.

V. INTERNATIONAL HUMAN RIGHTS DIMENSIONS

The policy of equality in pay of India can be strengthened with respect to international labour standards and human rights. Being a signatory to the Equal Remuneration Convention of 1951 (No. 100), India has the responsibility of providing equal pay for both male and female employees doing equal-value work. It is a wider criterion that goes even beyond the concept of equal pay for same work to cover cases of undervaluation of the occupations of women. Similarly, Article 11(1)(d) of CEDAW requires states to provide for equal pay for equal-value work.¹⁷The Indian judiciary has often made use of international law instruments while interpreting provisions in the Constitution and statutes. In accordance with the ratio of the decision in *Vishaka v. State of Rajasthan*, it is well accepted that ratified international treaties can be relied upon to fill the gaps in legislation.¹⁸

While there exists an internationally accepted principle of "equal pay for equal value," its application has yet to become firmly established within India's laws. The emphasis continues to be upon "same or similar work" in both the Indian judicial system and in legislative provisions.¹⁹This makes the legal system less effective in dealing with occupational segregation, whereby women are placed in low-paying positions even when their job roles require similar abilities and accountability as that of high-paying jobs done by men. In order to solve the problem, it is important that the legislature incorporates the concept of "equal pay for work of equal value" into its framework along with a finer judicial analysis of different types of jobs.

National Legal Services Authority vs Union of India made the equality provisions in the Constitution stronger by including transgender individuals within the rights of equality.²⁰Given the equality rights of individuals of all gender identities, the Court has established a broad constitutional basis for equal pay claims that extends past traditional male–female pay discrimination.

VI. PERSISTING CHALLENGES

A. Definitional Uncertainty and Comparator Problems

The problem with the application of equal pay is that a proper comparator should be identified first. However, in cases of public employment, which are the major source of equal pay claims, it becomes rather problematic because of the complicated structure of pay rates, service conditions, and cadres for government jobs.²¹There is always a consistent opinion that mere similarity in job titles will not support equal pay. There must be proper comparison based on the nature of work done, degree of responsibility and qualification required for the job.²²

The problem with finding an appropriate comparator is especially problematic in the private sector due to employers' wide discretion in determining the remuneration structure and the secrecy of salary data that makes access to such data difficult to obtain by employees. This is why legislation that mandates the publication of salary levels is necessary.

B. The Contractualisation Problem

The rise in the number of contracts, temporary, and daily wage employees has led to various difficulties when it comes to implementing the concept of equal pay in India. With workers no longer part of permanent employment, the current norms used to compare wages are not proving adequate anymore.²³Whereas cases like *State of Punjab v. Jagjit Singh* have established the principle that contractual workers are entitled to be paid equal remuneration for equal work, the implementation of such a right is only possible when there are robust labor inspections, accessible channels for complaints, and prevention of victimization of workers demanding their rights.

Nevertheless, labor enforcement bodies in India continue to be hampered by major drawbacks. The lack of proper manpower, insufficient resources, and lengthy dispute settlements have made their work difficult. Consequently, even though the right to equal remuneration has been acknowledged by law, many workers face numerous challenges to enjoying it.²⁴

C. The Judicial Enforcement Boundary

Indian equal pay jurisprudence reflects an ongoing challenge between the courts' duty to uphold constitutional guarantees and the practical limits of judicial intervention in reforming wage structures.²⁵In *State of Karnataka v. Umadevi*, the conflict between regulating regularisation of temporary employees and paying them equitable remuneration for doing comparable work has been considered by the Supreme Court. Although the Court approved of the principle of equal pay for equal work, the

¹⁶ *Maruti Suzuki India Ltd. v. Ram Lal*, (2019) SCC OnLine SC 1781.

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women, art. 11(1)(d), Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

¹⁹ *Haryana v. Charanjit Singh*, (2006) 9 SCC 321.

²⁰ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

²¹ *Vinay Kumar Mittal v. Uttar Pradesh Public Service Commission*, (2012) 5 SCC 200.

²² *Deoki Nandan Prasad v. State of Bihar*, (1971) 2 SCC 330.

²³ *Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162.

²⁴ *Comptroller and Auditor General of India v. K.S. Jagannathan*, (1986) 2 SCC 679.

²⁵ *Sub-Regional Sports Officer v. Anil Sharma*, (2019) 10 SCC 235.

jurisprudence which developed in light of this progressive stance has been plagued by lack of consistency in terms of doctrine.

Courts have also had to determine whether granting equal pay through a writ of mandamus is within their constitutional jurisdiction. The decisions made in this respect suggest that courts will grant this remedy only in cases where there is a clear violation of the Constitution and valid comparability can be established. Courts refrain from interfering in complicated matters where several pay scales and different kinds of services have been established.

VII. PROPOSALS FOR REFORM

The analysis illustrates that the notion of 'equal pay' is now a part of the fundamental right instead of being a Directive Principle of the Constitution in Indian courts, but the principle is not only limited in scope but also has not been fully implemented.

The first is that the concept of "same or similar work" should be replaced in the law by the more general one of "equal pay for work of equal value." This would help reduce the gender pay gap and the gap between formal and informal workers.

Second, there must be greater transparency measures. Employers should be legally required to perform periodic pay audits and make pay data available on a gender, caste and employment basis, which will demonstrate discriminatory pay practices and allow for accountability.

Third, institutional support is needed to ensure effective enforcement. Labour inspection systems, labour courts and legal aid systems should be sufficiently strengthened to enable workers to effectively exercise their rights.

Lastly, if the equal pay principle is explicitly incorporated into Articles 14 and 16 and/or added to the Constitution by amendment, then it would be given greater constitutional protection and enshrined in the State's policy as a constitutional principle.

VIII. CONCLUSION

The judiciary has played a very significant role in interpreting the Constitution of India as is evident from the development of the principle of equal pay in India. The principle was initially inserted in the non-enforceable Directive Principles of State Policy but finally it became enforceable in courts by relying on Article 39(d) along with Article 14 and 16 of the Constitution. This metamorphosis was made possible by a series of judicial rulings which widened the definition of constitutional equality. But in fact, equal pay is not achieved. The failure to eliminate pay gaps, poor pay for contractual and informal workers and ineffective enforcement continue to hinder the realization of this right. These challenges are part of the larger structural inequities which demand sound legislation, administrative and institutional changes.

Equal pay for equal work is not fully realised in the constitution. The full realization of this will depend on consistent judicial development, as well as on effective policy reforms in order to address the legal, institutional and economic barriers that persist in the way of wage equality. To achieve true wage justice, these are necessary measures.

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