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With this thought, we hereby present to you

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# **CONSTITUTIONAL RECOGNITION OF EQUAL PAY FOR EQUAL WORK**

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## **ABSTRACT:**

*One of the prominent Directive Principles of State Policymaking is the concept of Equal Pay for Equal Work. It finds its mention in the Article 39(d) under Part IV of the Indian Constitution. This legally recognized principle derives its essence and significance from an array of sources ranging from international conventions to domestic conventions, legal Acts, and provisions. It affirms that the State should fixate its policies and initiatives on achieving the objective of ensuring equal remuneration both for men and women, thereby implying that people holding identical jobs or ranks ought not to be treated differently on the grounds of gender where the work is the same and all conditions and considerations are equivalent. This approach aims to promote gender equity holistically whilst also balancing individual rights. This doctrine is considered as an outgrowth of the term 'Equality', as guaranteed in Article 14, wherein it affirmed that there shall exist a relatively equal pay or income scale with respect to identical positions and/or similar nature of job in any organization notwithstanding any factors that are capable of being discriminatory in nature. Other prominent fundamental rights read with this principle include the Right to Life and Personal Liberty as mentioned under Article 21. Given its importance and interconnection with other socio-legal issues, the nature of its legal enforceability is explicitly defined and interpreted every time and again through the jurisprudence of the Indian law courts.*

**KEYWORDS:** Constitution, Directive Principles of State Policy, Fundamental Rights, India, Remuneration

## INTRODUCTION

Work is the visual manifestation of an individual's mental or physical labor. It is the acknowledgment of a person's efforts made forth in response to stimuli, which may be internal or external in nature.<sup>1</sup> It is the acknowledgment of a person's efforts made in response to stimuli, which may be internal or external in nature.

In the said context, the concept of Equal Pay for Equal Work serves as one of the key components of "Equality" in our society, which tends to reciprocate the human efforts that are made in similar work and under the same circumstances, in the form of remuneration, notwithstanding any disparity in the same, based on their gender, color, caste, or creed. Hence, Equal work implies equally valuable effort. Moreover, it also promotes and encourages creating an equilibrium in a society that is accommodative of its citizens and strives to ensure that every person receives justice.

Its importance can be corroborated by the fact that the remuneration that workers receive directly influences their motivation to work and also creates a more dynamic workplace.<sup>2</sup> All modern organizations must, therefore, ensure that every employee is treated with dignity and provided with adequate tools and resources they require to feel motivated and driven towards doing their job.

While these facts remain true, the real burden lies in the increasing slew of issues concerning discrimination in the working sectors of society. Some of these may include wage disparity between men and women for the labor of the same nature, which is present in many organizations under the label of fresher, internship, etc.

The Honorable Supreme Court of India articulated and addressed this principle by way of several judicial pronouncements. In the case of **Randhir Singh v. Union of India**<sup>3</sup>, the Apex Court declared the doctrine as one of substance and held that it is not a "mere demagogic slogan"<sup>4</sup> but a

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<sup>1</sup> Ali, Sharafat. "Social, Economic and Political Justice to the Employees: Constitutional Perspectives." *Eduzone: International Peer Reviewed/Refereed Multidisciplinary Journal* 7, no. 2 (2018): 11-15.

<sup>2</sup> HR Search & Rescue. "Why Equal Pay Matters In The Workplace - HR Search & Rescue." HR Search & Rescue, April 5, 2021. <https://hrsearchandrescue.com/why-equal-pay-matters-in-the-workplace/>.

<sup>3</sup> *Randhir Singh v Union of India*, AIR 879 (1982).

<sup>4</sup> Mittal, J.K. "CASUAL LABOUR AND 'EQUAL PAY FOR EQUAL WORK.'" *Journal of the Indian Law Institute* 28, no. 2 (1986): 260-67. <http://www.jstor.org/stable/43951011>.



"constitutional goal" capable of being achieved through constitutional remedies and enforcement of constitutional rights. The court defined the concerned directive principle as "equal pay for equal work for everyone and as between the sexes" and read it into the fundamental rights guaranteed by:

- Article 14, which secures equality before the law and equal protection of the law; and
- Article 16, which deals with equality of opportunity in matters of public employment.

As a result, the constitutional remedies under Article 32 of the Indian Constitution<sup>5</sup> would be applicable for its implementation, in addition to being equally applicable for an individual engaged on a daily wage basis, who would be entitled to the same wages as other permanent employees in any organization to accomplish the same task.

Having outlined the underlying logic behind the principle of equal pay for equal work, an attempt is now made to methodically establish the essence of this principle through doctrinal research by reviewing relevant statutory and constitutional provisions, case laws, and other pertinent information.

## CONSTITUTIONAL PROVISIONS

- **Article 14:** In the first instance, the rule of equality mentioned in this Article forbids any form of extraordinary privilege or consideration, thereby, assuring that alike persons are considered alike, in similar circumstances. It also ensures that unlike persons shall not be treated alike. Besides this, the second important element incorporated within this article, which is, the equal protection of the laws, also places an obligation on the state to provide for basic socioeconomic arrangements to ensure that everyone receives equal protection of the laws in society.<sup>6</sup>
- **Article 15:** Discrimination which is substantially based on one's defining components like caste, race, religion, gender, or even birthplace, is forbidden within the ambit of Article 15 of the Constitution of India. By preventing classifications based on protected grounds, it upholds

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<sup>5</sup> Bakshi, Parvinrai Mulwantrai, and Subhash C. Kashyap. The constitution of India. Universal Law Publishing, 1982.

<sup>6</sup> Swara, Dipshi. "Equal Pay for Equal Work in India and the Globalising World - iPleaders." iPleaders, October 19, 2021. <https://blog.iplayers.in/equal-pay-for-equal-work-in-india-and-the-globalising-world/>.

the fundamental right of equality expressed in Article 14 under certain circumstances<sup>7</sup>. However, clause (3) and (4) of this Article provides for exceptions to the general rule as under (1) and (2), thereby allowing the State to make any special law or take any affirmative action in favour of children and women; and backward classes respectively.

- **Article 16:** This Article guarantees the right to equal opportunity in areas relating to public employment. In essence, it emphasizes that all citizens must be given equal opportunity to be hired or appointed to any post within the State. The scope of Article 16 is narrow as compared to Article 15 since it focuses on a very specific subject, that is public employment. Furthermore, the Equal Remuneration Convention<sup>8</sup> adopted by the International Labour Organisation (I.L.O.) in 1951 is also incorporated in the Indian Constitution by way of Article 16(2), which emphasizes the rule of equality by prohibiting discrimination based on sex exclusively concerning any employment or office under the State.
- **Article 39 (d):** It aims to establish social justice by adhering to the equal pay for equal work principle. Due to the interrelation between equality and social justice, it is pertinent to note that the directive principle of equal pay for equal work has transformed into a socio-legal necessity. Interestingly, the Equal Remuneration Act of 1976<sup>9</sup> was enacted in pursuance of this very Directive Principle.

## JUDICIAL PRONOUNCEMENTS

Having discussed the relevant Articles of the Indian Constitution, although not expressly mentioning that Equal Pay for Equal Work is a fundamental right, it merely indicates that various landmark judgements that also strengthen the notion of equal pay for equal work. Hence, it is essential to discuss them before addressing the socio-legal perspective of the topic.

One of the first cases to discuss Equal Pay for Equal Work as a legal concept was the case of *Kishori Mohanlal Bakshi v. Union of India*<sup>10</sup> in the year 1961 wherein the Apex Court propounded that it is incapable of being enforceable in a court of law. However, it wasn't until the *Mackinnon Mackenzie*

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<sup>7</sup> Bafna, Ruchitha. "Is Equal Pay For Equal Work A Fundamental Right In India." lawyersclubindia, February 1, 2022. <https://www.lawyersclubindia.com/Articles/is-equal-pay-for-equal-work-a-fundamental-right-in-india-14622.asp>.

<sup>8</sup> TEKLE, Tzehainesh. *Equal Remuneration Convention, 1951 (No. 100)*. 2018.

<sup>9</sup> Act, Equal Remuneration. "Ministry of Labour." Government of India (1976).

<sup>10</sup> *Kishori Mohanlal Bakshi v. Union of India*, AIR 1139 (1962).

*case*<sup>11</sup> in 1987 that it acquired proper recognition. This case stemmed from a plea for equal pay for female and male stenographers. Since the court believed in the concept of equal pay, the judgement, in this case, was decided in favour of the female stenographers.

Further, in 1982, the Supreme Court in the case of *Randhir Singh v. Union of India*<sup>12</sup>, noted that while the doctrine of "equal pay for equal work" is not expressly stated as a fundamental right by the Indian Constitution, it is undeniably a constitutional goal within the ambit of Articles 14, 16, and 39(c) of the Constitution. It further declared that the right to equal pay for equal work may be applied in situations where there exists unequal pay gaps or disparities based on unreasonable categorization.<sup>13</sup> Similarly, in case of *Dhirendra Chamoli v. State of Uttar Pradesh*<sup>14</sup>, the Supreme Court invoked Article 14 to uphold the right of temporary workers who perform labour similar to that of regular workers to receive equal salaries for equal work. The judiciary has consistently interpreted Article 39(d) of the Directive Principles of State Policy in a way that broadens the scope of the fundamental rights and strengthens the Directive Principles of State Policy. This viewpoint of the court is also apparent in the context of "equal pay for equal work," where the concerned directive principle has been enforced through the fundamental rights guaranteed by Articles 14 and 16 in previous cases and conceivably qua Article 21 in this case.

Apart from the aforementioned judgements, it is of paramount importance to cite the ruling of the *State of Punjab and Ors. v. Jagjit Singh and Ors.* This ruling attempted to present a change in judicial reasoning behind granting pay parity to temporary employees along with permanent employees. It held that the rule of "equal pay for equal work" should be applied to daily wagers, casual workers, and contractual workers who carry out the same duties as permanent employees. This verdict, which followed a long string of judgements on the issue of equal pay for equal work, was found to be crucial in eliminating the arbitrary distinction among workers doing similar jobs based on their classification as temporary or permanent.<sup>15</sup>

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<sup>11</sup> Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa and Others, 2 SCC 469 (1987).

<sup>12</sup> Randhir Singh v Union of India, AIR 879 (1982).

<sup>13</sup> Samanta, Subhajit. "Equal Pay for Equal Work: A Constitutional Goal to Be Accomplished." *Jus Corpus LJ* 2 (2021): 88.

<sup>14</sup> Dhirendra Chamoli v. State of Uttar Pradesh, 1 SCC 637 (1986).

<sup>15</sup> Rathore, Shubham. "Equal Pay for Equal Work- A Paradigm Shift." *International Journal of Legal Science and Innovation*, June 27, 2019. <https://www.ijlsi.com/equal-pay-for-equal-work-a-paradigm-shift/>.

Furthermore, in the case of *Surinder Singh v. Engineer-in-Chief, CPWD* the court stated that the said directive is not an abstract doctrine but rather a vital and vigorous one, which is universally accepted especially in socialist nations. This doctrine is an underlying principle enshrined in Article 14 and also originates from it, as held in the case of the State of *Madhya Pradesh v. Pramod Bhartiya*<sup>16</sup>.

One of the recent judgements based on the concerned directive in the case of *State of Madhya Pradesh vs. RD Sharma*<sup>17</sup>. In this case, the Apex Court held that although "Equal Pay for Equal Work" is not a fundamental right that all employees are granted, it is still regarded as a constitutional objective that the government must achieve.

In this way, the Directive Principle of Equal Pay for Equal Work is represented, recognized, and deliberated upon in the Courts of Law to determine and decide what is best for the citizen of India while also attempting to strike a balance with the constitutional provisions previously listed.

## **SOCIO-LEGAL PERSPECTIVE**

One of the offshoots of Equality is "equal pay for equal work," which recognizes the need for pay parity for job roles that have an identical nature and function in any profession, sector, or workplace without paying attention to any of the discriminatory factors like age, sex, race, creed, or the like. It helps to foster harmony and balance in society. However, there still exist several workplace discrimination grievances unaddressed today. It may be on grounds on gender, rank/position at a workplace, and deeply rooted social evils, to name a few.

It is pertinent to note that a person's decent standard of living is directly dependent upon striking a balance between work and its corresponding pay. This calls for the application of the rule of equality as guaranteed through various rights and provisions.

India has had a longstanding history of income disparities based on sex, caste, and even class. This socioeconomic paradigm needed to be discussed and modified since it was seen as being violative of

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<sup>16</sup> State of Madhya Pradesh v. Pramod Bhartiya, AIR 286 (1993).

<sup>17</sup> Shweta. "Equal Pay For Equal Work Not A Fundamental Right, But A Constitutional Goal: SC - Others." lawyersclubindia, January 31, 2022. <https://www.lawyersclubindia.com/news/equal-pay-for-equal-work-not-a-fundamental-right-but-a-constitutional-goal-sc-19849.asp>.

the very idea of justice. Resultantly, by way of a series of verdicts, the Supreme Court acknowledged and upheld this directive principle. It must also be noted that all such pay discrepancies are not merely against the right to equality and one's very own identity but also have significant ramifications in the society and economy as a whole. In addition to this, factors like education, experience, and training also influence wage disparity. Despite having the same nature of the labor and job profile, there is an apparent pay/income gap between both the public and private sectors; and the male and female workers in India. Any increase in such pay gaps is capable of causing disruption in the social and economic standards of society. Women have experienced oppression and gender inequality for a very long time. However, due to the rise of globalization, women from different social backgrounds have attempted to overcome all such obstacles to enter the workforce. But the struggle does not end here, there are several roadblocks at the workplace, which may be recognized in the form of sexual harassment, delayed promotion, and lower wages as compared to their male counterparts at the same workplace and having similar job commitments.

Therefore, it is necessary to acknowledge that while legislation is in place which promotes collective efforts to attain the objective of equal pay for equal work for all regardless of any discriminatory factors, pay parity is yet to be achieved substantially. It can be tackled when there is effective implementation of all recognized conventions, Acts, and provisions along with organizing rigorous awareness campaigns with the general public as the beneficiaries.

## **CONCLUSION**

All the Fundamental Rights are accompanied by the corresponding Directive Principles of State Policy. These are outlined in Part III and Part IV of the Indian Constitution respectively. Since they are often regarded as two sides of the same coin, they are complementary and supplementary to each other. While one defines the duties and obligations of the State, the other provides the tools for achieving such objectives. Although the doctrine of Equal Pay for Equal Work is not expressly stated as a fundamental right within Part III of the Constitution, it is inherently essential for the practical application of other basic rights like the right to equality, such conforming Fundamental Rights must be construed in the context of these guiding principles.

Moreover, it is evident from the previously cited judgements that this principle is not an absolute right. Besides that, there are numerous laws and legal regulations that address the notion of equal remuneration for equal work, however, the issue still prevails.

As previously discussed, this doctrine is an essential socio-legal tenet. In this era of globalization, the significance of the principle is ascertained through international instruments, which hold it as a crucial pillar to uphold the mandate of equality and humanity. As far as the Indian context is concerned, it has been considered a constitutional goal that is read with the fundamental rights and described as the Directive Principle under Article 39(d) of the Constitution. Be that as it may, there are exceptions to the said principle, which are determined by the test of reasonable classification based on intelligible differentia.

This concept has been successfully recognized by legal institutions not just in India but all across the globe. It is, therefore, necessary to create awareness and bring about a societal change to prevent any form of income disparity. "Wage justice" can also be promoted by elevating the status of the oppressed groups and eliminating any form of wage disparities based on factors like gender.

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