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**EXPLORING ARTICLES OF THE INDIAN CONSTITUTION:
SAFEGUARDING WORKERS' RIGHTS**

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Abstract

The Indian Constitution is the ultimate Law of the country, and all legislations are based on it. It is the world's largest written Constitution and one of the basic national documents. The Constitutional trinity guarantees its citizens a "Socialistic Pattern of Society" and a "Welfare State". It presents the aspirations of the weaker sections of society, particularly the working classes, and offers basic principles for governance. Every single Act that was in effect before the adoption of the Constitution was either altered or revoked once it went into effect. The evolution and development of India's Labour laws are significantly influenced by the Constitution. Working class-related benchmark legislation is mentioned in the Fundamental Rights and Directive Principles of State Policy (DPSP) contained in Parts III and IV of the Indian constitution. According to the Indian Constitution, Labour is a topic of its Concurrent List, meaning that both the Union and the State Governments have the authority to enact and enforce labour laws. The Author by exploring the articles of the constitution relating to labour welfare provides an insight into the legal and philosophical foundations of India's labour welfare policies. By examining these articles, people can get deeper knowledge about country's commitment to protecting and promoting the well being of its workforce.

Keywords: Indian Constitution, Fundamental Rights, DPSP, Labour Welfare, Legislations.

INTRODUCTION

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The term “Constitution” refers to a fundamental document of governance that is present in the majority of nations across the world. The nation’s Constitution acts as the primary basis for the nation’s legal system, providing the foundation upon which all other laws are enacted and maintained. There is not a single authority, department, or branch of the State that is superior to or goes beyond the Constitution or that possesses power that is unregulated and unrestrained. The Constitution is the source of power for all parts of Government, including the executive, legislative, and judicial branches of Government. As a consequence of this, a Constitution is the supreme or primary law of the nation.

It presents the aspirations of the weaker sections of society, particularly the working classes, and offers basic principles for governance. Every single Act that was in effect before the adoption of our Constitution was either altered or revoked once it went into effect. The evolution and development of India’s labour laws are significantly influenced by our Constitution.² According to the Indian Constitution, labour is a matter of its Concurrent list, meaning that both the Union and the State Governments have the authority to enact and enforce labour laws.³

CONSTITUTIONAL FRAMEWORK TO PROTECT WORKER’S RIGHTS

The Indian Constitution, which is considered to be the supreme law of the land, has provisions that outline the proper relationship between the Government and the people it serves.⁴ There is at least one entry in the Constitution that relates to labour relations in each of the three categories. Despite this, the vast majority of them are included on the Concurrent list. They include labour and industrial conflicts, trade unions, and several areas of social security and welfare, such as maternity benefits, old-age pensions, provident funds, and employer responsibility and in addition, they involve a number of different areas.⁵

² D.D. Basu, *Introduction to the Constitution of India*, 2 (Lexis Nexis, 20thedn., 2011).

³ Study Material Professional Programme Labour Laws & Practice, *available at*: [https://www.icsi.edu/media/webmodules/Labour Laws&Practice.pdf](https://www.icsi.edu/media/webmodules/Labour%20Laws%20Practice.pdf) (last visited on December 23, 2020).

⁴ M.P. Jain, *Indian Constitutional Law*, 4 (Lexis Nexis, 8th edn., 2018).

⁵ Overview of Labour Law Reforms, *available at*: <https://prsindia.org/billtrack/overview-of-labour-law-reforms> (Last visited on December 11, 2020).

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Part III of the Indian Constitution contains Fundamental Rights and Part IV contains Directive Principles of State Policy to protect fundamental human rights that are crucial to the nation's administration. The Supreme Court has generously interpreted freedom and civil rights provided to everyone under Part III in numerous rulings over the past 73 years.⁶ Main Articles of our Indian Constitution which protects, supports, and act as a guideline to various labour laws for their effective implementation and functioning are Articles 14, 16, 19(1)(c), 21, 23, 24, 35, 38, 39, 39 A, 41, 42, 43, 43 –A, 46, 47, 32, 226 and 227. These articles are discussed in detail as follows:

FUNDAMENTAL RIGHTS OF THE WORKERS

Equal Treatment under the Law

Article 14 of the constitution states that in India, the State shall not deny to any person equality before the law or equal protection of the laws. Discrimination is prohibited by the Rule of law. The idea of equality does not suggest that all people should be treated equally, which is physically impossible. It is a notion that implies that no one should be granted any special privileges because of their birth, religion, or other characteristics. According to the idea of “equal protection of the laws,” the State must treat individuals differently depending on their circumstances in order to provide equality for everyone.⁷

Equal Opportunity in Public Employment

In terms of public employment, Article 16 guarantees equality of opportunity and forbids the State from engaging in any kind of discrimination on the basis of religion, race, caste, sex, descent, place of birth, residency and any combination of these. Moreover, this Article gives the State a freedom to make special provisions for members of SCs and STs.⁸

Similarly in *Daily Rated Casual Labour v. Union of India*,⁹ in this case Supreme Court held that daily rated casual labours are entitled to benefit of regularisation, including pay parity

⁶ *Supra* note 2.

⁷ The Constitution of India, art. 14.

⁸ The Constitution of India, art. 16.

⁹ (1988) 1SCC 122.

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and other service benefits, if they have worked for a certain period of time. This judgement has significant impacts on labours' rights in India particularly for casual and contract labour. It has been cited in various cases like this.

Freedom to Form Associations and Unions

The Article 19(1) (c) provides that a citizen's fundamental freedom to organise into groups and unions. However, the State may, by legislation, place reasonable restrictions on this right in the interest of public order, morality, or the sovereignty and integrity of India, as stated in Article 19's clause (4). Hence, it encompasses the ability to create political parties as well as corporations, organisations, partnerships, and trade unions. The right that is guaranteed encompasses both the ability to start and maintain an association. The right to create associations involves the freedom to form or not form, to join or not join an association or union.¹⁰

In *P.Balakotiah v. Union of India*,¹¹ because the appellant is a trade unionist and a member of the Communist Party, his employment was terminated in accordance with the Railway Service Regulations. The appellant argued that being fired from his job effectively denied him the ability to organise an association. Without a doubt, the appellant possessed a basic right to freedom of association, but he lacked a fundamental right to remain in the Government employees. Because the order did not preclude the appellant from continuing to be a member of the Communist Party or a trade unionist, it was determined that the order terminating his services did not violate Article 19(1) (c).

Right to Life and Personal Liberty

Article 21 guarantees everyone's right to personal liberty in addition to their right to life. The concept of "personal liberty" has been given very broad amplitude, encompassing a number of rights that contribute to a citizen's personal liberty. Its deprivation must follow the legal process as laid out in the applicable statute, which must be fair, just, and reasonable. So, it comprises all of the facets of life that contribute to a man's existence being meaningful, full, and deserving of

¹⁰ The Constitution of India, art. 19(1)(c).

¹¹ AIR 1958 SC 232.

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living.¹² The Court granted Article 21 a new perspective in Maneka Gandhi's case. The right to "life" has been interpreted to encompass the right to live with dignity, going beyond the concept of just existing physically.

Rights against Exploitation

Article 23 contains that Human trafficking, being a begar, and other similar types of forced labour are forbidden under this Article, and anybody found in violation of this provision will be held legally liable for their actions. However, under clause (2), the State is allowed to impose mandatory services for public purposes as long as it does not do so in a way that discriminates solely on the basis of religion, race, caste, or class, or any combination of these. The Constitution's Article 35 grants the Parliament the power to enact legislation that will penalise offences against this Article. In order to penalise actions that result in trafficking in people, **The Suppression of Immoral Traffic in Women and Girls Act, 1956**, was approved by Parliament in accordance with this Article. The person is protected by Article 23 from both the State and private person. It places a duty on the State to actively work towards the abolition of the ills of "trade in human beings," begars, and other types of comparable forced labour wherever they may be found. Begar work or service is forced labour or service that is provided without payment.¹³

In *Suraj v. State of Madhya Pradesh*,¹⁴ the Hon'ble Supreme Court held that it smells like being a begar to ask a man to labour and then not give him any compensation or wages." A citizen of India has the fundamental right not to be compelled to perform labour for free. The term "trade in human beings," sometimes referred to as "slavery," suggests the buying and selling of people as property, a behaviour that is prohibited by the Constitution.

Prohibition of Employment of Children in Hazardous Factories

In accordance with Article 24 of the Indian Constitution, no child below the age of fourteen years should be employed to work in any factory or mine or engaged in any other

¹² The Constitution of India, art. 21.

¹³ The Constitution of India, art. 23.

¹⁴ AIR 1960 MP 303.

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hazardous occupation. This is also in line with Part IV of the Constitution's Articles 39(e) and (f), which underline the importance of safeguarding the health and vitality of employees as well as the necessity to protect minors from exploitation. To fulfil the object of this Article, the Child Employment (Prohibition and Regulation) Act of 1986 was passed which clearly forbids the employment of minors in a number of fields that are seen to be dangerous, and it gives room for expanding this ban to more fields.¹⁵

In *Peoples Union for Democratic Rights v. Union of India*,¹⁶ the Employment of Children Act, 1938, did not cover construction work because it was not a process listed in the Act's Schedule, but the Supreme Court observed that it was still a hazardous occupation under Article 24, which forbade the employment of children under the age of 14. This case is also known as the Asian Workers case. Even in the absence of implementing laws, Article 24's right to protect children from exploitation is enforceable.

The Child Labour (Prohibition and Regulation) Act, 1986 mandates that employers of children younger than 14 years old must abide by its provisions, which include compensation for the children, work opportunities for their parents or guardians, and schooling for the youngsters. This mandate was upheld by the Supreme Court in *M.C. Mehta v. State of Tamil Naidu*¹⁷. According to Article 39(f) of the Indian Constitution, children have the right to be shielded from any kind of exploitation and provided with the opportunities and resources necessary to reach their full potential. These ideas are in conformity with the prohibitions placed on "forced labour" and the employment of kids younger than fourteen years old, respectively, in Articles 23 and 24 of the Convention on the Rights of the Child.

Constitutional Remedies

It is a fact that a declaration of Fundamental Rights is pointless if there is not a functional mechanism in place to protect and defend such rights. Therefore, it was appropriate that the

¹⁵ The Constitution of India, art. 24.

¹⁶ AIR 1982 SC 1473.

¹⁷ AIR 1997 SC 699.

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authors of our Constitution, in addition to including a large list of essential rights, also included an effective remedy for the enforcement of those rights in Article 32 of the Constitution.¹⁸

Article 32 is a fundamental right in and of itself. Moreover, Article 226 gives all High Courts the authority to issue writs for the enforcement of fundamental rights. The right to petition the Supreme Court through “appropriate processes” to have the Fundamental Rights granted by Part III of the Constitution enforced is guaranteed under Article 32 (1). The Supreme Court has the authority to issue necessary directives, orders, or writs under Clause (2) of Article 32, including writs of habeas corpus, mandamus, prohibition, quo-warranto, and certiorari for the enforcement of any rights granted by Part III of the Constitution. The Parliament may, by legislation, provide any other court with the authority to utilise all or any of the powers that the Supreme Court may use under clause (3) of Article 32 within the local limits of its jurisdictions. Clause (4) states that the right protected by Article 32 shall not be interrupted until the Constitution so provides. Hence, Art. 32 offers a quick and affordable remedy to safeguard basic rights against interference by the legislative and executive branches.¹⁹

DIRECTIVE PRINCIPLES OF STATE POLICY FOR THE WORKERS

Social Order based on Socio-Economic Justice

According to Article 38(1), the State must work to promote the welfare of the people by guaranteeing and safeguarding as efficiently as it can a social order in which justice, social, economic, and political, should influence all the institutions of the national life.²⁰

Article 38(2) mandates that the State needs to minimize the inequalities in income and to remove inequalities in status, facilities, and opportunities, not just among individuals but also groups of persons dwelling in various places or engaged in different occupations.²¹

In *Consumer Education & Research Centre v. Union of India*,²² the Supreme Court found that reading Articles 21, 38, 42, 43, 46, and 48A collectively led to the conclusion that

¹⁸ J.N Pandey, *Constitutional Law of India* 446 (Central Law Agency, Allahabad, 56thedn., 2019).

¹⁹ The Constitution of India, art. 32 & 226

²⁰ The Constitution of India, art.38(1).

²¹ *Id.*, art.38(2).

²² (1995) 3 SCC 42.

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“the right to health, medical aid to protect a worker’s health and vigour while in service or post-retirement is a Fundamental Right to make the life of the workman meaningful and purposeful with dignity of the person.” The worker’s health allows him to take pleasure in the fruits of his labour and keeps him cognitively sharp and physically strong so he may lead a successful life in terms of business, society, and culture. Thus, access to medical services for the protection of employees’ health is a fundamental human right. Article 39, which aim to provide the Rules and principles for creating such social order, must always be read in conjunction with Article 38.

Certain Principles of Policy to be Followed by the State

Article 39 of the Indian Constitution states about the governmental policy towards ensuring Social Justice. It says:

- (a) that all citizens, regardless of gender, equally have the right to an adequate means of subsistence;
- (b) that the ownership and control of the material resources of the community are distributed in a way that best serves the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that the youth and the children are protected against exploitation and against moral and material abandonment.²³

The Supreme Court has interpreted Article 21 to encompass the “right to livelihood” in accordance with Art. 39(a). “If there is a responsibility upon the State to ensure to the people an appropriate means of living and the right to labour, it would be simple pedantry to omit the right

²³ The Constitution of India, art. 39.

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to livelihood from the substance of the right to life,” the Supreme Court stated in *Olga Tellis v. Bombay Municipal Council*.²⁴

The Equal Remuneration Act, 1976 was passed by Parliament in accordance with Article 39(d). The Act also prohibits discrimination in hiring women and allows for the formation of advisory bodies to advance female job prospects. There are additional provisions for the appointment of officials to hear complaints about violations of the Act’s provisions and make decisions in certain cases. To determine if the Act’s requirements are being followed by the employers, inspectors will be hired.²⁵

In *D.S. Nakara v. Union of India*²⁶, the concept of “equal pay for equal work” was raised. The Court stated that: “Article 38(1) enjoins the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic, and political shall inform all institutions of the national life.” In particular, the State must work to reduce income disparities and attempt to eradicate disparities in status, resources, and opportunities. The need to ensure that men and women get equal pay for equal labour is enjoined by Art. 39 (d), and this command should be read and construed in light of this court’s decision in *Randhir Singh v. Union of India*²⁷.

The Supreme Court Ruled in *F.A.I.C. and C.E.S. v. Union of India*²⁸ that different pay scales can be established for Government employees holding the same post and performing the same work on the basis of differences in the level of responsibility, dependability, and confidentiality, and as a result, it will not violate the Article 14 principle of equal pay for equal work. The Court Ruled that equal remuneration must be based on the type of labour performed. The amount of labour alone cannot be used to evaluate it. Regarding dependability and responsibility, there could be qualitative differences. Even though the tasks may be same, the responsibilities are different.

²⁴ AIR 1986 SC 180.

²⁵ The Constitution of India, art.39(d).

²⁶ 1983 AIR 130.

²⁷ 1982 AIR 879.

²⁸ AIR 1988 SC 1291.

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When we read Article 39(e) and (f) together, it becomes clear that one of the goals is for the State to focus specifically on protecting children and youth from exploitation and from moral and material abandonment.²⁹

In order to ensure the release of bonded labourers and protect them from exploitation, the Supreme Court in *Bandhua Mukti Morcha v. Union of India*,³⁰ read Articles 21 and 23 along with Articles 39(e) and (f), Article 41, and Article 42. According to a statement made by the Court in this regard, “This right to live with human dignity inherent in Article 21 gets its vital force from the Directive Principles of State Policy, notably Articles 41 and 42. Not only should slaves be freed, but they must also be properly rehabilitated after being freed. The families of the liberated bonded labourers must undergo adequate rehabilitation, according to the Supreme Court.

Right to work, to Education and to Public Assistance in Certain Conditions

Article 41 of the Indian Constitution deals with the Provisions Relating to the Social Security of the Workers,³¹ It requires the State to provide appropriate provisions for safeguarding the right to labour, education, and public assistance in circumstances of unemployment, old age, disease, and disability, as well as in other cases of unjustifiable want, within the confines of its economic capabilities and development. Articles 39, 41, and 43 of our Constitution ensure social security. A ground-breaking piece of legislation in the area of social insurance is the Employees’ State Insurance Act of 1948, the Employees’ Provident Funds and Miscellaneous Provisions Act of 1952 and the Maternity Benefit Act of 1961 etc are main social security laws that aid in achieving the goals of our Constitution’s guiding principles and to give industrial workers and their families a high level of security and prompt financial aid.

In *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath*,³² the Supreme Court said: “A sufficient means of living cannot be guaranteed [Art. 39(a)] for the citizens by taking away the means of livelihood without justification.” Effective arrangements for safeguarding the right

²⁹ The Constitution of India, art.39(e) & (f).

³⁰ (1997)10 SCC 549.

³¹ The Constitution of India, art. 41.

³² AIR 1986 SC 1571.

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to work [Art. 41] cannot be made by hiring someone and then for no apparent reason terminating their job.

Provision of Just and Humane Conditions of Work

Article 42 of the Indian Constitution deals with Workplace Conditions. It mandates the State to create provisions for maternity leave and reasonable and decent working conditions. One of the distinguishing features of the Indian Constitution is Article 42, which instructs the State to make arrangements for both maternity relief and reasonable and humane working conditions. The Maternity Benefit Act, 1961, which allows working women who have worked 160 days in a year to offer leave with pay and medical benefits, was later passed by the Indian Government in this context. This Act was further amended in 2017. The Factories Act of 1948 also addresses health, safety, and welfare, as well as the employment of young people and women, work hours for adults and children, vacations, and paid leave.³³

Living Wage etc., for the Workers

Article 43 of the Indian Constitution deals with Living Wage related provisions. According to Article 43, it is mandatory to provide the availability of a “living wage” and respectable working conditions across all industries. This Section enunciates the revolutionary notion that employees are entitled to certain reliefs as a matter of right. It requires the State to make an effort to provide work, a living wage, working conditions that ensure a respectable standard of living and full employment of leisure time as well as social and cultural opportunities to all workers, whether they are in the agricultural, industrial, or other sectors of the economy. The Minimum Wages Act of 1948 was passed in order to promote social justice for unorganised labour and to stop exploitation. The Act has been described as “only the first step” in carrying out the obligation stated in Article 43. It enables the national or State Governments to set minimum pay rates within a given timeframe for those working in particular scheduled jobs. No matter the industry’s ability to pay, the minimum wage must always be paid.³⁴

³³ M.P. Singh, *V.N. Shukla’s Constitution of India (Old Edition)* (Eastern Book Company, 11th edn, 2010).

³⁴ The Constitution of India, art. 43.

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Similarly, in *Jalan Trading Co. v. D.M. Aney*,³⁵ the Court further said that under Articles 39 and 43, it is acceptable to pay a statutory minimum wages even when the management suffers a loss.

Worker's Participation in the Management of Industry

Article 43-A of the Indian Constitution talks about Workers Participation in Management of an undertaking, establishments and the industries in which they work in.³⁶ Article 43-A, added by the 42nd Amendment in 1976, has a direct impact on labour laws, it states that the State shall adopt appropriate legislative or other measures to ensure worker's involvement in the administration of industrial facilities. The government has enacted various laws and policies to implement section 43-A i.e., the Industrial Dispute Act, 1947, the Factories Act, 1948, etc. which requires the work committees to encourage worker's participation in the management.

CONCLUSION

The Indian Constitution is the ultimate law of the country, and all legislations are based on it. It is the world's largest written Constitution and one of the basic national documents. The Constitution is a document of social revolution that imposes an obligation on all institutions, including the judiciary, to transform the status quo into a new human order in which justice, social, economic, and political justice will inform all institutions of national life, and there should be equality of status and opportunity. It presents the aspirations of the weaker sections of society, particularly the working classes, and offers basic principles for governance. The evolution and development of India's labour laws are significantly influenced by our Constitution.³⁷ According to the Indian Constitution, labour is a Concurrent topic, meaning that both the Union and the State Governments have the authority to enact and enforce labour laws. Working class-related benchmark legislation is mentioned in the Fundamental Rights and Directive Principles of State Policy contained in Parts III and IV. For India's labour legislation, Part III of the Indian Constitution serves as the standard. Moreover, Part III (Articles 12 to 35) of the Constitution addresses the basic rights of its citizens, including equality before the law, and

³⁵ AIR 1979 SC 233.

³⁶ The Constitution of India, art.43-A.

³⁷ D.D. Basu, *Introduction to the Constitution of India*, 2 (Lexis Nexis, 20th edn., 2011).

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prohibition of discrimination on religion, sexual identity, race, caste, and place of birth. It also abolishes untouchability and prohibits the employment of minors in industries.³⁸The Directive Principles of State Policy which are mentioned in part IV (Articles 12 to 35) has been used to interpret the Fundamental Rights of the workers. Article 32 and 226 of the constitution provide mechanism for effective enforcement of these Rights.



³⁸ V.N. Shukla, *Constitution of India*, 7 (Eastern Book Company, 11thedn., 2008).

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