



EVALUATING THE CONSTITUTIONAL VALIDITY OF RESTRICTIONS ON BUSINESS CLOSURE: A STUDY OF EXCEL WEAR V. UNION OF INDIA”

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ABSTRACT

The case of Excel Wear v. Union of India is one of the most important cases which matters even today in industrial and constitutional law. This was one of the first and most important decisions on the closure rule, showing that the right to shut down a business is just as important as the right to start or run one. By rejecting the unfair rules in Section 25-O of the Industrial Disputes Act, the decision protected the freedom of employers and showed the need for a fair balance between economic freedom and social justice. Its importance lies in shaping the law about closure and also starting a major discussion between personal rights and government control.

Keywords: Excel Wear Case, Industrial Disputes Act, Right to Closure, Economic Freedom, Constitutional Law.

INTRODUCTION

The Excel Wear case is the landmark judicial verdict in the Indian labour law. This case has prescribed that freedom of carrying on a business within Article 19(1)(g) of the Constitution of India encompasses the liberty of closing a business. This landmark judgment was delivered on September 29, 1978. This judgment challenged Sections 25-O and 25-R of the Industrial Disputes Act of 1947 on the grounds of constitutional validity. These sections obligated businesses to obtain government permission before closing and laid out punishments if these orders were not followed.

The dispute arose when India was seeking a balance between assisting workers and letting businesses work freely. The Industrial Disputes Act of 1947 was formed to assist in

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investigating and resolving work issues at workplaces and safeguarding workers' rights. However, the 1976 amendments introduced stringent provisions relating to closing industries, which placed significant restraints on the manner in which businesses were allowed to work and were challenged in the courts later on.

The constitutional provision applicable to this case is Article 19(1)(g). This provision gives all citizens the right to work within any employment or start any business. Although this right is essential, it is allowed to have reasonable restrictions under Article 19(6) to protect the public. Whether Sections 25-O and 25-R were reasonable or unduly restricting business liberty was the main constitutional issue seen in this case.¹²³

CASE BACKGROUND

Facts: Excel Wear was a partnership firm engaged in manufacturing garments for export. They used to have a factory at Bombay with 400 employees. The company's difficulties emerged in 1976 when the ties between management and employees deteriorated considerably. According to the petitioners, employees became violent and hostile after this year, and they started resorting to arbitrary and unjustifiable strikes and creating maximum turbulence among the workers.

The worsening industrial relations made it next to impossible for Excel Wear to continue business profitably. Faced with these circumstances, the company served a notice on May 2, 1977, to the Government of Maharashtra seeking prior approval for the closure of the undertaking under Section 25-O (1) of the Industrial Disputes Act. However, the State Government refused to approve, communicating their decision on August 1, 1977, stating that "the reasons for the intended closure are prejudicial to public interest."⁴

Similar Petitions: This Case also involved four writ petitions, which were similar in facts. The case of petitioner Acme Manufacturing Co. Ltd., which had also endured immense losses due to low output, serious labour issues, and an assault on management personnel. Similar to Excel Wear, the Maharashtra government rejected Acme's plea for a shutdown under Section 25-O (1).

¹ <https://labour.gov.in/industrialrelations/acts-administered-irpl-section>

² <https://lawfyi.io/excel-wear-etc-vs-union-of-india-ors-on-29-september-1978-case-summary/>

³ <https://vlex.in/vid/writ-petition-civil-644-852341730>

⁴ <https://www.casemine.com/judgement/in/5609abdae4b014971140d6f8>

The other two petitions were equally affected by operational issues, losses of money, and problems with employees that made it difficult to continue operating the business. All of these petitioners claimed that laws mandating government acquiescence before closing the business put undue restrictions on their fundamental right to operate a business.⁵

Procedural History: The Writ Petitions were filed as Writ Petition (Civil) 644 of 1977, and ancillary cases, which challenged the validity of sections 25-O and 25-R of the Industrial Disputes Act of 1947. The case was argued before a Supreme Court five-judge bench, which consisted of Chief Justice Y.V. Chandrachud and Justices Ranjit Singh Sarkaria, N.L. Untwalia, A.D. Koshal, and A.P. Sen.⁶

The hearing included tireless arguments by senior lawyers. F.S. Nariman argued on behalf of the petitioners, U.R. Lalit argued on behalf of the Union of India, and M.C. Bhandare argued on behalf of the State of Maharashtra. Labour unions were argued on behalf of by S.J. Deshmukh with the help of interveners, states and labour associations.⁷⁸

ISSUES FOR DETERMINATION

Primary Constitutional Question: The central issue before the Supreme Court was whether the right to close down a business constitutes a fundamental right under Article 19(1)(g) of the Constitution. The petitioners contended that business closure is an integral component of the broader freedom to carry on business, and any restriction on this right must satisfy the test of reasonableness under Article 19(6).

Specific Legal Challenges: The petitioners raised several specific objections to Sections 25-O and 25-R, arguing that these provisions imposed unreasonable restrictions on business freedom.

Procedural Flaws: Section 25-O did not require the government to justify the reason it denied closure permission, which was against the spirit of fair treatment. This regulation allowed authorities to decide using only abstract notions of "public interest" rather than actual reasons.

⁵ <https://lawbhoomi.com/excel-wear-v-union-of-india/>

⁶ <https://lawfoyer.in/excel-wear-etc-v-union-of-india-ors/>

⁷ <https://www.legalauthority.in/judgement/excel-wear-etc-vs-union-of-india-ors-32443>

⁸ <https://vlex.in/vid/writ-petition-civil-644-852341730>

Absence of Time Limits: The legislation did not specify a time within which the government had to respond after receiving requests for closures. This resulted in slow delays that affected business operations. It was also not specified till what time a refusal order was valid.

Right of Appeal: There was no provision under the law to appeal or reverse government orders declining authorisation for closure without the right of appeal; the ban became final and could never be reviewed.

Arbitrary Exercise of Power: The vast power vested in government bureaucrats and the lack of norms safeguarding the procedure made it possible for arbitrary and whimsical decisions that might force businesses to continue operating indefinitely.

Broader Constitutional Implications: This case raised essential questions of balance between individuals' economic freedom and the common interest of the public within the Constitution of India. Whether the worker's interests could ever fully override the right to shut down businesses and whether these restrictions were in accordance with the constitutional theory of proportionality of limitation of fundamental rights, which were decided by the Court.

The proceedings explored the relationship of Article 19(1)(g) and the Directive Principles of State Policies with special reference to protecting employees and promoting social justice. It sought to find unambiguous parameters that would safeguard both economic liberty and the rights of employees, and neither is unduly compromised.⁹¹⁰

ARGUMENTS OF BOTH SIDES

Arguments of the petitioners (Excel Wear and Other Employers):

Right to close is a constituent of the freedom to carry on business (Article 19(1)(g)): The petitioners' central argument was doctrinal, the constitutional right to "carry on any occupation, trade or business" must necessarily incorporate the corollary right "not" to carry on, i.e. the right to leave or shut down one's business.¹¹ Forcing an employer to keep going against his will or economic interests, they contended, essentially negates that fundamental freedom and thus invites Article 19(6) scrutiny where it is abridged. The petitioners based their arguments on

⁹ <https://blog.jpleaders.in/closure-in-labour-law/>

¹⁰ <https://corridalegal.com/closure-of-undertakings-legal-framework-and-judicial-scrutiny-under-the-industrial-disputes-act/>

¹¹ <https://www.casemine.com/commentary/in/balancing-employer-rights-and-labor-protections%3A-insights-from-excel-wear-v.-union-of-india-%281978%29/view>

previous precedent, *Hathising Manufacturing Co., Ltd., Ahmedabad vs. Union of India*,¹² identifying exit/closure as being inextricably linked with economic liberty.¹³

Section 25-O was vague, overbroad and arbitrary, imposing a de facto prohibition instead of a legal regulation permissible. Petitioners argued that Section 25-O¹⁴ mandated pre-government approval for closure, but it was devoid of objective criteria, did not obligate reasoned orders, imposed no binding period of decision and provided no statutory right of review or meaningful appeal.¹⁵ Coupled with penal sanctions in sections such as Section 25-R,¹⁶ the scheme, the petitioners argued, acted as a de facto veto that enabled administrative inertia or arbitrariness to compel companies to operate forever.¹⁷ This, they argued, was arbitrary and disproportionate under Article 19(6) and susceptible to Article 14.¹⁸

Procedural justice (Audi alteram partem) and temporal discipline are constitutionally necessary: They contended the state may, in line with public interest, control exit, but solely by a scheme that protects the employer's procedural right, such as opportunity to be heard, reasoned orders, enforceable timelines, so that permission could not be denied by delay.¹⁹ Without these, any "permission" regime is a tool of suppression rather than regulation.

Public interest doesn't support indefinite administration veto or criminal sanctions on bona fide closure: The petitioners agreed that the justification of safeguarding labour against fabricated or mala fide closures was sound, but insisted on proportionality wherein the motives of the employer are prima facie bona fide such as economic insolvency, safety risks, violent disruption of work, etc, the punitive nature of the scheme was disproportionate. In short, the state can regulate but cannot transform regulation into an eternal obligatory continuity of business.²⁰

Remedial Plea: Strike down or read-in workable safeguards: The petitioners asked for a holding that the impugned provisions were unconstitutional, or requested the court to "read-in"

¹² <https://www.lawfinderlive.com/archivesc/112258.htm>

¹³ <https://www.scconline.com/blog/post/2025/07/05/right-to-trade-vs-worker-protection-industrial-closure/>

¹⁴ <https://www.scconline.com/blog/post/2025/06/11/right-to-close-business-protected-under-art-191g-sc/>

¹⁵ <https://www.aironline.in/legal-articles/The%2BImportance%2Bof%2BReview%2Bor%2BReference%2Bunder%2BSection%2B25-O%2Bof%2BI.D.%2BAct>

¹⁶ <https://www.scconline.com/blog/post/2025/06/11/right-to-close-business-protected-under-art-191g-sc/>

¹⁷ <https://lawbhoomi.com/excel-wear-v-union-of-india/>

¹⁸ <https://www.casemine.com/commentary/in/balancing-employer-rights-and-labor-protections%3A-insights-from-excel-wear-v-union-of-india-%281978%29/view>

¹⁹ <https://www.casemine.com/judgement/in/5609abdae4b014971140d6f8>

²⁰ <https://www.goforthelaw.com/articles/fromlawstu/article67.htm>

procedural requirements such as hearing, timelines, reasons and deemed approval, if legislative nullifications were not favoured.²¹

Respondents' arguments (Union of India):

Legitimate regulatory object, labour protection and public interest: The central argument of the state was that closure of an industrial enterprise is not a purely private action, closures have grievous repercussions such as large-scale unemployment, disturbance of industrial peace, secondary economic impact, etc. the questioned provisions seek to ensure that closures are genuine and bona fide and not a pretext for avoiding statutory obligations to workers. Therefore, the restriction squarely comes under the allowed "reasonable restrictions" in Article 19(6).²²

Presumptions of constitutionality and deference to legislative policy: Respondents urged restraints on the judiciary. The legislation enacted for social welfare and protection of labour evokes a presumption of constitutionality, where courts will, if feasible, interpret the legislation to save it and provide procedural glosses (reading in) instead of holding it down.²³ That is, the scheme should be cured by interpretation and not be nullified unless its invalidity is inevitable.²⁴

Requirement of an investigation machinery to avoid mala fide practice: The state highlighted functional misuses, instances of owners seeking to shut down premises just to escape liabilities or to shift assets, contending that pre-examination allows authorities to spot bogus closures and safeguard employees' existing rights. The preventive function, respondents added, legitimised advance administrative guidance and a penalty for violation.²⁵

Invocation of Article 31-C and directive principles for socialist legitimacy: In a larger contest between social welfare and private economic liberty, the state invoked the constitutional framework to contend that legislation safeguarding workers' interests must be

²¹ <https://www.latestlaws.com/latest-caselaw/1978/september/1978-latest-caselaw-192-sc/>

²² <https://www.casemine.com/commentary/in/balancing-employer-rights-and-labor-protections%3A-insights-from-excel-wear-v.-union-of-india-%281978%29/view>

²³ <https://www.civildaily.com/news/explained-doctrine-of-presumption-of-constitutionality/>

²⁴ <https://www.casemine.com/judgement/in/5609abdae4b014971140d6f8>

²⁵ <https://www.argus-p.com/updates/updates/labour-law-case-summary-half-yearly-update-part-3/>

given weight. At least some respondents pressed that such laws further constitutionalise objectives and should be read down and not struck down.²⁶

Practical safeguards available in administrative practice: The state contended that the existing administrative norms could be made stringent instead of judicially invalidating the statutory structure. Briefly, cure by amendments/ administrative directions instead of judicial demolition.²⁷²⁸

COURT'S REASONING AND JUDGMENT

Recognition of the Right to Close under Article 19(1)(g): The highest court held categorically that the right to conduct a business. In Article 19(1)(g) necessarily comprises its “negative” aspect, the right to shut a business. In the court’s own words, the right to shut is part of the basic right to conduct a business. While acknowledging the role of the state in safeguarding third-party interests, the court emphasised that not all closures can be barred entirely, regulations should be given due consideration to economic liberty, and regulations itself has to meet Article 19(6)’s “reasonable restriction” test.²⁹³⁰

ANALYSIS OF SECTION 25-O'S PROCEDURAL AND SUBSTANTIVE UNREASONABLENESS

Procedural flaws: Section 25-O(2) did not include the provisions of reasons, 90-day time limit adherence, no deemed approval for delay or grant leave for appellate scrutiny, leaving room for refusal. Consequently, the restrictions could not be judged as proportionate, a stipulation under Article 19(6).

Compulsory continuation under sanctions: Imposing civil and criminal penalties puts a penalty on non-compliance, which makes continued operation take place even in untenable conditions, such as voiding constitutional rights.³¹

²⁶ <https://timesofindia.indiatimes.com/india/art-31c-on-directive-principles-continues-to-hold-good-sc/articleshow/114993906.cms>

²⁷ <https://lawbhoomi.com/enforceability-of-administrative-directions/>

²⁸ <https://lexforti.com/legal-news/enforceability-of-administrative-directions-in-indian-courts/>

²⁹ <https://www.sconline.com/blog/post/2025/06/11/right-to-close-business-protected-under-art-191g-sc/>

³⁰ <https://www.livelaw.in/supreme-court/right-under-article-191g-to-carry-on-business-under-also-includes-right-to-shut-down-business-supreme-court-294548>

³¹ <https://blog.iplayers.in/closure-in-labour-law/>

Substantive overreach: Decisions were made on smudgy grounds of the “public interest,” allowing vindictive denial of closure even when business was unviable or under duress, resulting in disproportionate interjection.³²

RESISTING ABSOLUTISM AND STATE DEFERENCE EXTREMES

The court walked in the middle path, acknowledging the validity of economic and labour well-being considerations but disallowing the employer’s absolutism and the state’s claim of general regulatory authority based on directive principles. Only framework with procedural fairness and accountability.³³

HOLDING AND LEGISLATIVE IMPACT

Holding: Section 25-O was held to be unconstitutional in its entirety, and Section 25-R (insofar as it was intended to punish non-compliance) was nugatory. All concerned government refusal orders were quashed.³⁴

Legislative Aftermath: the ruling led to the 1982 amendment to Section 25-O, requiring hearing, reasons, timelines, deemed approvals, and review rights, framing a constitutionally sound closure regime.³⁵

CRITICAL ANALYSIS: CONNECTING EXCEL WEAR WITH LABOUR CODES AND POLICY IMPLICATIONS

Tenuous Connection to the Industrial Relations Code, 2020-³⁶

Procedural Safeguards mirroring Excel Wear’s Mandate: Excel Wear laid stress on the constitutional requirement of the incorporation of procedural fairness, such as hearing, reasoned order, and review mechanism, into the closure laws. The IR code deals with these in Section 80, an employer shall provide 90 90-day notice in advance. The government shall make an enquiry with a hearing and pass a reasoned order, and if no order is made within 60 days,

³² <https://lawbhoomi.com/excel-wear-v-union-of-india/>

³³ <https://lawbhoomi.com/excel-wear-v-union-of-india/>

³⁴ <https://mukeshsuman.com/excel-wear-etc-vs-union-of-india-case-summary/>

³⁵ <https://www.aironline.in/legal-articles/The%2BImportance%2Bof%2BReview%2Bor%2BReference%2Bunder%2BSection%2B25-O%2Bof%2BI.D.%2BAct>

³⁶ https://labour.gov.in/sites/default/files/ir_as_introduced_in_lok_sabha.pdf

permission is considered to have been granted, and also a review or tribunal appeal is provided, and worker compensation is required.

Balancing economic Freedom and Protection of Workers: Excel Wear glowered at the restrictions on shutting down a business. The IR Code, which ensures employer responsibility through prior approval and procedural measures, also upholds economic freedom by introducing a timeline protection mechanism and workers' rights such as compensation, etc, thereby realising a balanced regulatory system.

Certainty and Clarity through Timeless and Review: The code eliminates administrative dragging planned in Excel Wear by requiring firm action, a 60-day clear timeline, short order validity period (1 year) and appeal procedures, making closure a regulated right not subject to administrative dragging.³⁷

Joining with the Code on Wages, 2019:³⁸

Timely Payment after Closure: Although Excel Wear never specified when to pay, the code for wages stipulates that employers should pay wages no later than 2 working days after dismissal of an employee, layoff, resignation, or closure of a business. This provides workers with economic security upon leaving employment.³⁹

Holistic Worker's Right and Fair Compensation: Besides Closure, the wages code includes minimum wages (floor wage principle), equal pay, bonuses, and clear checking through digital inspections. While it doesn't talk about closure directly, fair, timely, and non-arbitrary wage practices help support worker protection, which is backed by the core values of Excel Wear.⁴⁰

POLICY IMPLICATIONS AND CONSTITUTIONAL ALIGNMENT

From Prohibition to Proportional Regulation: Excel Wear was the first to establish rules for organised closure. The IR code makes sure this order is followed by being clear about technical

³⁷ <https://corridalegal.com/the-industrial-relations-code-2020-key-changes/>

³⁸ <https://taxguru.in/corporate-law/code-wages-2019.html>

³⁹ <https://www.mondaq.com/india/employee-benefits--compensation/856716/code-on-wages-2019--key-features-and-highlights>

⁴⁰ <https://www.legalserviceindia.com/legal//article-21168-the-code-on-wages-2019-redefining-fair-pay-and-employment-rights-in-india.html>

details, setting deadlines, and including everyone. This way, closure cannot be misused to escape responsibilities or force ongoing operations.⁴¹

Integrated Worker Safety: The IR code requires compensation in this event, while the Wages Code enforces timely payment after business exit. Together, they create a combined protection mechanism for the workers imprisoned in the closure process.⁴²

Operational Consistency across Codes: The post-closure wage agreement (The Wages Code) and closure procedure (IR Code) together affirm the values of the Constitution Article 14 (equality), Article 19(1)(g) and Article 19(6)(economic freedom with reasonable restriction) and directive principles (worker justice and welfare).⁴³

REFORM TRAJECTORY AND PRACTICAL CHALLENGES

Legislative Modernisation and Generality: The code represents years of labour law reform for the consolidation and simplicity, a trend Excel Wear initiated by revealing the constitutional flaws in the previous closure establishment.

Implementations: The wide-ranging interest of the general public in closure orders would be exposed to unfairness unless strict verification is carried out by officials. Speedy enforcement depends on government capability and transparency in application and communication. The effective merit of the deemed position will depend upon these being applied with the requisite application of the minimum. The Wages Code aims for quick payment, the 2-day rule, and online tracking to ensure clear processes, but it depends on basic administrative readiness.⁴⁴

Constitutional Consistency: The code, especially Section 80, follows the legal reasoning of Excel Wear closely. They show a regulatory style focused on fairness that the highest court supports. In the future, courts will probably question if authorities actually follow the correct procedures in a meaningful way, not just formally, based on the Excel Wear case.

⁴¹ <https://www.ijnrd.org/papers/IJNRD2306228.pdf>

⁴² <https://www.taxmann.com/post/blog/decoding-industrial-relations-under-the-new-labour-codes/>

⁴³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5116692

⁴⁴ <https://www.livemint.com/news/india/full-and-final-settlement-in-how-many-days-under-new-wage-code-11656644777238.html>

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