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Equal Pay for Equal work: A Constitutional Goal to be accomplished

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As we all know that equal work denotes the work which is of equal value in nature such as in a company or an organization where employees are doing the same kind of work at a similar position irrespective of their caste, colour, sex or creed would be entitled with the same amount of wages. As per the Preamble of the Indian Constitution which confers "equality of status and opportunity" that means there are no special privileges for any particular group or section of our society and all individuals will get adequate opportunities without any discrimination. Moreover, the state must endorse the welfare society for its people by protecting and securing as constructively as it may a social order wherein justice, social, economic, and political rights shall be secured for all the citizens of the nation. This paper aims to evaluate the legal provisions and contemporary judgments of the judiciary in this concern.

Keywords: *minimum wages, equal work, employee, gender discrimination.*

INTRODUCTION

The concept of equal pay for equal work is one of the important parts of 'Equality' in our society whereby it is addressed that there would be equality in pay scale or wages for the same position and similar nature of work in any public or private sector irrespective of sex, colour,

caste, creed or religion. On the other side, it would help to make a balance and harmony in a welfare society for its people as well as it will be assisting to confer justice to all the individuals. However, there have various issues of discrimination in working domains of the society such as inequality of wages for same nature of work between women and men, a difference of wages for equal work commences from the recruitment stage which exists in the many organisations on the name of fresher, internship, etc. The Hon'ble Supreme Court explained this principle and established it through several of its judgments. In *Randhir Singh v Union of India*,¹ the Hon'ble Supreme Court laid that the doctrine of equal pay for equal work is not a fundamental right and is a constitutional goal. Therefore, constitutional remedies under Article 32 of the Indian Constitution would be applicable for its enforcement as well as it is equally applicable for an individual employed on a daily wage basis and they would be entitled to the same wages as other permanent employees in the organisation to do the similar work.

EQUAL REMUNERATION CONVENTION, 1951

The Convention discloses the issue of discrimination in terms of providing remuneration to men and women. As article 1(b)² of the Convention mentioned: "the term equal remuneration for men and women workers for work of equal value in nature which implies to rates of remuneration incorporated without any discrimination on the ground sex or gender." It puts an obligation on the States to enact certain legislation that would prevent such discrimination. States shall make laws with the supervision of the following provisions:

- Prevent discrimination in remuneration based on gender in the public sector vested in States.
- The State shall recommend the same in private sectors and any unreasonable discrimination by organisations must be penalised.
- There must be Collective Bargaining Agreements between employers and employees and any clause which violates the doctrine of equal pay for equal work should be

¹ *Randhir Singh v Union of India* (1982) AIR 879

² Equal Remuneration Convention, 1951, art. 1(b)

declared null and void. Collective Bargaining helps to achieve equality which reduces the gender pay gap, therefore, reconstruct substantially.

- Remuneration or Wages must be defined precisely. The inclusion of other allowances, emoluments, and benefits along with salary must be defined. As article 1(a) of the Convention, states remuneration as “*the common, basic or minimum salary or wages*” however also “*any supplementary emoluments whatsoever payable directly or indirectly, whether in cash or kind by the employer to the worker and arising out of the worker’s employment*”.
- The right to equal pay for equal work is given to similar works as well as work of equal value under the Convention through the concept of value is not defined under the convention. States can keep knowledge, skills, volume, responsibilities in mind while determining the ‘value’ of a particular work and conferring equal opportunities with similar working circumstances to both genders to accomplish equal pay for equal rights.
- The theory of equal pay for equal work must be applied to all workers irrespective of their gender, in the public or private sector and an effective consequence must be applied in case of any inequality.

CONSTITUTIONAL PROVISIONS

- Article 14³ confers equality before the law which connotes that men and women both are entitled to equal rights and opportunities in the social, political, and economic domains.
- Article 15⁴ provides discrimination against on the grounds of sex, race, caste, religion, etc. However, clause (3)⁵ of this Article confers State can make any special law or positive discrimination in favour of children and women.
- Article 16⁶ provides equality of opportunity in matters of public employment which denotes all citizens have equal rights to employment and appointment in any office of State.

³ Constitution of India, 1950, art. 14

⁴ Constitution of India, 1950, art. 15

⁵ Constitution of India, 1950, art. 15(3)

- Article 39 (d)⁷ confers the principle of equal pay for equal work for both women and men which is to be followed by the State.
- Article 42⁸ says that State has to make provisions for ensuring humane circumstances for a woman in the workplace and maternity relief concerns.

STATUTORY PROVISIONS

- *Workmen's Compensation Act, 1923*⁹: This act aims to confer economic security to the dependents of the employee if there is occurred any accidental injury then compensation will be paying the sufferer employees. However, this is applicable merely for a specific class of employers and due to the disparity in bargaining power, there would be high possibilities that women might be accountable to exploitation. These above-mentioned stake aspects are evaluated under this act with listed reasonable measures.
- *Minimum Wages Act, 1948*¹⁰: The objective of this act is conferring the statutory fascination of minimum salary or wages of employees. However, employees who are inaccurately paid and have nominal bargaining capability in India.
- *Factories Act, 1948*¹¹: The objective of this act is to be introduced for regulating the circumstances of laborers required in the industries and factories such as safeguarding the health, empowerment of safety at the workplace while working with machinery, enhancing the biological circumstances of the work department and gives welfare amenities to the laborers.
- *Equal Remuneration Act of 1976*¹²: The objective of this act is conferring equal pay for equal work for both men and women. This Act was legislated by remembering in mind the unequal biological and social pressure a woman who is suffering at the time of her pregnancy and childbearing.

⁶ Constitution of India, 1950, art. 16

⁷ Constitution of India, 1950, art. 39(d)

⁸ Constitution of India, 1950, art. 42

⁹ Workmen's Compensation Act, 1923

¹⁰ Minimum Wages Act, 1948

¹¹ Factories Act, 1948

¹² Equal Remuneration Act, 1976

- *Code on Wages 2019*¹³: This act is walked away from the binary sexual configuration of women and men. Besides, this act has acknowledged the requirement of equal pay for equal work for all individuals irrespective of their genders and sex. It is boosted the arenas of the purpose of the law to other oppressed sex or gender person involving transgenders also. However, this act is permitted the government to announce the distinction in remunerations of men and women employees but not established on the ground of gender or sex basis and section 16 of this act granted the government has the power to proclaim different equality without any explanations or reasons.

JUDICIAL OBSERVATION

*In-State of Madhya Pradesh v R.D. Sharma and Anr.*¹⁴ - The appellant was the State of Madhya Pradesh and respondent R.D. Sharma. It should be pointed out that the Hon'ble Supreme court was consistently laid down that the equivalence of post and discernment of wage pay scales are the preliminary process of the executive and not the judiciary. Hence, generally, courts would not arrive at the task of job equivalence which is ordinarily left to the Pay Commissions which is an expert body for determining in this regard. Due to such job evaluation practices would include numerous characteristics comprising the appropriate data and scales for evaluating operations of several groups of employees and such experiments exist both complicated and time-consuming, apart from conveying economic significances. Therefore, it has always been laid down to be more sensitive to take off such assignment of the equation of post and decision of wage pay scales to be reasonably departed to an expert body. Until there is convincing substantial on record to enter to a strong outcome that an important misconception had lagged in while overhauling the pay scale for a provided post and that the court's interference was mandatory to reverse the grievance, the courts would not enter with such complicated issues. A helpful quotation of the statements composed in this concern in the case of *Secretary, Finance Department v West Bengal Registration Service Associations and Ors.*¹⁵ as explained in *State of Haryana and Anr. vs Haryana Civil Secretariat Personal Staff*

¹³ Code on Wages, 2019

¹⁴ *State of Madhya Pradesh v R.D. Sharma and Anr.* (2022)

¹⁵ *Secretary, Finance Department v West Bengal Registration Service Associations and Ors.* (1992) AIR 1203

Association that 'equal pay for equal work' is not a fundamental right granted in any worker though it is a constitutional goal to be accomplished by the State. Pertinently the Central Administrative Tribunal (CAT) after evaluating the suitable factual and legitimate viewpoints had correctly dismissed the claim of the respondent for conferring the maximum scale established on "equal pay for equal work" under the O.A. filed by him. The announced well-considered only and proper order of the CAT was incorrectly set aside by the Hon'ble High Court on irrelevant reasons referring to the doctrine of "equal pay for equal work" while wielding the power of superintendence in Article 227¹⁶ of the Indian Constitution and It is a well-defined legitimate standpoint that the power conferred in Article 227 is been resolved to be obtained sparingly and merely in relevant lawsuits to retain the tribunals and subordinate courts within the limits of their jurisdictions and not for amending only mistakes. However, In this case, neither the Tribunal had not imposed any ultra-virus error nor any delinquency of justice was committed. Therefore, the interference of the Hon'ble High Court in the order approved by the CAT was unneeded. After passing the judgment of the Hon'ble High Court the Madhya Pradesh Government appealed to the Hon'ble Supreme Court and the two judges bench Justice D.Y. Chandrachud and Justice Bela M. Trivedi laid down that Equal pay for equal pay is not a fundamental right, it is a constitutional goal to be accomplished and courts would not interfere on the task of job evolution because of expert bodies like pay commission has already incorporated for seeing in this regard.

CONCLUSION

The doctrine of equal pay for equal work has been legally acknowledged across the world. Even though, it has been mentioned that admitting this doctrine is most crucial for the economic balance and social justice of individuals and in the long run of an entire group or class of people. If we look at the International Conventions such as UDHR, ICCPR, ICESCR, and ILO then we would get to know that these conventions have been applied to conclude the indispensable of the doctrine in a globalised world. Besides, it is most crucial to maintain the directions of equality and humanity following international human rights and other

¹⁶ Constitution of India, 1950, art. 227

recognized conventions. However, In the context of the Indian Constitution, it has been recognized as a constitutional goal to be accomplished and not a Fundamental Rights and it had mentioned DPSP in Article 39(d) which comes under part IV of the Indian Constitution, it confers that State must make provision equal pay for equal work for men and women. But, the exceptions of equal pay for equal work performed based on the reasonable classification by intelligible differentia have also been studied at least.