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Unequal Wages To Women In Construction Sector

N.Shalini

INTRODUCTION

The Indian Constitution by its Preamble attacks on the ground level of the problem when provides "Security to all citizens of the India, equality of status and of opportunity as well as justice, social, economic and political." The Equal Remuneration Act, 1976 covers private and public industrial enterprises, unorganized and organized sector and temporary, permanent and casual workers.

The term equality means the condition of significantly enjoying the same rights, privileges and immunities and being subject to significantly the same duties. Equality guaranteed by the Equality of Protection clause is equality in the same circumstances and among people in the same conditions, any classification made should not be arbitrary, but should be based on certain differences in the classifications and must have significant relationship with legitimate objectives to be achieved. Even if it does not mean for everyone according to their needs, it means at least "equal pay for equal work".

Many elements are considered while shaping the wage structure in an organization. In the earlier times, it was structured by negotiating settlements with union of employees or by industrial adjudication. Later it was revised and restructured by the guidance of proficient committees. The employer's economic ability is an essential and the ability to expend business or make returns is also taken into consideration.¹

Due to enhanced step of advancement, development of latest technology and increase of educational activities amongst women, it has paved a way for the liberation of women. A continuous demand for equal pay for equal work for men and women worker is being made because women are not considered as inferior to men. It is a necessary to stand against discrimination concerning equal pay, employment opportunities, to occupy high posts and for leader in a trade union program. Only if these are done, women will be able to be leaders in the society as it was envisaged by Gandhiji.²

¹ Dr. B. Ravi Kumar, Gender Discrimination among Construction Workers With Reference to Vijayawada, 1 Journal of Sociology and Social Work, Issue 1, June 2013 pp. 42-53.

² N.Chitra, A Descriptive Study on Problems of Women Workers in Construction Industry at Tiruchirappalli, IOSR Journal Of Humanities And Social Science, pp. 46-52.

MEANING

The word "equal pay for equal work for men and women" means equal pay for all people who perform the same work and for all genders. Black Dictionary of Law provides the meaning of the word equal, which means identical, uniform in the same place or on the same level with respect to effectiveness, value, worth, quantity or rights.³ Equal pay means the principle of non-discrimination in compensation for work. Equal pay should be based on the kind and quality of work done and not according to the age, race, sex, religion, political association, ethnic origin or any other individual or group characteristic unrelated to ability, performance and qualification. Equal pay means the same amount of remuneration for a specific job regardless of the gender of the person performing it.

The Equal Remuneration Act, 1976 explains the word "remuneration" in Section 2 (g).⁴ The section 4 of Equal Remuneration Act, is the primary section which has the provision for equal pay as follows: "No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favorable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature."

SIGNIFICANCE OF EQUAL WAGES

Unequal pay means that individual male and female must get same pay for performing equal amount of work. The word "equal pay for equal work" has its significance. Historically speaking, equal pay for equal work has been a slogan of women's movement. Equal pay deals with discrimination on the basis of sex in the pay rules of male and female who are performing same work or similar in that organization.

Moreover this purpose is additionally enhanced and provided with a true significance by placing some definite provisions in our Constitution to make equality among the genders. Separately from guaranteeing "equality before law" and "equal protection of laws" in broad term, the Indian Constitution comprises of many provisions relating to equal treatment of male and female

³ Black Dictionary of law, 5th edition.

⁴ The basic wages or salary, and any additional emoluments whatsoever payable, either in cash or in kind to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.

workers in the scope of economic action.⁵ Article 39(d) of the Constitution is a directive principle of state policy which is enshrined with the principle of Equal pay for equal work.⁶ There is still discrimination in the wages provided to women in construction sector. Though men and woman perform the same kind of work in the construction sites, it has been observed that women are paid less than men. Construction sector being under the category of unorganized sector, there is no scope for the female workers to fight and get equal remuneration. In an organized sector, the condition of employment is casual and uncertain employment, ignorance and low literacy level. They work in an unsecured work environment as they can be fired at time.⁷

LEGISLATIONS ON EQUAL PAY FOR EQUAL WORK

The principle of 'Equal Pay for Equal Work' is enshrined in many International instruments. The International Labour Organization has recognized this principle as one of its primary aims. The International Labour Organization Equal Remuneration Convention, 1951 (No. 100), requires that each member apply the principle of equal pay for male and female workers for work of same value. It should be noted that Article 1 (b) of the Convention establishes, among other things, that the term "equal remuneration for men and women for work of equal value" which means payment rates established without discrimination on grounds of gender. Thus, the convention does not refer to differences in remuneration between workers of the same gender. In 1976, the Equal Remuneration Law provided for the payment of equal pay between male and female without discrimination based on gender. It took 25 years to become law due to the slow economic development of the country. The principle is provided in the Article 39(d) of Constitution of India as a Directive Principle of state policy. The drafters of the Constitution of India were well alert of inequalities in wage parity. But still in almost all industries, such as construction, weeding, extractive industries, transplantation of agricultural activities and plantations, there is discrimination in the wages paid to the male and female workers.⁸

⁵ L.C. Dhingra and Arvinder, Singh Dalal, "Equal Pay for Equal Work and The Law" A Critical Analysis, M.D.U. Law Journal, 2001, pp. 25.

⁶ There is equal pay for equal work for both men and women.

⁷ Aruna Solanki & Kirti Zankharia, Discrimination in wages: A case study of migrant construction workers in Surat city, 10 Journal of Economic & Social Development, Issue 2, December 2014 pp. 57-68.

⁸ Annette Barnabas & Joseph Anbarasu D & Clifford Paul.S, Prospects of Women Construction Workers in Tamil Nadu, South India, Indian Journal of Gender Studies (June 3, 2011).

The section 4 of the Equal Remuneration Act, 1976 provides that it is the duty of the employer to pay equal remuneration to men and women workers for same work or work of similar nature. The section 5 of this Act, specifically allows to makes positive discrimination against women as it states that no employer while making recruitment for the same work or work of a similar nature make any discrimination against women.

Section 4 of the Equal Remuneration Act, 1976 deals with the provision that the employer has a duty to pay equal remuneration to men and women for the same kind of work or similar work. Section 5 of the Equal Remuneration Act, 1976 provides for affirmative action against women because it is said that no employer who recruits for the same job or work of a similar nature is discriminatory to women.

In the case of *Randhir Singh vs. Union of India*,⁹ by interpreting Article 14 and 16 of the constitution in the light of the Preamble and Article 39 (d), the Supreme Court was of the opinion that the principle of 'equal pay for equal work' is deducible from these articles and shall be accordingly applied to cases of unequal scales of pay based on irrational classification though those draw the different scales of pay do same or similar work under the same employer.

In *Supreme Court Employees Association vs. Union of India*,¹⁰ where unequal pay has led to discrimination on unreasonable grounds within the scope of Article 14 of the Indian Constitution, it will be an issue of equal pay for equal work under Article 14 of Indian Constitution. If the established classification is correct, reasonable and related to the intended purpose, the principle of equal remuneration for equal work will not apply, even if the persons who perform the same work do not receive the same salary.

The Equal Remuneration Act aims to prevent discrimination on the basis of gender in employment, applicable to women workers. According to this law, the employer has a duty to pay the same salary to male and female for the same work or similar work in nature. In the case of *Seriyal Udayar v. State of Tamil Nadu*,¹¹ the Supreme Court observed that for the same work or work of a similar nature, the skills, efforts and responsibility required were the same when performed in similar work conditions.

The wordings 'or in any condition of service subsequent to recruitment such as promotion, training or transfer' were inserted by the Equal Remuneration (Amendment) Act, 1987, whereby discrimination based on employment terms (promotion, training, transfer) on the basis of gender

⁹ AIR 1982 SC 618.

¹⁰ 1984 (11) LLJ 506.

¹¹ AIR 1987 SC 1289.

is prohibited. The financial ability of the employer to pay equal remuneration is not a factor for the applicability of this Act.¹² The deciding factors in finding out which appropriate government should be involved for implementation are: various places where the employment is carried on, for whose benefit the employment is carried on, under whose control the work connected with employment is carried on, etc.¹³ Whether a particular work is 'similar in nature' can be found on the basis that the authority should take a broad view, take an equally broad approach for the very concept of similar work implying differences in details, it should look at all duties actually performed, not those theoretically possible.

The words "or any post-recruitment service condition, such as promotion, training or transfer" have been included in the Equal Remuneration (Amendment) Act of 1987, according to which discrimination is based on employment (promotion, training, transfer) based on: sex is prohibited. The financial capacity of the employer to pay equal remuneration is not a factor in the applicability of this Act.¹⁴ The determining factors for which the appropriate government should participate in the implementation are: several places where the work is performed, for whose benefit it is carried out work, under whose control the work related to work is related, work is done, etc. A particular work is "of a similar nature" can be found in the fact that the authority must have a broad vision, adopt an equally broad approach to the concept of similar work that involves differences of detail, should consider all tasks in reality and not theoretically possible.

There are violations of several labour laws in most of the construction sites, like the Equal Remuneration Act, 1946 and Minimum Wage Act, 1948. Mostly the workers aren't aware of the provisions of labour laws existing to them. Since many workers are not affiliated with any union, their dissent and work-related problems are not effectively represented with the employer.

INSTANCES OF EQUAL REMUNERATION NOT BEING PAID

The Shramshakti report observed that women were not being paid equal remuneration for the same work even when government is the employer i.e. even in public sector women face discrimination in payment of wages. Also, ironically, in states where the status of women is not high like in the places of Nagaland, Manipur, Assam this Act is still being violated. Hence, it is evident that somewhere it has become acceptable to pay lesser remuneration on for similar work to women workers.¹⁵

¹² AIR 1987 SC 1281, 1987 Lab IC 961.

¹³ 1991 Lab IC 160(DB) (Kant) (1988) Lab IC 879: (1987) 71 FJR 548 (Kant) Overruled.

¹⁴ AIR 1987 SC 1281, 1987 Lab IC 961.

¹⁵ Shramshakti Report: Report of the National Commission on Self-Employed Women and Women in the

In the case of *People's Union for Democratic Rights and Others v. Union of India*,¹⁶ it was stated before the court that the women workers involved in construction sites were being discriminated in matters relating to payment of wages on the basis of sex, which violates the provisions of the Equal Remuneration Act, 1976. The Supreme Court directed the government to ensure that the provisions of the Equal Remuneration Act, 1976, are not violated and implemented in fair manner.

In some cases in the construction sector due to intrinsic gender division of labour, women and men are given different work based on skills. Hence in certain circumstances due to the difference in nature of work the provision under the Equal Remuneration Act will not be applicable. Women workers face multiple layers of discrimination at construction sites.

In a leading case of *Randhir Singh vs. Union of India*,¹⁷ the Supreme Court of India held that the principle of “equal pay for equal work” though not a fundamental right, but a directive principle of state policy is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under article 32 of the constitution.

In the case of *Grib Kalyan Kendra vs. Union of India*,¹⁸ the Supreme Court declared that “Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the directive principle of state policy as contained in Article 39(d) of the Constitution “equal pay for equal work” has assumed the status of Fundamental Rights in service jurisprudence having regard to the constitution mandate of equality in Article 14 and 16 of the constitution.”

Our society has a tendency to link many jobs with men because they contemplate the job to be associated with male traits such as boldness, confidence and powerful. Women are considered to be soft and kind towards many kinds of jobs. But this stereotype is an obstruction to the growth of women in various fields. This significantly affects those women who want to achieve something big in her life. It is the responsibility of both the gender to eliminate all forms of discrimination against women. Only when both the genders work towards the goal of elimination of discrimination, it can be achieved.¹⁹

Informal Sector, New Delhi, 1988.

¹⁶ AIR 1982 SC 1473.

¹⁷ 1982 1 SCC 618.

¹⁸ 1987 4 SCC 634.

¹⁹ http://articles.economicstimes.indiatimes.com/2015-01-20/news/58268083_1_education-sector-women-employees-rs-150.

CONCLUSION

The construction sector is greatly dominated by male workers, but a shortage of labor is one of the ways to usher in change. In India due to a strong deep-rooted division of labour between men and women, sometimes work assigned to both men and women is different. This criterion mostly helps the employers to evade the provisions under the act which stipulates that equal remuneration to both men and women for the same or 'similar nature of work. The provision of the act has to be interpreted in such a way that this act is applicable only to work of equal value. To eliminate the discrimination against women, the organization must consider the qualification of an employee while hiring and how much productive will he be for the company by overlooking the gender of the employee. Gender should not be a barrier for availing employment. If a female is as qualified as a male, then she should be paid as a male. Construction sector being an unorganized sector, it would be difficult for the workers to have a common interest and their job is unsecured. This situation can be changed by implementing the laws and policies in a strict manner. Stringent action must be taken against those employers who harass their employees. It is very much essential for the workers to know about the laws which protect them.

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