

EQUAL PAY PRINCIPLE: A JUDICIAL APPROACH IN INDIA

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Abstract : Wealth is one of the basic requirements of wellbeing. Nowadays India is facing problem of wages and wage rates of labourer. The Constitution of India is supreme law of the land. The condition of wealth wages, pay policy is worsening in spite of various laws and judicial verdicts. The Supreme Court is performing function of interpretation of provisions of Constitution with judicious mind. The Indian Constitution contains provisions on equal pay for equal work under Directive principles. The Supreme Court of India is performing its pious constitutional duties for protecting wages of labourer. For controlling said problem India needs suitable law. In this article, Researcher analyzed the Constitutional provisions to protect the right to equal pay for equal work and to evaluate the response of judiciary in making the equal pay for equal work as a fundamental right.

Key words: Right to wealth, Fundamental Rights, equal pay, Directive Principles, Indian Judiciary.

1. INTRODUCTION:

Directive principles jurisprudence is based on the philosophy that in a democratic society an individual has a right to most basic necessities of life including food, clothing, housing, medical care and the right to social security in the event of unemployment, sickness, old age disability, widowhood and undeserved want etc. The welfare state accepts the responsibility of meeting these legitimate demands of an individual and rejects the doctrine of unmitigated individualism and the theory of Laissez faire.

The fundamental rights and directive principles lay down unequivocally these principles and aim at ensuring distributive justice to the Indian masses by imposing an affirmative duty upon the state to raise everyone to minimum acceptable standard of living. The philosophy of distributive justice contained in fundamental rights and directive principles has been aptly explained by Honorable Justice P.B.Gajendragadkar in the following words:

“Part III and IV taken together can be safely described, as containing the philosophy of the constitution. This philosophy can be described as philosophy of social service state. Both the preamble and the directive principles of the state policy give evidence of the unmistakable anxiety of the framers of the constitution to shape constitution as a mighty instrument for the betterment of their conditions equally noticeable through the relevant provisions is their determination to achieve this result in a democratic way by the rule of law. In other words, the provisions of part III and IV considered in the light of the preamble emphasize the need to improve the social and economic conditions of the people.”

There is thus every need that the dynamic provisions of the directive principles should fertilize the static provisions of the fundamental rights. It is the directive principles which nourish the root of our democracy, provide strength and vigor to it and attempt to make a real participatory democracy where fundamental rights will be available to all irrespective of their power, position and health. The whole ethos, the whole efforts of the constitution of India, is in fact, of striking a balance between the liberties and dignity of the individual and the needs of socio-economic justice.

2. RATIONAL OF STUDY:

The principle equal pay for equal work is guaranteed by the constitution of India. the preamble to the constitution, Articles 12, 14, 16, 21 , 32 and also under Article 39(d) and various Articles under Directive principles of State policy mandate the employer to follow pay principle. Though the various judgments underlined guidelines for safeguarding the rights of workers for equal pay for equal work but because of changing attitudes of judiciary, these guidelines are not properly implemented due to which labourers rights are openly violated by their employers. It therefore becomes necessary to have a critical and analytical study of changing parameters of judicial attitudes on the concept of equal pay for equal work and to suggest legal remedial measures for proper implementation of pay principles.

3. OBJECTIVE OF RESEARCH WORK:

The study has the following major objectives:

- To study the problems of workman.
- To study Equal Remuneration Act, 1976 and find out the effectiveness its implementation.
- To find out judicial Response to equal pay policy.

- To find out existing short comings by analyzing changing parameters of judicial attitudes on the concept of equal pay for equal work under the Constitution of India and suggest remedial measures.

4. SIGNIFICANCE OF THE STUDY:

The Indian Constitution has granted certain fundamental rights to its citizen under part III. It guarantees ‘Right to Life and personal liberty to all persons’ though it does not provides expressly for Equal pay for equal work. the liberal interpretation adopted by the Indian Supreme Court to the word equal pay brought the equal pay for equal work within the ambit of word life and declared it as a fundamental right under Article 21. Indian judiciary is playing significant role while interpreting the provisions of the Part IV of the Constitution.

5. SCOPE OF THE STUDY:

In this present research, researcher focused on the Constitutional provisions related with equal pay for equal work and interpretation of these provisions by the Supreme Court. The fundamental rights, directive principles of state policy and fundamental duties are there to protect wages of workers.

The scope of the study was limited to the Constitutional Provisions and Judicial Decisions in the area of equal pay. The Researcher has studied and analysed various decisions of the Supreme Court where the Court has given prime importance to the equal pay for equal work.

6. HYPOTHESIS:

The Indian judiciary and its judicial attitude on equal pay is not final. So, 1) there is need to give effective final wordings on equal pay for equal work by Apex court for proper implementation. 2) Wage determination should be extended Considering social aspect 4) Government should appoint special officer to keep watch over the industries / department in which labours work regarding work and payments. The Role of Indian Judiciary is Significant in Interpreting Constitutional Provisions Regarding Right to equal pay for equal work and Duty of the State

7. REVIEW OF LITERATURE:

Researcher referred the various books; study the various provisions of different constitution of various countries, various articles relating to equal pay for equal work, national and International policies on equal pay for equal work and equal pay for work of an equal value. Researcher referred various landmark judgments of various High Courts and Apex court of India.

Researcher also referred the various national and International conventions, conferences, various Articles of International Labour Organisation, Reports of different countries submitted to the International Labour Organisation on convention No.100 for different period. Researcher also referred reports of various committees on Equal Remuneration for understanding the various issues involved in the said reports.

The researcher has reviewed certain literature made available on Websites; Researcher referred important data published by Government of India, Labour Bureau for research purpose. Researcher also referred the definitions, concept and important information of pay in various Acts. Researcher also referred charter of Human Rights 1975, Equal Remuneration Act 1976, Factories Act 1948, Human Rights Act 1993, Equal pay Regulation Act 1993, Industrial and Labour Act 1993, Minimum Wages Act 1948, Plantation Act 1951, Work Place Relation Act 1996 and the Trade Congress Report, Report of the committee on Fair Wages,

8. MATERIALS AND METHODS:

Keeping the above objective and Hypothesis in view, this research work has been accomplished by following the analytical method of research. The first research question focuses on the international level policy of the principle of equal pay, and it is “What was the equal pay policy of the ILO and how did it change over the period from 1962 to 2000?” Second question focuses on changing parameters of judicial attitudes on the concept of equal pay for equal work

Law is a normative science i.e. a science which lays down norms and standards for human behaviour in a specified situation. Doctrinal research involves analyses of case law, arranging, ordering and systemizing legal propositions and study of legal institutions. The objective and philosophy of doctrinal researcher has to be the same as that of sociological jurisprudence that is social engineering through law. Doctrinal legal research has had the practical purposes of providing lawyers, judges and others with the tools needed to reach decisions on an immense variety of problems, usually with very limited time at disposal. In this present research researcher has relied upon various research articles, Supreme Court Cases. For research researcher has adopted following methods.

- Study of law on equal pay, Provisions under constitution of India etc.
- Analysis of Judicial Response to the concept of equal pay for equal work.

9. CONSTITUTIONAL PROVISIONS RELATING TO EQUAL PAY FOR EQUAL WORK:

W. Friedman said that the sum total of these different state activities is sufficient to transform the free economic society in which the state is a glorified policeman, but otherwise the state is an active participant in the economic and social life of citizen.

The theme of the fundamental rights and directive principles is to create socio-economic conditions where there will be distributive justice for all. The fundamental rights protect individual liberty, but the individual liberty cannot be considered in isolation of the socio-economic structure of the society. The directive principles, therefore, imposes positive obligations on the state to take steps for creating socio-economic conditions in which there will be social order with distributive justice available to all, so that the individual liberty will become a cherished value and dignity of the individual a living reality, not only for a few privileged persons, but for the entire masses living in the low visibility areas of human life.

The Directive Principles were introduced in the constitution to promote the welfare of the common man and bring about radical socio-economic changes in the structure of the Indian society so that all round advancement could be accelerated. The directive principles are the embodied of the ideals and aspirations of the people of India and constitute the goals towards which the people expect the state to march for their attainment. These principles are like beacon lights which illumine our path and lead us on to the achievement of the goal of social justice.

The Directive principles enjoy a very high place in the constitutional scheme and it is only in the frame work of the socio-economic structure envisaged in the directive principles that the fundamental rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of the life and who are living below poverty level.

Development of every nation depends upon healthy progress of production. Labour is the soul of production. Employer-Employee relationship plays important role in the progress of development. Quality and quantity of work is based on efficiency of workers. Efficiency of workers has close nexus with mental condition of workers. Sound mental condition always accelerates the rate of efficiency. If workers get sufficient remuneration with respect to their work which they required to maintain themselves and to satisfy the minimum requirement of their family, such satisfaction results in increase in efficiency.

In a welfare state, labour is a modern changing concept for development of industrial and national economy. In India, in absence of labour oriented policy –cum-law, workers are facing number of problems. Protection to the life is the constitutional aspect and to protect life and liberty of every citizen is a pious responsibility of government.

“Equal pay for equal work” is one Directive principles of state policy contain under Article 39(d) of the constitution of India. The Constitution accords a place of pride to fundamental rights and a place of permanence to the Directive principles. The directive principles of state policy enshrined in part IV of the Indian Constitution shall not be enforceable by any court, but the principles there in laid down are nevertheless fundamental in governance of the country and it shall be the duty of state to apply these principles in making laws.

Article 37 of the constitution says that the doctrine of “Equal pay for equal work” envisaged in Article 39(d) of the constitution, being also one of the directive principles of state policy, it is not enforceable by any courts in India, yet there are certain circumstances, where the courts are empowered to enforce the doctrine of equal pay for equal work, where the pay policy of any state government, instrumentality is based on no classification or irrational classification violating Article 14 and 16 of the constitution, there the court is empowered to remove unreasonable discrimination in the pay of two government employees doing similar work under the same employer.

Even though the principle of equal pay for equal work is not expressly declared by the Constitution to be a fundamental right, yet it attains the status of fundamental right, if it is read with Article 14 and 16 of the constitution and it becomes enforceable by the courts. Supreme Court by majority held that Equal pay for equal work is not mere demagogic slogan or principle, it is a constitutional goal capable of attainment through constitutional remedies of enforcement of constitutional rights.

Fundamental rights and Directive principles of state policy are the conscience of the constitution and they are designed to be the chief instrument in bringing about the great reforms of the socio-economic revolution and realizing the constitutional goals of social, economic and political justice for all. The fundamental Rights undoubtedly provide for political justice by conferring various freedoms on the individual, and also make a significant contribution to the fastening of the social revolution by aiming at a society which will be egalitarian in texture and where the rights of minority groups will be protected. But it is in the Directive principles that we find the clearest statement of the socio-economic revolution.

The Constitution of India under Article 14 Guarantees “equality before law and equal protection of law, to every citizen of this country also abhors discrimination and provide for maintaining equality of opportunity in the public employment. After extending these guarantees, amongst others, the constitution makers proceeded to chart out the course for the Governance of the country in part IV of the constitution entitled “directive principles of state policy”. These principles reflects the hopes and aspirations of the people and fix the socio-economic goals which the state must strive to attain and promote the welfare of the people by securing and protecting justice- social, economic and political

and in particular, strive to minimize the inequalities in income and to provide for adequate means of livelihood. The preamble of the constitution of India which promises socio-economic justice was amended to say that ours will be a socialistic democracy. The principle of equal pay for equal work was not accepted in India even in large scale organized industries and considerable differences existed between the wages and earnings of man and women before the enactment of the Equal Remuneration Act 1976

10. ASSESSMENT OF EQUAL PAY AND EQUAL JUSTICE:

The Directive Principles of State Policy are set out in part IV of the Constitution of India. The framers of the Constitution of India looked at the experiences of the Irish Constitution and thought it fit to give directive principles a place of pride in our own constitution with the origin, roots and routes of our own socio- economic- political phenomenon. This part starts with Article 37.¹⁸ It stipulates that the provisions contained in part IV shall not be enforceable by any court, but the principles herein laid down are nevertheless fundamental in governance of the country. the State under article 12 is under constitutional Duty to consider the principles laid-down under part IV of the constitutions while making any laws. The Irish Constitution essentially provided an inspiration qua aspiration to the founding fathers for introducing these directives in our Constitution.

Today the crisis before the nation is not the dearth of economic means. India has already achieved the economic sovereignty; the challenge is to distribute the fruits of the free economy in equitable manner to the most poor and marginalized sections of the society. The goal of justice- social, economic and political, liberty of thought, expression and belief and equality of status and opportunity- the promises made in 1950 have not yet been fully secured to the multitude of Indians.

The increased economic activity, globalization, influx of latest technological tools etc. all have given impetus to activity in the field of law which translate into new and more complex issues and disputes. These new and changing socio-economic trends couple with rapidly growing population, which includes a large section of underprivileged and the hydra of communalism in this highly competitive world, adds to the lurking dangers to the rule of law.

The framers of the Constitution were of the view that the scheme which they adopted would serve the needs of our country. The Constitution was not committed to any particular economic reorganization of the society and the people were free to mould the economic structure for their betterment in whatever manner they choose. it was genuinely believed that the Constitution contained within it elements necessary for growth and expansion and gave sufficient scope for the achievement of the great objectives contained in the preamble. The framers of the Constitution were also anxious to see that social and economic justice should be achieved peacefully without violence by democratic process and within the framework of the rule of law.

Dr. Babasaheb Ambedkar highlighted the characteristic of Indian social structure' democracy and said is only a top – dressing on the Indian soil which is undemocratic. In India, a society based on the principle of great inequality which means elevation for some and degradation for others. We also have a society in which there are some who have immense wealth as against many who live in object poverty.'

The concept of public trust doctrine is inherent in our Constitution. The preamble to the Constitution set out the two main objective of the Constitution. First is the basic character of the state, which was to come into existence i.e. a Sovereign, Democratic, Republic. The word socialist and Secular" were inserted in Constitution by 42nd amendment in 1976. The word socialist indicate the incorporation of the philosophy of socialism in the constitution and may enable the courts to learn more and more in favour of nationalism and state ownership of Industry. In public trust doctrine, the state is invested with the trust ownership and it is to act for the benefit of public who is the beneficiary of the trust. This ownership of state is common ownership on behalf of the public and can't be subjected to private ownership.

Then came the thought of liberalization of economy and opening India up to the world. Fundamentally, liberalization is essentially a laissez faire policy, which seeks to reduce the government interference to the minimum. Its primary aim is privatization and its ultimate aim is a capitalist economy. A question arises as to how far socialism, which our Constitution strives for, has suffered a setback.

To catch the international bus of industrial production and compete globally, a complete change in the mindset of all concerned is required. We cannot achieve our desired economical aim, unless changes are made in our labour policy. On account of globalization, there is an increase in demand to rectify the distortion in our labour law. Plethora of labour laws has been passed to achieve the goal of socio- economic justice enshrined in our Constitution. In India, we have about 50 labour legislations in force. With the changing times, this law needs a constant review and monitoring process and consolidation.

11. JUDICIAL RESPONSE TO EQUAL PAY FOR EQUAL WORK:

Judicial interpretation plays a very vital role in the evolution, development and growth of law. Although it is the primary function of the legislature to make law, yet while in course of interpreting the constitution and the statutes, Judges also, within a limited sense, make law. The legislature provides the basic provisions of a statute, but it cannot foresee and predict each and every complex problem and provide the law to deal with that. Here comes the role of Judges

to fill up the blanks left by the legislature. The provisions of the Constitution and statutes are bare skeletons. It is only through the dynamic process of constructive and creative interpretation by the judges that they are enlivened with life and blood.

“Judging the Judges is supposed to be the Jurimetrician’s Juristic Jurisdiction. So, it is stated with respect this is not being read as judging the judges. But in some of the judicial decisions of the Supreme Court of India on “Equal pay for equal work”, the interpretational oscillations, judicial vacillations, jurisprudential fluctuations, conceptual variations and doctrinal deviations have given an expression to an increasing sense of disquiet to the researcher advocating for protecting and promoting maintaining and sustaining the precedential certainty, jurisprudent sanctity, institutional unity in all its interpretational dimension jurisprudential evolutions, constitutional significance and ramifications.²⁵

Elaborating the nature of judicial function, Mathew J observed in Keshvanand Bharti v/s State of Kerala that the Judicial function is, like legislation, both creation and application of law. The Judicial function is ordinarily determined by the general norms as to procedure and as to the contents of the norms to be created, whereas legislation is usually determined by the constitution only in the formal respect but that is a difference in degree only. From a dynamic point of view, the individual norm created by the judicial decision is a stage in a process beginning with the establishment of the First Constitution, continued by legislation and customs, and leading to the judicial decisions. The court not merely formulates already existing law although it is generally asserted to be so; it does not only ‘seek’ and ‘find’ the law existing previous to its decision, it does not merely pronounce the law which exists ready and finished prior to its pronouncement. Both in establishing the presence of the conditions and in stipulating the sanction, the judicial decision has a constitutive character. The law creating function of the courts is especially manifested when the judicial decision creates a general norm. Where the courts are entitled not only to apply pre-existing substantive law in their decisions, but also to create new law for concrete cases, there is a comprehensive inclination to give these judicial decisions the character of precedents. Within such a legal system, Courts are legislative organs in exactly the same sense as the organ which is called the legislature in the narrower and ordinary sense of the terms. Courts are creator of legal norms.

The judicial function, in the modern context, not only involves finding the law as it is but also involves law making, in this case Mathew J observed that it is somewhat strange that judicial process which involved law making should be called “Finding the Law”. Some simple-hearted people believe that the names we give to things do not matter. But though the rose by any other name might smell as sweet, the history of civilization bears ample testimony to the momentous influence of names. At any rate, whether the process of judicial legislation should be called finding or making the law is undoubtedly of great practical moment. Nobody doubts today that within the confines of vast spaces, a judge moves with freedom which stamps his action as creative but made. The process, being legislative, demands the legislator’s wisdom.

Highlighting the role of judicial interpretation by the judges, Justice V.R. Krishna Iyer, while concurring with the majority, observed “Courts can and must interpret words and read their meaning so that public good is promoted and power misuse is interdicted”.

In our system of Jurisprudence, we are governed by the Constitution Therefore, judicial precedents are the oxygen which not only activates, but also concretizes and materializes the citizen’s rights slumbering in the provisions of Directive Principles of State policy enshrined in Part IV of the Constitution. Judicial precedents concretized and crystallized through constructive and creative interpretation have contributed new dimensions and wide horizons to the evolutions and development of Constitutional Jurisprudence to the effect that even though the principles of “equal pay for equal work” is not expressly declared to be a fundamental right, yet it attains the status of fundamental rights, if it is read along with Articles 14 and 16 of the Constitution.

The Constitution of India has expressed a deep concern for the welfare of workers and has provided that the State shall make provisions for securing just and humane conditions of work. The mandate of Article 37 of the Constitution is that the Directive Principles of the state policy shall not be enforceable by any court. The courts, however, would like to ensure the implementation of Directive Principles through the means of fundamental rights. The Constitution of India also makes provision for securing just and humane conditions of work by empowering State by suitable legislation for living wage.

12. EQUAL PAY FOR EQUAL WORK APPLICABLE TO ‘STATE’ UNDER ARTICLE 12 OF THE CONSTITUTION:

As a rule, the doctrine of “equal pay for equal work” being one of the Directive Principles of state policy enshrined in part IV of the Constitution, cannot by itself be enforceable by any court, yet where state instrumentalities, i.e. Government Corporations, Governmental Undertakings, Governmental Enterprises, Governmental Agencies, State Government adopt a policy of unequal scales of pay based on classification or irrational classification, the courts become empowered to enforce the doctrine of ‘equal pay for equal work’ on the ground of violation of fundamental rights

guaranteed under Article 14 and 16 of the Constitution. Thus equal pay for equal work is enforceable against "State" within Article 12 of the Constitution of India.

While comparing the relative importance of Directive Principles under Indian and Irish Constitution, Mathew J. observed that the definition of the word "State" both for the purpose of Part III and Part IV is the same.

The fundamental principle relating to the doctrine of equal pay for equal work is that all State instrumentalities, viz, the Central Government, State- Government, State Undertaking and State Enterprises must follow and frame such pay-policy and wage structure which are not discriminatory, arbitrary or irrational and which must pass the test of reasonable classification based on rational relevant and non-discriminatory grounds.

13. EQUAL PAY FOR EQUAL WORK AND JUDICIAL RESPONSE:

The principle of 'equal pay for equal work' has been widely discussed by the Apex Court in various decisions. Initially, the Supreme Court had expressly derecognized the principle from falling within the ambit of the Fundamental Right to Equality. In Kishori Mohanlal Bakshi v/s Union of India, the first Case before the Supreme Court wherein the concept of 'equal pay for equal work' was discussed. The question before the Court was whether discrimination in pay scales between Class-I and Class-II Income Tax Officers, is as much as they did the same work was violative of the Right to Equality. A six Judge Bench of the Apex Court held that the doctrine of equal pay for equal work was an abstract one and had no relation to the right to equality guaranteed under Article 14 of the Constitution of India and Article 16 of the Constitution did not forbid the creation of different grades in Government service, and there was no equality of opportunity between person holding posts in the same grade".

The Supreme Court further held that; 'equal pay for equal work' is an abstract doctrine and has nothing to do so in Article 14 of the Constitution. In the year 1982, for the first time in the history of Indian Constitutional Jurisprudence in case of Randhir Singh v/s. Union of India supreme court explained How the principle of equal pay for equal work is not an abstract doctrine? And how it is vital and vigorous doctrine accepted throughout the world particularly by all socialist countries?

Three-Judge Bench of the Supreme Court consisting of O Chinnappa Reddy, A.P. Sen and Bahrul Islam, JJ. has enlarged the doctrine of equal pay for equal work envisaged in Article 39 (d) of the Constitution of India and has exalted and elevated it to the position of a fundamental right by reading it along with Article 14 and 16 of the Constitution. The Supreme Court held that "equal pay for equal work" is not a mere demagogic slogan. It is a Constitutional goal capable of attainment through Constitutional remedies by enforcement of Constitutional rights Construing Article 14 and 16 in the light of Preamble and Art. 39 (d), the Supreme Court held that "the Principle of "equal pay for equal work is deductible from those Articles and may be applied to cases of unequal scales of pay based on no classification or irrational classification, though those drawing the different scales of pay do identical work under same employer". While laying down the principle Supreme Court held "It is true that the principle of "equal pay for equal work' is not expressly declared by our Constitution. Court also held that equality clauses of the Constitution must mean something to everyone. The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a sovereign, socialist, secular, democratic and republic. Again the word 'Socialist' must mean something. Even if it does not mean "To each according to his need", it must at least mean "equal pay for equal work".

14. CONCLUSION:

In this research the approach of researcher is based on the equal pay policy of the ILO and the implementation of Equal Remuneration Convention No. 100, 1951, Equal remuneration Act 1976 and the provisions Under the Constitution of India. The Convention sets out the principle of equal pay for women and men for work of equal value, requesting governments to implement it in their institutional contexts. The theoretical framework of the study considers the phenomenon from the gender, Nature of Works perspective, as the principle of equal pay for work of equal value relates to female and male employees and is thus also a gender issue. This issue is considered through the concepts of gender relations, gender systems and gender contracts by Indian Judiciary

Thus, a new analysis of the changes in the principle of equal pay at the national and international a level by judicial systems is introduced in this study. It expands previously developed theoretical concepts on gender issues in employment by elaborating and developing new theoretical concepts and provides a fundamentally different way to analyze the principle of equal pay on the basis of qualitative data.

15. SUGGESTIONS:

Government should provide such environment and facilities for worker to work even as a casual worker on non-starving wages. The government must be a model employer. In deciding whether the work is same or broadly similar, the authority should take a broad view. It should look at the duties actually performed, not those theoretically possible as already settle by law.

The governmental pay policy whether executive or legislative cannot run contrary to constitutional principles of constitutional law and also to the overriding provisions of Equal Remuneration Act 1976. The Governmental pay

policy must confirm to the constitutional principles contained in the Directive Principles of State Policy under Article 38(2) for striving to minimize the inequalities in income.

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