

V.V Giri National Labour Institute, NOIDA

Workshop on Equal Remuneration Act 1976:

Identifying the Affirmative Initiative & Challenges in the Implementation of the Act

Concept note

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Introduction.

1.1. The doctrine of 'equal pay for equal work' has come to be recognized worldwide as one of the universal human rights through various international instruments, viz:-

- (a) Universal Declaration of Human Rights, 1948.
- (b) International Covenant on Economic, Social and Cultural Rights, 1976 (ICESCR).
- (c) African Charter on Human and Peoples' Rights, 1986
- (d) The ILO Declaration on Fundamental Principles and Rights at Work, 1998
- (e) Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention no.100), 1951
- (f) ILO Convention No. 111 on Discrimination (Employment and Occupation) in 1960.

1.2. Article 11 of the 'UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) which relates to employment related issues, reads that the States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment and to ensure, **on the basis of equality of men and women, the same rights, in particular :-**

- (a) Right to work as an inalienable right of all human beings;
- (b). Same criteria for selection for employment
- (c). Right to free choice of profession & employment, job security, promotion, training etc
- (d). Equal remuneration for equal value of work
- (e). Right to social security in cases of retirement, unemployment, sickness, invalidity, old age, incapacity of work, right to paid leave.

(f). The right to protection of health, safety & working conditions, including safeguarding of function of reproduction.

Complete Text of this Article is reproduced at Annexure-1 of this Concept Note

1.3. The notable International Convention on the subject is 'Equal Remuneration Convention' (C 100) which ensures equal remuneration to both male and female labourers. This Convention has been ratified by 163 countries including India.

Ratification of International Conventions by amending the Municipal Laws

2.1. Various independent sovereign countries who are signatories to international instruments / conventions have the obligation to ratify these instruments, with or without reservations, through their Central legislatures and amend their municipal laws (national / local) laws to bring these in conformity with the international standards and obligations laid down in such instruments. Thus the provisions relating to equal wages or equal remuneration find place in the Municipal (national) laws of majority of countries, including **Republic of India**.

Equal wages for men and women in Indian Perspective.

3.1. In India the doctrine of 'equal pay for equal work' is not a Fundamental Right but has acquired the status of a 'statutory right' after enactment of '**Equal Remuneration Act, 1976**' by the Indian Parliament to implement Article 39 (d) which has been incorporated as one of the 'Directive Principles of State Policy' laid down in Articles 36 to 51 (PART IV) of the Constitution of India. Art. 39(d) reads as under:-

“39. Certain Principles of policy to be followed by the State.- The State shall, in particular, direct its policy, towards securing—

(d) that there is equal pay for equal work for both men and women

3.2. Needless to state that the term 'remuneration' has much wider scope than the term 'wages'.

Salient features of the Act:

4.1. The Equal Remuneration Act, 1976 (ERA) is a step towards gender equity. Its Preamble reads as under:-

“An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.”

4.2. The major salient features of the Act are as under:-

(a). It is a gender specific legislation and prohibits discrimination only between men and women; and not between ‘men and men’; or ‘women and women’

(b). Like all Indian Labour Laws, the ERA does not have the universal application. It applies to establishments and employments notified u/s 1(3) of the Act, viz- plantation, mines, banking, hospitals, textile, factories, railway, transport, food products, beverages, tobacco products, watches, clocks, jewelry, agriculture etc. It covers a fairly large number of workforce in organised as well as un-organised sector.

(c). The term ‘worker’ u/s 2(i) has been defined as one who works in any establishment or employment in respect of which this Act has come into force. There is no salary limit for worker and the definition has not been confined by words like skilled, technical, teacher, supervisory, managerial etc.

(d). ERA prohibits discrimination right from recruitment till the date of superannuation of a woman worker. Sec 5 prohibits discrimination between men and women, in recruitment and subsequent to recruitment, i.e. in (i) conditions of service, (ii) Promotions, (iii) Trainings and (iv) Transfers (except where employment of women is prohibited, restricted, regulated etc).

(e). Sec. 4(1) casts a duty upon the employer to pay equal remuneration to men and women workers for ‘**same work**’ or ‘**work of similar nature**’. U/s 2(h) the term ‘**Same work or work of similar nature**’ has been defined as the work in which skill, effort and responsibility are same, when performed under similar working conditions.

(f). U/s 4(2) and 4(3), for bringing parity, the remuneration of any worker cannot be reduced, but can only be increased to the higher or the highest level.

(g). Per Sec. 2(g) of the ERA, 'Remuneration' means the basic wage or salary, and any additional emoluments, paid either in cash or kind

(h). The ERA is a self-contained Code. U/s 7, the appropriate Government has the power to appoint 'Authority' and 'Authority for Appeal' (Appellate Authority). They adjudicate the complaints and the claim cases only. The penalty for contravention of any provision of the Act can be imposed only by the Judicial Magistrates.

(i) The Act is being enforced both by the Central and the State Governments in their respective spheres. Central Government is the appropriate Government in relation to employment carried on by or under the authority of CG or railway administration or banking company, mine, oilfield or major port or any corporation established by a Central Act. State Government is the appropriate Government in all other cases.

5. Gist of leading judgments on the subject {Discrimination in wages, remuneration and other conditions of employment) is placed at **Annexure-2** of this Concept Note.

Way Ahead:

6.1. 'Code on Wages Bill, 2017' {Bill No. 163 of 2017) was introduced in the Lok Sabha on 03.08.2017. In this Code, four existing wage Acts are proposed to be merged, namely Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. In the Code, there are only two clauses relating to Equal Wages (not remuneration) which are reproduced verbatim as under:-

“3(1) There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.

3 (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee.

4. Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.”

6.2. If the Code Bill is passed by the Parliament in its present form, the scope of the ER Act will be reduced drastically as the term ‘**remuneration**’ will be replaced by the term ‘**wages**’. Further, in the proposed Code, there is no provision like Sec. 5 of the ER Act, which prohibits discrimination between men and women in recruitment and matters subsequent to recruitment, like (i) conditions of service (ii) Promotions, (c). Trainings and (iv) Transfers

6.3. The ILO is celebrating its Centenary this year. India is a Founding Member of the ILO. India has also signed the ‘CEDAW’ and ‘Equal Remuneration Convention’ (C-100). We need to strive for complete equality between men and women in the matter of employment as stated in Article 11 of the CEDAW (**Complete Text is given at Annexure-1**) which also includes the maternity benefits.

6.4. For drafting any policy, the feedback in the form of data is required, which can be collected either after proper field surveys or on the basis of analysis of inspection reports which point out to various deficiencies relating to implementation of any legislation. More the number of inspections, more awareness is created between the employer and the employees. Thus more stress needs to be given on the enforcement of the Act by the appropriate Governments.

7. To identify the challenges and constraint in the implementation of the Act, VVG NLI is organizing this workshop with the main stakeholders. The distinguished members of the workshop may also identify the vulnerable sectors which require special attention and the mode by which the objective of ER Act can be achieved.

Text of Article 11 of the 'UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW).

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) *The right to work as an inalienable right of all human beings;*
- (b) *The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*
- (c) *The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*
- (d) ***The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;***
- (e) ***The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;***
- (f) *The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

2. *In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;***
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*
3. *Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

Gist of leading judgment on the subject {Discrimination in wages, remuneration and other conditions of employment}

Dharwad Dist. PWD Employees Association v State of Karnataka, (1990) 2 SCC 396.

The ER Act is a legislation providing equality of pay for equal work between men and women which certainly is a part of the principle 'equal pay for equal work.

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C. Girijambal v State of A.P., 1981 SCC (L&S) 293.

ER Act is not applicable in case of professional services. .

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Mackinnon Mackenzie & Co. v Audrey D Costa, (1987) 2 SCC 469.

Fact of the case: A dismissed confidential lady stenographer filed claim before the Authority appointed u/s 7 of the ER Act, 1976 alleging that during her employment, after the Act came into force, she was being paid remuneration at the rates less favourable than those paid to the male Stenographers, performing the same or similar kind of work. Hence she was entitled to recover the difference between remuneration paid to her and the male Stenographers.

Employer contended that the wages were paid to her as per settlement arrived at between the employees' Union and the management; and hence there was no discrimination. Because of settlement, she was getting Rs. 730.20 PM less than her male counterparts. Further, employer had no capacity to pay.

Ruling by the Supreme Court:-

On settlement: A settlement arrived at between the management and the employees' union cannot be a valid ground for effecting discrimination in payment of remuneration between male and female employees performing the same work or work of similar nature

On financial capacity to pay:

*"It is lastly urged on behalf of the petitioner that the enforcement of the Act will be highly prejudicial to the management, since its financial position is not satisfactory **and the management is not able to pay equal remuneration to both male Stenographers and female Stenographers.** The Act does not permit the management to pay to a section of its employees doing the same work or a work of similar nature lesser pay contrary to Section 4(1) of the Act only because it is not able to pay equal remuneration to all. **The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it.**"*

Equal pay for equal work - 'same work or work of similar nature' defined.

State of Punjab V Surjit Singh, (2009) 9 SCC 514 : 2009 AIR SCW 6759

*"19. Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. **But equal pay must be for equal work of equal value.** The Principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation... A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. **The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity... Functions may be the same but responsibilities make a difference. ..."***

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