

Equal Pay for Equal Work

Ms. Apoorva Muktibodh

Dept. of Commerce & Economics, Jagran Lakecity University, Bhopal
jagraneip@gmail.com

Article Info

Volume 83

Page Number: 7349 - 7351

Publication Issue:

March - April 2020

Article History

Article Received: 24 July 2019

Revised: 12 September 2019

Accepted: 15 February 2020

Publication: 07 April 2020

Abstract

As it is known to us that India is considered as one of the rapid growing economy of the world, which is aiming to reach heights in the coming years but this goal of reaching heights can only be achieved when 'equal pay for equal work' will be implemented. Along with this there is a huge roar in the country about this particular issue and women are facing problem at their workplace continuously. Woman being considered as vulnerable section of the society are facing numerous problems and gender pay gap is among them. In this research paper the issue of unequal pay for equal work will be discussed with their constitutional application and to find out where is the lacuna in the field of legislation. This problem of gender injustice is faced by every woman in every section of the society which also included entertainment industry.

Keywords; *Equal Pay, Gender Injustice, Gender Equality, Government..*

I. INTRODUCTION

Indian Constitution being fundamental law of land do not specifically contains any provision for equal pay for equivalent work as a fundamental right or the constitutional right. It is indirectly enshrined in the constitution under Article 14, 15 and 16, Even it is not specifically given in the dictate standard of state policy. Directive principle of state policy are those policies of the states which are not executable in the court of law. It was also observed that they are essential polices to the country's governance and it is the responsibility of a state to consider them while passing legislations.

The perception of equal pay for equal work generally recognized not only in India but worldwide in terms of gender pay gap. It is crucial to first recognize the distinction among gender in directive to comprehend the notion of gender pay gap. The concept is covered under various the Articles of the conventions i.e. Art 7 of International covenant on economic and social and cultural rights, Art 4 of the European social charter. The very

renowned body ILO has beautifully declared "the principles of equal remuneration for equal value".

There are various grounds reflected by the EEOC's where it is reflected payment of wages differ for same kind of work.

Thus concept of equality in payment of wages for same work emerged out as good practice in the countries around the globe which is even being recognized by the various renowned organization that includes UN as well. 10th April of every year is being celebrated as equal pay day in the countries worldwide.

II. INDIAN SCENENRIO FOR EQUAL PAY

This concept as a sentence is specifically not stated in the Indian Constitution under part iii of it i.e. Fundamental Rights, yet no second thought can be given to whether or not it is a fundamental right. India's Constitution contains a number of clauses that guarantee equal pay for equal work in India, particularly when we speak about gender pay gaps.

Previously, such right was only accessible through Directive State Policy Principles under Article 39 of

the Constitution. Although Directive Principles cannot be enforced through any tribunal of law, they are essential to the country's governance and a State has an obligation to deliberate them while ratifying legislation.

However, as stated above, it is now undoubtedly a fundamental right under various article under Indian Constitution. The fundamental equal pay right for equal job has taken shape through different court judgments as a fundamental right. There are various cases that has come up which has shown the true position of this concept in the legacy of law.

III. JUDICIAL APPROCHES

The concept equality in payment for the very first regarded in year 1962 in the famous case law of Kishori Mohanlal Bakshi v. Union of India where the apex court declared unable to be obligatory in court of law.

In another famous case law , some sections of the Delhi School Education Act were declared to be unconstitutional as it violates Article 14 because it discriminated against school teachers on salary and other terms of service, primarily on the grounds of assisted schools and unassisted minority schools.

It has been held in Dhirendra Chamoli v. State of UP that the principle of equal pay also applies to casual employees who are hired on a daily basis but for others.

In a substantial case of Jagjit Singh and Ors, the apex court held that the said should be applied to employed as everyday wagers, casual and predetermined workers who accomplish the same responsibilities as regulars.

“Labeling the rejection of equal pay for fair job as oppressive, suppressive SC said that the principle must also be expanded to temporary workers in a welfare state.”

IV. LEGISLATIVE APPROCHES

There are many Acts been passed by the parliament of the India in respect of “Equal Pay for Equal work”. As given under

Workmn’s Compension Act, 1923:

The aim is to convey monetarist protection for workers and their dependents in the event of accidental injury by paying compensation to a certain class of employees.

There are probabilities that the woman may be subject to manipulation because of the difference in bargaining power. This act services to prevent this risk.

Minimum Wages Act, 1948:

To deliver the statutory fixation of minimal wages, as employees in India are poorly structured and have less negotiating authority. There are no distinct salaries paid to female employees as that of man.

Factories Act, 1948:

Familiarized to legalize the status of factory workers who are employed in the factory.

Delivers distinct provision for women's services and set working hours.

Equal Remuneration Act of 1976

Delivers equal pay for equal work to both the males and females.

Act was implemented in the light of the uneven physical and sociological burden that a female faces when she is bringing and raising children

Following are the legislations which are enacted for the benefits of the vulnerable section of the society. Woman being discriminate on the bases of gender and paid unequal as compare to male. In order to tackle with this problem the above-mentioned legislations are enacted to deal with the issue.

V. SOME EXCEPTIONS TO EQUALITY IN PAYMENT OF WAGES

Now this principle becomes the FR. Though even not being an absolute right. There are still some exceptions. These exceptions are not specifically mentioned anywhere and have also advanced through a number of instances. According to some, these are not exceptions, but only cases in which the principle of equal pay for equal work does not apply.

In the case of *F.A.I.C and C.E.S.* the Apex court ruled that distinct pay scale might be resolved on the grounds of distinction in degree of accountability, reliability and concealment for public servants holding the same position and performing comparable job. The tribunal also said equal pay is dependent on the nature of the job performed and not purely the quantity of work. In terms of reliability and accountability, qualitative variations may exist.

In the case of *Mewa Ram v. A.I.I.M.S*, the Supreme Court held that the principle of equal pay for equal work would not apply if the duties and utilities were of a comparable nature. Due to differences in academic skills, distinct wages can be provided to hearing therapists and audiologists in *A.I.I.M.S*.

In the case of *Associated Bank Officers Association*, it was stated that State Bank of India officials and officers of State Bank of India subsidiary companies are not in a similar situation taking into account the duties of State Bank of India officials. Therefore, the standard of equal pay for equal job in this situation could not be implemented.

VI. CONCLUSION

Despite numerous efforts by the legislature, the executive and the judiciary, the issue of unequal pay for fair job still occurs in India. While the legislature has adopted numerous legislation to address the issue, different court judgments have resulted in equal pay being recognized as a fundamental right for equal job. All of these together resulted in a

considerable enhancement in the scenario. Although times have gone by, but crisis still continues.

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