

**The Experience in Implementation of the Equal  
Remuneration Act (ERA), 1976**

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**The Equal Remuneration  
Act (ERA), 1976**



## Contents

<i>1. Introduction.....</i>	<i>1</i>
<i>2. Historical Background.....</i>	<i>1</i>
<i>2.1. International Initiatives.....</i>	<i>1</i>
<i>2.2. Equal Remuneration Act in India.....</i>	<i>2</i>
<i>3. Efficacy of the Equal Remuneration Act.....</i>	<i>4</i>
<i>4. What Accounts for the Limited Effectiveness of ERA.....</i>	<i>8</i>
<i>Conclusions.....</i>	<i>9</i>
<i>References.....</i>	<i>10</i>
<i>Annex I.....</i>	<i>11</i>
<i>Annex II.....</i>	<i>15</i>
<i>Annex III.....</i>	<i>27</i>
<i>Annex IV.....</i>	<i>37</i>
<i>Annex V.....</i>	<i>47</i>
<i>Annex VI.....</i>	<i>55</i>

## Introduction

Pay inequality is prevalent all over the world, including India and is one of the most stubborn forms of discrimination in the labor market. Ensuring gender equity in wages is not only imperative from the perspective of gender equity, but is also a matter of human rights.

Differences in pay between men and women could be accounted for in two ways: first, differences in individual characteristics and the characteristics of the organizations in which they work and second, gender based discrimination in the labor market (ILO, 2008). The former takes into account factors as educational level and field of study, work experience in the labor market and seniority in the organization or in the job level, number of working hours and size of organization and sector of activity. Thus, part of the gender wage gap could be reduced through policies aimed at directly addressing these dimensions such as flexible working hours so that women can balance their work and family responsibilities and making it possible for mothers to work without interruption so that they can gain both work experience and seniority.

Econometric studies show that even after the first set of factors are taken into account; a part of the gender wage gap remains unexplained. This residual difference in wages between men and women is attributed to discrimination in the labor market stemming from stereotypes and prejudices regarding women's work. Legislation aimed at ensuring equal pay for equal work is one of the ways in which governments can intervene to correct this distortion in the labor market. This note looks at the Equal Remuneration Act (1976) in India- its provisions, the extent of its effectiveness and ways in which policy makers can act to improve its efficacy.

## 2. Historical Background

### 2.1 International Initiatives

The International Labor Organization (ILO) has put in considerable efforts towards a greater recognition of "pay equity" as a fundamental right of workers. On 29<sup>th</sup> June, 1951 the ILO adopted the Equal Remuneration Convention (No. 100). This convention states that each member state shall ensure that the principle of equal remuneration for work of equal value is applicable to all workers. Till date, it has been ratified by 167 countries. This principle may be applied through various means- be it legislation or a recognised machinery for wage determination or through collective agreements between employers and workers or through some combination of the above means. India has ratified Convention No. 100 (equal pay for work of equal value) and Convention No. 111 (non discrimination in employment and occupation).

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly on 18 December, 1979 too recognizes "pay equity" as a right of women. Article 11 of the Convention states that all member states must take appropriate measures to eliminate discrimination against women in the field of employment, to ensure, on the basis of equality of men and women, the same rights, in particular the right to equal remuneration, including benefits and the right to equal treatment in respect of work of equal value as well as equality of treatment in the evaluation of the quality of work.

The European Economic Community Act (originally signed on March 25, 1957) too makes a provision for equal pay for equal work or work of equal value for men and women.

The Social Summit of Copenhagen in 1995 led to the adoption in 1998 of the ILO declaration on Fundamental Principles and Rights at Work (FPR). This declaration commits Member States to respect and promote principles and rights in

the four categories, whether or not they have ratified the relevant convention. These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation (Also see

<http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>)

## 2.2 Equal Remuneration Act in India

Specific legislations have also been passed by the Indian Parliament to uphold the cause of equality between men and women in terms of equal pay for equal work. Two such most prominent legislations are Minimum Wages Act, 1948 and Equal Remuneration Act, 1976.

### Minimum Wages Act, 1948

Coinciding with the adoption of the first ILO Convention (No.26) on the Minimum Wages was the setting up of the Royal Commission on Labour in India in 1929 to look into the issue. The Commission recommended minimum wages for *beedi* making, wool cleaning, mica factories, tanning and the establishment of a statutory wage board for fixing in tea plantations. The first step towards the initiation of minimum wage legislation in India was the introduction of the minimum wage bill in the Indian Legislative Assembly on February 11, 1946 which was followed by the adoption of the Minimum Wages Act on March 15, 1948. This act provides for fixation and enforcement of minimum wages in respect of schedule employments (Section 2g) to prevent exploitation of labour through payment of low wages. It also provides for review and revision of minimum wages already fixed under suitable intervals not exceeding five years (Section 3). The Central Government has fixed minimum wages under this Act for 40 scheduled employments under the Central sphere. Several States have fixed higher Minimum Wages than

those prescribed by the Central Government for highly skilled, skilled, unskilled and semi skilled workers engaged in scheduled employments. Once a minimum wages is fixed according to the provisions of the Act, it is not open to the employer to plead his inability to pay the said wages to his employees. The Act also provides that different wage rate may be fixed for:

- a. Different scheduled employments
- b. Different works in the same employment
- c. Adult, adolescent and children
- d. Different locations
- e. Male and female

### Equal Remuneration Act, 1976

This Act provides for the payment of equal remuneration to men and women workers for same or similar nature of work by stipulating that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing “*same work or work of similar nature*” (Section 4). It also provides for not making discrimination against female employees while recruiting for same work or work of similar

ILO Convention, 1951, (No.100) goes beyond the emphasis on “same work or work of a similar nature” in ERA. This convention addresses discrimination in remuneration by ensuring that women and men receive equal remuneration not just for the same or similar work, but also for work of equal value. This principle is fundamental to the achievement of gender equality because a large proportion of women do different jobs than men.

nature or in any condition of service subsequent to recruitment such as transfers, training and

promotions, etc (Section 5). Under this law, no discrimination is permissible in recruitment and service conditions except for where employment of women is prohibited or restricted by law (Section 15).

The term “*same work or work of a similar nature*” is defined under the Act as work in respect of which the skill, effort and responsibility are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

The Act grants power to the appropriate government to appoint authorities for hearing and deciding claims and complaints (S.7) and also appoint inspectors (S.9) for the purpose, *inter alia*, of making an investigation as to whether the provision of the Act are being complied with by employers. S. 10 of the Act provides for penalties, including imprisonment, for the contraventions of the provisions of the Act and S. 11 provides for Offences by Companies.

The situation regarding the enforcement of this law is regularly monitored by the Central Ministry of Labour and Central Advisory Committee. The Central Industrial Relations Machinery (“CIRM”) in the Ministry of Labour is responsible for enforcing the Act. CIRM is an attached office of the Ministry and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central).

Presently there are 18 regions each headed by a Regional Labour Commissioner (C) with Headquarters at Ajmer, Ahmedabad, Asansol, Bangalore, Bombay, Bhubaneshwar, Chandigarh, Cochin, Calcutta, Guwahati, Hyderabad, Jabalpur, Madras, New Delhi, Patna, Nagpur, Dhanbad and Kanpur.

The Assistant Labour Commissioner (C) is the ‘appointed authority’ and the Regional Labour Commissioner (C) is the Appellate Authority under the Act. (S. 7)

The Act also provides for the constitution of an Advisory Committee for the purpose of providing increasing employment opportunities for women. The description of the Advisory Council as given by the Labor Minister in debate in the Parliament is as follows “An advisory committee is going to be constituted by the central government or the state government, as the case may be. This committee can not only go into the question of retrenchment of women workers but also into the question of potential possibilities of women employment. If such a committee comes to the conclusion that a particular undertaking could have employed more women and makes a recommendation to that effect to the government, the government can issue directions.” The Advisory Committee can,

In the debate on the ERA in the Rajya Sabha, Shrimati Ela Bhat said “as I understand it, the purpose of the law is to not only give equal remuneration but also to give equal employment opportunities. For that Advisory Committees have to be formed under the law.” She then asked how often the Advisory Council met, when was the last time they met? Had the State Advisory councils been formed? The information and broadcasting Minister Mr. Ajit Panja, 1987 who presented the bill in the Rajya Sabha stated that the last time the central advisory council met was on 31<sup>st</sup> January 1986. There was no clear information on the advisory council from most of the states or union territories, except Gujarat, Madhya Pradesh, Uttar Pradesh and Himachal Pradesh.

however, only look into the extent of women

employment in an undertaking and not into the wage structure.

The Act was enacted by the Parliament on 11<sup>th</sup> February, 1976. The Act applies to the whole of India and has come into force in different establishments on such dates as notified by the Central government. Till date, about 22 establishments<sup>1</sup> in the organized sector are covered under the Act. The Act covers all occupations under the Schedule of the Minimum Wages Act, including the agricultural sector. The Statement of Objects and Reasons provides that the Act has come into force to give effect to the constitutional provision of Art. 39 which envisage that the state shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. This law reflects the Directive Principles of State Policy which states that the state shall strive to promote social welfare by ensuring economic justice for both men and women.

The Act was amended in 1987. While presenting the bill in the Lok Sabha, the Minister of Labor stated the amendment was intended to rectify certain lacunae and omission in the ERA, 1976. These were:

1. The Principal Omission in the 1976 Act was that while the Act prohibited discrimination against women in recruitment there was no specific clause prohibiting such discrimination during their employment. Under the 1976 Act, therefore, any discrimination against women in matters of promotion, increments, etc does not amount to an offence under Equal Remuneration Act.
2. The amendment proposed to provide for more stringent policies for violations of the provisions of the Act.
3. In order to make prosecutions easier, the amendment also proposed to permit

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<sup>1</sup> The term “establishment” in the Act has the same meaning assigned to it as in the Industrial Disputes Act, 1947.

individuals and recognized welfare institutions or organisations to file complaints in court.

### 3. Efficacy of the Equal Remuneration Act

Equal Remuneration Act has had at best a limited impact both in terms of ensuring parity in wages in the various sub-sectors of the labor market as well as in terms of successful prosecutions.

At the macro-level, empirical evidence suggests that the extent of gender wage gap varies across sectors. A study (Nirmala et al, 1998) based on a random sample of 60 households with both the husband and wife working as agricultural laborers in Nettapakkam village in the Pondicherry region suggests that the female laborers were paid half of what the male laborers were paid. Moreover, a look at gender wage gap over time does not suggest that there has been a distinct trend towards gender equality in wages (Chavan and Bedamatta, 2006). While the years 1977-83 was marked by a decline in the male-female earnings gap across most of the states in India, the male-female earnings disparity increased in the period 1983- 88 in 14 out of the 17 states (or 82 percent of the states) of India.

In the non-agricultural sector, men working as casual workers in the informal sector earn on an average Rs. 51.3 per day compared to Rs. 32.4 by women, difference of Rs. 18.90 per day. In the formal sector, the difference is strikingly more. The men earn Rs. 73.0 per day compared to women who earn Rs. 47.4 per day. For every formal sector worker there are more than 6 workers in the informal sector and this rises to more than 10 for women<sup>2</sup>. The average wage rate for regular wage/salaried employees, in rural

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<sup>2</sup> The National Commission for Enterprises in the Unorganised Sector (NCEUS) (2007) [http://nceus.gov.in/The\\_Challenge\\_of\\_Employment\\_in\\_India.pdf](http://nceus.gov.in/The_Challenge_of_Employment_in_India.pdf)

areas, was Rs. 138.74 for males and Rs. 87.71 for females – the difference was of the order of nearly Rs. 50.

The following table gives more detailed information on the extent of the gender wage gap in the non-agricultural sector:

**Table 1: Average Daily Earnings of Regular Wage Salaried Workers and Other Casual Laborers in Non-Agricultural Activities by Type of Enterprise; All-India, 2004-05** (Average Daily Earnings of Adult (15-59) Workers Rs. (0.00))

Enterprise Data	Rural Males		Rural Females		Urban Males		Urban Females	
	RWS-Workers	OCL Workers	RWS-Workers	OCL Workers	RWS-Workers	OCL Workers	RWS-Workers	OCL Workers
<b>1-4 Non Factory</b>	68.20	65.82	36.79	41.87	87.97	67.49	41.64	38.92
<b>1-4 Factory</b>	91.76	78.70	51.32	46.17	124.74	73.96	80.08	46.57
<b>5</b>	238.60	65.18	136.22	43.74	324.00	72.52	277.37	64.84
<b>6</b>	176.41	66.13	59.11	37.33	271.94	76.86	225.41	54.40
<b>7</b>	160.00	64.77	93.78	43.24	178.32	59.11	171.48	99.13
<b>5-7</b>	220.06	65.79	120.93	40.40	300.09	75.43	250.54	58.92

Source: Sundaram (2008)

Notes: (1) Enterprise type 1-4: Proprietary/partnership enterprises excluding such enterprises engaged in manufacturing using electrical and employing 10 or more workers. (2) Enterprise type 5: Government/public sector. (3) Enterprise type 6: Public/private limited company. (4) Enterprise type 7: Co-operative societies/trust/non-profit institutions.

Clearly, the above data suggests that ERA has not had its desired impact.

Indeed, standard microeconomics suggests that ERA could potentially adversely impact women's employment. In a competitive world, wages are linked to worker's productivity. Equal Remuneration Act, 1976 does not link wages to productivity; and instead posits that women be paid equal wages as men. This implies that an employer who hires a woman must pay her equal wages as the male worker; though gender norms may stereotype female workers to be less efficient than male workers. Thus, employers who are more focused on efficiency and profit-maximization rather than on social equity objectives would cringe at hiring women workers. Changing the perception of Equal Remuneration Act, 1976 from a matter of social

protection to women workers to a matter of equitable rights and responsibilities among employers could help towards implementation of the Act.

Though workers in both the formal and informal sectors have filed cases under the Act, it has primarily been used in the organized sector. Of the total of 17 cases filed in the Supreme and High Courts till date under the Act, only 5 cases relate to the informal sector (1 in the plantation sector and 4 in the construction sector).

As far as prosecutions launched by the Labor Department are considered, here too prosecutions and convictions are limited. Between the years 1982-1984, there were only 240 prosecutions by the central government and no state except Uttar Pradesh had any



prosecutions<sup>3</sup>. Provisional figures for 2000-01 indicate that the central government launched prosecutions against 775 violators of the ERA. Of these, less than half of these have been convicted so far<sup>4</sup>. It is not clear to what extent the amendment of the Act in 1987 helped improve the prosecution and conviction rate for violations of its provisions.

Members of the Parliament pointed out in the debate on the ERA that the Act could potentially lead to the exclusion of women workers and hence, the Act should make special provision to ensure that this does not happen.

The other worry expressed by the members was that employers could retrench women workers so as to avoid paying them same wages as men to them. Employers who would pay women wages equal to men could also increase the work load on women.

In the debate in the Lok Sabha, Member of Parliament Dr. Datta Samant cited examples of the mills in Bombay and Ahmedabad where women were not paid the same wages as men in many cases and many times women were retrenched and many mill owners gave it in writing to both the trade unions and the government that they will not hire women. He pointed out that if this was the state in the cities than it would be difficult to implement the Act in rural areas, where women workers were not organized.

In a case for appeal in Delhi High Court<sup>5</sup> the petitioners were women workers employed with The Cooperative Store Ltd., Super Bazaar, Connaught Circus. They filed a claim in 2004

under Sec 7(1) (b) of the Equal Remuneration Act, 1976 claiming same pay-scale as granted to men performing the same work. According to the petitioners they were working as Packers in the cooperative store since 1978. By an order passed in 1984, they were appointed to a regular pay-scale of Rs.150-240-360. Their male counterparts, who were doing the same or similar work, were appointed in the pay-scale of Rs.185-305-440. According to the petitioners this was the violation of the provisions of the Equal Remuneration Act, 1976 and that they were entitled to the same remuneration as their male counterparts. The contention of Respondents was that all the ladies were working as Packing Cleaners and their job was to clean pulses, *masalas*, etc. While the men folk were working as Packers and had to weigh the goods and pack them with the use of electrical appliances. Since the nature of work was dissimilar, there was a difference in the pay-scales. The concerned Authority formed under the Act to look into the matter concluded that the claim of the petitioners was justified. It was noted by the Authority that prior to 1984, the remuneration given to both men and women was the same because they were doing same or similar work. It was also noted that the Respondents were not able to produce any evidence to show that the nature of work performed by men and women was different. The Authority also brought to notice the case of one Sujjan, who was a female worker but her name was included in the list of male workers and so was getting a higher remuneration but when it was known that she was wrongly designated as a male worker, her remuneration was reduced. But the Appellate Authority held otherwise. The aforesaid decision was challenged by the Co-operative Store Ltd. (Super Bazar) before the Division Bench of the High Court, The Delhi High Court in 2005<sup>6</sup>, which observed that the law on the subject has been laid down in the case M/s. Mackinnon

<sup>3</sup> Source: Parliamentary debate on ERA

<sup>4</sup> Source: labour.nic.in/annrep/files2k1/lab11.pdf

<sup>5</sup> Case Name & Citation: Bimla Rani & Ors. Vs. Appellate Authority Equal Remuneration, Act 1976 & Ors; 113 (2004) DLT 441

<sup>6</sup> Case Name and Citation: Co-operative Store Ltd. (Super Bazar) Vs. Bimla Devi; (2005) 7 AD (Delhi) 794

Mackenzie & Co. Ltd. Vs Audrey D'Costa (1987) 2 SCC 469. In this case lady stenographers were given a lesser scale than male stenographers and that was found by the Supreme Court to be in violation of the provisions of the Act. The Court referred to various international treaties and obligations and constitutional provisions and observed that same or similar work has been explained to mean work in respect of which the skill, effort and responsibility required are the same when performed under similar working conditions by a man or a woman. It also observed that the Appellate Authority laid emphasis only on one factor, namely, the designation given to the Petitioners (Packing Cleaners) and to their male counterparts (Packers) and according to the Authority, the designation itself postulates a dissimilarity in the nature of work resulting in unequal wages. But this is completely erroneous way of approaching the question in issue. What designation is given to an employee is of no consequence at all. It is the nature of the work which is important. The case of Sujjan vividly explains the point and it clearly shows that the work she was doing was similar to the work being performed by the male workers and that it was only the gender which was the determining factor for fixing the pay-scales. It held that this is obviously not permissible under the provisions of the Act.

The principle of “equal pay for equal work” has also been used by men to demand equal wages vis-à-vis other male employees. For instance, a case was filed in the Supreme Court in 1985 by draughtsmen working in Government Ordnance Factory<sup>7</sup>. Senior Draughtsmen, working in the factory, were classified into two groups of workers- one group receiving a higher scale of pay than the other group. Both the groups of workers were discharging the same duties. Selection into the higher scale was based on seniority cum fitness instead of merit cum seniority. The differences in pay scale were found

to be in violation of Article 14, that is, the principle of “equal pay for equal work”. The court ruled that the same pay scale should be available to all Senior Draughtsmen; those getting the lower scale of pay are entitled to the higher scale.

The issue of equality has been contested in other ways, e.g.

**NREGA:** The Andhra Pradesh High Court passed a historic judgment cancelling the Central Government notification on the NREGA wages that are lower than the minimum wages revised by the state government. Andhra Pradesh Vyavasya Vruthidarula Union (APPVU), a local Trade Union Federation had filed a public interest litigation (PIL) with the High Court challenging the Central Government notification which is a clear violation of the Minimum Wages Act. The State Government had revised the minimum wages in 2002. As per the Act, the next revision should have been in 2005. After a series of campaigns by various mass organisations, it was revised in 2008. APVVU, being a state level federation of agricultural workers unions involved extensively for the implementation of NREGA, challenged the Central Government notification of minimum wage (Rs.80) that is lower than minimum wages (Rs.119) in the state. It was held that, “Many progressive social legislations and judgments would remain paper tigers, if they are not implemented. Therefore, the role of social movements and trade unions is to see how the workers are organised to actualise the objectives of Acts like NREGA, Minimum Wages Act, Equal Remuneration Act, Land Reform Laws, Right to Information Act, SC&ST (Prevention of atrocities)Act, Bonded Labour (Abolition) Act, Domestic Violence Act and so on”. In the light of this High Court judgment, the State Government issued orders for payment of wages as per the Minimum Wages of Andhra Pradesh for NREGA workers.

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<sup>7</sup> Case Name: P. Savita & Ors. Vs Union of India, Ministry of Defence

President of the All India Trade Union Congress, Mr. Narasimhan says that the Equal Remuneration Act is there is far from effective. He highlights the case of the *Anganwadi* workers. Though employed with the government, they are not paid at par with the male employees doing more or less similar kind of job. When the Union took up this issue with the Government, they brushed aside their claim for equal pay for equal work on the grounds that the *Anganwadi* workers are not permanent employees. The fight for gender equity in wages has to be under the minimum wages, which are more or less equal to men.

**Minimum Wages Act, 1948:** While contesting a case of equal pay for equal work, the Minimum Wages Act, 1948 as opposed to the Equal Remuneration Act, 1976 is often a more helpful legislation. For example, if a woman is a victim of bias in wages falling short of the minimum amount fixed by the Central or the State government, Minimum Wages Act ensures a certain amount of wages for every worker as a statutory requirement.

However, the Act is not helpful when both men and women are actually working above the minimum wage level. This is because the Act itself has different provisions for men and women workers. Also, there are different categories of work like light work and heavy work. For example, under Kerala Minimum Wages Schedules, agricultural work has two categories- “light work” for which the minimum wages is Rs. 72/- per day and “heavy work” for which the minimum wages is Rs. 125/- per day. In this instance, women often are primarily engaged in “light work” by the employers even when they are physically fit to do “heavy work” and hence,

they only earn Rs. 72/- per day when they could have easily earned Rs. 125/- per day<sup>8</sup>.

#### 4. What accounts for the limited effectiveness of ERA?

Clearly, ERA has not been as effective as was intended in bringing about gender equity in the labor market. We, therefore, need to account for the factors responsible for its limited effectiveness.

- To begin with the term “work of similar nature” creates much scope for ambiguity in the implementation of the Act.
- Poor people, whose main objective is to earn an income, are more than willing to work at less than minimum wages and/ or accept gender inequity in wages rather than risk losing their job by antagonizing their employers by claiming better or higher wages.
- Using ERA also means bringing men into the picture either as employers or as co-workers and this is not always feasible for women in the existing patriarchal framework.
- Furthermore, the judicial process is very slow, and expensive and therefore, not feasible for many poor women.
- Although the Act covers both the organized and the unorganized sector, the general notion among women workers is that its applicability is limited to the organized sector. This is unfortunate since a large percent of the working women are in the unorganized sector and majority of these women come from the marginalized sections of the society. Furthermore, women working in this sector are not organized and therefore, have limited collective bargaining power.
- The definition of the employer used in the Act is the same as in Clause 2 of the Payment

<sup>8</sup> Source: Interview with Mr. Nikhil Dey, Social Worker and Activist, Mazdoor Kisan Shakti Sangathan

of Gratuity Act. This too limits the applicability of ERA to the unorganized sector.

- Penalties are not harsh enough.
- State governments do not have the financial resources to implement the Act. For example, the enforcement agencies at the district level lack the transportation facilities to implement the law. They are often dependent for transport on the same person they have to investigate. This does not allow them to take independent decisions.
- Labor departments across the country are overburdened with work. There are 30 labor laws in India that fall within the responsibility of labor inspectors. In this kind of a situation, labor inspectors tend to prioritize legislations as Minimum Wages Act, Factories Act, Employees' State Insurance Act as compared to the Equal Remuneration Act.
- We should also point out that although ERA is to prevent discrimination in recruitment and thereafter- which is an important provision to prevent occupational segregation in the labour market. But the Act seemed to have aggravated the stratification of some jobs as "female" and "male" accompanied by different pay levels. More awareness is needed on the non-discrimination part of the Act. Another important conclusion is that there is a need to reform the law to "equal employment opportunities" which covers pay, treatment, sexual harassment and all other employment related issues.

## Conclusions

The above review suggest that the Act has had limited impact in terms of ensuring gender equitable wages and more needs to be done to improve the effectiveness of this Act. Based on the above review, we suggest the following policy recommendations:

1. Legal experts along with trade union leaders can work towards a clearer and a concise definition of the term "same work or work of a similar nature". The definition adopted by ILO of "equal pay for work of equal value" as per The Equal Remuneration Convention (No. 100) could prove useful in this respect.
2. Changes in the law that would enhance its efficacy in the unorganized sector (for example, through a broader definition of the term "employer") would also be helpful.
3. Harsher penalties could help towards discouraging violations of prosecutions under the Act.
4. If the implementation of the Act could be prioritized, for example, by making it a job-responsibility of a particular Labor Inspector (as opposed to it being a responsibility of all Inspectors in the Labor Ministry), the chances of prosecutions could be improved as well.
5. A wider dissemination of the Act among workers, particularly in the informal sector, is required. Such dissemination should also have contact information of officers that workers could report to in case of violations of the Act. Additionally, a provision for ensuring that the identity of the complainant is not disclosed could be useful.
6. A comparative study of ERA with NREGA which seems to have had a greater success in ensuring gender parity in wages could also give useful pointers on a more effective legislation.
7. The focus should also be on policies that promote sharing of family responsibilities amongst men and women. In this context, the ILO's mandate on gender equality is of particular importance. Its mandate is to promote equality between all women and men in the world of work. This mandate is grounded in International Labour Conventions of particular relevance to gender equality - especially the four key equality Conventions. These are the Discrimination (Employment and Occupation) Convention, 1958 (No. 111),

Equal Remuneration Convention, 1951 (No. 100), Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183). Unless all of these co-exist, the idea of equal remuneration alone may be difficult to attain.

8. There is also a need for a policy measure such as Equal Employment Opportunities Commission Bill suggested by the Sachar Committee. Perhaps we can draw from the recommendations of the Expert Group set up by the Ministry of Minority Affairs in this respect. For example, among other things, it suggests that ERA has not been successful because it is not victim-driven in contrast to constitutional protection against discrimination by the state, which gives agency to the victim of discrimination to take up the matter directly with the Supreme Court and High Courts. The victim is accorded a secondary role in ERA and the proof required is beyond reasonable doubt. So, successful prosecutions are rare, and immediate benefits to the victim are limited. Therefore, in order to ensure successful implementation, agency must be placed in

NREGA (2005) guarantees at least 100 days of employment to every household member whose adult member is willing to undertake unskilled labour. Mr. Nikhil Dey, Activist, MKSS points out that in this Act, there is no difference between a male and female worker and the reference is only to an adult member who wants to volunteer to work as an unskilled labor and everyone is paid the same wage irrespective of gender.

the hands of those who are most likely to benefit from it<sup>9</sup>.

9. Finally, continued efforts through advocacy and public debate to bring about a stronger social commitment for equality are needed.

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<sup>9</sup> See

<http://www.thehindu.com/fline/fl2510/stories/20080523251010200.htm>

## Annex I

### Brief Note on the Equal Remuneration Act, 1976

#### Introduction

The Equal Remuneration, 1976 (Act 25 of 1976) (hereinafter referred to as “**the Act**”) was enacted by Parliament on 11<sup>th</sup> February 1976 to provide for the payment of equal remuneration to men and women and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith and incidental thereto.

The primary objective<sup>1</sup> of the Act is to ensure equal pay for equal work for both men and women as provided under Article 39<sup>2</sup> of the

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<sup>1</sup> **Prefatory Note – Statement of Objects and Reasons.** – Article 39 of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the President promulgated on the 26<sup>th</sup> September, 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the Constitution may be implemented in the year which is being celebrated as the International Women’s Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of similar nature and for the prevention of discrimination on grounds of sex.

(2) The Ordinance also ensures that there will be no discrimination against recruitment of women and provides for the setting up of Advisory committees to promote employment opportunities for women.

(3) The Bill seeks to replace the Ordinance 12 of 1975, promulgated by the President on Sept. 26, 1975

<sup>2</sup> **Article 39.** The State shall, in particular, direct its policy towards securing—

Constitution of India and further to ensure that there is no discrimination against recruitment of women.

The Act derives its inception from Article 39 of the Constitution which is provided under Part IV under the chapter ‘Directive Principles of State Policy’ and the object of which is to embody the concept of a welfare state. As such, the Act can be called a welfare legislation.

Historically, equal pay for equal work has been a slogan of the women’s movement. Equal pay laws, therefore, usually deal with sex-based discrimination in the pay scales of men and women doing the same or equal work in the same organization. The Equal Pay Act, 1970 and the Equal Pay (Amendment) Regulations, 1983 in Great Britain are for a similar purpose as that of the Act in India.

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(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

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

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

1[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

## Applicability and Commencement of the Act:

The Act applies to the whole of India and has come into force in respect of different establishments on such dates as the Central Government has, by notification appointed.

Till date, about 22 establishments in the organized sector are covered by the Act.

## Salient Features of the Act:

- The Act casts a duty on the employer to pay equal remuneration to men and women workers for same work or work of similar nature (S. 4) as also maintain registers in relation to the workers employed by him (S. 8).
- It further mandates that no discrimination shall be made while recruiting men and women workers for the same work or work of similar nature or in any condition of service subsequent to recruitment such as promotions, training or transfer (S. 5)
- The expression “*same work or work of a similar nature*” has been defined under the Act [S. 2(h)] to mean work in respect of which the skill, effort and responsibility are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.
- It provides for constitution of an Advisory Committee for the purpose of providing increasing employment opportunities for women (S. 6)
- It grants power to the appropriate Government to appoint authorities for hearing and deciding claims and complaints (S. 7) and also appoint Inspectors (S.9) for the purpose, *inter alia*, of making an investigation as to whether the provision of the Act are being complied with by employers
- S. 10 of the Act provides for penalties, including imprisonment, for the contraventions of the provisions of the Act and S. 11 provides for Offences by Companies.
- The cognizance and trial of offences is provided under S. 12 of the Act which mandates that no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the Act and no Court shall take cognizance of such offence except upon its own knowledge or upon a complaint made by the appropriate Government or by the person aggrieved by the offence or by any recognized welfare institution or organization.
- The benefit conferred to women under the Act is not absolute and unconditional but subject to S.16 of the Act which authorizes restriction regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate Government on it being satisfied that the differences in regard to the remuneration of men and women workers in any establishment, or employment is based on a factor other than sex.
- The Equal Remuneration Rules, 1976 lays down the procedure for making complaints regarding contravention of the Act as also for claims regarding non-payment of wages.

### **Authority for Redressal of Complaints under the Act:**

The [Central Industrial Relations Machinery \(“CIRM”\)](#) in the Ministry of Labour is responsible for enforcing the Act. CIRM is an attached office of the Ministry and is also known as the [Chief Labour Commissioner \(Central\) \[CLC\(C\)\] Organisation](#). The CIRM is headed by the Chief Labour Commissioner (Central).

Presently there are 18 regions each headed by a Regional Labour Commissioner (C) with Headquarters at Ajmer, Ahmedabad, Asansol, Bangalore, Bombay, Bhubaneshwar, Chandigarh, Cochin, Calcutta, Guwahati, Hyderabad, Jabalpur, Madras, New Delhi, Patna, Nagpur, Dhanbad and Kanpur.

The Assistant Labour Commissioner (C) is the ‘appointed authority’ and the Regional Labour Commissioner (C) is the Appellate Authority under the Act. (S. 7)

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Act.

Complaints can be filed by a worker, a group of workers, a legal practitioner or an official of a registered Trade Union; in addition the Central Advisory Committee members are empowered to file complaints.

The following social welfare organizations have been recognized, under the Equal Remuneration Act, 1976, for the purpose of filing **complaints in courts** against employers for violation of the provisions of the Act:

- The Centre for Women’s Development Studies, New Delhi.
- The Self-Employed Women’s Association, Ahmedabad.
- The Working Women’s Forum (India), Chennai.

- The Institute of Social Studies Trust, New Delhi.

Penalties under the Act can include imprisonment up to one year, or two for a second offence or a fine upto twenty thousand rupees, or both.



## Annex II

### a. Analysis of the Supreme Court Cases on the Equal Remuneration Act, 1976<sup>i</sup>

S. No.	Year	Case Name and Citation	Place of Institution	Sector	Type of Work	Point of Law
1.	1981	Air India Vs Nergesh Meerza & Ors.  (1981) 4 SCC 335	Bombay	Airline	Air Hostess	<ul style="list-style-type: none"> <li>Prohibit discrimination on ground of sex alone and not on the ground of sex coupled with other considerations-Central Government making declaration under S. 16 of the ERA that in matters of allowance and other types of remunerations between Air Hostesses and Flight Stewards in Air India and Indian Airlines “based on different conditions of service and not on difference of sex”- Hence, neither the above constitutional mandate nor S. 4 of the ERA violated by the different conditions of service for Air Hostesses</li> <li>Benefits conferred to females under S. 4 of ERA are not absolute and unconditional but subject to S. 16 of the Act.</li> </ul>
2.	1982	People’s Union for Democratic Rights & Ors. Vs Union of India & Ors  (1982) 2 SCC 494	Supreme Court  (Public Interest Litigation under Article 32)  New Delhi	Construction	Casual Labour	<ul style="list-style-type: none"> <li>Worker temporarily employed by contractors in connection with construction works are entitled to the benefits of relevant labour laws like the ERA and to seek implementation thereof under Article 32 of the Constitution before the Supreme Court</li> <li>Directions given by the Supreme Court to the Government and the concerned authorities for enforcing observance of the provision of the ERA, <i>inter alia</i> by the contractors engaged in the construction work connected with the Asian Games in Delhi</li> </ul>

3.	1982	People's Union for Democratic Rights & Ors. Vs Union of India & Ors  (1982) 3 SCC 235	Supreme Court  (Public Interest Litigation under Article 32)  New Delhi	Construction	Casual Labour	<ul style="list-style-type: none"> <li>Where large construction projects entrusted by State to private contractors, the State has supervening responsibility to see that the benefits under labour laws, which touch upon the fundamental rights are not infringed by the private contractors or any other person</li> </ul>
4.	1985	P. Savita & Ors. Vs Union of India, Ministry of Defence	Jabalpur, MP	Government Ordnance Factory	Draughtsman	<ul style="list-style-type: none"> <li>Discrimination amongst persons holding identical posts and discharging identical duties-Classification of Senior Draughtsmen in two groups with higher and lower scales of pay-Lower scale equivalent to the junior post of Draughtsman- Both the groups discharging the same functions and duties-Selection to the higher scale based on seniority cum fitness instead of merit cum seniority-Held, classification violative of Article 14 i.e. the principle of 'equal pay for equal work'- Same pay scale should be available to all Senior Draughtsmen-Those getting the lower scale also entitled to the higher scale</li> <li>Supreme Court also considered but did not express any views on whether Article 39(d) which is the basis of the ERA should be read with Article 14 so as to confer it the position of fundamental right</li> </ul>
5.	1987	M/s Mackinnon Mackenzie & Co. Ltd. Vs Audrey D'Costa & Anr.	Bombay	Private Clerical Work	Confidential Lady Stenographer	<ul style="list-style-type: none"> <li>Confidential Lady Stenographers performing same or similar work as that of their male counterparts, hence held that lower remuneration to Lady Stenographers violative of S. 4(1) of the ERA</li> <li>Settlement arrived at between management and</li> </ul>

		(1987) 2 SCC 469				<p>employees after negotiations cannot be a valid ground or effecting discrimination in payment of remuneration between male and female employees performing same or similar nature of work</p> <ul style="list-style-type: none"> <li>• No exemption from the ERA can be claimed by employer on ground of financial incapability</li> <li>• Where sex discrimination is alleged, there should be a proper job evaluation before any further enquiry is made</li> <li>• In deciding that the work is the same or broadly similar, the Authority should take a broad approach and should not defeat a claim on trivial grounds</li> </ul>
6.	1990	<p>Dharwad Distt. P.W.D. Literate Daily Wage Employees Association &amp; Ors. Vs State of Karnataka</p> <p>(1990) 2 SCC 396</p>	Bangalore, Karnataka	Government Service	Daily and Monthly Rated Employees	<ul style="list-style-type: none"> <li>• Equal pay for equal work and providing security for service by regularizing casual employment within a reasonable period have been unanimously accepted by the Supreme Court as a constitutional goal to the socialistic policy of India.</li> <li>• Implementation of the principle of 'equal pay for equal work' is obligatory on the State by virtue of Article 39(d) r/w Articles 14 and 16 of the Constitution as also the socialistic philosophy adopted by the Constitution by adding the word 'Socialistic' in the Preamble</li> <li>• Daily/monthly rated or casual workers working continuously for long under the State must be regularized in service with parity in pay.<sup>ii</sup></li> </ul>

7.	1993	State of Madhya Pradesh & Anr. Vs Pramod Bhartiya & Ors  (1993) 1 SCC 539	Madhya Pradesh	Education (Government)	Lecturer	<ul style="list-style-type: none"> <li>• Burden to establish right to equal pay is on the person claiming the same</li> <li>• Principle of equal pay for equal work inapplicable where distinction is based on qualitative difference in functions and responsibilities</li> <li>• Equal pay for equal work is implicit in the doctrine of equality enshrined in Article 14, it flows from it. To say that the said rule is stated as a Directive Principle of State Policy and is thus not enforceable in a court of law is to indulge in sophistry. The rule is a much a part of Article 14 as it is of Article 16 (1) i.e. equality of opportunity</li> <li>• ERA is an enactment to give statutory shape to the rule of “equal pay for equal work both for men and women”</li> </ul>
8.	1996	Sita Devi & Ors. Vs State of Haryana & Ors.  (1996) 10 SCC 1	Supreme Court (Public Interest Litigation under Article 32)  New Delhi	Education (Government)	Under-Matriculate Instructors	<ul style="list-style-type: none"> <li>• While considering a case on the principle of equal pay for equal work, education qualifications as a basis for classification is relevant</li> <li>• Person claiming parity in employment should establish similarity in qualifications, duties and functions</li> </ul>
9.	1998	Associate Banks Officers’ Association Vs State Bank of India & Ors.	Supreme Court (Public Interest Litigation under Article	Banking	Bank Employees	<ul style="list-style-type: none"> <li>• Historical background of the principle of Equal pay for equal work explained with relevance to the ERA</li> <li>• Cautious approach is to be adopted while applying the principle and mere difference is not discrimination. Different organizations or even within the same organization there may be several considerations which affect the wage structure and a simplistic approach may</li> </ul>

		(1998) 1 SCC 428	32) New Delhi			<p>lead to undesirable results</p> <ul style="list-style-type: none"> <li>• The doctrine is designed to correct irrational and inexplicable differentiation and it is easier to identify such discrimination when the discriminated group is sex based (women) or colour based (Blacks in USA) or cast based (Scheduled Castes etc) and more difficult to identify in other cases.</li> </ul>
10.	2003	Air India Cabin Crew Assn. Vs Yeshaswinee Merchant & Ors  (2003) 6 SCC 277	Bombay	Airline	Air Hostess	<ul style="list-style-type: none"> <li>• Article 15 and 16 do not prohibit special treatment for women. The constitutional mandate is infringed only where the females would have same treatment with males but for their sex. In English law “<i>but-for-sex</i>” test has been developed to mean no less favourable treatment is to be given to women on <i>gender based criterion</i> which would favour the opposite sex and women will not be deliberately selected or less favourable treatment because of their sex</li> <li>• The factual foundation of the declaration made by the Government under S. 16 of the ERA to the affect that the differences in the remuneration of male and female employees were not based only on the ground of sex remains unshaken and the declaration has not lost its efficacy on amendment introduced to S. 5 in the year 1977.</li> <li>• Terms and conditions willingly accepted by the employees after negotiation in the course of industrial adjudication cannot be questioned on the basis of provisions of S. 5 of the ERA.</li> <li>• Early-age retirement policy for air-hostesses in Air India does not contravene S. 5 of the ERA and otherwise, it is saved by S. 15(a) and 15(b)(ii) of the Act.</li> </ul>

11.	2006	U.P. State Sugar Corpn. Ltd. and Anr. Vs. Sant Raj Singh and Ors  (2006) 9 SCC 82	Maholi, Uttranchal	Sugar Industry	Assistant Laboratory Incharge	<ul style="list-style-type: none"> <li>• Doctrine of equal pay for equal work under Article 39 (1) cannot be applied in vacuum - constitutional scheme postulates equal pay for equal work for all those who are equally placed in all respects - possession of higher qualification has all along been treated by Supreme Court to be valid basis for classification of two categories of employees.</li> </ul>
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**b. Analysis of the High Court Cases on the Equal Remuneration Act, 1976**

S. No.	Year	Case Name and Citation	Place of Institution	Sector	Type of Work	Point of Law
1.	2004	Bimla Rani & Ors. Vs Appellate Authority Equal Remuneration Act, 1976 & Ors.  113 (2004) DLT 441	Delhi High Court	Retail	Packing Cleaners	<ul style="list-style-type: none"> <li>• While fixing pay scales of employees, nature of work is the determining factor and not designation</li> <li>• It is not permissible under the Constitutional Schemes and the provisions of the ERA to fix pay scales only by considering the designation</li> <li>• The fact that India is a signatory to the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value adopted in the General Conference of the International Labour Organisation (ILO) on 29<sup>th</sup> June, 1951 has also been highlighted.</li> <li>• The said Convention provides that each Member State shall ensure the application to all workers, the principle of equal remuneration for work of equal value and that the same shall be applied through legislative means</li> <li>• Reference has also been made to another convention which came into effect in December, 1979, being the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Article 11 of this Convention provides, inter alia, for all States to take appropriate measures to eliminate discrimination against</li> </ul>

						women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular 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.
2.	2005	Co-operative Store Ltd. (Super Bazar) Vs Bimla Devi  (2005) 7 AD (Delhi) 794	Delhi High Court	Retail	Packing Cleaners	<ul style="list-style-type: none"> <li>The aforesaid decision was challenged by the Co-operative Store Ltd. (Super Bazar) before the Division Bench of the High Court which upheld the aforesaid decision and the law laid down therein</li> </ul>
3.	2000	Chinnathambi and Ors. Vs. P.O., Labour Court and Anr.  (2000) III LLJ 1105 Mad	Madras High Court	Plantation	Workers	<ul style="list-style-type: none"> <li>A claim of equal pay for equal work cannot be raised for the first time before the High Court, unless their right is determined by a competent authority in an appropriate proceeding, even if the petitioners are entitled for equal pay for equal work under Article 14 of the Constitution of India.</li> <li>Once the disparity in payment between the petitioners and the workers governed under the settlement, dated April 8, 1987, is claimed to be based on reasonable classification by the management, the petitioners cannot claim equal pay as an existing right; and the same cannot be awarded automatically by the employer without such a right of equal pay for equal work being determined by raising an</li> </ul>



						<p>industrial dispute under Section <u>10(1)</u> of the Industrial Disputes Act</p> <ul style="list-style-type: none"> <li>• However, the HC further took note of the fact that the ERA was enacted to provide equal remuneration to men and women workers for the same work or work of a similar nature and to prevent discrimination on the ground of sex. As such, it was held that the said salient principle is intended to enforce Article <u>14</u> in spirit and substance.</li> <li>• Hence, the HC applied the provisions of ERA to the case of the petitioners, particularly since some of the petitioners were women workers.</li> </ul>
4.	1987	Koshy and Thomas Vs. State  ILR 1987 KAR 3814	Karnataka High Court	Construction	N.A.	<ul style="list-style-type: none"> <li>• A complaint was filed by the Labour Enforcement Officer (Central), Bangalore, an Inspector under the ERA against the Petitioners under Section <u>10(1)(a)</u> of the ERA, for contravention of Rule 6 made punishable under Section <u>8</u> i.e. failure to maintain the Register in Form D, appended to Equal Remuneration Rules, 1976</li> <li>• It has been held that the words "under the authority of" appearing in S. 2 (a) (i) of the ERA means pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master, and that a Company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its Memorandum of Association and the Articles</li> </ul>

						of Association, cannot be said to be carrying on its business pursuant to the authority of the Central Government
5.	1995	R.H. Bhatt Vs. Principal Chief Conservator of Forests and Anr.  (1995)1GLR327	Gujarat High Court	Forest and Wildlife	Range Forest Officer	<ul style="list-style-type: none"> <li>• Where the action of respondents in re-fixing pay scale of petitioner was challenged, it was held that the differentiation made was not violative of Articles 14 and 16 and does not violates doctrine of 'equal pay for equal work' since the following were observed in both the employments: <ul style="list-style-type: none"> <li>i. educational qualifications prescribed for both posts different</li> <li>ii. nature of duties and responsibilities to be performed different</li> <li>iii. recruitment rules different</li> <li>iv. other posts have promotional avenue whereas petitioner's posts does not have promotional avenue</li> <li>v. petitioner's post lower than other posts</li> </ul> </li> </ul>
6.	1997	Irene Fernandes Vs. Neo Pharma (Pvt.) Ltd.  (1997)99BOMLR633	Bombay High Court	Medicine	Junior Executive (Accounts Department)	<ul style="list-style-type: none"> <li>• Once the requirements of the ERA are satisfied the applicant has to be paid the same basic wage or salary. The entitlement under the provisions of the ERA is totally independent of any settlement.</li> <li>• The proceedings before the authority under ERA are clearly quasi judicial in nature. It has to record evidence, hear the parties and give final directions which are executable. The authority is expressly given all powers of a civil court. As such whenever any application</li> </ul>

						<p>is made under the provisions of the ERA or complaint is lodged, the authority will have to record evidence of witnesses and for that purpose administer oath. The other side will have to be given an opportunity to cross-examine the witnesses. Documentary evidence will have to be taken on record and appropriately exhibited and after hearing both sides, the authority will have to give reasoned order in support of his directions which ultimately it may give.</p>
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➤ **ANALYSIS DONE BY ARSHDEEP SINGH**

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<sup>i</sup> In most cases the ERA is not being being used to address differentials between men and women. Most cases, except a few, relate to wage differential between casual/permanent or daily wage/permanent employees or if they have been performing similar duties as others. In most cases, the women (except the Super Bazar, Air India and Mackinnon Mackenzie Case) have actually not used the ERA.

<sup>ii</sup> This can be contrasted with the case of the Anganwadi workers, Government being the biggest employer and anganwadi workers are not paid in par with the male employees in the government service doing more or less similar kind of job. When they took up this issue with the Government the answer given was that they are not permanent employees and brushed it aside and have to fight for the minimum wages which are more or less equal to men. (As quoted by Mr. Narasimhan, President – All India Trade Union Congress in the interview section)

## Annex III

### A Summary of the Debates in the Parliament on the Equal Remuneration Act

*Navika Harshe*

The Equal Remuneration Bill has had an unusual journey in becoming an Act. It was first passed as an ordinance in the year 1975. Ordinances are usually passed on matters of an urgent nature, when the house is not in session. The bill was then debated and passed in the Rajya Sabha and later the Lok Sabha. The provisions of the bill are in keeping with the Article 15 and article 39 of the constitutions hence there was no opposition to the bill in either of the houses of Parliament.

In 1974 Shri Indrajit Gupta brought forward a motion stating that the year as it was also the International Women's Year the Government should take steps to ensure equality of women in every walk of life. This motion was later adopted by the Government and during the discussion on this motion many members including the minister spoke about the need of Equal Remuneration for women.

On 12<sup>th</sup> January 1976 the Equal Remuneration Bill was discussed in the Rajya Sabha. Discussing the need for such legislation the Minister for Labour Shri K.V Raghunath Reddy gave the following reasons. India ratified the International Labor Organization (ILO) in 1958 and as part of the terms of convention every member state that ratified the convention had to promote as well as ensure the applications of principle of equal remuneration through laws or regulations.

The need for the act was also felt because to the findings of the report of the National Commission on Labour, which states that the fixing of statutory minimum wages had reduced the gap between men and women, yet discrimination still existed in sectors like agriculture and other unorganized sectors. The Committee on Status of Women headed by Dr Phulrenu Guha also

strongly recommended the need for 'legislative action' to provide equal pay for equal work.

The Salient features of the bill as stated in the Parliament were<sup>1</sup>

1. The bill provides for the payment of equal remuneration to men and women workers for the same work or work of similar nature. This stipulation would have effect notwithstanding anything inconsistent in any existing law, award, agreement or contract service, where the rates of remuneration for the same or similar nature of work are different on the ground of sex, the higher or the highest of such rates shall be payable to men and women workers.
2. No employer shall, while making the recruitment for the same work or work of similar nature, make any discrimination against women except where the employment of women in such work is prohibited by any law, such as mines.
3. The bill also provides for the setting up of one or more advisory committees by the appropriate Government for promoting employment opportunities for women.
4. Provisions made for the appointment of authorities for hearing and deciding claims, appellate authorities for hearing appeals and inspectors for the purpose of making investigations.
5. Contravention of any provision of the Act shall be punishable with fine which may extend up to Rs. 5000

The bill was largely unopposed in both the houses of parliament yet some of the issues of concerns which were raised in both the houses during the debates in Parliament are enumerated below:

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<sup>1</sup> Lok Sabha Debates, January 30, 1976, 'Equal Remuneration Bill.' Pno:168-222.

## Definition:

The definition of work of similar of similar nature was considered ambiguous by many members of Parliament. Shri U.K Lakshmana Gowda raised the issue that the definition “‘same work or work of a similar nature’ means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by a man or a woman and the differenced, if any between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.” Is a deviation from the original recommendations of ILO and what the reasons for the departure were? In his reply the Labour minister stated that “‘same work or work of similar nature is more practicable and in fact a better definition than ‘work of equal value’ because equal value can be misinterpreted.”

Some members felt that the amount of wages paid to women should be the same but the amount of work they do should be reduced as women have to work at home and take care of the family.

Shri. Sanat Kumar Raha said that the need for a separate act for equal remuneration was not clear as this could have been added as an amendment clause to the Minimum Wages Act or a national wage system or any other industrial bill. He also mentioned the fact that article 39 of the constitution already provided for the equal remuneration and yet nothing had been done to ensure equality. He was very critical of the fact that the government only took steps when it was extremely necessary. Many of other members were also critical of the fact that the legislation was brought so late.

## The Unorganised Sector

In his speech while introducing the bill in The Rajya Sabha <sup>2</sup>The minister for Labour Shri K.V Raghunath Reddy said “ This Measure is significant not only because it coincides with the international Women’s year but also because it immediate relief to millions of our womenfolk employed or seeking employment. As most of those women belong to the weaker sections of the community and are largely employed in the unorganized sectors of industry, it is only appropriate that this measure was taken on a priority basis, as part of the Government’s policy of improving the condition of the weaker and exploited sections of the community.”

In the Rajya Sabha some of the questions raised were on the definitions of employer, which is the same as in clause 2 of the Payment of Gratuity Act. This aspect of the act has limited the application of the act to only the organized sector. Members of parliament including Shri. Lakshmana Gowda and Shrimati. Sumitra Kulkarni cited examples from their constituencies as examples of discriminatory practices followed. Shrimati. Sumitra Kulkarni also mentioned the fact that Sewa gram ashrams do not follow the principle of equal pay for equal work. Shrimati Roza Deshpande mentioned the fact that there were certain jobs earmarked for women in the industrial and agriculture sector and these jobs are paid less.

In the Lok Sabha most of the issues raised were related to the unorganized sector Mr. S.P Bhattacharya raised the point that even though in the introductory speech the labour minister said that the act would include the unorganized sector also, the bill did not specifically mention the fact that it is applicable to the unorganized sector She also mentioned the fact even if the act is enforced the number of women covered in the act namely

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<sup>2</sup> Rajya Sabha debates ‘ The Equal Remuneration Bill.’6 January 1976, 12,January,1976,3, February1976.

the organized sector are very few. Shrimati Roza Deshpande also made a specific mention of the fact that most women are either unskilled or semi skilled workers and hence they may need more protection. Many other members including Shri K Mayathevar and Shrimati Bhargavi Thankappan raised the issue of the unorganized sector especially women in the cashew industry , bidi making units and plantations.

In his reply to the discussion the labour minister stated that the act would cover all occupations under the schedule of the minimum wages act and since the minimum wages act also deals with agriculture the act would be applicable to the agricultural sector also.

Shrimati Sumita Kulkari in the Rajya Sabha said that she was worried that many employers who would pay women equally would increase the work load of women or many women would be retrenched in order to avoid paying equal wages. She cited the status of women report which showed that number of women employed had declined over the years and she felt that the situation may worsen if adequate provisions were not made in the act to protect women.

All the members who participated in the debate in both houses of parliament spoke about the unorganized sector and the need to protect women working in agriculture, bidi making, plantation and construction.

### **Advisory Council**

“An advisory committee is going to be constituted by the central government or the state government, as the case may be. This committee can not only go into the question of retrenchment of women workers but also into the question of potential possibilities of women employment. If such a committee comes to the conclusion that a particular undertaking could have employed more women and makes a recommendation to that effect to the government

the government can issue directions”. This was the description given by the Labour minister of the Advisory Council

The advisory committee can only look into the extent of women employed and not into the wage structure. He also mentions the fact that the advisory council should look into the matter of implementing the Act. Mr. Sanat Kumar Raha welcomed the idea that the advisory council would be comprised of a majority of women but felt that the advisory council should also be the implementing authority of the Act. He also suggested that there should be ‘women special authority’ to hear grievances from women workers. Some members felt that the women in the advisory council should be in the majority and not just fifty percent, to this the minister agreed that they would make sure that women were in the majority in the committee but such a provision could not be provided for under the law.

Shri Krishnarao Narayan Dhulap proposed that in place of just women in clause 6 of the act which deals with the advisory council he proposed the term working women be added. This motion was negated in the house.

In the Lok Sabha Shrimati Roza Deshpande said that the decision of the advisory council should not just be advisory but should be mandatory. She also raised the issue of unskilled workers and suggested that the government should provide vocational training to them. She recommended that a certain percentage of jobs should be reserved for women in certain industries and they should be provided with training centers to train them for different jobs and the advisory committee should see to it that a certain percentage of women are employed in each industry.

In his reply the labour minister stated that “The advisory committee can make certain recommendations; and it is not a mere, general advisory committee. An advisory committee can

be there for the textile industry; it can be there for the textile industry; it can be there for mines; that committee can be there for the sugar industries as also the various employments and occupations .People who have got special knowledge of these industries can be appointed as members of these advisory committees. What is contemplated is this. After the advisory committees tender their advice or make their recommendation, government would examine them, give opportunities to the employers or whoever should be given an opportunity and then the government gives directions as to what is to be done, on the committee's advice. So though at one stage it is recommendatory at another stage it becomes mandatory”.

Shrimati Bhargavi Thankappan suggested that the women workers representing various trade unions should be included in the Advisory Committee. The minister in his reply stated that it was necessary for the trade unions to take an interest in getting the provisions implemented but did not specifically say anything about including members of trade unions in the advisory council. During the voting when the question was raised by Shrimati Roza Deshpande the Minister said “They are there. They are going to be expanded.”

### **Implementing Authority**

Two clauses connected to the debate led to a lot of debate among the members of Parliament. The first was clause 12(2) which states that “No court shall take cognizance of an offence punishable under this Act except upon a complaint made with the sanction of the appropriate Government or an officer authorized by it in this behalf.” Shrimati Sunita Kulkari felt that this would make the application of the act difficult especially in the unorganized sector as unions do not exist in this sector. She also mentioned the fact that the act does not lay down clear cut ways of implementing the Act as the Act specifically does not look into these aspects. In his reply the

minister stated that a provision had been made to appoint inspectors who would lodge the complaint instead of the allowing the aggrieved to have a cause to complain and hence the need for sanction he also stated that if the sanction worked adversely then it would be removed.

The second Clause 12 (1) which states that “No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act” was also widely debated as it was felt that it would make it more difficult for the women to access courts and since the amount of the fine for not complying with the act was not too high there was no need for a magistrate of the first class.

Shrimati Bhargavi Thankappan suggested that arrangements should be made to review the implementation of the act every three months or at least once a year.

Shrimati Sunita Kulkari said that the penalty of Rs 5000 was a small amount and would not act as a deterrent to the offenders she suggested that imprisonment as an alternative punishment

### **Other Issues**

Some of the other issues raised in Parliament were that implementing the act would create competition from the male workers which ultimately would lead to the exclusion of women workers and hence the Act should make special provisions to ensure that this does not happen. The other worry which was expressed by members was that many employers would retrench women workers instead of paying them equal wages.

The Act stated that it would be implemented in three years many members felt that was too long a time for implementing the act. Members were worried that because the ordinance was passed prior to the Act, a lot of women may have been retrenched even before the act was passed.

Many members felt that the amount of the fine was too paltry and hence would not act as deterrent to employers. Some suggested that imprisonment for a certain period should also be part of the punishment for violating the norms of the act.

### **Equal Remuneration Act (Amendment) Bill 1987**

The Equal Remuneration Amendment Bill was first passed in the Rajya Sabha<sup>3</sup> and later in the Lok Sabha<sup>4</sup>. The bill was presented in the Rajya Sabha by Shri Ajit Panja former minister of Information and Broadcasting. The bill was presented in the Lok Sabha by the minister for Labour Mr. P.A. Sangma.

The amendments were brought to section 5, and section 10 of the original Act. The amendment to section 5 would prevent discrimination to women during the course of employment. Changes to section 10 prescribed an increase in the penalty for not following the provisions of the Act.

While presenting the bill in the Lok Sabha the Minister for Labour Mr. P. A. Sangma called the Equal Remuneration Act (ERA) as one of the 'most important Acts relating to women'. He also specifically stated the act covers all categories of employments in the organized and the unorganized sector.

Explaining the need for the amendment to the act the minister stated that the amendment was intended to rectify certain lacunae and omissions in the ERA.

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<sup>3</sup> Rajya Sabha Debates, November 23, 1987 'The Equal Remuneration (Amend.) Bill', P.no 220-274. November 24, 1987 p.no236-249.

<sup>4</sup> Lok Sabha Debates, December 7, 1987, 'The Equal Remuneration (Amend.) Bill', P.no 384-426. December 9, 1987, P.no 284-308.

“The Principal Omission in the existing act is that while the Act prohibits discrimination against women in recruitment there is no specific clause prohibiting such discrimination during their employment. Under the existing Act, therefore, any discrimination against women in matters of promotion, increments, etc does not amount to an offence under Equal Remuneration Act”.

“One of the reasons the Act has not been as effective as it should have been is that the penalties provided in the Act are comparatively light. It is proposed to make these penalties far more stringent”.

“To make prosecution easier, it is also proposed to permit individuals and recognized welfare institutions or organisations to file complaints in court”.

The discussion in this bill along with a focus on the unorganized sector also brought out issues of the violation of the act in organized sector including public sector undertakings some of the issues raised in the ERA main bill were again raised in the amendment bill.

### **Implementation**

In the Rajya Sabha as well as the Lok Sabha Most of the members asked for an explanation for the lack of proper implementation of the ERA. In the Rajya Sabha Shri Dipen Ghosh said that the definition of 'work of similar nature was an ambiguous term and was subject to interpretation hence he felt it required a clearer definition. Shri Yella Sesi Bhushan called the ERA “a dead bill in the archives of the Government legislature for the last one decade.” He also mentioned the fact that there was no machinery in place to enforce the law, which was demonstrated by the fact that there were only 240 prosecutions under the central sector from the year 1982 to 1984 and excepting Uttar Pradesh no state had any prosecution. This clearly showed that there was a dire need to implement the act properly.



Shrimati Ela Ramesh Bhat said that “if only three labour legislations, i.e., The Minimum wages Act, the contract labour Act and the migrant labour act are implemented the life of labour in this country would be very different.” She mentioned the fact that none of the trade unions were willing to raise the issue of equal wages for women. She also asked the minister what the government had done to bring the unorganized sector into the fold of the formal or organized sector. And what was being done to bring women from the piece rate wages to time-rate wage? She urged the minister of information and broadcasting to give wide publicity to the act, and give priority to women’s organisation in registering complaints the same point was made by Shrimati Vyjayantimala Bala in the Lok Sabha. Shri. Santosh Bagrodia made the point that wages should be linked to productivity he further said that he was not disputing the need for minimum wages, he said they should increase the wages but in some way also link wages to productivity. He is the only member who justified paying women less in construction work by saying that “the output of women was much less and therefore employers do not like to pay as much as to men.” He also said women need to change their image and they should come together and fight for their rights. He also said that the voluntary organizations which are allowed to register cases should be registered so that they do not misuse the act.

Shri Ghulam Rasool Matto said that the act may have certain shortcomings yet it was critical that the house supported it. He mentioned the need for providing women with special privileges during birth of a child or in matters related to transfers.

Shri Thampan Thomas said that to his knowledge it was not clear who the implementing authority of the act was

In the Lok Sabha Dr. Datta Samant stated that creating a central legislation on the subject of labour was of no consequence as labour was a

state subject and change could only be brought through change in the state laws. He also gave examples from the organized sector especially mills in Bombay and Ahmedabad where the women were not paid equal wages and many times women were retrenched and many mill owners had given it in writing to both the trade unions and the government that they were not going to employ women. He pointed out that if this was the state in the cities then it would be extremely difficult to implement the act in rural areas where women were not organized.

Shri Garadhar Saha stated that the expression ‘The work of similar nature’ is a vague expression. He also said that there was a need of proper monitoring of the implementation of the act.

Shrimati Kishori Sinha mentioned the minimum wages and equal remuneration are connected and without implementing one the other cannot be implemented. She urged the Government to **give priority to women’s organizations to be able to complain.**

Dr Phulrenu Guha felt that unless there is enough awareness created about the act in a male dominated society the act can never be properly implemented.

Shri. Bhadrashwar Tanti was very critical of the way a complaint could be registered he was of the opinion that an individual should be allowed to lodge a complaint.

### **Organised sector**

In the Rajya Sabha Shri Dipen Ghosh gave examples of different sectors where equal wages were not being paid. Shri Sharad Yadav, Shri P.N Sukul also made a mention of this fact

Ms. Mamta Banerji in her speech in the Lok Sabha said that a lot of private sector organizations do not hire women as they do not want to grant

them maternity leave. In both the organized, and the unorganized sector women do not get equal opportunities. “How can the right to equal remuneration work unless you give right to equal employment opportunities?” she suggested the a parliamentary committee on the lines similar to the parliamentary committee development of schedule castes and schedule tribes should be set up for redressing the grievances of women.

Shri Manoj Pandey talked of the problem of contract labour which even many of the Government departments were hiring and were not paying equal wages. He stated that one of the reasons the act could not be properly enforced was because of the practice of hiring contract labour. Many members raised the issue that even public sector undertakings do not follow the ERA. Shri Bapulal Malviya pointed out that even in the municipalities and the municipal corporation women are not paid equal wages.

### **Advisory Council**

In the Rajya Sabha Shrimati Ela Bhat said “as I understand it the purpose of the law is to not only give equal remuneration but also to give equal employment opportunities. For that Advisory Committees have to be formed under the law.” She then asked how often the Advisory Council met, when was the last time they met? Had the State Advisory councils been formed? The information and broadcasting Minister Mr. Ajit Panja who presented the bill in the Rajya Sabha stated that the last time the central advisory council met was on 31<sup>st</sup> January 1986. There was no clear information on the advisory council from most of the states or union territories, except Gujarat, Madhya Pradesh, Uttar Pradesh and Himachal Pradesh.

In the Lok Sabha Shrimati Vyjayantimala Bali said “the Central advisory committee and with the formation of State Advisory Committees, in each state should see to it that the law is enforced in letter and spirit”.

### **Unorganised Sector**

Most members in their speech made a mention of the fact that the unorganized sector was still not properly covered under the Act.

In the Rajya Sabha Shrimati Ela Ramesh Bhat said that in her travels across the country she found that the general feeling about the law was that it was non applicable to the unorganized sector, where majority of the women worked. She also said that the government was the biggest defaulter of the Act, and women were no better if they worked in the unorganized sector or for the government.

Shri Manoj pandey stated that even the minimum wages were not always paid and he said that one of the problems as to why this happened was because the minimum wages should have been fixed after assessing the ability of the farmer to pay the labour. The economic viewpoint of both the farmer and labour has to be kept in view before the minimum wage is fixed.

The Minister for Labour in his reply to the Lok Sabha said that since the majority of women work in the unorganized the main problem with implementation was that the women were not organized and hence they had no collective bargaining power. The state governments had financial constraints and hence were not able to implement the law. The enforcement agencies at the district level were immobile making them dependent on the transport provided by the very person they needed to inspect which did not let them take an independent decision. Hence improving the mobility of the enforcing agency was a necessary step in the implementation of the Act.

The enforcement machinery for the act was also limited to the district headquarters and was not available beyond that point. And unorganized workers who are aware of their rights are not able to take recourse to the law as they are not able to reach the place of justice.

Mr. P. A. Sangma talked about the fact that when the conference of the labour ministers was convened in 1987 the main agenda of discussion among the ministers was on the implementation of labour laws. During the discussion it was decided that in order to better facilitate the implementation of labour laws seven major laws related to labour would be chosen and implementing them would be the priority of the Government. The Equal Remuneration Act was one of the Acts which was selected. Following the selection an (action plan) was drawn to see how they could be implemented. These acts would also be publicized widely. On the aspect of monitoring the acts he said “Monitoring will be done at the regional level. We have decided to divide this country into six regions and have frequent meeting of the ministers where we will review the decisions taken and how much progress they have made.” In the zones one city was chosen as the place where the minister would meet, like in the south zone all the ministers would meet in Madras and in the east all the ministers would meet in Calcutta. After these meetings a comprehensive plan would be drawn for the proper implementation of the Laws. The entire exercise was scheduled to be completed by fifteenth January 1988.

Shri Ajay Mushran raised the problem dividing the country into zones and having the ministers meet in only one city would limit the implementation of the act to only those parts of the country, and hence the meetings should be held in different places also.

In his reply the minister stated that he would not only meet ministers but would also meet parliamentary consultative committee and also the members of Parliament attached to the ministry of labour. They would then be divided into two groups in which one would look into agricultural labour and the other would look into non-agricultural labour. The committee of Agriculture was going to submit its report and two committees had been appointed to look into self-employed women.

## Other Issues

Some of the other issues which rose in the Parliament during the debates and suggestions given by members include the problem of transfer of women from one city to the other as part of their job. Many felt that women should not be transferred as this would break the family. In reply to this the minister of Information and Broadcasting Shri. Ajit Panja replied that transfers were a problem but no special provision could be provided in the act to prevent women from being transferred.

Maternity leave was also one of the issues raised in the Parliament. Many members felt that with the implementation of the act many employers would not employ women as they would not want to give them maternity benefits.

Shrimati Vyjayantimala Bali said that a separate machinery consisting of women officers to supervise at the workplaces and factories and also in the rural areas should be created and established all over the country so that they can go and ensure that equal wages are paid to the women workers.

Some members felt that the punishment for violation of the act should be rigorous imprisonment and not just imprisonment.

The Equal Remuneration Act (Amend.) Bill also passed without any opposition.

## Reference to the Equal Remuneration Act in the 14 Lok Sabha (2004-2009)

In the Fourteenth Lok Sabha there was no debate on the Equal remuneration Act. There was one question asked on the implementation of the act. There were no specific questions about the implementation of the act. The answers in which the act was mentioned were on issues of the general implementation of the labour laws in the country.

## Reference:

- 1) 1)Lok Sabha Debates, January 30,1976, '*Equal Remuneration Bill.*'Pno:168-222.
- 2) Rajya Sabha debates 'The Equal Remuneration Bill.'6 January 1976, 12,January,1976,3, February1976.
- 3) Rajya Sabha Debates, November 23, 1987 '*The Equal Remuneration (Amendt.) Bill*', P.no 220-274. November 24, 1987 p.no236-249.
- 4) Lok Sabha Debates, December 7, 1987, '*The Equal Remuneration (Amendt.) Bill*', P.no 384-426.December 9, 1987,P.No. 284-308.

## Annex IV

### Interviews

#### 1. Cividep India

<http://www.cividep.org/>

#### Functioning and Cases

Cividep was started in 2000.

The major areas in Bangalore where garment industries can be found are Peenya, Mysore Road and Bomanahalli. There are about 1200 factories, each employing about 1,100 workers.

K Jayaram, Vice President of the Garment and Textile Workers Union said that the 985 officially recognized factories in Bangalore are owned by only about 150 people, each of whom will have a minimum of 10 factories.

Workers come from rural villages, Tamil Nadu and Andhra

Many women come from Mandya and have to be at the factory at 8 PM. They have to leave at about 6:30AM in the morning and reach home by 9:30 PM. This should also be taken into account while speaking of efficiency, besides the very high target workers have to meet every hour.

Jayaram also pointed out that while male garment workers would spend time with the supervisors after work, and gradually move up the ladder. Women could not do so.

Gopinath mentioned that since a large part of the work force is migrant labour, there are few Dalits. This is because they have no relatives in the city and no 'social capital'. Most migrant labour would be backward castes and Muslims already in the city. Muslim women, he said have their own restrictions as well.

Garment workers are not organized in South Asian countries, except perhaps a small number in Bangladesh.

Speaking of the MFA, he said that the quota did some good to the LDCs especially in generating employment. With the end of the MFA in 2005, industries abroad closed.

Women are generally employed in low paid jobs. Women even justify this saying that men work harder.

The management does not allow unions to be formed and prefers the formation of a worker's committee.

GATWU is an industry based union and not a factory based one. The issues that have come up are those like arbitrary retrenchment. There have also been cases of suicide. It was at GATWU's intervention that the management paid compensation of 1 lakh. Cividep promotes GATWU, but is not part of it.

**Gopinath also said that their legal intervention has mainly been around illegal termination as there is a good chance of getting justice since they are able to prove their termination.**

**Another case involved a pregnant woman at Texport Overseas, where after developing labour pains, she was asked to apply for leave, and delivered her baby outside the premises but lost it.**

**On the issue of gratuity, there have been many cases of workers being terminated before completing five years, with the factory renaming itself to prevent paying gratuity**

There is also strong political interaction, since the 500,000 workers are constitute a sizeable number and the JD(S) has taken into consideration the problems of garment workers.

## On Wage

While workers have been getting minimum wage where they have been better organised, the recent revision in March has not been implemented.

Unskilled women workers will get Rs 113 per day. Skilled women workers will get Rs 120/day. These earnings are given at the end of the month with a wage slip.

The 'Sample Department' consists of a small group of master tailors, all of whom are generally men. They produce a sample of the whole apparel for the customers.

They make sample shirts and earn Rs 250 a day

Supervisors are also men who earn about Rs 8000-10000/month

Delhi and Chennai have a higher statutory wage.

The revision of minimum wage in March 2009 by the state has still not been implemented and that is another focus of their work. The penalty, at any rate, is a pittance, about 10,000 rupees or so.

The Clothing Manufacturers Association of India lobbied to bring down the minimum wage in 2001. In 2009, with the next revision in minimum wage to Rs 127 per day, exporters have been still reluctant to pay the minimum wage.

The impact of the recession can be seen in comparison to the situation in Delhi, and seems relatively better. Since Bangalore has a lower minimum wage, business has come to Bangalore. With the Yuan strengthening against the dollar, India gained.

The attrition rate is about 6-8% a month, so the workforce can change entirely in a year and a half. This high rate is attributed to the harassment at the work place, and also marriage and return

to the village. Munnade is an unregistered group that works with domestic workers at a community level. Their settlements are close to the industry and meetings are held on Sunday. Gate meetings are held in the evenings where about 50-100 workers gather. A community meeting sees about 30-35 workers.

Commenting on the workers, he said that there was a preference for women workers who are said to have 'nimble fingers'. Laughing this off, he said men can be as good or as bad as women.

Trade unions he said, are largely male dominated. Not only is it difficult to organize women, there is also a reluctance for women to talk about themselves, except with reference to a naming ceremony or some such. This brought in requirement of a CBO, to 'create the impulse to organise'. Cividep, in that sense, is a pre-union formation.

## On the Shop Floor,

About 25-30 women in a batch.

The packing and Delivering department is dominated by men. It is seen as skilled work since it requires some literacy.

Harassment on the shop floor is a major concern. Women are given high hourly targets, and to meet these, many work through lunch time, don't take breaks to go to the toilet or to drink water. Cividep found an alarming number of women with problems like weak eye sight, piles, respiratory problems.

20-25% of the women are sole earners of the family. This is also indicative of other concern we should bear in mind like nutrition levels etc. Most work 9- 10 hours a day and no overtime is given unless the management declares overtime.

The domestic market is small, most factories aim at export. However, those factories that produce

for the domestic market generally have worse working conditions.

<http://www.hindu.com/2009/11/24/stories/2009112459840400.htm>

## Unpaid Garment Workers Launch Indefinite Protest

Staff Reporter



PHOTO: K. GOPINATHAN 1

**RESOLUTE:** Konega International staff braving the chill even as they began their indefinite protest near Chief Minister B.S. Yeddyurappa's home office in Bangalore on Monday.

BANGALORE: A large number of workers from Konega International began their indefinite protest near Chief Minister B.S. Yeddyurappa's home office following his lukewarm response to address their demands, particularly payment of salaries held up for the last four months.

The workers decided to stay put on the road off the Kumara Krupa Guest House till they received a favourable response. The employees, who braved Monday evening's downpour, were determined to dig in and had come prepared to cook and sleep on the premises.

Around 900 employees, mostly women, have been fighting since October for their pay. The management has also not paid their bonus and its

contributions to the Provident Fund and Employees State Insurance, they said.

A group of workers, led by K.N. Umesh, General Secretary, of the Bangalore district unit of the Centre of Indian Trade Union, went to submit a memorandum to the Chief Minister seeking his intervention. "He did not show any sympathy; instead he questioned the purpose of our protest," said Geeta, a tailor working in the factory for five years.

The workers were angry over the alleged support of the Government to the Mumbai-based employer. "The Chief Minister asked what the Government can do if the employer is untraceable," said another worker Gayatri.

## 2. Ms. Geetha. R – President, Women Struggle Federation and Union of unorganized workers - Chennai

Interview Conducted on 26<sup>th</sup> November, 2009

Under the banner of women struggle federation they fight for women's rights and its members are from unorganized sector – vendors, domestic workers, agricultural labourers, construction workers, fish vendors, workers in salt pan etc from across the state of Tamil Nadu. Members of the Union of unorganized workers are both men and women engaged in 100 and odd type of works. They have been fighting for the rights of these workers and to recognize them as workers, their continuous struggle made the government to recognize domestic workers and embroidery workers and recently they got included into the schedule.

She says that government's fixation of wages itself is unequal. There aren't any scientific studies carried out on time basis to challenge on ERA. Women themselves have not perceived the discrimination in wages; hence they had tried to bring it out in the Shram Shakti report of 1988.

In the report a comparison of work and difference in wages was highlighted.

She was of the opinion that agriculture sector is the root of the problem until the discrimination is highlighted and solved; one cannot look into the other unorganized sectors. She quoted the example of women doing planting and men ploughing, both the work are strenuous but there are no studies to highlight the time put in for these jobs and the physical strain on both men and women and relating to the wages earned. She says women are not able to pronounce the discrimination they too equally say that men do hard work than women and hence they get higher wages. Only NREGS has tried to give equal wage to some extent. That is both men and women are paid same by the contractor though not the specified amount.

She is aware of the Advisory Committee and said that they look only at equal work, if proved that equal wage is not paid for equal work then the case is been charged against the employer. ERA does not hold good in case of unorganized sector, hence the workers and their unions in unorganized field mostly fight under Minimum wages act as they do not even receive the minimum wages prescribed. Many cases fought under the minimum wages Act have been won and in some cases it was not possible was specified.

She said there is an urgent need to carry out a study to prove that women's work that are considered as unskilled or semi-skilled to be contested and proved for e.g., that transplanting is equally a skilled job but it has to be proved.

She finally said that protection against victimization is not there in the law; hence women are not coming forward to contest the ERA. Of late women are able to understand the discrimination but are not willing to lose the job on hand to fight for equal wage when the law does not protect the victim. Until and unless women come forward to fight they cannot take it

up, for which there should be a clause to protect the victim or else it is very easy for the employer to throw them away from their jobs.

### **3. Dr. Jaya Arunachalam – President of Working Women's Forum, Indian Co-operative Network for Women Ltd & National Union of Working Women, Chennai**

**Interviewed on 26<sup>th</sup> November 2009**

She is on the Central Advisory committee on the Equal Remuneration Act 1976. She says that meetings are held regularly once in four - five months and most of the time she attends it. She has given us a copy of the letter inviting to participate in the meeting that was held on 7-4-2008 at the main Committee Room, Shram Shakti Bhawan, Rafi Marg, New Delhi.

They work exclusively with the people in the unorganized sector and do not concentrate on the issues of the organized workers as they have very strong unions yet doing nothing. She says regarding ERA it does not apply much to the unorganized sector as people do not receive even the minimum wages prescribed and quoted the struggle that they carried out in 1988 for the beedi workers. Beedi workers were paid only Rs. 11/- for 1000 beedis and they organized them and presented a memorandum to the Prime Minister at Vellore demanding justice towards payment of stipulated wages as per the rules of Minimum Wages Act. Prime Minister's intervention benefited the beedi workers and were able to get Rs.21/- for 1000 beedis.

She said that in 2005, 19% of women constituted the unorganized sector and nobody came forward to fight on ERA as they were not able to spell out the discrimination in many of their areas of work. This was possible in weaving, in Kanchipuram both men and women sat on looms but women were never recognized as weavers and did not allow to become members of cooperative



societies even in the government run weavers'/ marketing cooperatives societies. Male weavers prone to alcoholism tend to pledge the raw materials received from the society and spent away the cash loans pushing their families into debts and forcing their children into bonded labourers. Hence WWF organized the women weavers and forwarded loans to them which gave recognition to their work and were able to get membership in the cooperatives. Now these women weavers are able to get benefits such as life insurance, provident funds, bonuses and advances both from the WWF and the local cooperative societies.

She says their experience has shown that it is easy to use ERA with the Collectors and Labour Commissioners than with the employers. In case of NREGS both men and women are getting equal wages of Rs. 80/- though it is Rs.100/-, Rs. 20/- is been taken away by the contractor or middlemen.

#### **4. Mr. Narasimhan, President – All India Trade Union Congress**

He says Equal remuneration Act is there but no policy that makes it more effective. He quoted the case of the Anganwadi workers, Government being the biggest employer and anganwadi workers are not paid in par with the male employees in the government service doing more or less similar kind of job. When they took up this issue with the Government the answer given was that they are not permanent employees and brushed it aside and have to fight for the minimum wages which are more or less equal to men.

He said that in organized sector there is no blatant wage disparity, technically it is fixed. He gave the example of the news paper employees and said in case of promotion it is visible; women are not given promotions easily or quickly even though they are entitled for it.

In the unorganized sector especially in the agriculture sector women and men do similar tasks but wage disparity is there. There is effort from the union side to bridge this gap and in some areas women and men are given same wages i.e., quoting the plantation sector.

The union is aware of the advisory committee but not approached as there was no complaints from the women or groups requesting to file a case for 'Equal remuneration'.

#### **5. November - 18, 2009**

##### **Discussion with Vice-President of Karnataka State Construction workers Central Union, National Centre for Labour (NCL)**

Mr. Jeevanand is the vice-president of the construction workers central union. He said so far no one from the construction workers or its union has used ERA to fight for equal wages. The reason is that in Bangalore city the wages are far above the Minimum wages prescribed. Though women get less compared to men doing the same job by Rs. 20-30/-, if the workers complain about it then it is taken up with the person who pays the wages and it gets solved. So far no one has taken it to the court was specified. He also said that women are given lenience (relaxation) for the work done compared to men, hence women do not come forward to give complain about the wage disparity.

#### **6. Renana Jhabvala, SEWA. Nov 16**

1. Two kinds of problems – women getting less than men for doing exactly the same work. For example in the 80's (not sure if it still continues but probably not) there used to be 'zanani beedi' and 'mardani beedi' depending on whether it was made by a woman or a man. This kind of wage difference is declining.

2. The other is men and women doing different tasks – problem being that women are not allowed to enter certain jobs – eg skilled women masons not being taken on. So two sub questions here – are women acquiring more skills? And if so is this changing their profile as workers? And only then the question of equal wages becomes relevant if they have started doing the same work as men.
3. Why ERA is not used much – lots of practical reasons:
  - a. Main need of poor people is to earn enough for survival, get a higher income
  - b. Can ask for more at least up to minimum wage
  - c. Using ERA means also bringing men into the picture – have to show that a man doing the same task is getting more – not always easy/ possible
  - d. Women do not want to antagonize the contractor and other workers and risk losing their work
  - e. Women who don't have work will willingly and wholeheartedly fight to get work, but once they have some work they do not want to risk losing it, are more cautious
  - f. The judicial process is very slow, and expensive – not feasible, not worth it for workers in the unorganized sector

RJ felt that it was not usually practical for women who are informal workers to individually file cases – if someone would initiate and fight a class action suit that would give visibility, and may achieve something.

**7. Discussion with Mr. Venugopal Varma, President – Centre for Un Organised Workers Trade Union, Chief Patron & President – Karnataka Building and Other Construction Workers Union, Karnataka Construction and Un Organised General Workers Union – Member.**

Their union has organized 5000 unorganized workers in Karnataka, of which 4000 are construction workers. He said that they had fought for minimum wages but not used ERA. The reason being that workers also do not say their correct wages earned, fearing the loss of jobs. The owners / masons / supervisors who ever give the wages quote high in their books and disburse lesser wages. Neither men nor women have come with complaints to take it forward even though it is discussed in their meetings. The other type of unorganized workers like beedi, agarbathi, etc- for their rights to get maternity benefits, minimum wage etc has been fought.

He gave a list of unorganized sector employment. They are as follows:

**Schedule I**

Sl. No	Occupation / Activity
1	Agarbathi Making
2	Agriculture
3	Agriculture machinery handling
4	Animal Husbandry
5	Arrack and liquor production and vending
6	Automobile work
7	Bakery work
8	Band playing
9	Bangles manufacture
10	Beads making/ piercing
11	Beautician
12	Beedi manufacture
13	Bicycle repair
14	Bindi work
15	Blacksmithy
16	Boat /Ferry operation
17	Bookbinding
18	Brick-kiln work
19	Brunch making
20	Breweries , distilleries
21	Building and road maintenance
22	Beed manufacture

23	Bullock / camel cart operation
24	Butchery
25	Cable TV operation
26	Cane / Reed work
27	Carpentry
28	Carpet weaving
29	Cashew processing
30	Catering
31	Chikan work
32	Cine service
33	Cloth printing
34	Clubs and canteen services
35	Coaching services
36	Coir processing manufacture
37	Confectionary
38	Construction work
39	Construction of tents and pandals, supply of utensils and decorations for functions
40	Courier service
41	Dairying and allied activities
42	Data entry operator
43	Distribution of petroleum products
44	Domestic work
45	Dyeing
46	Electronics and electrical goods repair
47	Electroplating
48	Embroidery work
49	Envelop making
50	Fire works/ crackers production
51	Fishery production
52	Fish processing
53	Floral work and garland making
54	Flour mills operation
55	Foot wear production
56	Forestry products operation
57	Foundry
58	Gardening and parks maintenance
59	Garment manufacture
60	Gem cutting
61	Ginning
62	Glassware manufacture
63	Goldsmithy
64	Hair dressing, beauty parlour

65	Handloom weaving, khadi weaving
66	Hawing and vending
67	Head load work
68	Health service
69	Honey gathering
70	Horticulture and floriculture
71	Hotel and restaurant services
72	Locksmith and repair
73	Manual operations on unspecified jobs
74	Masala making
75	Matches manufacture
76	Minor forest produce gathering
77	Minor minerals and mines work
78	Newspaper vending
79	NGO service
80	Oil extraction
81	Packing
82	Panwallah service
83	Pappad making
84	Petrol bunk / pump and allied service
85	Pickle making
86	Plantation (other than those covered under plantations labour Act, 1951- Act No.69 of 1951)
87	Plastic manufacture
88	Pottery
89	Powerloom weaving
90	Printing press work
91	Quarry work
92	Rag picking
93	Rice milling
94	Rickshaw pulling
95	Salt pan work
96	Sand mining
97	Sawmill work
98	Scavenging
99	Security service
100	Sericulture (silk rearing)
101	Service station work
102	Shepherding
103	Shoe shinning work
104	Shops and establishments services
105	Small scale farming

106	Soap manufacturing
107	Sports goods manufacture
108	Steel vessels and utensils manufacture
109	Stone crushing
110	Sweeping
111	Tanning
112	Leather goods manufacturing
113	Sugarcane juice vending and jaggery products
114	Panipuri vending
115	Shopping mall workers
116	Umbrella and utensils repair and polishers
117	Gunny bag vendors
118	Auto / school van and bus drivers
119	Logistic workers
120	Telephone booth service
121	Temple, church and mosque service
122	Tendu leaves collection
123	Timber industry (furniture manufacturing etc)
124	Tobacco processing
125	Toddy tapping
126	Toy making
127	Transport services (driving, conducting, cleaning, etc)
128	Laundry work
129	Wayside mechanics and workshop service
130	Welding
131	Vegetable vendors
132	Toilet cleaners
133	Juice vendors in cart and others
134	Food vendors in pull cart
135	Stone breaking and stone crushers
136	All those workers in the unorganized sector are not covered here above
137	Drama and other cultural artists
138	Sex workers and sexual minorities

#### 8. Discussion with Ms. Lakshmi Shanmugam, President – Karnataka Mahila Milan

They organize women into groups for micro finance and tie up with nationalized banks to

access credit facilities to start small enterprises. She says that so far no one has fought for equal remuneration using the ACT, it was observed that Minimum Wages Act was been too often used in the unorganized sector to get decent wages – especially in case of Pourakarmikas (Sweepers & scavengers).

9. **Rahul Kumar, practising lawyer in Delhi High Court** explains that for a woman working in any scheduled employment who is a victim of bias in terms of wages falling short of the minimum amount fixed either by the Central Government or the State Government, Minimum Wages Act is the most helpful legislation as it ensures a certain amount for every worker as a statutory requirement. Since, under this Act, it is mandatory for every employer to provide that certain minimum amount fixed for every worker, it becomes easier for women to contest and get such amount under this Act.

10. **Nikhil Dey (social worker and activist of Mazdoor Kisan Shakti Sangathan)** argues that the statutory requirement does not solve the question of payment inequality based on gender because the Act itself has different provisions for male and female worker. Also, there are different categories of work like light work and hard work for which the minimum wages are different. To avoid violation of this Act, the employers usually club together women for certain particular category of work for which the payment is less. For example under Kerala Minimum Wages Schedule, agricultural work has two categories i.e. ‘light work’ for which the fixed minimum wage is Rs.72 and for ‘hard work’ the fixed minimum wage is Rs.125. Here, women would primarily be engaged in the category of ‘light work’ by the employers even if they are physically fit to perform ‘hard work’ and would be entitled to get only Rs.72 where they can easily earn Rs.125 per day. So, on the face of it there is no inequality but effectively women are

being underpaid. Here, Nikhil Dey highlights the gender equality quotient in the National Rural Employment Guarantee Act (NREGA). This Act provides enhancement of livelihood security of the households of the rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work (Sec 1). In this Act there is no apparent difference carved out between a male worker a female worker. It only talks about “adult members” who can volunteer to work as unskilled labourers and each such adult would be paid the wage rate fixed irrespective of the fact whether such adult is a male or a female.

## Annex V

### Equal Wages/Pay For The ‘Weaker Sex’

*Ragini Nayak*

“To call a woman the weaker sex is a libel; it is man’s injustice to women. If by strength is meant brute strength, then indeed is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man’s superior” said the Mahatma.

Today, this logic does not seem to apply in terms of the monetary return women get from their work in both the organised and unorganised sector, when compared with their male counterparts, not just in India but world-wide. Women with respect to wages and pay-checks remain the weaker sex.

Equal pay for women is not just an issue regarding pay/wages inequality between men and women but it reflects upon social, cultural and political perception of women as physically and intellectually inferior to men. This perspective is so ingrained in the socio-cultural and psychological fabric of society that many a times it becomes an integral part of the domestic politics of a country and an economic problem that needs governmental intervention through legislation and regulation.

Equal pay for women has been a topic of debate and discussion in the international sphere for a long time now. The General Conference of the International Labour Organisation (ILO) adopted on 29<sup>th</sup> June 1951 the Convention Concerning Equal Remuneration for Men and Women workers for Work of Equal Value. It provides that each member state shall ensure the application to all workers, the principle of equal remuneration for work of equal value. This principle may be applied through legislative means, by recognised machinery for wage determination, through collective agreements between employers and workers or a

combination of these various means. Article 11 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) provides for all member states to take appropriate measures to eliminate discrimination against women in the field of employment to ensure, on the basis of equality of men and women, the same rights, in particular the right to equal remuneration, including benefits and to equal treatment in respect of work of equal value as well as quality of treatment in the evaluation of the quality of work. The EEC Treaty provides for the application of the principle that men and women should receive equal pay for equal work. The Social Summit of Copenhagen in 1995, led to the adoption in 1998 of the ILO declaration on Fundamental Principles and Rights at Work (FPR). This declaration is based on a consensus on the four fundamental areas regarding the rights of workers -voice, non-discrimination, absence of forced labour and child labour as constituting the base for a more effective rights based labour system.

Despite of all these aforementioned efforts at the international level, domestic situation in different countries, as far as equality of pay is concerned, does not seem to improve much. The International Trade Union Confederation in 2008, based on their survey of 63 countries showed that there is a significant gender gap in employment and payment. This report provides that, “Women earn on an average 84.8% of men’s earnings”. It is also observed in the report that “Higher education of women does not necessarily lead to smaller pay gap”.

Keeping in tune with the International Conventions, different countries across the globe have passed legislation to counter gender bias existing in the economic field.

In the United States of America, the legislation passed by the Federal Government in 1963 under the United States Equal Pay Act made it illegal to pay men and women different wage rates for equal work on jobs which require equal skill,

effort and responsibility and are performed under similar working conditions. Recently, President Obama signed the Lilly Ledbetter Fair Pay Act, a law named for an Alabama woman who at the end of her 19-year old career as a supervisor in Good Year Tire and Rubber Company Plant complained that she had been paid less than men. In a 5-4 decision the Supreme Court threw out her case ruling that she should have filed her suit within 180 of the day that Good Year first paid her less than her peers. Congress tried to pass a law that would have effectively overturned the decision while President George. W Bush was still in office, but the White House opposed the bill; opponents contended that it would encourage law-suits and argued that employees could delay filing their claims in the hope of replacing bigger rewards. But the new Congress passed the bill, which restarts the six-month clock every time the worker receives a pay-check.

In United Kingdom, the Equal Pay Act of 1970 was established by parliament to prevent discrimination as regards to the terms of conditions of employment between men and women.

In Ireland the Anti-Discrimination (Pay) Act 1974 was passed which came into force in 1977.

A similar Act was passed in France in 1972.

In India, though 'Equal Pay for Equal Work' is not a fundamental right under the Indian Constitution, it is a Constitutional goal which colours the interpretation of Article 14 and 16, so as to be elevated to the rank of a fundamental right, the denial of which would result in 'irrational classification'. Art 14, Art 16, Art 39 and Art 43 are the constitutional provisions which have been primarily used by female petitioners to invoke economic justice at the altar of Indian Courts.

Article 14 of the constitution provides that the state shall not deny to any person equality before

the law or equal protection of laws within the territory of India. The concept of equality and equal protection of laws guaranteed by Art 14 encompasses social and economic justice."Equal protection of law" is a positive concept implying equality of treatment in equal circumstances. Equal law should be applied with an equal hand to all persons who are equals. This doctrine of equality and is a dynamic and evolving concept which has many facets. It is embodied not only in Art 14 but also in Art 15-18 of Part III as well as Art 38, 39, 39A, 41, 43 and 46 of Part IV. The object of all these provisions is to attain-'justice social, economic and political', which is indicated in the Preamble and the sum total of the aspirations incorporated in our constitution.

Affirmative action is a foundational principle implicit in Art 14. It stipulates that to treat unequals as equals is to perpetuate inequality. It refers to policies that take race, ethnicity, physical disabilities or sex into consideration in an attempt to promote equal opportunity. It seeks to redress imbalances due to disproportionate representation of underprivileged sections of society in governmental, educational and industrial institutions. The disproportionate representations result from covert institutionalised and involuntary forms of discrimination that permeates the fabric of society, particularly in societies which have had a long history of racial, ethnic or sex based discrimination. Such acts of discrimination may take many forms. Some are overt such as stereotypes (e.g. women are only fit to be secretaries and housewives), others are covert such as "Old Boys Clubs" that tend to favour racially akin new members.

Art 16 of the constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state and that no citizen shall, on the ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the

state. Art 16 is only an instance of application of the general rule of equality laid down in Art 14. Hence, Art 16 does not debar a reasonable classification of the employees in the matter of appointment or promotion, provided that classification is made with reference to the objective to be achieved, as equality of opportunity means equality as between members of the same class of employees and not between that of separate independent classes.

With respect to equal pay for equal work, the gist of Art 14 and Art 16 would be that there cannot be inequality or discrimination only on the ground of sex

Art 39 clause (d) is a specific provision in the Indian Constitution stipulating 'equal pay for equal work'.

As the constitution of India envisages a just and humane society and accordingly gives place to the concept of living wage in the chapter on the Directive Principles of state policy, Art 43 of the constitution provides that the state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Specific legislations have also been passed by the Indian Parliament to uphold the cause of equality between men and women in terms of equal pay for equal work. Two such most prominent legislations are Minimum Wages Act, 1948 and Equal Remuneration Act, 1976.

### **Minimum Wages Act, 1948**

Coinciding with the adoption of the first ILO Convention (No.26) on the Minimum Wages was the setting up of the Royal Commission on Labour in India in 1929 to look into the issue. The Commission recommended minimum wages

for beedi making, wool cleaning, mica factories, tanning and the establishment of a statutory wage board for fixing in Tea plantations. The first step towards the initiation of minimum wage legislation in India was the introduction of the minimum wage bill in the Indian Legislative Assembly on February 11, 1946 which was followed by the adoption of the Minimum Wages Act on March 15, 1948. This act provides for fixation and enforcement of minimum wages in respect of scheduled employments (Section 2 g) to prevent exploitation of labour through payment of low wages. It also provides for review and revision of minimum wages already fixed under suitable intervals not exceeding five years (Section 3). The Central Government has fixed minimum wages under this Act for 40 scheduled employments under the Central sphere. Several States have fixed higher Minimum Wages than those prescribed by the Central Government for highly skilled, skilled, unskilled and semi skilled workers engaged in scheduled employments. Once a minimum wages is fixed according to the provisions of the Act, it is not open to the employer to plead his inability to pay the said wages to his employees. The Act also provides that different wage rate may be fixed for:

- a. Different scheduled employments
- b. Different works in the same employment
- c. Adult, adolescent and children
- d. Different locations
- e. Male and female

### **Equal Remuneration Act, 1976**

This Act provides for the payment of equal remuneration to men and women workers for same or similar nature of work by stipulating that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing same work or work of similar nature (Section 4). It also provides for



not making discrimination against female employees while recruiting for same work or work of similar nature or in any condition of service subsequent to recruitment such as transfers, training and promotions etc (Section 5). Under this law, no discrimination is permissible in recruitment and service conditions except for where employment of women is prohibited or restricted by law (Section 15). The situation regarding the enforcement of this law is regularly monitored by the Central Ministry of Labour and Central Advisory Committee. The Statement of Objects and Reasons provides that the Act has come into force to give effect to the Constitutional provision of Art 39 which envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women and that this provision was implemented in the year which was being celebrated as the International Women's Year (1975). This law reflects the essence of the Directive Principles ensuring that the state shall strive to promote the welfare of the people by promoting a social order in which economic justice is informed for both men and women.

In order to find out the efficacy of both these legislations, it is important to look into their usefulness in both the organised and unorganised sector. In India 93% of the total workforce work in the informal sector in different employments like contract labour, construction worker, casual labour, workers in small units-handlooms, power-loom, beedi making, tanneries etc, sweepers and scavengers, employees in shops, workers in agriculture. Workers in the informal sector are distinguished from the workers in the formal sector in the following ways:

- a. In the organised sector activities are regulated by legislation while that in the unorganised sector are not well regulated.
- b. Workers in the organised sector are covered under social security legislations, while they do not cover the unorganised sector.

In unorganised sector, where labour is vulnerable to exploitation and does not have effective bargaining power, the intervention of government becomes necessary both from the perspective of social justice and for increasing efficiency and productivity in the economy. The minimum wage legislation is the main labour legislation for the workers in this sector. Though Equal Remuneration Act covers both the organised and unorganised sectors, it has been a trend that this Act has been primarily used for the organised sector for skilled and trained labourers and also for company matters or by workers in the managerial hierarchy.

If we look at the gender perspective in terms of equality of pay, it is almost everybody's case that women are underpaid both in the formal and informal sector. While contesting a case for equal pay for equal work, the applicability of either of the Acts depends on the chances of success in the use of these Acts. Rahul Kumar, practising lawyer in Delhi High Court explains that for a woman working in any scheduled employment who is a victim of bias in terms of wages falling short of the minimum amount fixed either by the Central Government or the State Government, Minimum Wages Act is the most helpful legislation as it ensures a certain amount for every worker as a statutory requirement. Since, under this Act, it is mandatory for every employer to provide that certain minimum amount fixed for every worker, it becomes easier for women to contest and get such amount under this Act. But, Nikhil Dey (social worker and activist of Mazdoor Kisan Shakti Sangathan) argues that the statutory requirement does not solve the question of payment inequality based on gender because the Act itself has different provisions for male and female worker. Also, there are different categories of work like light work and hard work for which the minimum wages are different. To avoid violation of this Act, the employers usually club together women for certain particular category of work for which the payment is less. For example under Kerala Minimum Wages Schedule, agricultural work has two categories

i.e. 'light work' for which the fixed minimum wage is Rs.72 and for 'hard work' the fixed minimum wage is Rs.125. Here, women would primarily be engaged in the category of 'light work' by the employers even if they are physically fit to perform 'hard work' and would be entitled to get only Rs.72 where they can easily earn Rs.125 per day. So, on the face of it there is no inequality but effectively women are being underpaid. Here, Nikhil Dey highlights the gender equality quotient in the National Rural Employment Guarantee Act (NREGA). This Act provides enhancement of livelihood security of the households of the rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work (Sec 1). In this Act there is no apparent difference carved out between a male worker a female worker. It only talks about "adult members" who can volunteer to work as unskilled labourers and each such adult would be paid the wage rate fixed irrespective of the fact whether such adult is a male or a female.

Equal remuneration Act, 1976 though applicable for both the organised and unorganised sector, is scarcely used in cases where the petitioner is getting a wage less than the prescribed Minimum wage as it does not prescribe any statutory requirement like the Minimum Wages Act, 1948. It is suitable for all such cases which are beyond the scope of the Minimum Wages Act, 1948 and in which there is inequality in payment of wages between the male and female employees doing same or similar work. Also, without reading too much of feminism into this issue, it can still be argued that in a predominantly patriarchal society women too imbibe the male perception of being inferior. Since there is no comparison between the two sexes as far as the Minimum Wages Act, 1948 is concerned while an obvious comparison and contrast has to take place if the Equal Remuneration Act, 1976 is used, there might be some hesitance in using it. Both the woman petitioner and her legal

representative might possibly be victims of the false belief in the intellectual or absolute physical superiority of males.

Two different judgements given by Delhi High Court and Andhra Pradesh High Court illustrate the applicability of both the aforementioned Acts in detail.

The Andhra Pradesh High Court passed a historic judgement cancelling the Central Government notification on the NREGA wages that are lower than the minimum wages revised by the state government. Andhra Pradesh Vyavsaaya Vruthidarula Union (APPVU), a local Trade Union Federation had filed a public interest litigation (PIL) with the High Court challenging the Central Government notification which is a clear violation of the Minimum Wages Act. The State Government had revised the minimum wages in 2002. As per the Act, the next revision should have been in 2005. After a series of campaigns by various mass organisations, it was revised in 2008. APVVU, being a state level federation of agricultural workers unions involved extensively for the implementation of NREGA, challenged the Central Government notification of minimum wage (Rs.80) that is lower than minimum wages (Rs.119) in the state. It was held that, "Many progressive social legislations and judgements would remain paper tigers, if they are not implemented. Therefore, the role of social movements and trade unions is to see how the workers are organised to actualise the objectives of Acts like NREGA, Minimum Wages Act, Equal Remuneration Act, Land Reform Laws, Right to Information Act, SC&ST(Prevention of atrocities)Act, Bonded Labour (Abolition) Act, Domestic Violence Act and so on". In the light of this High Court judgement, the State Government issued orders for payment of wages as per the Minimum Wages of AP for NREGA workers.

In a case for appeal in Delhi High Court, the petitioners were ladies employed with The Cooperative Store Ltd. Super Bazaar, Connaught

Circus. They filed a claim under Sec 7(1) (b) of the Equal Remuneration Act, 1976 claiming same pay-scale as granted to men performing the same work. According to the petitioners they were working as Packers in the cooperative store since 1978. By an order passed in 1984, they were appointed to a regular pay-scale being Rs.150-240-360. Their male counterparts, who were doing the same or similar work, were appointed in the pay-scale of Rs.185-305-440. According to the petitioners this was the violation of the provisions of the Equal Remuneration Act, 1976 and that they were entitled to the same remuneration as their male counterparts. The contention of Respondents was that all the ladies were working as Packing Cleaners and their job was to clean pulses, masalas etc. While the men folk were working as Packers and had to weigh the goods and pack them with the use of electrical appliances. Since the nature of work was dissimilar, there was a difference in the pay-scales. The concerned Authority formed under the Act to look into the matter concluded that the claim of the petitioners was justified. It was noted by the Authority that prior to 1984, the remuneration given to both men and women was the same because they were doing same or similar work. It was also noted that the Respondents were not able to produce any evidence to show that the nature of work performed by men and women was different. The Authority also brought to notice the case of one Sujjan, who was a female worker but her name was included in the list of male workers and so was getting a higher remuneration but when it was known that she was wrongly designated as a male worker, her remuneration was reduced. But the Appellate Authority held otherwise. The Delhi High Court observed that the law on the subject has been laid down in the case *M/s. Mackinnon Mackenzie & Co. Ltd. Vs Audrey D'Costa* (1987) 2 SCC 469. In this case lady stenographers were given a lesser scale than male stenographers and that was found by the Supreme Court to be violative of the provisions of the Act. The Court referred to various International Treaties and obligations and Constitutional provisions and observed that same

or similar work has been explained to mean work in respect of which the skill, effort and responsibility required are the same when performed under similar working conditions by a man or a woman. It also observed that the Appellate Authority laid emphasis only on one factor, namely, the designation given to the Petitioners (Packing Cleaners) and to their male counterparts (Packers) and according to the Authority, the designation itself postulates a dissimilarity in the nature of work resulting in unequal wages. But this is completely erroneous way of approaching the question in issue. What designation is given to an employee is of no consequence at all. It is the nature of the work which is important. The case of Sujjan vividly explains the point and it clearly shows that the work she was doing was similar to the work being performed by the male workers and that it was only the designation which was the determining factor for fixing the pay-scales. It held that this is obviously not permissible both under our Constitutional schemes as well as under the provisions of the Act.

Despite of the pro activism of our judiciary, economic equality is still an unrealised dream in our country. Even the legislative measures do not seem to tackle this problem effectively. The ILO Committee of Experts on the Application of Conventions and Recommendations in 2007 identified that equal pay for same work or work of similar nature is not sufficient compliance with Convention No.100. The Committee notes that considerable gender pay differentials exist in a number of occupations in the service sector, mostly in favour of men. The Committee recalled its previous comments concerning the narrow scope of section 4 of the Equal Remuneration Act, 1976, which requires employers to pay equal remuneration to men and women for same or similar work. It suggested that any future revision of the equal pay legislation should include a provision that goes beyond a reference to the “same” or “similar” work, choosing instead the value of work as a point of comparison because the concept of “work of equal value”

encompasses work that is of an entirely different nature, which is nevertheless of equal value. The Committee also observed that, according to the Centre of Indian Trade Unions (CITU) work traditionally done by women, such as weeding and transplanting in the agricultural sector is often classified as “light work” which does not correspond with the real nature of the tasks involved. In this regard the committee stressed the need to promote the development and use of job classifications established on the basis of work actually performed, using objective criteria unrelated to the worker’s sex and free from gender bias.

On the one hand, there is a school of thought contending that if women’s work is of equal value, why are employers not slashing their payroll costs by hiring women instead of men. In a free market, businesses are highly competitive and if they are paying men more than women, there must be a reason. On the other hand, the argument goes that such chauvinistic thinking is a by-product of the male-dominant society and a comprehensive effort has to be taken to subvert the male perception of women’s economic worth. Probably, the need is to look out for a joint solution.

#### **References:**

- 1) Wikipedia, free encyclopedia
- 2) ‘Is the Wage Gap women’s choice’-Rachael Bondi
- 3) Marilyn vos Savant ( Parade Magazine,2000) on Equal Pay
- 4) Observation, CEACR 2007/78<sup>th</sup> Session
- 5) Ghosh and Bharadwaj, 1992, pp 150-154
- 6) Shorter Constitution of India, 13<sup>th</sup> edition, by former Chief Justice Y.B. Chandrachud in collaboration with V.R. Manohar and Justice Bhagwati

## Annex VI

### Workshop on ‘Implementing the Equal Remuneration Act’

A workshop was convened on March 26 to present and discuss the draft report and to discuss ways forward.

The agenda and list of participants is attached.

Following the presentation, some of the salient points made include:

- The Indian Act has been critiqued for using the definition of ‘work of similar nature’ instead of ‘work of equal value’. It was pointed out that there had been a discussion in the Parliament on this and the Labour Minister felt that it would be more practicable and more effective to use the former definition and this is why it was selected. It was also pointed out by a participant that in Australia, the definition has recently been amended to ‘equal value’ but that this has not made a difference. Therefore while the inadequacy of the definition remains from a theoretical and gender equity perspective, it may not be the main reason for why the ERA has been so little used.
- It was suggested that we need to clarify two points made, one the (narrow) definition of an ‘employer’ as used in the ERA [alongwith any other alternative and broader definitions available]; and second the precise way in which the Minimum Wage Act allows for wages to be set differently for men and women, while for example the NREGA explicitly makes this impossible.
- A third suggestion was that detailed time and motion studies are needed in different types of work in order to make it possible for the

Act to be enforced, and that a Labour officer needs to be appointed in each sector/ industry to focus on the question of equal remuneration.

- Finally it was felt that a discussion needs to be held with the Labour Ministry to take this forward and also to understand how best the Advisory Committee can contribute to the creation of an environment of greater awareness and better compliance with the Act.
- Several participants felt that what is needed is stronger gender sensitization.

### Recommendations Emerging from the Workshop Include:

*ILO to follow up with the Ministry of Labour to further examine how to encourage the progress towards gender wage parity, including further research/ studies; training on relevant concepts and approaches; advocacy and gender sensitization.*



**Agenda: Implementing the Equal Remuneration Act (1976), March 26<sup>th</sup> 2010**  
*Venue: Maple, India Habitat Centre, Lodi Road, New Delhi*

<b>Time</b>	<b>Session</b>	<b>Chair</b>
2.30-2.45 p.m.	Welcome and Introduction to Study	Reiko Tsushima
2.45-3.30 p.m.	Presentations of Key Findings: ISST Team: <ul style="list-style-type: none"><li>• Manjitha Banerji</li><li>• Navika Harshe</li><li>• Arshdeep Singh</li><li>• Ragini Nayak</li></ul>	
3.30-4.30 p.m.	Discussion on findings and wrap up, followed by tea	

## Participants

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