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EQUAL PAY FOR EQUAL WORK: CONSTITUTIONAL AND ITS IMPLEMENTATION IN INDIA

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ABSTRACT -

The concept of “Equal Pay for Equal Work” is an important concept in Indian labour and constitutional law. The principle is not mentioned explicitly in the Constitution of India but Article 39(d) mandates that the State ensure equality of pay for equal work for both men and women. In certain cases, and with judicial interpretation, especially through Articles 14 and 16, the Supreme Court has converted this DP into a constitutional doctrine that is enforceable. The doctrine has developed from the public employment/servants of the government to the temporary, casual, contractual and daily-wage employees. The Equal Remuneration Act, 1976 was the main legislation at the statutory level which was the first attempt in India to address the issue of gender-based wage discrimination. The Act has been later incorporated into the Code on Wages, 2019, which bans wage disparity on the basis of gender between the same or similar work. But there are still plenty of challenges to overcome, such as the issue of informal employment, occupational segregation, unequal bargaining power, a lack of transparency in wage structures, and the problem of establishing a level of comparability between the jobs and between “equal work” and “work of equal value.” This paper discusses the constitutional basis and development of equal pay, judicial history, legislation, gender aspect, international conventions and problems in respect of equal pay in India. It states that India has a robust formal legal structure but with greater institutional control, objective job evaluation and greater transparency in pay and recognition of the wider international recognition of equal remuneration for work of equal value will achieve the greater equality.

INTRODUCTION -

Fair and non-discriminatory remuneration forms an integral part of labour justice. Wages are not just an economic factor, they reflect the standard of living, dignity, social security and meaningful participation to society of the worker. This means that unequal pay is a violation of both economic equality and the guarantees of social justice in the constitution.

Equal Pay for Equal Work” suggests that if two individuals are doing a similar job and the work of both the jobs involves same level of skill, effort, responsibility and working conditions, they should normally be paid the same wages. This is especially relevant when it comes to concerns of gender discrimination, as women have been paid less compensation than men who are doing the same or similar work.

This principle is contained in the Indian Constitution primarily in Article 39(d) that mandates the State to ensure that women are given the same pay as men for the same work. Article 39 is not a standing valid cause in court but over the years, the Supreme Court has time and time again established that the meaning and scope of Fundamental Rights must be guided by the Directive Principles. The Supreme Court in *Randhir Singh v. Union of India* interpreted the principle of equal pay for equal work in the light of Articles 14, 16 along with Article 39(d) and Preamble of the Indian Constitution.¹

However, the doctrine does not apply to every disparity in remuneration being unconstitutional. The Supreme Court has consistently declared that "equal pay" is dependent upon "equal work", and equality must be judged on the basis of the actual duties and responsibilities of the job. Pay scales may vary based on the differences in the qualifications, experience, responsibility, reliability or other reasonable factors.²

Statutory codification of the principle is also important. The Equal Remuneration Act, 1976 was enacted in India after the convention of Equal Remuneration Convention, 1951 of ILO. The Act banned unequal treatment of equal work or work of a similar nature, and also had a ban on discrimination between women and men in remuneration. Its provisions have now been incorporated into the Code on Wages, 2019, which bars gender discrimination in recruitment and wages.³

Hence, the concept of equal pay in India is available in three dimensions, namely, Constitutional equality, Statutory protection and International labour standards.

MEANING AND SCOPE OF EQUAL PAY FOR EQUAL WORK -

Meaning -

Equal Pay for Equal Work is equal pay for work that is substantially the same, and not equal pay for work that is the same, but for a different reason, such as category, department, gender

¹ *Randhir Singh v. Union of India*, (1982) 1 SCC 618, 625–27 (India).

² *Fed'n of All India Customs & Cent. Excise Stenographers (Recognized) v. Union of India*, (1988) 3 SCC 91, 101–07 (India).

³ Code on Wages, No. 29 of 2019, §§ 3–4 (India).

or employment classification.

It doesn't imply that two jobs have to be exactly the same. The comparison is based upon relevant factors such as:

1. Nature of duties
2. Skill required
3. Effort involved
4. Responsibility undertaken
5. Qualifications
6. Experience
7. Working conditions
8. Degree of supervision
9. Reliability and confidentiality
10. Functional responsibilities

This approach was further explained in *Federation of All India Customs & Central Excise Stenographers v. Union of India*, by the Supreme Court, which ruled that the principle of equal pay is not just to be measured by quantity of work. Qualitative differences in responsibility, reliability, confidentiality and other factors may necessitate differences in remuneration.⁴

“Same Work” and “Similar Work” -

Under the present statutory provisions by the Code on Wages, 2019, the term “same work or work of a similar nature” is used.

The statutory definition considers if the skill, effort, experience and responsibility are the same in respect of the work done under similar conditions and if differences between men and women are practical.⁵

So, the law doesn't strictly call for a comparison of job titles alone. For example:

If a male stenographer and female stenographer are employed to do substantially the same stenographic work, have the same skill and responsibility level, and provide the same type of work environment, the employer should not be able to claim on the basis that the two positions are different that they should be paid different wages.

This has been directly applied in *Mackinnon Mackenzie & Co. Ltd. v. Audrey D' Costa*, where female stenographers were paid less than male stenographers who were doing work of a comparable nature. The employer tried to argue the difference was justified by his employment

⁴ *Fed'n of All India Customs & Cent. Excise Stenographers*, (1988) 3 SCC 91.

⁵ Code on Wages, 2019, § 2(v).

practices, but the Supreme Court disagreed and ruled the women deserve equal pay. The employer argued the difference was justified by his employment practices, but the Supreme Court disagreed and ruled the women were entitled to equal pay.⁶

qual Pay Does Not Mean Identical Pay in Every Situation -

The doctrine is not a strict one that insists on equal pay for all workers in similar roles. For instance, two workers can have broadly the same role and the one can:

- have much higher levels of qualifications;
- have greater experience;
- take on significantly more duties;
- operate in much harsher environments than;
- perform confidential functions;
- have more supervisory duties.

Then there is a rational and objective distinction which may justify different remuneration. The question is:

Is the difference in payment rooted in a rational and objective distinction related to the nature and needs of the work, or is it based on an impermissible ground (sex), or an irrational classification?

HISTORICAL DEVELOPMENT OF THE PRINCIPLE IN INDIA –

The development of equal pay in India can be divided into four stages – Stage – 1 – Constitutional Recognition

Equal pay has been included in the Directive Principles in the Constitution under Article 39(d). The provision particularly mentions equal pay for equal work, as between men and women. The framers of the Constitution, therefore, defined the concept of remuneration equality as a component of social and economic justice.

Stage – 2 – International Influence

The International Labour Organisation (ILO) adopted the Equal Remuneration Convention, 1951 (No. 100), in which equal pay for work of equal value is stipulated for men and women. India acceded to the Convention on 25th September 1958. International Labour Organization The Convention was significant because it expanded the notion of “identical jobs” to “work of equal value.”

Stage – 3 – Equal Remuneration Act, 1976

⁶ *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, (1987) 2 SCC 469, 473–78 (India).

To ensure equal remuneration for men and women and to eliminate discrimination against women in employment, the Equal Remuneration Act, 1976 was enacted in India.

This was preceded by the Equal Remuneration Ordinance of 1975.⁷

The Supreme Court later clarified that the Act was for the purpose of implementing Article 39(d) and India's international obligations under ILO Convention No. 100.⁸

Stage – 4 - Code on Wages, 2019

The Equal Remuneration Act was then incorporated into the Code on Wages, 2019 together with Payment of Wages Act, 1936, Minimum Wages Act, 1948 and Payment of Bonus Act, 1965.⁹

The Code introduces modernisation of the statutory framework, which prevents discrimination on the basis of gender in the field of wages and recruitment for the same work or work of similar nature.

CONSTITUTIONAL FRAMEWORK –

Article 39(d) is not the only provision in the Constitution that guarantees equal pay. Multiple provisions are in play.

1. Article 14 – Equality Before Law

Article 14 ensures equality in law and equality under the law.

It bans unreasonable state measures and demands equality of treatment for those in like circumstances.

Article 14 was the main constitutional argument advanced by the Supreme Court to make the provision of equal pay a constitutional obligation and not just a Directive Principle obligation.¹⁰

In the case of *Randhir Singh*, the Court stated that Article 14 has to be read in conjunction with Article 39(d) especially in the context of persons working same work and getting placed on different scales of pay.¹¹

2. Article 16 — Equality of Opportunity in Public Employment

Article 16 provides equality of opportunity in the public service. Article 16 is an important constitutional foundation, as many important equality of pay cases involve government employment.

⁷ Equal Remuneration Ordinance, 1975 (India).

⁸ *Mackinnon Mackenzie*, (1987) 2 SCC 469.

⁹ Ministry of Labour & Employment, Government of India, *The Code on Wages, 2019*.

¹⁰ INDIA CONST. art. 14.

¹¹ *Randhir Singh*, (1982) 1 SCC 618.

If two government officials have similar duties but receive different salaries for these duties, there may be a possibility of invoking Articles 14 and 16.

3. Article 15 – Prohibition of Discrimination

Article 15(1) is a general ban on discrimination based on factors, among others, sex. Article 15(3), however, allows the State to make special provision for women and children. Gender-equality cases focused on the Article 15 and employment equality.

4. Article 39(d)

According to Article 39(d) the State is directed to ensure:

“Equal pay for equal work to both men and women.”

While Article 39 is not enforceable per se due to Article 37, it offers a valuable form of constitutional guidance to the interpretation of Article 14 and Article 16.

In a landmark judgment, the Supreme Court in *Randhir Singh* held that Article 39(d) is a constitutional objective that could sway the Fundamental Rights interpretation.¹²

5. Article 38

Article 38 calls upon the State to maintain a social order in which social, economic and political justice guides the national institutions.

This goal of decreasing economic inequality is linked to a desire for equal pay.

6. Article 43

Article 43 requires the State to provide a decent standard of living and a living wage conditions of work.

Equal pay is thus a component of the constitutional goal of economic justice and dignity of labour.

EVOLUTION OF THE PRINCIPLE THROUGH JUDICIAL DECISIONS–

a) *Randhir Singh v. Union of India*, (1982) 1 SCC 618

Facts -

Randhir Singh was a driver-constable of the Delhi Administration. He stated that he had done very similar jobs to those of drivers in other government offices, only to be paid less.

He approached the Supreme Court under Article 32. Principle -

The main issue raised was whether “equal pay for equal work” could be given effect to in Articles 14 and 16, even though it is stated in Article 39(d).

¹² Id.

Held -

The Supreme Court decided that:

- equal pay for equal work is a constitutional goal;

Article 39(d) should be interpreted in conjunction with Articles 14 and 16;

- the principle of equality is infringed upon by any difference in pay for the same work;

- the doctrine is not only a political catch phrase.

The Court used to explain the principle with reference to Article 14 and Article 16 read with Article 39(d) and the Preamble of the Constitution of India. The Court had famously tried to explain it that the principle could be deducted from Article 14 along with Article 16 read with Article 39(d) and the Preamble of the Indian Constitution.¹³

Importance -

The first Indian equal pay case.

It brought the non-binding Article 39(d) into the realm of constitutional instruments.

b) Convention: *Dhirendra Chamoli v. State of U.P.* (1986) 1 SCC 637 Facts -

The petitioners were working as casual labourers in the Nehru Yuva Kendra organisation. They worked as regular workers but were paid less due to their temporary status.

Held –

In this decision, the Supreme Court determined that temporary or casual workers who are essentially doing the same work as regular employees should not be denied the same wages just because their job is classified as “temporary.”

The Court found that this was an unequal treatment, which is a violation of Article 14 and the constitution's promise of a socialist welfare state.¹⁴

Importance -

The decision brought equal-pay cases outside the realm of permanent employees and acknowledged the issue of exploitation of temporary workers.

c) *Surinder Singh v. Engineer-in-Chief, CPWD* (1986) 1 SCC 639 Facts -

Workers on a day to day basis received wages equivalent to regular work on a similar task.

Held-

The Supreme Court held that the principle of equal pay should apply to temporary workers when their work is “substantially equivalent”.

The ruling was also aimed at clarifying that an employer is not able to evade the obligations of

¹³ Id. at 625–27.

¹⁴ *Dhirendra Chamoli v. State of U.P.*, (1986) 1 SCC 637.

equal pay by altering the way in which it is paid.

Importance -

It strengthened the thesis that the content of labour is more important than the name of the job.

d) Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa (1987) 2 SCC 469 Facts -

Audrey D'Costa was a Stenographer woman. The stenographers were getting paid less than the male stenographers who were doing very similar work.

The difference was explained by the employer in terms of the status and makeup of the workforce.

Held -

The employer's arguments were rejected by the Supreme Court. The Court ruled that:

- the specific tasks carried out need to be compared;

There should be no technical objections to a claim for equal pay where there are only minor variations;

- statutory equality will not be superseded by employment settlements;

The inability of the employer to meet financial obligations does not excuse the employer from complying with the provisions of the equal remuneration requirements. Failure to pay for financial reasons does not excuse the employer to breach the equal remuneration requirements.¹⁵

Importance -

One of the most powerful voices around gender wage discrimination in India.

It affirms that an employer may not make artificial classifications to pay women less.

e) Federation of All India Customs & Central Excise Stenographers v. Union of India (1988) 3 SCC 91

Facts -

In the Central Secretariat, stenographers were claiming equality with stenographers in Customs and Central Excise offices.

They contended that it was also substantially similar and that the difference in wage rates for both was in breach of Articles 14 and 16.

Held -

The Supreme Court denied the claim.

It believed that equal pay was not to be based simply on the work quantity. Factors such as:

- responsibility;

¹⁵ Mackinnon Mackenzie, (1987) 2 SCC 469.

- reliability;
- confidentiality;
- skill;
- experience;
- working conditions;

The salary ranges may be justified may differ.¹⁶

Importance -

This case is a limitation of the doctrine.

It helps prevent courts from applying the “equal pay” principle mechanically without asking whether or not the jobs are actually equal.

f) State of Haryana v. Charanjit Singh

The Supreme Court restated that equal pay is not a formula and that the Claimant has to demonstrate that the workers in question are in an equal employment situation with respect to their duties and responsibilities.

The Court emphasized that before the question of "equal work" can arise, one must first be able to prove "equal work" before claiming equal pay.

This is especially true in light of the repeated warnings by courts not to apply the doctrine across the board in all salary disputes.

g) State of Punjab v. Jagjit Singh (2017) 1 SCC 148. Facts -

The case was of temporary employees who argued that they should be treated in the same manner as regular employees doing substantially the same work, such as daily wage, casual, ad hoc and contractual employees.

The State contended that the pay disparities were due to differences in recruitment and status of employment and therefore were permissible.

Held -

The earlier decisions of the Constitution Bench were quoted and the Supreme Court concluded that the temporary employees doing the same work and having the necessary qualifications may be granted the minimum of the regular pay scale with conditions as defined by the Supreme Court.

The Court did not accept the argument that an equal-pay claim is defeated by being "temporary" alone as it were.¹⁷

¹⁶ *Fed'n of All India Customs & Cent. Excise Stenographers*, (1988) 3 SCC 91.

¹⁷ *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148, 182–91 (India).

The Court, however, made it clear that equal pay does not necessarily lead to regularisation or permanency.

Importance -

The contemporary expert on equal pay for:

- daily-wage employees;
- casual employees;
- contractual employees;
- temporary employees;
- ad hoc employees.

It shows that wage discrimination because of employment status is not justified if the underlying job is essentially the same.

STATUTORY IMPLEMENTATION IN INDIA –

i. Equal Remuneration Act, 1976

The main legislation that existed in the past was the Equal Remuneration Act, 1976. Its objectives included:

1. Equal wages for men and women;
2. The prevention of sex based discrimination;
3. Treatment of all equally when it comes to recruitment;
4. Creation of authorities to settle conflicts;
5. Advancement of opportunities for women in the labour market.

Section 4 imposed the obligation on employers to pay an equal wage to both men and women doing the same work or work of a comparable nature.

Section 5 did not allow discrimination in recruitment.

The Supreme Court's recent ruling in the *Mackinnon Mackenzie* case illustrates how these provisions are dealt with in practice.¹⁸

ii. Code on Wages, 2019

The existing legal provisions are contained in the Code on Wages, 2019. Four statutes were incorporated into the Code:

- Payment of Wages Act, 1936;
- Minimum Wages Act, 1948;
- Payment of Bonus Act, 1965;

¹⁸ *Mackinnon Mackenzie*, (1987) 2 SCC 469.

- Equal Remuneration Act, 1976.¹⁹

Section 3 — Prohibition of Discrimination on Ground of Gender

Section 3 states that there shall be no discrimination based on sex in the matters of wages for employees doing the same work or work of a similar nature.

It also bars discrimination in recruitment when doing the same or similar work, except as may be reasonably necessary in accordance with law.²⁰

Section 4 – Determination of Same or Similar work

If there is an argument over whether work is the same or similar, it is within the authority of the relevant body to decide the question.

This is significant because there must be an objective basis by which the job can be compared in order for wage equality to be achieved.

The importance of the Code

The Code streamlines and clarifies the wage-law framework by consolidating several wage laws into one.

As per the Ministry the Code is specific in stating that it covers the Equal Remuneration Act, and bans gender discrimination in pay and hiring.²¹

EQUAL PAY AND GENDER EQUALITY -

Equal pay is an important component of substantive gender equality.

There are a number of ways in which wage inequality can be observed for women:

1. Direct wage discrimination

Females and males are paid different wages for the same work due to their gender.

2. Occupational segregation

Women's work might be undervalued as a system and concentrated in occupations that are considered “women's work”.

3. Recruitment discrimination

Lower starting wages may be provided to women for the same qualifications.

4. Promotion discrimination

Women may not move up the career ladder as quickly as men do and that can impact lifetime earnings.

5. Motherhood penalty

¹⁹ Ministry of Labour & Employment, Government of India, *The Code on Wages, 2019*.

²⁰ Code on Wages, 2019, § 3.

²¹ Press Information Bureau, Ministry of Labour & Employment, *New Wage Code* (July 25, 2022).

Women's earnings can be adversely impacted by career interruptions due to childbirth and caregiving duties.

6. Informal employment

There is under-representation of women in formal and secure jobs, where legal enforcement is stronger.

ILO has acknowledged that gender wage gap may also result from undervaluation of women's work and/or penalties for motherhood.

But the gender pay gap is not being closed when only the same pay rate is required for the same job.

ROLE OF COURTS AND BURDEN OF PROOF –

- Role of Courts

Courts have three key functions:

First — Constitutional Review

Article 14 and 16 violations are decided by the courts.

Second — Comparative Assessment

Courts consider whether it is truly equivalent or similar.

The third is prevention of the artificial classification. The third is the prevention of the artificial classification.

Courts do not allow employers to rely upon artificial distinctions as a justification for pay discrimination.

In *Mackinnon Mackenzie*, for instance, the court said that it was not possible to justify disparate pay to stenographers with various specializations when they actually do the same work.²²

- Burden on the Employee

When an employee alleges the existence of a prima facie case of comparability, they typically must prove that the job duties of the two positions are comparable.

The employer may demonstrate differences relating to:

- who the comparator is
- what their responsibilities are
- qualifications
- skill
- effort

²² *Mackinnon Mackenzie*, (1987) 2 SCC 469.

- responsibility
- working conditions
- remuneration received
- similarity of actual work.

Just stating that two employees have the same job title doesn't cut it.

- Employer's Burden

When a prima facie case has been made, the employer must offer a rational explanation for the difference.

The employer can show inequalities in respect of:

- qualifications;
- experience;
- seniority;
- responsibility;
- working conditions;
- recruitment requirements;
- functional responsibilities.

This is in keeping with the general principle of the constitution that classifications must have a rational connection and have a reasonable basis to the object to be achieved.

CHALLENGES IN IMPLEMENTATION –

While there is robust constitutional and statutory safeguarding, it is difficult to implement.

- Informal Sector

In India a considerable number of people work without an employment contract. These employees frequently are missing:

- written contracts;
- wage records;
- bargaining power;
- opportunities for grievance avenues.

In this sense, there can be statutory equality without the real equality.

- Difficulty in Comparing Work

It isn't always easy to identify if two jobs are truly equal. Job titles can be the same, but duties can be different.

On the other hand, job titles can vary even though the job content is quite similar.

- Lack of Wage Transparency

Many workers have no idea of how much their fellow workers are paid. This makes it hard to detect pay discrimination.

9.4 Gender Stereotypes

Assumptions about women may lead to their being directed into jobs with lower wages, including those related to:

- physical ability;
- leadership;
- family responsibilities;
- maternity;
- working hours.

- Contract Labour and Outsourcing

Outsourcing can create multiple layers of jobs and may result in the difficulty of identifying the responsibility to implement wage equality.

- Weak Enforcement

Although legal rights may be in place, employees might be reluctant to complain for the following reasons:

- fear of dismissal;
- workplace retaliation;
- financial constraints;
- lack of awareness;
- unequal bargaining power.

- Narrow Concept of “Similar Work” This is one of the biggest deficits.

While statutory law in India is more on the lines of same or similar work, ILO Convention No. 100 takes the concept of work of equal value.

Specifically, the ILO has noted that India's constitutional and statutory definition has been more restrictive than the “work of equal value” in the Convention. Normlex.

INTERNATIONAL FRAMEWORK –

A. The ILO Equal Remuneration Convention, 1951

The most important international instrument is the Equal Remuneration Convention, 1951 (No.100) of the International Labour Organisation.

According to Article 1, equal remuneration is "remuneration based on equal value and

determined without discrimination on the basis of sex".

Article 2 obliges the Member States to promote and ensure equal remuneration for men and women for work of equal value. Article 3 calls for objective job evaluation.²³

India has ratified Convention No. 100 in 1958 and it is still valid for India.

B. ILO Convention No. 111

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) relates to employment and occupation.

In 1960 India ratified Convention No. 111.²⁴

C. Universal Declaration of Human Rights

Article 23(2) of the UDHR recognises the right of everyone, without discrimination, to equal pay for equal work.

This means that the principle of equal remuneration is a wider human rights principle.

D. The International Covenant on Economic, Social and Cultural Rights

Article 7(a)(i) of the ICESCR states that people have a right to "fair wages and equal remuneration for work of equal value without distinction".

India has ratified the ICESCR in 1979.

In the case of *State of Punjab vs. Jagjit Singh*, the Supreme Court mentioned India's obligations under international law in the context of equal pay.²⁵

E. CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women calls on States to take steps to ensure equality of pay and to remove discrimination in employment.

It thus helps to strengthen the principle that access to the labour market should not be the only indicator of gender equality and that labour market conditions and pay should reflect the same.

CRITICAL ANALYSIS -

Article 31A of the Constitution and the Equal Pay Act are examples of economic equality that are embodied in the Indian law.

The most impressive aspect of it is its constitutionalisation of the principle.

Article 39(d) was not an empty declaration of the Supreme Court with regard to the *Randhir Singh* interpretation. Through Article 14+16, it put the concept of equal remuneration into practice. The Court, through Article 14+16, put the concept of equal remuneration into

²³ International Labour Organization, *Equal Remuneration Convention*, 1951 (No. 100), arts. 1–4.

²⁴ International Labour Organization, *Ratifications for India*, NORMLEX.

²⁵ *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148

practice.²⁶

The second important aspect is the evolution of jurisprudence of protection for temporary workers. The judgment of Dhirendra Chamoli and Surinder Singh and Jagjit Singh is indicative of the fact that the employer cannot always evade the requirement of equal pay by tagging an employee on temporary basis.

The third strength is the specific statutory ban on gender pay gaps. But the rules and regulations are not complete.

First is the fact that the principle is very reliant on the employee ensuring comparability.

Second, there has been a history of reluctance to get involved in pay structures because of the administrative and economic aspects of wage determination.

Third, the statutory focus is on “same or similar work” whereas the ILO's standard focuses on “work of equal value.”

Fourth, in informal employment, legal protection is far less effective.

Fifth, equal pay laws are not enough to eradicate occupational segregation or unequal promotion to senior levels.

ILO's analysis of India has revealed that despite legal and economic developments there is continued gender wage gap. International Labour Organization

The key issue, therefore, is no longer whether a law is lacking. In India, the principle is followed. The bigger issue is effective enforcement and moving towards substantive equality in the economic realm.

SUGGESTIONS AND REFORMS –

1. Introduce Greater Wage Transparency.

Employers, especially large employers, should have clear wage structures and provide relevant gender-specific wage information.

Transparency helps identify wage disparities that may be discriminatory.

2. Adopt Objective Job Evaluation

Jobs should be assessed by the following objective standards:

- skill;
- effort;
- responsibility;
- working conditions.

²⁶ *Randhir Singh, (1982) 1 SCC 618.*

This would be in line with ILO Convention No. 100 – Article.²⁷

3. Move Toward “Work of Equal Value”

The concept of “same or similar work” in the Indian law should evolve over time towards “equal remuneration for equal work” as is recognized internationally.

For instance, an occupation that is predominantly female and another that is predominantly male may have similar skills, responsibilities and efforts but with a different type of work.

4. Strengthen Labour Inspection

The mechanism of Inspector/Facilitator to detect gender based wage discrimination under the Code must be effectively used.

Ensure the protection of whistleblowers and complainants. Ensure protection of whistleblowers and complainants 12.5

Wage Discrimination Complaints should be protected from Retaliation by employees.

5. Strengthen Awareness

Opinion should be shared with workers about the following:

- wage rights;
- equality provisions;
- complaint mechanisms;
- labour authorities;
- available remedies.

6. Address Informal Employment

Protecting workers from informal, casual and contract arrangements should be done in an effective manner.

7. Gender-Neutral Job Classification

Employers should avoid job classifications based upon stereotypes.

Job descriptions should be based on the job description and not gender assumptions.

8. Regular Pay Audits

Periodic internal pay-equity audits should be done in large establishments. These audits can detect:

- gender pay gaps;
- unequal starting salaries;
- promotion disparities;
- occupational segregation;

²⁷ ILO Equal Remuneration Convention, 1951 (No. 100), art. 3.

- unequal allowances.

9. Stronger Judicial Guidelines

Courts could establish more definitive rules on assessing:

1. prima facie comparability;
2. burden shifting;
3. objective job evaluation;
4. permissible wage differentials;
5. indirect discrimination.

This would make litigation more uniform.

CONCLUSION -

Equal Pay for Equal Work is one of the most significant crossovers between the constitutional and labour law in India. While Article 39(d) of the Preamble makes the principle part of the Directive Principles of State Policy, the Supreme Court has accorded it the force of a constitutional principle in Article 14 and 16.

It was the judiciary starting with *Randhir Singh* that started to make equal pay a reality, rather than a constitutional dream. Later judgments, by *Dhirendra Chamoli*, *Surinder Singh* and *State of Punjab v. Jagjit Singh*, extended the doctrine to temporary and non-permanent workers, and *Mackinnon Mackenzie* gave robust protection against gender based wage discrimination. Concurrently, *Federation of All India Customs & Central Excise Stenographers* asserted that equal remuneration cannot be awarded mechanically and that a true difference in responsibility, skill, experience and working conditions would merit a difference in remuneration.

The legislative structure has also undergone significant change. The Equal Remuneration Act, 1976 was the first detailed statutory initiative to address gender based wage discrimination in India which has been incorporated in the Code on Wages, 2019. Section 3 of the Code does not allow for differences in wages and/or recruitment for the same or similar work based on gender.

However, there is no substantive equality as a result of formal legal equality. The lack of information, wage transparency, occupational segregation, gender stereotypes and lack of evidence of comparability of work remain as obstacles to implementation.

The most important change in the future must thus be from “equal pay for equal work” to “equal remuneration for work of equal value.” This would make Indian law more in line with ILO Convention No. 100 and would be able to include not only the direct discrimination but

also the structural undervaluation of traditionally female dominated professions.

Finally, equal pay should be seen as more than a wage formula, but as a reflection of the dignity of the person, substantive equality, social justice and decent work as enshrined in the Constitution. India's legal system offers a solid backbone, while the hurdle now is to bring this constitutional assurance to the ground for every worker.

