

illegal, workers are not entitled to wages for the period of strike. But if the strike is illegal, then, in addition to being deprived wages, they also expose themselves to punishment. In the *Syndicate Bank v. Umesh Nayak*<sup>9</sup>, the five member Constitution Bench of the Supreme Court laid down the wages for the period of strike were to be paid only if the strike is legal as well as justified. In this cases, it was a slightly disputed question whether the strike was legal or illegal. On the face of it, the strike was illegal, and the trial Court relying on *T.S. Kelavala's* case held that no wages to be paid for the period of strike. But on appeal to the High Court it was held that the strike was legal and justified, and

therefore, the workmen are entitled to wages for the period of strike.

On appeal, the Supreme Court observed that there was no conflict between the *Churakulam Tea Estate* case and the *Crompton Greaves Ltd.* case on the one hand, and the *T.S. Kelavala* case, on the other. In *T.S. Kelavala's* case, the question of justifiability was not challenged at all. The Supreme Court, in the facts and circumstances of the case, held the strike to be illegal, thereby disentitling the workmen from claiming wages for the period of strike. It reiterated that wages, for the period of strike, are to be paid only if the strike is legal and justified.

## EQUAL PAY FOR EQUAL WORK : A MYTH OR REALITY

By

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### Introduction

The 100th anniversary of International Women's Day was celebrated recently on March 8. But it is evident that for a large majority of working women the conditions are not much different from what they were more than a century ago, when the idea of observing Women's Day all over the world. This is an occasion to examine the position of women in India and to assess whether equal opportunities are provided to women on par with men.

In India the family and the State, both operate on patriarchal gender modes. This has widened the gap between women and men and put women in a disadvantageous position. The gender based discrimination still

represents the ugly face of the society of our times. The Human Development Report 1995 points out that "in no society women enjoy the same opportunities as man<sup>1</sup>. Women all over the world have, by and large been discriminated against in almost every sphere. This discrimination is more apparent in the field of economic activity. According to United Nations Report 1980, "Women constitute half of world's population, perform nearly two thirds of its work hours, receive one tenth of the world's income and own less than one hundredth of the world's property. This shows the extent of economic exploitation of women.

Discrimination in wages between men and women is an important aspect involved in the exploitation of labour. Underpayment is

9. AIR 1995 SC 319

1. Report of the National Commission on Labour, 2002 p.933

the only guarantee they get at the hands of employers. Women are not only denied 'equal pay for equal work' but are also subjected to sexual exploitation. Even when her rights are legally recognised in abstract, longstanding custom prevents their full expression. In spite of the International Conventions, Constitutional provisions, statutes and judicial pronouncements 'equal pay for equal work' for both men and women remains as a myth but not reality in practice.

### *International efforts relating to 'Equal Pay for Equal Work'*

At the global level UNO played a significant role in recognising the right to fair wages and equal pay for equal work as the human rights of all individuals be it men or women<sup>2</sup>, Article 7(a)(i) of the International Covenant on Economic, Social and Cultural Rights, 1966 recognised the right to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. Convention on the Elimination of all Forms of Discrimination against Women, 1979 also prohibits all forms of discrimination in the political, social, economic fields. Equal Remuneration Convention, 1951 adopted by ILO also lays down certain principles concerning equal remuneration for men and women workers for work of equal value.

### *National efforts relating to 'Equal Pay for Equal work'*

The Preamble of the Constitution guarantees social, economic and political justice and equality to all the citizens. To give effect to these cherished ideals "equal pay for equal work" for both men and women has been incorporated in Art. 39(d) of the Constitution of India as a Directive Principle of State

Policy as an unenforceable right. To give effect to this Directive Principle Equal Remuneration Act, 1976 was enacted by the Parliament.

### *Equal Remuneration Act, 1976*

The object of this Act is to provide for the payment of equal remuneration to men and women workers for the same kind of work or work of a similar nature and to prevent discrimination on the ground of sex against women in the matter of employment.

Under Section 2(h) of the Act 'same work or work of similar nature' means work in respect of which the skill, effort and responsibility require are the same. Section 4 of the Act imposes a duty on the employer to pay equal remuneration to men and women workers for same work or work of a similar nature and also specifically prevents discrimination in the matter of wages on the ground of sex. Even a settlement arrived at between the Management and the employees cannot be a valid ground for effecting discrimination in payment of remuneration between male and female employees performing the same work or work of a similar nature<sup>3</sup>.

### *Judicial Interpretation*

The Judiciary by its dynamism transformed the concept of "equal pay for equal work" which is a Directive Principle into the parameters of Article 14 of the Constitution, which is a fundamental right by its interpretative techniques.

The Supreme Court for the first time in *Randbir Singh v. Union of India*<sup>4</sup>, read the Directive Principle into fundamental right and held that denial of 'equal pay for equal work' amounts to violation of Article 14 of the Constitution and 'equal pay for equal work'

2. Article 23(2)(3) of Universal Declaration of Human Rights, 1948

3. *Mackinnon Mackenzie & Co v. Andrey D' Costa*, AIR 1987 SC 1281

4. AIR 1982 SC 879

is not an abstract doctrine but one of substance. In *People's Union for Democratic Rights v. Union of India*,<sup>5</sup> and *Mackinnon Mackenzie & Co v. Andrey D' Costa*,<sup>6</sup> the Supreme Court also held that denial of equal wages to women workers on par with men for doing same work or similar nature of work amounts not only violation of Equal Remuneration Act and Article 39(d) but also Article 14 of the Constitution.

Thus, in course of time, the concept of 'equal pay for equal work' got embodied as an integral part of Article 14 of the Constitution and the unenforceable, abstract and inert concept became an enforceable fundamental right, by the progressive interpretation given by the Supreme Court.

### **Implementation**

The bulk of the women workers that is over 95% (of women workers) are employed in the unorganised sector, especially in agricultural and allied activities, construction work, home based work like beedi, matches, garments, papad making and in some traditional industries like coir, cashew, plantations *etc.* The discrimination in wages between men and women workers is more visible in these sectors. The women working in these unorganised sectors are paid abnormally low wages, much below the subsistence level which can be called as starvation wage. They are paid lower wages than male workers. They also do not have fixed working hours. Usually, they are made to work more than 8 hours a day. They are deprived of all permanent benefits, there is practically no certainty of securing employment and the women workers solely depend on the mercy of their employers. These workers are vulnerable because their work is insecure, irregular and often unrecognised.

The argument often put forth for unequal wage payment is that women in agriculture sector perform easy tasks and are not capable of performing strenuous tasks. The World Development Report 1996 points out that the tasks performed exclusively by women are usually the most back-breaking and low paying, *e.g.*, transplanting, weeding, winnowing, threshing, harvesting and so on. These tasks are also monotonous and repetitive, and involve harmful postures, wet conditions and handling of toxic materials. Yet, there is wide disparity between the wages of men and women in most States.

Construction industry forms another major sector of employment for women. The women workers in construction industry are also facing a number of problems of lower wages, unequal wages and are being exploited by the employers. "The women workers in construction industry do the most arduous and unskilled jobs like brick making, stone carrying *etc.* Despite the key role played by them in the construction work they are not considered as the main labour force. The employers generally consider them as mere helpers and give them less wages than what they give to the male labourers.

Another area where women are mostly exploited is in home based production. The most invisible workforce is in piece-rated home-based work. Although the number of women are increasing in these categories, there are no official estimates. The plight of the women who constitutes large part of the workforce in home based production is deplorable. They are confined to low skills, low pay and inhuman working conditions. No minimum wage and equal wages legislation is applicable to them.

### **Globalisation and its Impact on the Employment of Women and Wages**

The conditions of the working women in the post-reform period have further deteriorated and they are the worst affected

5. AIR 1982 SC 1473

6. AIR 1987 SC 1281

by the liberalisation policies. The overall growth rate of employment for women in the organised sector has been declining whereas employment opportunities for women has been increasing in low paid, insecure employment in the unorganised sector. Women are mainly engaged in casual, contract, part-time, temporary and home-based work without any job security and with less and unequal wages.

### **Conclusion**

The right to minimum wage and 'equal pay for equal work' are legally recognised but in reality majority of women workers are denied minimum wages and equal pay for equal work. Thus, majority of women are subjected to economic exploitation and 'equal pay for equal work' remains as a myth in practice. To prevent this exploitation and discrimination against women there must be strict implementation of the Equal Remuneration Act and Minimum Wages Act and the scope of these legislations should be

extended to the women working in the unorganised sector and home based work.

Approximately half of the population of our country are women and, therefore, the potential workforce is of the female gender. Any social, economic or industrial system that ignores the potential talents and special aptitudes of this half will be flawed on many counts. It will be guilty of denying equal opportunities, and thus creating conditions that cause or perpetuate exploitation and disparities. It may even result in conditions of near slavery for a large section of our population. It is, therefore, necessary to ensure equal opportunities for employment, equal remuneration for equal work, equal opportunities for the acquisition and upgradation of skills; equal opportunities for promotions; equal opportunities for access to positions of responsibility, equal respect and protection from indignities, harassment and humiliation at the place of work, equal opportunities for the redressal of grievances.

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### **SPEECH BY HON'BLE B. PRAKASH RAO ON HIS LORDSHIP FAREWELL AT THE DINNER MEETING AT 8 P.M. ON 24.5.2011**

*Good evening to My Lord the Chief Justice,  
my dear Hon'ble Brother Judges and Sister,*

I trust that this feast is not a sheer customary one given in the honour of an outgoing friend. I am in no doubt, by what I could perceive from the quiet ambiance prevailing, that you are not mere customary but with all poignant feelings in your inner layers of wits, offering a farewell to me. It is an immense fortune for me to have the warmth and esteem from people like you of having outstanding astuteness. Our ceaseless bond is shaped by a universal pool of ideology, philosophy, work culture and more, by a comparable kind of understanding

towards morals of life. I will not make a broad-spectrum speech as somebody usually makes at the time of demitting office. I did not become Judge by coincidence or by chance. I have elected the vocation as a Lawyer with a fascination and then accepted the call to the Bench with strength of mind of making a mark. I am ever beholden to my parents as they are motive for my achievements and for the position I have reached.

There is wise saying, to retreat differences of opinion; dinner convention with foe is a finest technique. Fortunately, I have no conflict of views with anyone of you. But being members of legal brotherhood, one will not