

**“Equal pay for Equal work” is not just a Slogan: it’s a Constitutional Mandate;****An analysis****Dr. Dulumoni Nath****Assistant Professor****Tezpur Law College, Assam****Abstract**

Gender equality is an important factor in determining a country’s overall development and growth. A nation can progress & attain its peak of development only when both men and women are entitled to equal opportunities and honour. But unfortunately, women of our society are often cornered and restrained from getting equal rights as men to health, education, administration, decision-making and economic independence in terms of remuneration as well as wages. Discrimination and inequality against women continues from ancient age till date. On the one hand we promote “Right to Equality”, “Gender Equality”, at the same time inequality and violence against women increases tremendously. Numerous laws were being enacted by legislature for the better protection and promotion of women, but due to non implementation properly of the laws by concerned agencies, everything spoils. Our Law of the Land i.e. Constitution of India envisages many provisions for protection and women empowerment.

Part III under Fundamental Rights special treatment is granted in favour of women. On the other hand under DPSP, again equal treatment upon women is established and particularly Article 39(d) speaks about ‘equal pay for equal work’ without any discrimination on the ground of sex. In order to implement Art.39 (d) of the Constitution, the Equal Remuneration Act, 1976 was incorporated. Now, after the passing of this Act, no employer is allowed to pay discriminatory wages or remuneration on the ground of sex, if the work is same or similar in nature. It is pertinent to mention here that even after existence of numerous laws to protect women and their rights, still women are victimized and far away from equal treatment. So it’s the high time to work together for the protection and promotion of women in real sense.

**Key words:** Right to Equality, Gender equality, DPSP, Fundamental Rights, Constitution of India.

## 1. Prelude:

*“To call woman the weaker sex is a libel; it is man’s injustice to woman. 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.... Without her man could not be. If non-violence is the law of our being, the future is with woman...”*

**M.K.Gandhi**

**Father of the Nation**

Man and woman are two halves of humanity. Neither can reach its highest creative excellence without the cooperation of the other. Over the years, radical changes have been introduced in the laws pertaining to women, which not only recognize their rights, but also afford sufficient protection against exploitation. In spite of all this, discrimination and inequality against women continues. Gender equality in most cases boils down only to a myth. On the one hand we promote “Right to Equality” as citizen of a democratic country, whereas in this 21<sup>st</sup> century we fall in the easy prey of some inhuman practice namely gender based inequality against women and shockingly that’s rooted in the family itself. A girl baby is considered a burden by the family members and is received with dismay in maximum families, where the birth of a boy baby is celebrated with great pomp & ardour. The status of women in almost all parts of the world not only in India is discriminatory and prejudicial because of male dominated society’s unequal treatment everywhere, whether it is inside family or outside family. News comes from every nook and corner of the globe about discrimination, inequality, violence against women in every minute, where women are not safe, secured and protected as well as equal with men.

## 2. Objectives of the study:

- a) The paper tries to understand the concept of equal pay for equal work
- b) To analyse the Constitutional provisions on equal treatment towards women
- c) The aim to study the relevant provisions under Equal Remuneration Act, 1976

## 3. Methodology:

The present study is purely based on Secondary Data collected from various sources like journals, books, newspaper articles, the archives of internet, magazines etc.

## 4. Equality Clause as a Guard wall protection:

The concept of equality has been held basic to the **rule of law** and is regarded as the most fundamental postulate of republicanism. In *Indira Nehru Gandhi v. Raj Narain*,<sup>1</sup> the majority of the Supreme Court has held that the right to equality conferred by Article 14 is a

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<sup>1</sup> AIR 1975 SC 2299

Basic Structure of the Constitution and an essential feature of democracy or rule of law. Equality Clause, embodied in Article 14, does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation and is thus consequently an essential ingredient of social and economic justice.<sup>2</sup>

Article 14 provides: “*The state shall not deny to any person equality before the law or equal protection of laws within the territory of India*”. According to this provision, women are quite equal with men in all fields of administration, judiciary or defence whatsoever. The women are entitled to be appointed for any post in administration, judiciary or defence, police forces etc. and to be elected for any constitutional post. According to *Dr. Ivor Jennings* “Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike.” Whereas equal protection of the laws would mean “subjection to equal laws applying to all in the same circumstances, whether they be men or women or even children.”<sup>3</sup> One step ahead in support of right to equality, in *National Legal Services Authority v. Union of India*<sup>4</sup> that the word “person” in Article 14 is not restricted to male and female, but includes even Hijras/Transgender persons. Such persons, who are neither male nor female, are also held entitled to equal protection of laws and equality in all spheres.

##### **5. Incorporation of the Directive Principles of State Policy:**

Part IV of the Constitution relates to the Directive Principles of State Policy. It sets forth the ideals and objectives to be achieved by the state for setting up in India a Social Welfare State, as distinguished from a mere Police State, which aims at social welfare and the common good and to secure to all its citizens, justice-social and economic.<sup>5</sup> The founding fathers were aware of the drawbacks, the country had been suffering from such as, poverty, unemployment, lack of education, social, economic, and political backwardness. They in order to eradicate these evils, set forth in the very Preamble, the ideals and objectives to be achieved.<sup>6</sup> To achieve this cherished goal, the framers were unanimous to secure to the people practically all the prevailing political, social and economic rights. These rights were, broadly speaking divided into two categories: 1) Political and Civil Rights and 2) Social and Economic Rights. The former rights which were, in their opinion, within the reach of the individual were provisioned as *Fundamental Rights* and the later being considered beyond individual’s reach under the prevailing circumstances, were titled as *Directive Principles of State Policy*.<sup>7</sup>

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<sup>2</sup> Secretary, H.S.E.B. v. Suresh, AIR 1999 SC 1160

<sup>3</sup> Manjula Batra, Women & Law with law relating to children in India,2012,p- 25

<sup>4</sup> AIR 2014 SC 1863

<sup>5</sup> Kapila Hingorani v. State of Bihar, JT 2003(5) SC 1

<sup>6</sup> Narender Kumar, Constitutional Law of India,2018, p-550

<sup>7</sup> Ibid

**Dr. B.R.Ambedkar**, while explaining the object underlying the *Directive Principles of State Policy*, observed:<sup>8</sup>

While we have established political democracy, it is also the desire that we should lay down as our ideal, economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That ideal is economic democracy, whereby, so far as I am concerned, I understand to mean one man one vote.

Article 37 of the Constitution of India expressly declares that the Directive Principles shall not be enforceable by any court. But this non-enforceable nature does not reduce the importance of the Directive Principles, for these Directives have been at the same time, declared as *fundamental in the governance of the country*. It has, further, been laid down a *duty of the state to apply these Directive Principles while making laws*.<sup>9</sup> About non-binding nature of DPSP it was explained by Dr. Ambedkar when he observed:<sup>10</sup>

Although there is no sanction against the state in the legal sense, if it does not implement these directives, but the state would be answerable to the people every time at the time of elections and people would reject the Government which did not take steps towards the implementation of these directives. It had been considered as an effective sanction against the state in the Constituent Assembly. Therefore, there may not be the legal force behind the Directives but the highest tribunal – the public opinion – stands behind them. No Government can afford to ignore these directives, if it is not keen to doom its future for all times to come.

#### **6. Article 39(d) under DPSP & protection granted to women:**

Part IV of the Constitution containing Articles 38, 39 (a), (d) and (e), 42, 44 and 45 specially deals with the welfare and development of women. According to Art. 39 (a), state should direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood. This Art. Provides equal right for all citizens, irrespective of sex, to adequate means of livelihood.<sup>11</sup> On the other hand, as per **Art. 39(d) of the Constitution**, the states should ensure that there should be equal pay for equal work for both men and women. Thus, the state is under constitutional obligation to direct its policy towards securing that there is equal pay for equal work for both men and women. This principle has been implemented by the Supreme Court in a number of cases. Parliament also enacted Equal Remuneration Act, 1976.

The Apex Court in *Randhir Singh v. Union of India*<sup>12</sup> has expressed the opinion that the principle of “equal work” is not declared in the Constitution to be a fundamental right but it is certainly a constitutional goal. The Court further said that continuing Articles 14 and 16 in the light of Preamble and Article 39(d), the principle of equal pay for equal work is deducible

<sup>8</sup> CAD III, 494-95

<sup>9</sup> Ibid

<sup>10</sup> CAD, VIII, 493-94

<sup>11</sup> Dr. S.C.Tripathi, Women and Criminal Law,2014, p-26

<sup>12</sup> AIR 1982 SC, 879

from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though, those drawing the different scales of pay do identical work under the same employer. In the present case, the Supreme Court has held that the principle of 'equal pay and equal work', though not a fundamental right, is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of 'equal pay for equal work' is equally applicable to both men and women, even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work.<sup>13</sup> Similarly, in *State of Haryana v. Rajpal Sharma*,<sup>14</sup> the Supreme Court has held that the teachers employed in privately managed aided schools in the State of Haryana are entitled to the same salary and dearness allowance as it paid to teachers employed in Government schools.

If the kind and nature of work is not identical, then it does not matter if men are paid more. But in case work is of same type, both men and women should be paid equally without any discrimination.

It is pertinent to mention here that, under Art.39(d), while granting equal scales, the court in exercise of their limited power of judicial review can only examine whether the decision of the state authorities is rational and Just or prejudicial to a particular set of employee.<sup>15</sup>

#### **7. International Influence paved the way for passing of Equal Remuneration Act:**

The Equal Remuneration Act, 1976 is an Act to provide for the payment of equal remuneration to men and women workers. The Act also aims at preventing discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.<sup>16</sup> The Act of 1976 gives effects to Article 39(d) of the Constitution of India and Equal Remuneration Convention, 1951 of Industrial Labour Organization. As like the provision of Art.39(d), Equal Remuneration Convention, 1951 also provides for the equal remuneration for men and women workers for work of equal value. India is one among the state parties to the said convention. Article 2 of that convention provides that each member country by means of National Law or Regulation shall ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

In order to implement Art. 39(d) of the Constitution of India and the Equal Remuneration Convention, 1951 of ILO, the President of India promulgated on the 26<sup>th</sup> Sept. 1975 the Equal Remuneration Ordinance, 1975, so that the provisions of Art. 39(d) of the Indian Constitution might be implemented. This Ordinance was promulgated in 1975 which was declared to be the International Women's Year. The said Ordinance provided for payment of equal remuneration to men and women workers for the same work or the work of a similar

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<sup>13</sup> Daily Rates Casual Labour v. Union of India, (1988) 1 SCC 122

<sup>14</sup> AIR 1997, SC 449

<sup>15</sup> Steel Authority of India Ltd. v. Dibyender Bhattacharya, AIR 2011 SC 897 : 2011 AIR SCW 808: (2010) 11 SCALE 3647.

<sup>16</sup> Preamble, The Equal Remuneration Act, 1976

nature and for the prevention of discrimination on account of sex. The above Ordinance was replaced by the Equal Remuneration Act, 1976 which received the assent of President on Feb. 11, 1976.<sup>17</sup>

### 8. Peeping into the Equal Remuneration Act, 1976:

The Equal Remuneration Act, 1976 enacted by the Indian Parliament is applicable to the whole of India without any limitation, one step towards women empowerment as well as elimination of discrimination on the ground of sex. The Apex Court in *Associate Bank Officers Association v. State Bank of India*<sup>18</sup> has explained the history and evolution of the principle “equal pay for equal work”. Historically, equal pay for equal work has been a slogan of the women’s sex based discrimination in the pay scales of men and women doing same or equal work in the same organization. It is meant to prevent discrimination on the ground of sex, against women in the matter of employment. The Equal Remuneration Act, 1976 contains 18 Sections and the provisions of the Act are mainly based on Article 39(d) of the Constitution of India.

The concept of equal pay for equal work has a broader aspect and it gives emphasis upon certain factors. In *Mackinnon Mackenzie and Co. V. Andrey D. Costa*<sup>19</sup> the Apex Court has observed that the question of equal pay for equal work can be decided on the basis of various factors like responsibility, skill, effort and condition of work. Whether work is of a similar nature – a broad approach should be taken. The Court further observed that in doing so the fact that duties actually and generally performed by men and women not theoretically possible, should be considered.

According to Section 4 of the Equal Remuneration Act, the employer has the statutory obligation to pay equal remuneration to men and women workers;

- 1) For the same work
- 2) Work of similar nature.

Thus, if the work done by the worker is same or of similar in nature, the employer is not allowed to pay different remuneration whether in cash or in kind only on the ground of sex. The Supreme Court held<sup>20</sup> that the Equal Remuneration Act, 1976 does not permit the management to pay to a section of its employees doing the same work or a work of similar nature lesser pay contrary to Section 4(1) of the Act only because it is not able to pay equal remuneration to all.

Apart from equal remuneration, Sec. 5 of the Act prohibits any kind of discrimination to be made at the time of recruiting men and women workers. The Sec. provides that no employer shall be allowed to make discrimination while making recruitment for the same work or work of a similar nature or make any discrimination on the ground of sex unless that

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<sup>17</sup> Dr. Meenu Paul, Labour and Industrial Law, 2011, p - 744

<sup>18</sup> 1998(1) SCC 429

<sup>19</sup> AIR 1987 SC 1281

<sup>20</sup> Ibid

particular employment of men or women is restricted or prohibited by any statute. This provision also extends to promotions, training & transfer, not only limited to recruitment and it is covered by Article 16(1) of the Constitution of India. The provisions contained in the Equal Remuneration Act and Rules are mandatory in nature and the employers specified under Sec.1 of the Act are under statutory obligation to maintain prescribed registers and other documents are laid down under the Act. Any violation of the provisions would invite penal action against the delinquent employer. Section 10 of the Act deals with penalties, whereas Section 11 deals with the offences by the companies.<sup>21</sup>

## 9. Conclusion & Suggestion:

Man and woman both are the two sides of the same coin. Without support and co-operation of each-other no development is possible whether it is in case of own family in particular and society as a whole. For building up of a nation contribution of both parties are required. Now, particularly in developing countries, man and woman both are coming forward to work together ignoring the old outdated tradition of gender inequality. The Indian women also contributed satisfactorily towards all round development, but even though their status is still vulnerable and needs special care & treatment. That may be possible by social awareness regarding women's rights and through enacting laws in support of assertion and protection of women's rights. It is pertinent to mention here that the Equal Remuneration Act, 1976 is the most prominent legislation regarding women's right and promoting gender equality. In this era of '*feminism*' every woman should be aware of their rights.

As we introduce our society as a socio-welfare society with justice based norms, we have numerous laws to protect us but unfortunately, today itself also we are lacking behind and still suffering from inequality, harassment, violence, insult and many more. As of now after having so many laws to promote and protect the vulnerable section of the society, i.e. women, still the crimes against women is in increasing number day by day. The basic reason behind this is non implementation of laws. Laws are enacted by legislature and it becomes the duty of the executive to implement it, but problem starts here. Due to lack of willingness on the part of the concerned personnel, the actual beneficiaries remain untouched and they abstain from fruit of the law. So executing authorities should be public centric and should be accountable for each and every minutely done in their official capacity.

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<sup>21</sup> Dr. S.C.Tripathi, Women and Criminal Law,2014. P-322