The Equal Remuneration Act, 1976:

Identifying the Affirmative Initiative & Challenges in the Implementation of the Act

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V.V. GIRI NATIONAL LABOUR INSTITUTE

The Equal Remuneration Act, 1976: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act

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ISBN: 978-93-82902-66-9

No. of Copies : 300

Year of Publication : 2019

This document can be downloaded from the Institute's website at www.vvgnli.gov.in

Printed and Published by V.V. Giri National Labour Institute, Sector–24, Noida–201301, U.P.

Printed at: Chandu Press, D-97, Shakarpur, Delhi-110092

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Foreword

V.V. Giri National Labour Institute (VVGNLI) has initiated a research study on implementation of The Equal Remuneration Act, 1976 (ER Act). Objective of the study is to measure the implications of the Equal Remuneration Act in various sectors and review related international initiatives. Before finalizing the scope of the study, VVGNLI conducted a brain storming workshop on "Equal Remuneration Act: Identifying Affirmative Initiatives & Challenges in the Implementation of the Act" on the 27th March 2019.

As labour officers play an important role in monitoring this law, their participation in the workshop, along with representatives of trade unions and employers, experts and academicians from universities was of great help in selecting the sectors which require urgent attention and also framing the questionnaire for collecting information from the field.

Dr. H. Srinivas, Director General, VVGNLI, inaugurating the workshop, said that the workshop should focus on systems, processes and international best practices, to work out a 'Way Forward' which brings effective and lasting improvement in gender equity as regards remuneration and opportunities for women's employment, training and career progression.

As regards, coverage of principles of gender equity including various UN declarations, charters, ILO conventions no. 100/ 1951 (Equal remuneration) and 111/ 1958 (Discrimination in Employment and Occupation) etc, UN convention on elimination of all forms of discrimination against women, 1979, etc; it was suggested that the areas covered by ILO convention No 156 of 1981 should also be included in the scope of the study. Convention 156 provides for equal opportunities and equal treatment for men and women workers with family responsibilities. Under this Convention, adjustment with family responsibilities, to the extent possible, without detriment to work, is a basic human right.

Discussions in the workshop highlighted the need for establishing a policy, taking into account the changes in the traditional role of men and women in society and in the family, to prevent discrimination against women and achieve gender equity.

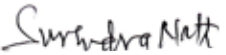
Women have greater family responsibilities, including the reproductive function, infant and child care. At times, women have to opt out of work in order to discharge these essential family responsibilities. Employers, govts and the society should, therefore, ensure that work places try to make the required adjustment with family responsibilities, and do not discriminate

on the ground of family responsibilities.

Efforts should be made to provide vocational guidance and training to facilitate women to reenter employment after absence due to essential family responsibilities. By the time women are done with these family responsibilities, they are in their middle age. In the absence of facilitating measures, women often suffer discrimination during employment and career progression, loss of employment, and access to employment opportunities when they want to return to work. In this connection, the workshop took note of Sir Adam Smith's observation that withdrawal of women from homes and hearths was a powerful instrument for improving the wealth of nations. It was decided to include ILO's convention no 156/1981 also in the scope of this study and research.

Suggestions were made on the scope of the research work, areas to be covered and changes in the Wage Code Bill which would substitute the ER Act. In particular, need was felt for retaining existing provisions of the ER Act prohibiting discrimination against women in recruitment, promotion, training and transfers; and for exploring avenues for vocational training to women to increase employment opportunities for women (analogous to Sec 4 and 5 of ER Act)

Researchers will now survey, investigate and carry forward the research and study to identify specific initiatives to meet the challenges in the effective implementation of the ER Act, keeping in view the suggestions adopted in the workshop. Hopefully, this study and research will contribute to developing a national policy, not only for preventing discrimination against women, but for promoting employment opportunities for women and for ensuring that women remain integrated with labour force, notwithstanding their crucial family responsibilities.



Surendra Nath
[Prof Surendra Nath IAS (ret)]

Preface

India is a Founding Member of the ILO, which is celebrating its Centenary year during this year. India has ratified 43 Conventions and 1 protocol including:

(a) UN Convention on Elimination of Discrimination against Women {(CEDAW)

(b) 'Equal Remuneration Convention' (C-100); and

(c) Discrimination (Employment and Occupation) Convention, 1958 (C-111).

To meet its obligations under above three international instruments, the Indian Parliament enacted 'The Equal Remuneration Act, 1976' which made the discrimination between men and women, in all matters relating to employment, from the stage of recruitment to superannuation, an offence.

The ER Act also owes its origin to the Article 39 (d) which was incorporated as one of the 'Directive Principles of State Policy' in the Constitution of India, which reads as under:-

> ***"39. Certain Principles of policy to be followed by the State.*** *– The State shall, in particular, direct its policy, towards securing –*
>
> *(d) that there is equal pay for equal work for both men and women.*

Despite, the excellent provisions of the ER Act, the discrimination in both, the organised and un-organised Sectors of employment continues. Hence, in order to identify the challenges and constraint in the implementation of the ER Act, the V.V. Giri National Labour Institute, Noida (UP) organized a workshop on 27th March 2019 which was chaired by Prof. Surender Nath, Retd. Secretary (Legal), Government of India. The Workshop was attended by the academicians, labour administrators and research scholar for:

(a) Identifying the constraints and the bottlenecks in the implementation of the Act;

(b) Identifying the vulnerable employments, which require special attention by the Central as well as State Governments in their respective spheres.

(c) For recommending suitable amendments, if required, in the proposed legislation, i.e. 'Code on Wages, 2017'

The learned members of the Workshop had detailed and in-depth discussions in above areas and made worthy recommendations thereupon.

I am confident that all the stakeholders shall endeavour to implement the recommendations of the Workshop to the best of their abilities and subject to the available resources.

I congratulate Dr. Shashi Bala, Fellow & Project Director and her team for this path-breaking and result oriented approach towards eliminating discrimination, in all respects, amongst sexes.

Dr. H. Srinivas
Director General
V.V. Giri National Labour Institute, Noida

Acknowledgement

In today's globalized era, women form an integral part of the workforce. In such an environment, the quality of women's employment is very important and this depends upon several factors. The foremost being equals access to quality education and fair opportunities in the labour market. This requires empowerment of women as well as the creation of awareness amongst all stakeholders about their legal rights and duties.

Equal Remuneration Act is one of the milestones towards mainstreaming women in the world of work. We acknowledge the support and would like to express our deepest appreciation to Dr H. Srinivas, Director General, V.V. Giri National Labour Institute, Noida for providing us with the opportunity to initiate this research with this brainstorming workshop.

We would like to thank profoundly Prof. Surendra Nath, IAS (Retd) and former Secretary to Govt. of India, for chairing and deliberating this workshop. We would also like to thank Shri G.P. Bhatia, CLS (Retd), chief Presenter of the workshop, whose expertise and support contributed immensely in the development and delivery of this workshop.

Special Thanks to our panelists; Dr Mridula Ghai, Additional Central Provident Fund Commissioner, New Delhi and Dr M. M. Rehman, Former Senior Fellow, VVGNLI, Noida.

We would also like to express our sincere gratitude to Shri Rajan Verma, Chief Labour Commissioner (Central), Smt. Shakuntala Patnaik, Dy Chief Labour Commissioner (Central), Ministry of Labour and Employment, New Delhi for their valuable inputs & nominating Labour Administrators despite their busy schedule in the month of March.

We would also like to thank all the participants whose help and cooperation made this workshop meaningful.

Thanks are due to the project team consisting of Ms Tanu Bhardwaj (Research Associate), Mr Rishabh Bajpai, (Computer Operator) and Mrs Valsamma B. Nair, Stenographer who helped in organizing this fruitful event.

Dr. Shashi Bala
Fellow
V.V. Giri National Labour Institute

Proceeding of the Workshop on the Equal Remuneration Act, 1976: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act
27th March 2019

The Workshop on '**The Equal Remuneration Act, 1976: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act'** was held under the aegis of V.V. Giri National Labour Institute, Noida on 27th March 2019 and was attended by the eminent personalities viz academicians, Labour Administrators, Research Scholars, Faculty of VVGNLI, Noida and Trade Unions leaders etc. List of Participants is enclosed at **(Annexure-1)**.

Welcome by Workshop Director:

1.1 Dr. Shashi Bala, Fellow, V.V. Giri National Labour Institute, Noida welcomed the Director General, VVGNLI and all the distinguished participants to the Workshop. Giving an over-view of the Workshop, she emphasized on the importance of gender equality in India and adoption of inclusive growth mechanism. As women constitute significant part of the labour market they should get equal remuneration and equal opportunities of growth at workplace without any discrimination. She said that Institute's motive is ***Shramev Jayate*** which implies the Dignity of Labour and linked this to the agenda of the mainstreaming women in the world of work. Though this is one day Workshop, still we consider it as a journey for a noble cause viz 'Victory of Dignity of Labour'. She highlighted the major objective of the workshop i.e. to identify the challenges in the fair implementation of this important piece of legislation. As labour administrators play an important role in enforcing and monitoring of this Act, their presence in the workshop will immensely help in selecting the vulnerable sectors of employments which require urgent attention for enforcing the various provisions of the Act. She requested the participants to go through the concept note on ER Workshop (**Annexure-2).** The Labour Administrators were requested

to give their feedback on enforcement of ER Act and the Impact of the Maternity Benefit (Amendment) Act, 2017 on Employment in the given the questionnaire (**Annexure- 3)**

1.2 The International Labour Organisation (ILO) is celebrating its Centenary Year during this year, India being a Founding Member of the ILO is also a signatory to following Conventions, amongst others, adopted for denouncing and prohibiting all types of distinction, exclusion, restriction and discrimination against women, i.e.,

(a) UN Convention on the Elimination of All Forms of Discrimination against Women, 1979. {CEDAW} (Annexure-4)

(b) Equal Remuneration Convention, 1951 (No. 100)(Annexure-5)

(C) Discrimination (Employment and Occupation) Convention, 1958 (C-111)(Annexure-6)

Thus it was the most appropriate time for self-inspection and to strive for complete equality amongst all genders (not only between men and women) in the matter of employment as stated in Article 11 of the CEDAW.

Inaugural address by the Director General, V.V. Giri National Labour Institute, Noida

2.1 Dr. H. Srinivas, the Director General, VVGNLI, Noida welcomed the Chairperson, panelists and all participants to the Workshop. In his inaugural address he expressed his pleasure over organizing the Workshop on such a sensitive issue relating to parity of opportunities and remuneration amongst all genders. The gender parity is recognized as one of the universal human rights which impacts the livelihood and service conditions of billions of women workforce around the globe. He acknowledged that encouraging women participation in the labour market is one of the challenges despite the Constitutional guarantee of equality and some of the best provisions incorporated in the Equal Remuneration Act, 1976.

2.2 Both the society and the law are the dynamic concepts. The law has to be amended keeping in view the public aspirations, the same needs

to be done in case of Equal Remuneration Act, 1976; and its proposed amalgamation in the Code of Wages, 2017. If there are some loop-holes, these should be plugged.

2.3 The Director General further held that awareness and the effective enforcement of the ER Act, will definitely improve working conditions of the women in all spheres of life. He advised the panelists and participants of the workshop to suggest measures for further enhancing all round gender equity from recruitment to superannuation, which takes within its compass the parity in wages, remuneration, training, career, progression and promotion etc.

Address by Chairperson:

3. Prof. Surendra Nath, IAS (Retd) and former Secretary to Govt. of India in his address stated that it is neither the person nor the authority, but the inbuilt systems and processes, which are important for implementing any law and achieving the desired goals. He also cited Sir Adam Smith's observation that "*withdrawal of women from homes and hearths is about the most important and powerful instrument for improving the wealth of nations*". He stressed the importance of adopting best global practices for ensuring gender equity. In this context, he mentioned the need for observing the basic human right's contained in ILO convention no 156 of 1981 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with family responsibilities. Women go out of work for meeting families' essential reproductive function. They often face difficulties in returning to work after infant care. Workplaces, should, therefore, facilitate women's return to work after meeting families' essential reproductive function and infant care.

Presentation by Chief Presenter:-

4.1 Shri G. P. Bhatia, CLS (Retd) gave an elaborate presentations and integrated various issues pertaining to the theme of the workshop. Some important issues which were highlighted during his presentation and were later deliberated at length in the Workshop, are summed up as under:-

(a) That the Equal Remuneration Act, 1976 was enacted by the Central Legislature to meet its international obligations under following two International Conventions ratified by India, i.e.

(i). **Equal Remuneration Convention, 1951** (No. 100) which was adopted in the General Conference of the ILO in its 34th Session on 29th June 1951. After ratification by India, it was registered with the ILO on 25th September 1958. **(Annexure-5)**

(ii). **Discrimination (Employment and Occupation) Convention, 1958 (C-111),** which was adopted in the General Conference of the ILO in its 42nd Session on 25th June 1958. After ratification by India, it was registered with the ILO on 03rd June 1960. **(Annexure-6)**

Both these Conventions have 14 Articles each.

4.2 Section 4 of the ER Act, 1976 which refers to parity in remuneration, discharges India's international obligation under Article 2 of C-100. The comparative text of Sec. 4 of the ER Act and text of Article 2 of C-100 are given in Table-1 below:-

Table-1

Sec. 4 of the ER Act	Art. 2 of the C-100 (Equal Remuneration Convention, 1951)
Sec. 4. Duty of employer to pay equal remuneration to **men and women** workers for same work or work of similar nature. 4(1). No employer shall pay to any worker, employed by him in any establishment or employment, remuneration whether payable in cash or in kind, at rates less favorable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature. 4(2). No employer shall for the purpose of complying with the provision of sub-section (1), reduce the rate of remuneration of any worker. 4(3). Xxxxx	ARTICLE 2 1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

4.3 The two terms 'remuneration' and the 'same work or work of similar nature' have been defined in the ER Act, 1976 as under:-

> ***2(g) "remuneration"*** *means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;* **(Annexure- 7)**
>
> ***2(h) "same work or work of similar nature"*** *means work in respect of which Skill, effort and responsibility required 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;* **(Annexure-7)**

4.4 Section 5 of the ER Act, 1976 which prohibits discrimination in recruitment; and conditions of service subsequent to recruitment, discharges India's international obligation under Article 2 of C-111. The comparative text of Sec. 5 of the ER Act and the text of Article 2 of C-111 are given in Table-2 below:-

Table-2

Sec. 5 of the ER Act	Art. 2 of the C-111 (Discrimination (Employment and Occupation) Convention, 1958)
Sec. 5. No discrimination to be made while recruiting men and women workers. 5(1). On and from the commencement of this Act, no employer shall while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment	**Article 2.** Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, **equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof**.

4.5 The existing ER Act is proposed to be amalgamated in the Code on Wages, once it is enacted by the Indian Parliament. The 'Code on Wages Bill, 2017' {Bill No. 163 of 2017) was introduced in the Lok Sabha on 03.08.2017. The opening two Paras of its 'STATEMENT OF OBJECTS AND REASONS' read as under:-

> *"1. The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:––*
>
> *(a) industrial relations;*
>
> *(b) wages;*
>
> *(c) social security;*
>
> *(d) safety; and*
>
> *(e) welfare and working conditions.*
>
> *2. In pursuance of the recommendations of the said Commission and the deliberations made in the tripartite meeting comprising of the Government, employers' and industry representatives, it has been decided to bring the proposed legislation, namely, the Code on Wages, 2017. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely:––*
>
> *(a) the Payment of Wages Act, 1936;*
>
> *(b) the Minimum Wages Act, 1948;*
>
> *(c) the Payment of Bonus Act, 1965; and*
>
> *(d) the Equal Remuneration Act, 1976."***(Annexure-7)**

4.6 In the Code, there are only two clauses relating to Equal Wages (there is no term 'remuneration' in the proposed Code) which are reproduced verbatim as under:-

> *3(1) There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.*
>
> *- (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee.*

4. Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government"

4.7 Elaborating Clause 3.1, it was pointed that this clause would apply to trans-genders also as the words used here are "**shall be no discrimination among employees on the ground of gender**". Hence the discrimination will not be limited only to men and women, as the existing ER Act prohibits discrimination between men and women and not amongst all the three genders.**(Annexure-7)**

4.8 However, in the proposed Code, there is no provision corresponding to Sec. 5 of the ER Act, 1976 which discharges India's international obligation contained in Article 2 of C-111 **{**(Discrimination (Employment and Occupation) Convention, 1958)}. The texts of both (Sec. 5 of ER Act and Article 2 of C-111) have been re-produced at Table-2.

4.9 Since there is no provision corresponding to existing Sec. 5 of the ER Act (w.r.t. Article 2 of C-111), in the proposed Code, this has diluted the provisions of existing ER Act, instead of strengthening the provisions of the Act.

4.10 Rightly, there is no definition of 'remuneration' in the proposed Code because there are common definitions for the four amalgamated Codes. The term 'wages' as defined in Clause 2(x) of the Code has two limbs, one for MW Act, PW Act and ER Act; and other for Payment of Bonus Act. The term is very exhaustive and wide enough to cover the various components of the wages, which reads as under:-

2(x) "wages" means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, ***and includes,—***

(i) any remuneration payable under any award or settlement between the parties or order of a court;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any period of leave;

(iii) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;

(iv) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(vi) any house rent allowance,

but does not include––

(A) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court or Tribunal;

(B) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(C) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(D) any travelling allowance or the value of any travelling concession;

(E) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(F) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv):

***Provided that, for the purposes of Chapter IV, "wages"** means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and*

includes dearness allowance, that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living, but does not include,––

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) Any travelling concession;

(iv) Any bonus including incentive, production and attendance bonus;

(v) Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;

(vii) Any commission payable to the employee:

Provided further that for calculating the wages under the first proviso for the purposes of payment of bonus, if the payments made by the employer to the employee under clauses (i) to (vii) exceeds one-half of the all remuneration specified under the said proviso, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under that proviso.

Explanation.––Where an employee is given in lieu of the whole or part of the wages payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purposes of the first proviso, be deemed to form part of the wages of such employee;

***{Note:** Chapter IV of the proposed Code deals with the Payment of Bonus (Clauses 26 to 41). Hence, there is a different definition of wages under the proviso clause of 2(x) of the proposed Code}*

4.11. It was proposed to draft a simple definition which could be understood by a lay-man as the law is made for a lay-man and not for legal luminaries.

4.12 In the proposed Code, there is no liability of principal employer towards payment of wages to contract labour as it exists now in the Minimum Wages Act, 1948 and Payment of Wages Act, 1936. Existing provisions are as under:-

Sec. 2 (e) of Minimum Wages Act, 1948.

> ***Sec. 2(e) 'employer'*** *means any person who employs,* ***whether directly or through another person****, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes….*
>
> **Xxxx**
>
> **Xxxx**

Sec. 3 (2)of the Payment of Wages Act, 1936.

> Sec. 3(2) notwithstanding anything contained in sub-section (1) it shall be the responsibility of the employer to make payment of all wages required to be made under this Act **in case the contractor or the person designated by the employer fails to make such payment**.

It is pertinent to note that there is no definition of principal employer either in the Minimum Wages Act, 1948 or Payment of Wages Act, 1936, however, without referring to the term principal employer, the Central Legislature has made the principal employer liable to make payment of unpaid wages employed through the contractor; by using the term "***whether directly or through another person, or whether on behalf of himself or any other person***" {Sec. 2 (e) of MW Act} and "**in case the contractor or the person designated by the employer fails to make such payment**"{Sec. 3(2) of the PW Act}.

4.13 Clause 43 / **CHAPTER VI (PAYMENT OF DUES, CLAIMS AND AUDIT) of the proposed "Code on Wages, 2017"** refers to the responsibility of employer alone to make payment of wages to its employees. In this Clause, there is reference to direct master-servant relationship, as the employer has been held responsible only for making payment to the employees directly employed by him. To quote Clause 43:-

> ***Clause 43. Every employer shall pay all amounts required to be paid under this Code to every employee employed by him:***
>
> *Provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other*

person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

4.14. Thus the contract labour has been left at the mercy of the Contractor as no orders could be passed by any authority against the principal employer. Instead the responsibility should have been fastened on the principal employer to ensure that the contractor employed by him complies the provisions of the four existing Wage Laws and in case the contractor fails to comply, the principal employer should have been made responsible. Hence, the existing provisions are far better than the proposed provisions of the Code. A comparison of text of definition of employer under the existing MW Act and the proposed Code are given in Table-3 below:-

Table-3

Sec. 2(e) of the MW Act, 1948	Clause 2(k) of the proposed 'Code on Wages, 2017'
2(e). 'employer' *means any person* ***who employs, whether directly or through another person,*** *or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes….* **Xxxxx** **Xxxxx**	**Clause 2(k)** "employer" means a person who employs one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,— Xxxx Xxxx

5. View expressed by other panelists and participants:

5.1. Ms. Mridula Ghai, Additional Central Provident Fund Commissioner, New Delhi stated that ER Act needs an effective implementation. Referring to a recent study conducted by Linked In, she stated that women were getting equal remuneration only in two out of one hundred and fifty industries in the formal sectors of economy. Further as per ILO Global Wage Report for 2018-19, in India gender pay gap between men and women was as high as 34% (world average - 16 %) as against 24.81 % in 2013. The pay gap is increasing in India. This

can only be reduced by effective and result oriented monitoring of the provisions of the ER Act.

5.2 Dr. Jeet Singh Mann, Professor, National Law University, Delhi was of the view that discrimination in remuneration, despite there being same or similar performance, depends on various factors, viz:-

(a) Bargaining capacity of women vis-à-vis men

(b) Demand and supply of labour in the market

(c) Fear of termination on making complaint relating to discrimination

He further stated that over all condition of employed women was undoubtedly vulnerable. There was need to protect a female worker from termination and victimization if she files a complaint alleging discrimination against her employer. There was also need to conduct empirical research to find out real challenges (including low rate of conviction) and their solutions in the field of enforcement. For effective enforcement, there should also be same or similar definitions of remuneration or wages, employee / worker etc in all wage laws, viz Minimum Wages Act, 1948; Payment of Wages,1936; Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976.

5.3 Dr. M. M. Rehman, former Sr. Fellow, V.V. Giri National Labour Institute, Noida stated that the basic purpose of all labour laws including the ER Act was to provide justice to persons for whom said Acts have been enacted. Women during their employment have to undergo various specific problems relating to feminine gender including the social function of child bearing and child rearing. Her special needs, apart from equal remuneration, should also be catered to with great dignity.

5.4 Dr. Poonam S. Chauhan, former Sr. Fellow drew the attention of the esteemed members of the Workshop towards inequality of wages and remuneration in the un-organized sectors like agriculture and transport.

5.5 Dr. Helen R. Sekar and Dr. Elina Samantroy were of the view that a provision similar to Section 5 of the ER Act, 1976 should be incorporated in the proposed Code on Wages not only to honour our international obligation towards ratified C-111 {Discrimination (Employment and Occupation)

Convention, 1958}but also to ensure that the existing provisions of ER Act are not diluted.

5.6 Shri V.K Trivedi, CLS, Labour Welfare Commissioner, Army HQ stressed the need for having a simple definition of wages, employee & employer.

5.7 Other participants also spoke the similar lines.

6. Based on the aforesaid discussions, following major issues were framed for detailed discussions in the Workshop.

(a) To identify challenges and constraints in the implementation of the Act, viz. lack of awareness about the Act, causes of poor enforcement etc.

(b) Effect of non-inclusion of Sec. 5 of the Existing ER Act in the proposed 'Code on Wages Bill, 2017'. Whether it violates Art. 2 of C-111 {Discrimination (Employment and Occupation) Convention, 1958}?

(c) Identifying vulnerable sectors which require study and special attention of the legislature and the executive.

(d) Making principal employer responsible for implementation of the entire proposed Code which includes the existing ER Act also.

7. Recommendations:

7.1 After detailed discussions, the esteemed panelists and participants of the Workshop were of unanimous view that the Director General, VVG NLI, may please scrutinize the following recommendations; and recommend, if feasible as per the national policy, to the Ministry of Labour and Employment, for inclusion in the revised 'Code on Wages' as the Code on Wages Bill, 2017 has already lapsed because of dissolution of present Lok Sabha on completion of its term. The Code is to be presented afresh in the new Lok Sabha.

To identify challenges and constraints in the implementation of the Act, viz lack of awareness about the Act, causes of poor enforcement etc.

7.2 In order to raise awareness on gender issues amongst all stake holders

(Government officers, employers, employees, trade unions, NGOs etc), following recommendations were made:-

(a) Regular training programmes for sensitization of all stake holders should be conducted at the VVGNLI, Noida; the Indian Institute of Workers Education and institutes, so identified, in due course;

(b) Such Institutes should develop a methodology to 'train the trainers' in aforesaid field, who in turn should impart periodic training on the respective rights and duties to the employer, workers and trade unions in organized and un-organized sectors.

(c) The Universities having their Gender Departments should also be requested to conduct similar programmes in Universities as well as their affiliated colleges.

Effective and surprise inspections by senior Labour Administrators.

7.3 The Hon'ble Supreme Court, way back in 1982, in their judgment in the case of 'People's Union for Democratic Rights & Ors Vs. Union of India &Ors, (1982) 3 SCC 235 emphasised the need for an effective inspection system so that the workers, for whom the laws have been enacted, get their rightful dues. To quote relevant extracts of the said judgment:-

> *"…We may add that whenever any construction work is being carried out either departmentally or through contractors, the Government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from any workman in regard to non-observance of any such provision before proceeding to take action against the erring officers or contractors, but they should institute an effective system of periodic inspections/ coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a Government or a governmental authority or a public sector corporation is expected to do in a social welfare State."*

There was unanimous view that Government's policy should shift towards an effective and surprise inspection system instead of 'controlled' or 'no inspections'.

Sensitising the judicial authorities for imposing deterrent fines for violations of labour laws.

7.4 The Hon'ble Supreme Court in aforesaid judgment also impressed upon the Magistrate and Judges to view the violations of labour laws seriously and punish the errant employers by imposing adequate punishments. To quote the relevant text of said judgment:-

Imposition of adequate fines

> *"…We are shocked to find that in cases of violations of labour laws enacted for the benefit of workmen, the Magistrates have been imposing only small fines of Rs. 200/- threrabouts. The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity. They seem to overlook the fact that the labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of fine. If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. We would like to impress upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishments."*.(**Copy of the judgment is at Annexure-8**)

Effect of non-inclusion of Sec. 5 of the Existing ER Act in the proposed 'Code on Wages Bill, 2017'.

7.5 The learned members were of unanimous view that the existing provisions of the ER Act, 1976 should not be diluted. Therefore, not only existing Section 5 of ER Act, but provisions laid down in Articles 7 and 8 of the un-ratified ILO Convention C-156 (Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981) should also be incorporated in the new 'Code on

Wages'. Said convention (C-156) was adopted by the General Conference of the ILO on 23 June 1981, five years after the ER Act came in to force. This convention provides for adjustment of work with family responsibilities. Women have much greater and crucial family responsibilities, including the reproductive function, infant and child care etc. At times, women are forced to opt out of job because of these prime and demanding responsibilities.

7.6 The relevant pages of 'Code on Wages, 2017' are at (**Annexure-9)** and relevant Articles of C-156 are reproduced below (Full text of the Convention at Annexure-10):

Article 1

1. This Convention ***applies to men and women workers with responsibilities in relation to their dependent children,*** *where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity*

2. The provisions of this Convention ***shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family*** *who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.*

*3. For the purposes of this Convention, the terms "****dependent child" and "other member of the immediate family who clearly needs care or support"*** *mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.*

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as "workers with family responsibilities"

Article 2

This Convention applies to all branches of economic activity and all categories of workers

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

> ***Family responsibilities shall not, as such, constitute a valid reason for termination of employment.***

7.7 The provisions akin to C-156 were inserted by recent amendment in the Sec. 5(5) of the Maternity Benefit Act, 1961 (w.e.f. 01.04.2017) which reads as under:-

> ***Sec. 5(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as employer and the woman***

7.8 Some thirty-seven years back, a three Judge Bench of Hon'ble Supreme Court, in 'Air India Etc. Etc Vs. Nergesh Meerza & Ors. Etc. Etc **{1982 SCR (1) 438}** had the occasion to discuss similar issue and held as under:-

> ***"…. Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the AH (Air Hostess) concerned and the Corporation has nothing to do with the same. ..."***

7.9 In compliance with aforesaid directions of the Hon'ble Supreme Court, efforts should be made to facilitate the return of women to work, after they are free from their reproductive (child-bearing and child rearing) responsibilities, even though they have entered their middle age. The skill and knowledge they acquired should be used for nation building.

Identifying vulnerable sectors of employments which require study and special attention.

7.10 The learned members unanimously recommended that initially two or three, out of the following, vulnerable employments and sectors of economy may be selected for study and appropriate recommendations may be made to the Government for taking adequate steps for eliminating the discrimination therein, i.e.

(a) Agriculture

(b) Construction

(c) Electronic manufacturing

(d) Beauty industry (Health and Wellness)

(e) Hotel industry

(f) Education Sector

(g) Private Transport

(h) Media industry

Retaining existing definition of 'employer' u/s 2 (e) of MW Act, 1948 and making 'employer' to ensure payment of wages and compliance of labour laws for contract labour employed by it.

7.11 There was unanimous view that the proposed definition of 'employer' in clause 2(k) of the proposed 'Code on Wages, 2017' has not put any liability on principal employer w.r.t. un-paid wages to contract labour even though such a responsibility exists at present (Please see Para 4.12 to 4.14 above). Accordingly, the existing definition of employer u/s 2 (e) of MW Act, which also includes a principal employer, should be retained in the proposed Code. This would be equally applicable to all the four Wage Acts.

Simplifying definition of wages:

7.12 With reference to discussions made in Paras 4.10 and 4.11 above, it was unanimously recommended to simplify the draft definition of 'wages' under clause 2(x) of the proposed Code. The existing definition of '**remuneration**' u/s 2(g) of the E R Act or the existing definition of 'wages' u/s 2(rr) of the Industrial Disputes Act, 1947 can be adopted. The definitions of employee, employer and wages should be uniform to the extent possible in all Wage Acts, admittedly, there cannot be complete uniformity because object of each enactment is different.

Concluding remarks:

8. In her concluding remarks, Dr. Shashi Bala urged the participants for a concerted action for for timely inclusive and sustainable development of all the three genders before it is too late. She, concluded the workshop by quoting extracts from story of 'PRAYING HANDS' by integrating that with the vulnerable working conditions of women. To quote verbatim:-

> "*I personally feel Affirmative policies acts as a catalyst to survive in difficult circumstances and make many invisible hands hopelessly optimistic towards life. Especially the marginalized section of the society that is often predominated by women. By the time the persons in authority realizes and feels the situation of these women, the situation of many of these women is quite similar to Albert in the story connected to praying hands saying No...no … it is too late for me…(Story can be accessed at*

link ***https://www.thoughtco.com/praying-hands-1725186****). In my personal opinion benefit of affirmative policies must be accessible to all for paving the way towards optimism to this aspiring and worthy section of our society as well."*

Vote of Thanks:

9. Advocate Tanu Bhardwaj, Research Associate, VVGNLI, Noida proposed the vote of thanks for the distinguished Chairperson, panelists and participants behalf of the Director General VVGNLI Noida and the Director of the Workshop. She hopefully wished for continuing further journey in the same spirit with the same unbeatable HIGH JOSH.

Annexure-1

List of Participants

Panelists:

1. Prof Shri Surendra Nath, IAS (Retd) - Chairperson
2. Shri G.P. Bhatia, CLS (Retd), - Chief Presenter
3. Dr. Mridula Ghai, Additional Central Provident Fund Commissioner (EPFO), New Delhi
4. Dr. M. M. Rehman, Former Senior Fellow, VVGNLI, Noida

Participants:

1. Dr. Renuka Singh, Professor, (JNU), New Delhi
2. Dr. J. S. Mann, Prof, National Law University, Dwarka, Delhi.
3. Dr. Poonam S. Chauhan, Former Senior Fellow, VVGNLI, Noida
4. Mr. Vinay Kumar Trivedi, CLS, Labour Welfare Commissioner, Army (HQ), New Delhi
5. Mr. Shah Alam, Assistant Professor (JMI), New Delhi
6. Dr. Suraiya Tabassum, Assistant Professor (JMI), New Delhi
7. Mr. Ankur Dalal, CLS, Regional Labour Commissioner (C) HQ, New Delhi
8. Mr. R. A. Khan, CLS, Regional Labour Commissioner (C), HQ, New Delhi
9. Ms. Reegha Jaisingh Chauhan, CLS, Asst. Labour Commissioner (C), CLC(HQ), New Delhi
10. Mr. Vinay Kumar Jaiswal, CLS, Asst. Welfare Commissioner, Raipur (Chhattisgarh) (Only forenoon)
11. Mr. Prashant K. Pajai, CLS, Asst. Labour Commissioner (C), Durgapur (Only forenoon)
12. Mr. Ankur, CLS, Asst. Labour Welfare Commissioner, SQAE, Kolkatta (Only forenoon)
13. Mr. Manish Kr. Shankar, CLS, Asst. Labour Welfare Commissioner, CPWD, Patna (Only forenoon)
14. Mr. Pravin Kumar, CLS, Asst. Labour Commissioner (C), Chaibasa (Jharkhand) (Only forenoon)
15. Mr. Love Singh, CLS, Asst. Labour Commissioner (C), Hazaribagh (Jharkhand) (Only forenoon)
16. Mr. Anupreet Singh, CLS, Asst. Labour Commissioner (C), Dhanbad (Jharkhand) (Only forenoon)

17. Ms. Garima Sharma, Labour Enforcement Officer (C), CLC (HQ), New Delhi
18. Ms. Afreen Hussain, Research Scholar JMI, New Delhi
19. Ms. Shiney Chakraborty, Institute of Social Studies Trust, New Delhi
20. Ms. Salma Khatoon, Research Scholar, JMI, New Delhi
21. Ms. Shalini Garg, Research Assistant, JMI, New Delhi
22. Mr. Balram Kumar, Production Manager, Bihar Rural Livelihoods Promotion Society, Bihar
23. Mr. Jagesh, Field Worker, Max Life Insurance, Noida
24. Mr. Sanjay Kumar Shukla, Member, Nirman Majdoor Union, Pratap Garh, U.P. (Only afternoon)
25. Ms. Vandana Kumari, Member, Nirman Majdoor Union, Pratap Garh, U.P. (Only afternoon)
26. Mr. Shivji Singh, Member, P.K.K.M. Union, Balia, U.P. (Only afternoon)
27. Mr. Tejnarayan, Member, P.K.K.M. Union, Balia, U.P. (Only afternoon)
28. Mr. Kuber Ojha, Member, P.K.K.M. Union, Balia, U.P. (Only afternoon)
29. Mr. Prabhakar Singh, Member, P.K.K.M. Union, Balia, U.P. (Only afternoon)
30. Ms. Vinita Mishra, Field Coordinator, Social Security Forum, Udaipur (Rajasthan) (Only afternoon)
31. Mr. Fanish Singh Kushare, Member, National Social Security Forum, Udaipur (Only afternoon)
32. Mr. Hemant Nandan Ojha, Member, AIUC, Balia, Pratap Garh (U.P) (Only afternoon)
33. Mr. Rajnish Kumar Rai, Secretary, P.K.K.M. Union, Balia U.P. (Only afternoon)

Faculty from VVGNLI:

1. Dr. Helen R. Sekar Senior Fellow (Only forenoon)
2. Dr. Sanjay Upadhyaya, Senior Fellow (Only forenoon)
3. Dr. Elina Samantroy, Fellow (Only forenoon)

Workshop Team

1. Dr. Shashi Bala, Fellow, VVGNLI – Workshop Director & Team Leader
2. Mrs. Valsamma B. Nair , Steno. Gr. II, VVGNLI (Only forenoon)
3. Ms. Tanu Bhardwaj ,Research Associate, VVGNLI
4. Mr. Rishabh Bajpai, Computer Operator, VVGNLI

Annexure-2

Concept Note

V.V Giri National Labour Institute, NOIDA

Workshop on Equal Remuneration Act 1976:

Identifying the Affirmative Initiative & Challenges in the Implementation of the Act

Concept note

27th March 2019

Workshop Coordinator: Dr. Shashi Bala, Fellow, V.V. GNLI

Introduction

1.1. The doctrine of 'equal pay for equal work' has come to be recognized worldwide as one of the universal human rights through various international instruments, viz:-

(a) Universal Declaration of Human Rights, 1948.

(b) International Covenant on Economic, Social and Cultural Rights, 1976 (ICESCR).

(c) African Charter on Human and Peoples' Rights, 1986

(d) The ILO Declaration on Fundamental Principles and Rights at Work, 1998

(e) Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention no.100), 1951

(f) ILO Convention No. 111 on Discrimination (Employment and Occupation) in 1960.

1.2 Article 11 of the 'UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) which relates to employment related issues, reads that the States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment and to ensure, **on the basis of equality of men and women, the same rights, in particular:-**

(a) Right to work as an inalienable right of all human beings;

(b) Same criteria for selection for employment

(c) Right to free choice of profession & employment, job security, promotion, training etc

(d) Equal remuneration for equal value of work

(e) Right to social security in cases of retirement, unemployment, sickness, invalidity, old age, incapacity of work, right to paid leave.

(f) The right to protection of health, safety & working conditions, including safeguarding of function of reproduction.

Complete Text of this Article is reproduced at Annexure-1 of this Concept Note

1.3 The notable International Convention on the subject is 'Equal Remuneration Convention' (C 100) which ensures equal remuneration to both male and female labourers. This Convention has been ratified by 163 countries including India.

Ratification of International Conventions by amending the Municipal Laws

2.1 Various independent sovereign countries who are signatories to international instruments/conventions have the obligation to ratify these instruments, with or without reservations, through their Central legislatures and amend their municipal laws (national/local) laws to bring these in conformity with the international standards and obligations laid down in such instruments. Thus the provisions relating to equal wages or equal remuneration find place in the Municipal (national) laws of majority of countries, including **Republic of India.**

Equal wages for men and women in Indian Perspective

3.1 In India the doctrine of '**equal pay for equal work'** is not a Fundamental Right but has acquired the status of a 'statutory right' after enactment of 'Equal **Remuneration Act, 1976'** by the Indian Parliament to implement Article 39 (d) which has been incorporated as one of the 'Directive Principles of State Policy' laid down in Articles 36 to 51 (PART IV) of the Constitution of India. Art. 39(d) reads as under:-

> ***"39. Certain Principles of policy to be followed by the State****.- The State shall, in particular, direct its policy, towards securing –*
>
> *(d) that there is equal pay for equal work for both men and women*

3.2 Needless to state that the term 'remuneration' has much wider scope that the term 'wages'.

Salient features of the Act:

4.1 The Equal Remuneration Act, 1976 (ERA) is a step towards gender equity. Its Preamble reads as under:-

> **"An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto."**

4.2 The major salient features of the Act are as under:-

(a) It is a gender specific legislation and prohibits discrimination only between men and women; and not between 'men and men'; or 'women and women'

(b) Like all Indian Labour Laws, the ERA does not have the universal application. It applies to establishments and employments notified u/s 1(3) of the Act, viz- plantation, mines, banking, hospitals, textile, factories, railway, transport, food products, beverages, tobacco products, watches, clocks, jeweler, agriculture etc. It covers a fairly large number of workforce in organised as well as un-organised sector.

(c) The term 'worker' u/s 2(i) has been defined as one who works in any establishment or employment in respect of which this Act has come into force. There is no salary limit for worker and the definition has not been confined by words like skilled, technical, teacher, supervisory, managerial etc.

(d)ERA prohibits discrimination right from recruitment till the date of superannuation of a woman worker. Sec 5 prohibits discrimination between men and women, in recruitment and subsequent to recruitment, i.e. in (i) conditions of service, (ii) Promotions, (iii) Trainings and (iv) Transfers (except where employment of women is prohibited, restricted, regulated etc).

(e)Sec. 4(1) casts a duty upon the employer to pay equal remuneration to men and women workers for '**same work'** or '**work of similar nature'**. U/s 2(h) the term '**Same work or work of similar nature'** has been defined as the work in which skill, effort and responsibility are same, when performed under similar working conditions.

(f) U/s 4(2) and 4(3), for bringing parity, the remuneration of any worker cannot be reduced, but can only be increased to the higher or the highest level.

(g) Per Sec. 2(g) of the ERA, 'Remuneration' means the basic wage or salary, and any additional emoluments, paid either in cash or kind.

(h) The ERA is a self-contained Code. U/s 7, the appropriate Government has the power to appoint 'Authority' and 'Authority for Appeal' (Appellate Authority). They adjudicate the complaints and the claim cases only. The penalty for contravention of any provision of the Act can be imposed only by the Judicial Magistrates.

(i) The Act is being enforced both by the Central and the State Governments in their respective spheres. Central Government is the appropriate Government in relation to employment carried on by or under the authority of CG or railway administration or banking company, mine, oilfield or major port or any corporation established by a Central Act. State Government is the appropriate Government in all other cases.

5. Gist of leading judgments on the subject {Discrimination in wages, remuneration and other conditions of employment) is placed at **Annexure-2** of this Concept Note.

Way Ahead:

6.1 'Code on Wages Bill, 2017' {Bill No. 163 of 2017) was introduced in the Lok Sabha on 03.08.2017. In this Code, four existing wage Acts are proposed to be merged, namely Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. In the Code, there are only two clauses relating to Equal Wages (not remuneration) which are reproduced verbatim as under:-

> ***"3(1) There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.***
>
> ***3 (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee.***
>
> ***4. Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government."***

6.2 If the Code Bill is passed by the Parliament in its present form, the scope of the ER Act will be reduced drastically as the term **'remuneration'**

will be replaced by the term '**wages**'. Further, in the proposed Code, there is no provision like Sec. 5 of the ER Act, which prohibits discrimination between men and women in recruitment and matters subsequent to recruitment, like (i) conditions of service (ii) Promotions, (iii). Trainings and (iv) Transfers

6.3 The ILO is celebrating its Centenary this year. India is a Founding Member of the ILO. India has also signed the 'CEDAW' and 'Equal Remuneration Convention' (C-100). We need to strive for complete equality between men and women in the matter of employment as stated in Article 11 of the CEDAW (**Complete Text is given at Annexure-1**) which also includes the maternity benefits.

6.4 For drafting any policy, the feedback in the form of data is required, which can be collected ether after proper field surveys or on the basis of analysis of inspection reports which point out to various deficiencies relating to implementation of any legislation. More the number of inspections, more awareness is created amongst the employer and the employees. Thus more stress needs to be given on the enforcement of the Act by the appropriate Governments.

7. To identify the challenges and constraint in the implementation of the Act, VVGNLI is organizing this workshop with the main stakeholders. The distinguished members of the workshop may also identify the vulnerable sectors which require special attention and the mode by which the objective of ER Act can be achieved.

Annexure -1 to Concept Note

Text of Article 11 of the 'UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) 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;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3 Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Annexure -2 to Concept Note

Gist of leading judgment on the subject {Discrimination in wages, remuneration and other conditions of employment}

Dharwad Dist. PWD Employees Association v State of Karnataka, (1990) 2 SCC 396.

The ER Act is a legislation providing equality of pay for equal work between men and women which certainly is a part of the principle 'equal pay for equal work.

……..

C. Girijambal v State of A.P., 1981 SCC (L&S) 293.

ER Act is not applicable in case of professional services. .

…….

Mackinnon Mackenzie & Co. v Audrey D Costa, (1987) 2 SCC 469

Fact of the case: A dismissed confidential lady stenographer filed claim before the Authority appointed u/s 7 of the ER Act, 1976 alleging that during her employment, after the Act came into force, she was being paid remuneration at the rates less favourable than those paid to the male Stenographers, performing the same or similar kind of work. Hence she was entitled to recover the difference between remuneration paid to her and the male Stenographers.

Employer contended that the wages were paid to her as per settlement arrived at between the employees' Union and the management; and hence there was no discrimination. Because of settlement, she was getting Rs. 730.20 PM less than her male counterparts. Further, employer had no capacity to pay.

Ruling by the Supreme Court:-

On settlement: A settlement arrived at between the management and the employees' union cannot be a valid ground for effecting discrimination in payment of remuneration between male and female employees performing the same work or work of similar nature

On financial capacity to pay:

> *"It is lastly urged on behalf of the petitioner that the enforcement of the Act will be highly prejudicial to the management, since its financial position is not satisfactory* ***and the management is not able to pay equal***

remuneration to both male Stenographers and female Stenographers. *The Act 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.* ***The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it."***

Equal pay for equal work - 'same work or work of similar nature' defined.

State of Punjab V Surjit Singh, (2009) 9 SCC 514: 2009 AIR SCW 6759

"19. Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. ***But equal pay must be for equal work of equal value.*** *The Principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation… A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service.* ***The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity… Functions may be the same but responsibilities make a difference. …"***

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Annexure 3 (i)

Two Questionnaire on Equal Remuneration Act, 1976 and Impact of Maternity Benefit (Amendment) Act, 2017 on employment

Workshop on Equal Remuneration Act 1976: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act

(RESEARCH STUDY ON IMPLIMENTATION OF EQUAL REMUNERATION ACT, 1976, QUESTIONNAIRE FOR LABOUR ADMINISTRATORS)

27th March 2019

V.V. Giri National Labour Institute, Noida

NOTE: Please tick at appropriate box in the given grid or encircle the appropriate response. Some questions may have multiple responses.			
Name & Designation			
Total years of experience as Labour Administrator			
Jurisdiction			
Location / State			
I	Are you currently working with laws relating to women workers? If yes, please specify details	1. Yes	
		2. No	
II	Whether entrusted with the powers of Inspector or Authority or Appellate Authority under E.R. Act?	Inspector	
		Authority	
		Appellate Authority	
	Can you state key features of the E.R. Act, 1976?		

III	Average annual number of inspections conducted **by you** in last five years.		
IV	Average annual number of prosecution launched during last five years		
V	Average percentage of convictions in prosecution cases		
VI	Average fine imposed by Magistrates for violation of provisions of ER Act		
VII	Whether any sentence was ever awarded by any Magistrate during last five years	1. Yes	
		2. No	
VIII	Whether any record of inspections conducted and irregularities noticed is maintained and reflected in monthly and annual reports?	1. Yes	
		2. No	
IX	Average annual number of claim cases filed **by you** and adjudicated by the authority for non- implementation of Act during the last five years.		
X	Identify the difficulties faced **by you** as an Inspector during inspection, filing prosecution and claim cases?		
XI	Please give suggestions to overcome these difficulties		
XII	In case you are an Authority or Appellate Authority, please state the average annual number of claims adjudicated by you as Authority; and appeals as an Appellate Authority?	1. Average claims adjudicated PA :	
		2. Average appeals adjudicated per PA:	
XIII	Please state steps taken by you to create awareness regarding implementation of E.R. Act, 1976?		
XIV	Have you come across any instance when a woman employee was terminated for demanding equal remuneration? If yes, please specify	1. Yes	
		2. No	
XV	How do you handle such cases of dismissals of women employees?		

XVI	What advantages or disadvantages accrue to an employer/establishment, if it Implements provisions of E.R. Act, 1976?	
XVII	How would you assess employer's attitude towards implementation of E.R. Act, 1976?	Supportive Neutral Unsupportive
XII	How do male employees feel about provisions of E.R. Act, 1976?	Supportive
		Neutral
		Unsupportive
XIX	Please state the administrative or other difficulties faced by **the Labour Department** in effective implementation of the E.R. Act, 1976. This includes inspection to conviction and adjudication of claims / appeals.	
XX	Suggestion, if any to overcome the difficulties highlighted above.	
XXI	Please suggest vulnerable area & industry which require immediate intervention and enforcement of E.R. Act, 1976.	
XXII	How do you view existing provisions under the E.R. Act, 1976 and proposed provisions in the Code of Wages, 2017?	
XXII	Suggestions, if any, for improvement in the provisions relating to Equal Remuneration in the Code of Wages.	
XXIV	Please suggest improvements / amendments, if any, required for better implementation of the E.R. Act?	

(Signature)

Project Director : Dr. Shashi Bala, Fellow, Co–ordinator : Center for Gender and labour Studies.

V.V. GIRI NATIONAL LABOUR INSTITUTE, NOIDA, Ministry of Labour and Employment

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Annexure 3 (ii)

Workshop on Equal Remuneration Act 1976:
Identifying the Affirmative Initiative &Challenges in the Implementation of the Act
(Impact on Employment of the Maternity Benefit (Amendment) Act, 2017, Sub Part of the RESEARCH STUDY ON IMPLEMENTATION OF Equal Remuneration Act 1976)
QUESTIONNAIRE FOR LABOUR ADMINISTRATORS
27th March 2019
V.V. Giri National Labour Institute, Noida

NOTE: Please tick at appropriate box in the given grid or encircle the appropriate response. Some questions may have multiple responses.			
Name & Designation			
Total years of experience as Labour Administrator			
Jurisdiction			
Location / State			
1	Are you currently working with laws relating to women workers? If yes, please specify details	I. Yes	
		II. No	
2	Whether entrusted with the powers of Inspector or Authority under MB Act?	I. Inspector	
		II. Authority	
3.	Whether appointment letters issued by employer include information regarding every benefits available under M.B. Act?. **Sec. 11-A(2) wef 01.07.2017**	I. Yes	
		II. No	
4	Average annual number of inspections conducted **by you** in last five years.		
5	Average annual number of prosecution launched during last five years		
6	Average percentage of convictions in prosecution cases		

7	Average fine imposed by Magistrates for violation of provisions of MB Act		
8	Whether any sentence was ever awarded by any Magistrate during last five years	I. Yes	
		II. No	
9	Whether any record of inspections conducted and irregularities noticed is maintained and reflected in monthly and annual reports?	I. Yes	
		II. No	
10	Average annual number of directions made **by you**under Sec. 17(2) for I. Making payment of Maternity Benefit II. Directing employer to employ a women who has been discharged or dismissed during the period of confinement during the last five years.	I. II.	
11	Identify the difficulties faced **by you** as an Inspector during inspection and filing prosecution?		
12	Please give suggestions to overcome these difficulties		
13	In case you are an Authority, please state the average annual number of appeals adjudicated by you, against the directions given by the Inspector.		
14	Please state steps taken by you to create awareness regarding recent amendments under MB Act, 2017?		
15	Have you come across any instance when a woman employee was terminated for demanding benefits due under the Act? If yes, please specify	I. Yes	
		II. No	
16	How do you handle such cases of dismissals of women employees?		
17	What advantages or disadvantages accrue to an employer/establishment, if it Implements provisions of MB Act, 2017?	I. Yes	
		II. No	
18	How would you assess employer's attitude towards implementation of Act?	Supportive	
		Neutral	
		Unsupportive	

19	How do male employees feel about provisions of Act?	Supportive
		Neutral
		Unsupportive
20	Pls state the administrative or other difficulties faced by **the Labour Department** in effective implementation of the Act. This includes 'inspection to conviction' and issuing direction u/s 17 and appeals.	
21	Suggestion, if any to overcome the difficulties highlighted above	
22	Pls suggest vulnerable area & industry which require immediate intervention and enforcement of MB Act.	
23	How do you view existing provisions under the MB Act, 2017?	
24	Please suggest improvements / amendments, if any, required for better implementation of the Act.	
25	How do you view proposed provisions in the Draft Labour Code on Social security, 2018?	
26	Suggestions, if any, for improvement in the provisions relating to Maternity benefit in proposed Code.	

(Signature)

Project Director : Dr. ShashiBala, Fellow, Co-ordinator : Center for Gender and labour Studies.
V.V. GIRI NATIONAL LABOUR INSTITUTE , NOIDA , Ministry of Labour and Employment
Govt. of India, E-mail : balashashi.vvgnli@gov.in / shashibala2002@gmail.com

Annexure - 4

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Elimination of All Forms of Discrimination against Women

Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

entry into force 3 September 1981, in accordance with article 27(1)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) 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;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure i courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to th movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure. 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Annexure-5

Equal Remuneration Convention, 1951 (C-100)

C100 - Equal Remuneration Convention, 1951 (No. 100)

(Entry into force: 23 May 1953)

Adoption: Geneva, 34th ILC session (29 Jun 1951) - Status: Up-to-date instrument (Fundamental Convention).

Convention may be denounced: 23 May 2023 - 23 May 2024

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

Article 1

For the purpose of this Convention--

(a) the term ***remuneration*** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term ***equal remuneration for men and women workers for work of equal value*** refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of--

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate –

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 12

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the

Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides--

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Annexure-6

Discrimination (Employment and Occupation) Convention, 1958 (C-111)

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Convention concerning Discrimination in Respect of Employment and Occupation (Entry into force: 15 Jun 1960)

Adoption: Geneva, 42nd ILC session (25 Jun 1958) - Status: Up-to-date instrument (Fundamental Convention). Convention may be denounced: 15 Jun 2020 - 15 Jun 2021

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term ***discrimination*** includes--

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms ***employment*** and ***occupation*** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice–

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Annexure-7

Equal Remuneration Act, 1976

THE EQUAL REMUNERATION ACT, 1976

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

CHAPTER II

PAYMENT OF REMUNERATION AT EQUAL RATES TO MEN AND WOMEN WORKERS AND OTHER MATTERS

CHAPTER III

MISCELLANEOUS

THE EQUAL REMUNERATION ACT, 1976

ACT NO. 25 OF 1976

[11*th February*, 1976.]

An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Equal Remuneration Act, 1976.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date[1], not being later than three years from the passing of this Act, as the Central Government may, by notification, appoint and different dates may be appointed for different establishments or employments.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means,—

(*i*) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and

(*ii*) in relation to any other employment, the State Government;

(*b*) "commencement of this Act" means, in relation to an establishment or employment, the date on which this Act comes into force in respect of that establishment or employment;

(*c*) "employer" has the meaning assigned to it in clause (*f*) of section 2 of the Payment of Gratuity Act, 1972 (39 of 1972);

(*d*) "man" and "woman" mean male and female human beings, respectively, of any age;

(*e*) "notification" means a notification published in the Official Gazette;

(*f*) "prescribed" means prescribed by rules made under this Act;

(*g*) "remuneration" means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

(*h*) "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 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;

(*i*) "worker" means a worker in any establishment or employment in respect of which this Act has come into force;

(*j*) words and expressions used in this Act and not defined but defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

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1. 8th March, 1976, *vide* notification No. S.O. 175(E), dated 6th March, 1976, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

3. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.

CHAPTER II

PAYMENT OF REMUNERATION AT EQUAL RATES TO MEN AND WOMEN WORKERS AND OTHER MATTERS

4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.—(*1*) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(*2*) No employer shall, for the purpose of complying with the provisions of sub-section (*1*), reduce the rate of remuneration of any worker.

(*3*) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:

Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

5. No discrimination to be made while recruiting men and women workers.—On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, [1][or in any condition of service subsequent to recruitment such as promotions, training or transfer,] make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Provided that the provisions of this section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

6. Advisory Committee.—(*1*) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf.

(*2*) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.

(*3*) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment, and such other relevant factors as the Committee may think fit.

(*4*) The Advisory Committee shall regulate its own procedure.

(*5*) The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit.

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1. Ins. by Act 49 of 1987, s. 2 (w.e.f. 16-12-1987).

7. Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints.—(*1*) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding—

(*a*) complaints with regard to the contravention of any provision of this Act;

(*b*) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature;

and may, by the same or subsequent notification, define the local limits within which each such authority shall exercise its jurisdiction.

(*2*) Every complaint or claim referred to in sub-section (*1*) shall be made in such manner as may be prescribed.

(*3*) If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (*1*).

(*4*) Where a complaint or claim is made to the authority appointed under sub-section (*1*), it may, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct,—

(*i*) in the case of a claim arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid;

(*ii*) in the case of complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

(*5*) Every authority appointed under sub-section (*1*) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(*6*) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (*1*), on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

(*7*) The authority referred to in sub-section (*6*) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (*6*), allow the appeal to be preferred within a further period of thirty days but not thereafter.

(*8*) The provisions of sub-section (*1*) of section 33C of the Industrial Disputes Act, 1947 (14 of 1947), shall apply for the recovery of monies due from an employer arising out of the decision of an authority appointed under this section.

CHAPTER III

MISCELLANEOUS

8. Duty of employers to maintain registers.—On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

9. Inspectors.—(*1*) The appropriate Government may, by notification, appoint such persons as it may think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

(*2*) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(*3*) An Inspector may, at any place within the local limits of his jurisdiction,—

(*a*) enter, at any reasonable time, with such assistance as he thinks fit, any building, factory, premises or vessel;

(*b*) require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents;

(*c*) take, on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with;

(*d*) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be, or to have been a worker in the establishment;

(*e*) make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.

(*4*) Any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition.

10. Penalties.—(*1*) If after the commencement of this Act, any employer, being required by or under the Act, so to do—

(*a*) omits or fails to maintain any register or other document in relation to workers employed by him, or

(*b*) omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or

(*c*) omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

(*d*) omits or refuses to give any information,

he shall be punishable [1][with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both].

(*2*) If, after the commencement of this Act, any employer—

(*a*) makes any recruitment in contravention of the provisions of this Act, or

(*b*) makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or

(*c*) makes any discrimination between men and women workers in contravention of the provisions of this Act, or

(*d*) omits or fails to carry out any direction made by the appropriate Government under sub-section (*5*) of section 6,

he shall be punishable [2][with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences].

(*3*) If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine which may extend to five hundred rupees.

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1. Subs. by Act 49 of 1987, s. 3, for "with fine which may extend to one thousand rupees" (w.e.f. 16-12-1987).
2. Subs. by s. 3, *ibid.*, for "with fine which may extend to five thousand rupees" (w.e.f. 16-12-1987).

11. Offences by companies.—(*1*) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

[1][**12. Cognizance and trial of offences.**—(*1*) 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.

(*2*) No court shall take cognizance of an offence punishable under this Act except upon—

(*a*) its own knowledge or upon a complaint made by the appropriate Government or an officer authorised by it in this behalf, or

(*b*) a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.]

13. Power to make rules.—(*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner in which complaint or claim referred to in sub-section (*1*) of section 7 shall be made;

(*b*) registers and other documents which an employer is required under section 8 to maintain in relation to the workers employed by him;

(*c*) any other matter which is required to be, or may be, prescribed.

(*3*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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1. Subs. by Act 49 of 1987, s. 4, for section 12 (w.e.f. 16-12-1987).

14. Power of Central Government to give directions.—The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

[1][**15. Act not to apply in certain special cases.**—Nothing in this Act shall apply—

(*a*) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or

(*b*) to any special treatment accorded to women in connection with—

(*i*) the birth or expected birth of a child, or

(*ii*) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.]

16. Power to make declaration.—Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act.

17. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notification, make any order, not inconsistent with the provisions of this Act, which appears to it to be necessary for the purpose of removing the difficulty:

Provided that every such order shall, as soon as may be after it is made, be laid before each House of Parliament.

18. Repeal and saving.—(*1*) The Equal Remuneration Ordinance, 1975 (12 of 1975) is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed (including any notification, nomination, appointment, order or direction made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force when such thing was done or action was taken.

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1. Subs. by Act 49 of 1987, s. 5, for section 15 (w.e.f. 16-12-1987).

Annexure-8

People's Union for Democratic Rights and Others Vs. Union of India and Others

PETITIONER:
PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND OTHERS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT18/09/1982

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
ISLAM, BAHARUL (J)

CITATION:
1982 AIR 1473 1983 SCR (1) 456
1982 SCC (3) 235 1982 SCALE (1)818
CITATOR INFO :
RF 1983 SC 75 (6)
R 1983 SC 328 (3)
RF 1984 SC 177 (1,6,7)
F 1984 SC 802 (10,21)
RF 1987 SC1086 (4)

ACT:
Public Interest Litigation, scope and need for-Violation of various labour laws in relation to workmen employed in the construction work connected with the Asian Games like Constitution of India, 1950 Arts. 24, Minimum wages Act, 1948, Equal Remuneration Act. The employment of Children Act, 1938 and 1970, Interstate Migrant workman (Regulation of Employment and conditions of Service) Act, 1970 and contract Labour (Regulation and Abolition) Act, 1970-Locus-standi-Maintainabillty of the writ and remedial relief that could be granted-Duties of Court regarding sentencing in cases of violation of Labour Laws-Constitution of India Articles 14, 23, 24 and 32-Scope of Article 23 Meaning of "begar" Duty of State when violation of Arts. 17, 23 and 24 is complained.

HEADNOTE:
Petitioner No. 1, is an organisation formed for the purpose of protecting democratic rights. It commissioned three social scientists for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various Asiad Projects were working. Based on the report made by these three social scientists after personal investigation and study the 1st petitioner addressed a letter to Hon'ble Mr. Justice Bhagwati complaining of violation of various labour laws by tho respondents' and/or their agents and seeking interference by the Supreme Court to render social justice by means of appropriate directions to the affected workmen. The Supreme Court treated the letter as a writ petition on the judicial side and issued notice to the Union of India, Delhi Administration and the Delhi Development Authority.

The allegations in the petition were:

(i) The various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the

construction work of the projects and they were registered as principal employers under section 7 of the Contract Labour (Regulation and Abolition) Act. 1970. These contractors engaged workers through "Jamadars" who brought them from different parts of India particularly the States of Rajasthan, Uttar Pradesh and Orissa and paid to these Jamadars the minimum wage of Rs. 9.25 per day per worker and not to the workmen direct. The Jamadars deducted Rupee one per day per worker as their commis-

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sion with the result that there was a violation of the provisions of A the Minimum Wages Act;

(ii) The provisions of Equal Remuneration Act, 1976 were violated as the women workers were being paid Rs. 71- per day, the balance of the amount of the wage was being misappropriated by the Jamadars:

(iii) There was violation of Article 24 of the Constitution and of the - . provisions of the Employment of Children Acts, 1938 and 1970 in as much as children below the age of 14 years were employed by the contractors in the construction work of the various projects,

(iv) There was violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 which resulted in deprivation and exploitation of the workers and denial of their right to proper living condition and medical and other facilities under the Act; and

(v) The provisions of the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, though brought into force as far back as 2nd October 1980 in the Union. Territory of Delhi were not implemented by the Contractors.

Allowing the petition, the Court,

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HELD: 1:1. Public interest litigation which is strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and indicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of Government. [467 C-F]

1:2. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of law is meant for them also, though today it exists

only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental rights to carry on their business and to fatten their purses by exploiting the consuming public, certainly the "chamaras" to belonging
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to the lowest strata of society have Fundamental Right to earn on honest living through their sweat and toil. Large numbers of men, women and children who constitute the bulk of an population are today living a sub human existence in conditions of object poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. Nor can these poor and deprived sections of humanity afford to enforce their civil and political rights. (467 P-H; 468 A-D]

1:3. The only solution of making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. Of course, the task of restructuring the social and economic order so that the social and economic right become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. [468 G-H, 469 B-D]

1:4. Public interest litigation, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority. [469 D-F]

1:5. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India who gave to themselves this magnificent Constitution. Pendency of large arrears in the courts cannot be any reason for denying access of justice to the poor and weaker sections of the community. [470 E-F]

1:6. The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor

and vulnerable sections of the community and actively help in the
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realisation of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice for without it, it cannot survive for long. Fortunately this change is gradually taking place and public interest litigation is playing a large part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future. This writ petition is one such instance of public interest litigation. [470 G-H; 471 A-C]

2. It is true that construction industry does not find a place on the schedule to the Employment of Children Act, 1938 and the Prohibition enacted in section 3 sub-section (3) of that Act against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry. But, apart altogether from the requirement of Convention No. 59 of C the International Labour organisation and ratified by India, Article 24 of the Constitution provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate propiro vigore and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this Constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. Therefore, notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every state Government must ensure that this constitutional mandate is not violated in any part of the Country [474 A-F]

3. Magistrates and Judges in the country must view violations of labour laws with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment. The labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are to be punished with meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. [476 E-H]

4:1. It is true that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen, and therefore from a strictly traditional point of view it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by the Supreme Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-saxon system of jurisprudence have been broken and a new dimension has

been given to the doctrine of
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locus standi which has revolutionised the whole concept of access to justice in a way not known before to the Western System of jurisprudence. [477 F-H]

4:2. Having regard to the peculiar socio economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is therefore Necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost. [478 A-C]

4:3. Where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting bonafide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ Petition on the judicial side and take action upon it. [478 C-F]

Here, the workmen whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability, are unable to approach the courts for judicial redress and hence the petitioners have, under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen. The petitioners are not acting mala fide or out of extraneous motives since the first petitioner is admittedly an organisation dedicated to tho protecting and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable.There can be no doubt that it is out of a sense of public service that the present Litigation has been brought by the petitioners and it is clearly maintainable. [478 G-H; 479 A-B]

4.4 The Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of the provisions of various labour law by its contractors and for non-compliance with the laws by the contractors, the workmen would clearly have a cause of actions against them as principal employers. So far as to Con tract Labour (Regulation and Abolition) Act, 1970 is concerned, section 20 is clear that if any amenity required to be provided under sections 16 to 18 or 19 for the
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benefit of the workmen employed in an establishment is not

provided by the contractor, the obligation to provide such amenity rests on the principal employer. [479 C-D]

Sections 17 and 18 of the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 also make principal employer liable to make payment of the wages to the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under sections 14 and 15 and to provide the facilities specified in section 16 of such migrant workmen. [479 F-G]

Article 24 of the Constitution embodies a Fundamental Right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment. Since, construction work is a hazardous employment, no child below the age of 14 years can be employed in constructions work and therefore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years, but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad Projects. Similarly the respondents must ensure compliance with by the contractors of the Provisions of the equal Remuneration Act, 1946 as they express the principle of equality embodied in Article 14 of the Constitution. [479 G-H; 480 A-D]

No doubt, the contractors are liable to pay the minimum wage to the workmen employed by them under the Minimum Wage Act 1948 but the Union of India, the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractors would equally be responsible to ensure that the minimum wage is paid to the workmen by their contractors.

[480 G-H]

5:1. It is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a Fundamental Right, for it is only for enforcement right that a writ petition can be maintained in this Court under Article 32. But, certainly the following complaints do legitimately form the subject matter of a writ petition under Article 32; namely, (i) the complaint of violation of Article 24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad Projects, (ii) allegation of non-observance of the provisions of the Equal Remuneration Act 1946, is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14; and (iii) the complaint of non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Interstate Migrant Workmen (Regulations of Employment and Conditions of Service) Act 1979 as it is a complaint relating to violation of Article 21. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition Act 1970 and the Inter-State Migrant Workmen Regulation of Employment and Conditions of Service) Act 1979 which became enforceable w.e.f. 4-6-1982 are clearly intended to ensure basic

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human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration

and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen; and (iv) the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act 1948, is also one relating to breach of a Fundamental Right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen.

[481 D-H; 482 A-F]

Maneka Gandhi v. Union of India, [1978] 2 SCR 663; Francis Coralie Mullin v. The Administrator of Union Territory of Delhi & Others, [1981] 2 SCR 516, applied.

5:2. Many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found inter alia in Articles 17, 23 and 24. [483 C-D]

5:3. Article 23 is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The prohibition against "traffic in human being and begar and other similar forms of forced labour" is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice. [484 G-H; 485 A]

5:4. The word "begar" in Article 23 is not a word of common use in English language, but a word of Indian origin which like many other words has found its way in English vocabulary. It is a form of forced labour under which a person is compelled to work without receiving any remuneration. Begar is thus clearly a film of forced labour. [485 E-G]

S. Vasudevan v. S.D. Mittal AIR 1962 Bom. 53 applied.

5:5. It is not merely 'begar' which is constitutionally prohibited by Article 23 but also all other similar forms of forced labour. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values. To contend that exacting labour by passing some remuneration, though it be inadequate will not attract the provisions of Article 23 is to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23. The contention is not only illfounded, but does not accord with the principle enunciated by this Court in Maneka Gandhi v. Union of India that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than to attenuate

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their meaning and content. The Constitution makers did not intend to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. There could be no logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as

a pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article. To interpret Article 23 as contended would be reducing Article 23 to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Art. 23. It would not be right to place on the language of Article 23 an interpretation which would emasculate its beneficient provisions and defeat the very purpose of enacting them. Article 23 is intended to abolish every form of forced labour. [486 E-H; 487 A-D]

5:6. The words "other similar forms of forced labour" are used in Article 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour". If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour. they would straight-away come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour." These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which has the effect of rendering any words used by the legislature superfluous redundant. [487 E-G]

The object of adding these words was clearly to expand the reach and content of Article 23 by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour, 'begar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by Article 23 if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. For example, where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years, if a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23. That is why specific performance of a contract of service cannot be enforced against an employee
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and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Article 23. [487 H; 488 A-D]

Baily v. Aalabama, 219 US 219:55 Law Ed. 191; quoted with approval,

5:7. Even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he

cannot be forced by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Article 23, which strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service, for the reasons, namely; (i) it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be breach of the contract entered into by him; (ii) there should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person; (iii) in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract the employee by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore, provides that no one shall be forced to provide labour or service against his will, even though it be under a contractor of service. [490 C-H]

Pollock v. Williams, 322 US 4:88 Lawyers Edn. 1095; referred to.

5:8. Where a person provides labour or services to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied. [492 F-G]

5:9. Ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. Therefore when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of

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some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide." [491 B-D]

5:10. 'Force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternative and compels him to adopt one particular course of action may properly be regarded as

'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour of service provided by him would be clearly 'forced labour'. The word 'forced' should not be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national character, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and every one shall have the right to work, to education and to adequate means of livelihood. The constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and, therefore, every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is a fact that in a capitalist society economic circumstances exert much greater pressure on an individual in driging him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. [491 D-H; 492 A-E]

6. Wherever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Article 17 or 23

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or 24 is being violated, it is the constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. The fact that the person whose fundamental right is-violated can always approach the court for the purpose of enforcement of his fundamental right, cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting

him. [493 A-D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 8143 of 1981.
(Under article 32 of the Constitution of India)

Govind Mukhoty in person and A.K. Ganguli for the petitioner.

Miss A. Subhashini for Respondent No. 1.

N.C. Talukdar and R.N. Poddar for Respondents Nos.5 and 6.

Sardar Bahadur Saharya and Vishnu Bahadur Saharya for Respondent No. 7.

The Judgment of the Court was delivered by

BHAGWATI, J. This is a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. The matter was brought to the attention of the Court by the 1st petitioner which is an organisation formed for the purpose of protecting democratic rights by means of a letter addressed to one of us (Bhagwati, J.). The letter was based on a report made by a team of three social scientists who were commissioned by the 1st petitioner for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various Asiad Projects were working. Since the letter addressed by the 1st petitioner was based on the report made by three social scientists after personal investigation and study, it was treated as a writ petition on the judicial side and notice was issued upon it inter alia to the Union of India, Delhi Development Authority and Delhi Administration which

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were arrayed as respondents to the writ petition. These respondents filed their respective affidavits in reply to the allegations contained in the writ petition and an affidavit was filed on behalf of the petitioner in rejoinder to the affidavits in reply and the writ petition was argued before us on the basis of these pleadings.

Before we proceed to deal with the facts giving rise to this writ petition, we may repeat what we have said earlier in various orders made by us from time to time dealing with public interest litigation. We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does

not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil ? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government under the label of Fundamental Right, the courts are praised for their boldness

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and courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty: utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce ? This was brought out forcibly by W. Paul Gormseley at the Silver Jubilee Celebrations of the Universal Declaration of Human Rights at the Banaras Hindu University:

> "Since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution in its chapter on Fundamental Rights and on the Directive Principles of State Policy and has already completed twenty-five years of independence, the question may be raised whether or not the Fundamental Rights enshrined in our Constitution have any meaning to the millions of our people to whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavoidable. We, in India, should on this occasion study the Human Rights declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country."

The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the International

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Human Rights Conference in Tehran called by the General Assembly in 1968 declared in a final proclamation:

"Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible."

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multidimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the Court. The state or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate

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and the industrial tycoon, but they exist also for the poor and the down-trodden the have-nots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate, and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgment delivered by this Court in Judges Appointment and Transfer cases. Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. They have been crying for justice but their cries have so far been in the wilderness. They have been suffering injustice silently with the patience of a rock, without the strength even to shed any tears. Mahatma Gandhi once said to Gurudev Tagore, "I

have had the pain of watching birds, who for want of strength could not be coaxed even into a flutter of their wings. The human bird under the Indian sky gets up weaker than when he pretended to retire. For millions it is an eternal trance." This is true of the 'human bird' in India even today after more than 30 years of independence. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India" who gave to themselves this magnificent Constitution. It is true that there are large arrears pending in the courts but, that cannot be any reason for denying access to justice to the poor and weaker sections of the community. No State has a right to tell its citizens that because a large number of cases of the rich and the well-to-do are pending in our courts, we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford, is disposed of. The time has now come when the courts must become the courts for the poor and struggling masses of this country They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that
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social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice, for without it, it cannot survive for long. Fortunately, this change is gradually taking place and public interest litigation is playing a large part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the fore front and the entire theatre of the law is changing. It holds out great possibilities for the future. This writ petition is one such instance of public interest litigation.

The Asian Games take place periodically in different parts of Asia and this time India is hosting the Asian Games. It is a highly prestigious undertaking and in order to accomplish it successfully according to international standards, the Government of India had to embark upon various construction projects which included building of fly-overs, stadia, swimming pool, hotels and Asian Games village complex. This construction work was framed out by the Government of India amongst various Authorities such as the Delhi Administration, the Delhi Development Authority and the New Delhi Municipal Committee. It is not necessary for the purpose of the present writ petition to set out what particular project was entrusted to which authority because it is not the purpose of this writ petition to find fault with any particular authority for not observing the labour laws in relation to the workmen employed in the projects which are being executed by it, but to ensure that in future the labour laws are implemented and the rights of the workers under the labour laws are not violated. These various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the construction work of the projects and they were registered as principal employers under section 7

of the Contract Labour (Regulation and Abolition) Act, 1970. The contractors started the construction work of the projects and for the purpose of carrying out the construction work, they engaged workers through jamadars. The jamadars brought the workers from different parts of India and particularly the States of Rajasthan, Uttar Pradesh and Orissa and got them employed by the contractors. The workers were entitled to a minimum wage of Rs.
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9.25 per day, that being the minimum wage fixed for workers employed on the construction of roads and in building operations but the case of the petitioners was that the workers were not paid this minimum wage and they were exploited by the contractors and the jamadars. The Union of India in the affidavit reply filed on its behalf by Madan Mohan; Under Secretary, Ministry of Labour asserted that the contractors did pay the minimum wage of Rs. 9.25 per day but frankly admitted that this minimum wage was paid to the jamadars through whom the workers were recruited and the jamadars deducted rupee one per day per worker as their commission and paid only Rs. 8.25 by way of wage to the workers. The result was that in fact the workers did not get the minimum wage of Rs. 9.25 per day. The petitioners also alleged in the writ petition that the provisions of the Equal Remuneration Act, 1976 were violated and women workers were being paid only Rs. 7/- per day and the balance of the amount of the wage was being misappropriated by the jamadars. It was also pointed out by the petitioners that there was violation of Article 24 of the Constitution and of the provisions of the Employment of Children Act, 1938 in as much as children below the age of 14 years were employed by the contractors in the construction work of the various projects. The petitioners also alleged violation of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and pointed out various breaches of those provisions by the contractors which resulted in deprivation and exploitation of the workers employed in the construction work of most of the projects. It was also the case of the petitioners that the workers were denied proper living conditions and medical and other facilities to which they were entitled under the provisions of the Contract Labour (Regulation and Abolition) Act 1970. The petitioners also complained that the contractors were not implementing the provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 though that Act was brought in force in the Union Territory of Delhi as far back as 2nd October 1980. The report of the team of three social scientists on which the writ petition was based set out various instances of violations of the provisions of the Minimum Wages Act, 1948, the Equal Remuneration Act 1976, Article 24 of the Constitution, The Employment of Children Act 1970, and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

These averments made on behalf of the petitioners were denied in the affidavits in reply filed on behalf of the Union of India, the
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Delhi Administration and the Delhi Development Authority. It was asserted by these authorities that so far as the Equal Remuneration Act 1976 and the Contract Labour (Regulation and Abolition) Act 1970 were concerned, the provisions of these labour laws were being complied with by the contractors and whenever any violations of these labour laws were brought to the attention of the authorities as a result

of periodical inspections carried out by them, action by way of prosecution was being taken against the contractors. The provisions of the Minimum Wages Act 1948 were, according to the Delhi Development Authority, being observed by the contractors and it was pointed out by the Delhi Development Authority in its affidavit in reply that the construction work of the projects entrusted to it was being carried out by the contractors under a written contract entered into with them and this written contract incorporated "Model Rules for the Protection of Health and Sanitary Arrangements for Workers employed by Delhi Development Authority or its Contractors" which provided for various facilities to be given to the workers employed in the construction work and also ensured to them payment of minimum wage The Delhi Administration was not so categorical as the Delhi Development Authority in regard to the observance of the provisions of the Minimum Wages Act 1948 and in its affidavit in reply it conceded that the jamadars through whom the workers were recruited might be deducting rupee one per day per worker from the minimum wage payable to the workers. The Union of India was however more frank and it clearly admitted in its affidavit in reply that the jamadars were deducting rupee one per day per worker from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day and there was violation of the provisions of the Minimum Wages Act, 1948.

So far as the Employment of Children Act 1938 is concerned the case of the Union of India, the Delhi Administration and the Delhi Development Authority was that no complaint in regard to the violation of the provisions of that Act was at any time received by them and they disputed that there was any violation of these provisions by the contractors. It was also contended on behalf of these Authorities that the Employment of Children Act 1938 was not applicable in case of employment in the construction work of these projects, since construction industry is not a process specified in the Schedule and is therefore not within the provisions of sub-

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section (3) of section 3 of that Act. Now unfortunately this contention urged on behalf of the respondents is well founded, because construction industry does not find a place in the Schedule to the Employment of Children Act 1938 and the prohibition enacted in section 3 sub-section (3) of that Act against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry. This is a sad and deplorable omission which, we think, must be immediately set right by every State Government by amending the Schedule so as to include construction industry in it in exercise of the power conferred under section 3A of the Employment of Children Act, 1938. We hope and trust that every State Government will take the necessary steps in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. That would be in consonance with Convention No. 59 adopted by the International Labour Organisation and ratified by India. But apart altogether from the requirement of Convention No. 59, we have Article 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate

proprio vigore and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. There can therefore be no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country. Here, of course, the plea of the Union of India, the Delhi Administration and the Delhi Development Authority was that no child below the age of 14 years was at any time employed in the construction work of these projects and in any event no complaint in that behalf was received by any of these Authorities and hence there was no violation of the constitutional prohibition enacted in Article 24. So far as the complaint in regard to non-observance of the provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was concerned, the defence of the Union of India, the Delhi Administration and the Delhi Development Authority that though this Act had come into force in the
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Union Territory of Delhi with effect from 2nd October 1980, the power to enforce the provisions of the Act was delegated to the Administrator of the Union Territory of Delhi only on 14th July 1981 and thereafter also the provisions of the Act could not been enforced because the Rules to be made under the Act had not been finalised until 4th June 1982. It is difficult to understand as to why in the case of beneficient legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 it should have taken more than 18 months for the Government of India to delegate the power to enforce the provisions of the Act to the Administrator of the Union Territory of Delhi and another almost 12 months to make the Rules under the Act. It was well known that a large number of migrant workmen coming from different States were employed in the construction work of various Asiad projects and if the provisions of a social welfare legislation like the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 were applied and the benefit of such provisions made available to these migrant workmen, it would have gone a long way towards ameliorating their conditions of work and ensuring them a decent living with basic human dignity. We very much wished that the provisions of this Act had been made applicable earlier to the migrant workmen employed in the construction work of these projects though we must confess that we do not see why the enforcement of the provisions of the Act should have been held up until the making of the Rules. It is no doubt true that there are certain provisions in the Act which cannot be enforced unless there are rules made under the Act but equally there are other provisions which do not need any prescription by the Rules for their enforcement and these latter provisions could certainly have been enforced by the Administrator of the Union Territory of Delhi in so far as migrant workmen employed in these projects were concerned. There can be no doubt that in any event from and after 4th June, 1982 the provisions of this beneficient legislation have become enforceable and the migrant workmen employed in the construction work of these projects are entitled to the rights and benefits conferred upon them under those provisions. We need not point out that so far as the rights

and benefits conferred upon migrant workmen under the provisions of section 13 to 16 of the Act are concerned, the responsibility for ensuring such rights and benefits rests not only on the contractors but also on the Union of India, the Delhi Administration or the Delhi Development Authority who is
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the principal employer in relation to the construction work entrusted by it to the contractors. We must confess that we have serious doubts whether the provisions of this Act are being implemented in relation to the migrant workmen employed in the construction work of these projects and we have therefore by our Order dated 11th May 1982 appointed three Ombudsmen for the purpose of making periodic inspection and reporting to us whether the provisions of this Act are being implemented at least from 4th June 1982.

We must in fairness point out that the Union of India has stated in its affidavit in reply that a number of prosecution have been launched against the contractors for violations of the provision of various labour laws and in Annexure I to its affidavit in reply it has given detailed particulars of such prosecutions. It is apparent from the particulars given in this Annexure that the prosecutions launched against the contractors were primarily for offences such as non-maintenance of relevant registers non-provision of welfare and health facilities such as first aid box, latrines, urinals etc. and non-issue of wage slips. We do not propose to go into the details of these prosecutions launched against the contractors but we are shocked to find that in cases of violations of labour laws enacted for the benefit of workmen, the Magistrates have been imposing only small fines of Rs. 200/- thereabouts. The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity. They seem to over-look the fact labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violations the labour laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. We would like to impress upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment.

We may conveniently at this stage, before proceeding to examine the factual aspects of the case, deal with two preliminary
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objections raised on behalf of the respondents against the maintainability of the writ petition. The first preliminary objection was that the petitioners had no locus standi to maintain the writ petition since, even on the averments made in the writ petition, the rights said to have been violated were those of the workers employed in the construction work of the various Asiad projects and not of the petitioners and the petitioners could not therefore have any cause of action. The second preliminary objection urged on behalf of the respondents was that in any event no writ petition could lie against the respondents, because the workmen whose

rights were said to have been violated were employees of the contractors and not of the respondents and the cause of action of the workmen, if any, was therefore against the contractors and not against the respondents. It was also contended as part of this preliminary objection that no writ petition under article 32 of the Constitution could lie against the respondents for the alleged violations of the rights of the workmen under the various labour laws, and the remedy, if any, was only under the provisions of those laws. These two preliminary objections were pressed before us on behalf of the Union of India, the Delhi Administration and the Delhi Development Authority with a view to shutting out an inquiry by this Court into the violations of various labour laws alleged in the writ petition, but we do not think there is any substance in them and they must be rejected. Our reasons for saying so are as follows:

The first preliminary objection raises the question of locus standi of the petitioners to maintain the writ petition. It is true, that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen and therefore from a strictly traditional point of view, it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon System of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the Western System of jurisprudence. This Court

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has taken the view that, having regard to the peculiar socioeconomic conditions prevailing in the country where there is, considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may became easily available to the lowly and the lost. It has been held by this Court in its recent judgment in the Judges Appointment and Transfer case, in a major break-through which in the years to come is likely to impart new significance and relevance to the judicial system and to transform it into as instrument of socio-economic change, that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting bona fide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of

poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. That is what has happened in the present case. Here the workmen whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability, are unable to approach the courts for judicial redress and hence the petitioners, have under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen. It is not the case of the respondents that the petitioners are acting mala fide or out of extraneous motives and in fact the respondents cannot so allege, since
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the first petitioner is admittedly an organisation dedicated to the protection and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable. There can be no doubt that it is out of a sense of public service that the present litigation has been brought by the petitioners and it is clearly maintainable.

We must then proceed to consider the first limb of the second preliminary objection. It is true that the workmen whose cause has been championed by the petitioners are employees of the contractors but the Union of India, the Delhi Administration and the Delhi Development Authority which have entrusted the construction work of Asiad projects to the contractors cannot escape their obligation for observance of the various labour laws by the contractors. So far as the Contract Labour (Regulation and Abolition) Act 1970 is concerned, it is clear that under section 20, if any amenity required to be provided under sections 16, 17, 18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer and therefore if in the construction work of the Asiad projects, the contractors do not carry out the obligations imposed upon them by any of these sections, the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers would be liable and these obligations would be enforceable against them. The same position obtains in regard to the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. In the case of this Act also, sections 17 and 18 make the principal employer liable to make payment of the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under sections 14 and 15 and to provide the facilities specified in section 16 to such migrant workmen, in case the contractor fails to do so and these obligations are also therefore clearly enforceable against the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers. So far as Article 24 of the Constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment and since, as pointed out above, construction work is a hazardous employment, no child below the age of 14 years can be employed in construction work and there
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fore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years, but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad projects. The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. So also with regard to the observance of the provisions of the Equal Remuneration Act 1946, the Union of India, the Delhi Administration and the Delhi Development Authority cannot avoid their obligation to ensure that these provisions are complied with by the contractors. It is the principle of equality embodied in Article 14 of the Constitution which finds expression in the provisions of the Equal Remuneration Act 1946 and if the Union of India, the Delhi Administration or the Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act 1946 are not observed and the principles of equality before the law enshrined in Article 14 is violated by its own contractors, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the executive that the violation is being committed by the contractors and not by it. If any particular contractor is committing a breach of the provisions of the Equal Remuneration Act 1946 and thus denying equality before the law to the workmen, the Union of India, the Delhi Administration or the Delhi Development Authority as the case may be, would be under an obligation to ensure that the contractor observes the provisions of the Equal Remuneration Act 1946 and does not breach the equality clause enacted in Article 14. The Union of India, the Delhi Administration and the Delhi Development Authority must also ensure that the minimum wage is paid to the workmen as provided under the Minimum Wages Act 1948. The contractors are, of course, liable to pay the minimum wage to the workmen employed by them but the Union of India the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractors would equally be responsible to ensure that the minimum wage is paid to the workmen by their contractors. This obligation which even otherwise rests on the Union of India, the Delhi Administration and the Delhi Development Authority is additionally

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re-inforced by section 17 of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 in so far as migrant workmen are concerned. It is obvious, therefore, that the Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and the Delhi Development Authority.

That takes us to a consideration of the other limb of the second preliminary objection. The argument of the respondents under this head of preliminary objection was that a writ petition under Article 32 cannot be maintained unless it complains of a breach of some fundamental right or the other and since what were alleged in the present writ

petition were merely violations of the labour laws enacted for the benefit of the workmen and not breaches of any fundamental rights, the present writ petition was not maintainable and was liable to be dismissed. Now it is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a fundamental right, for it is only for enforcement of a fundamental right that a writ petition can be maintained in this Court under Article 32. So far we agree with the contention of the respondents but there our agreement ends. We cannot accept the plea of the respondents that the present writ petition does not complain of any breach of a fundamental right. The complaint of violation of Article 24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad projects is clearly a complaint of violation of a fundamental right. So also when the petitioners allege non-observance of the provisions of the Equal Remuneration Act 1946, it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Article 14 and it can hardly be disputed that such a complaint can legitimately form the subject matter of a writ petition under Article 32. Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation & Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and this is also in our opinion a complaint relating to violation of Article 21. This Article has
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acquired a new dimension as a result of the decision of this Court in Maneka Gandhi v. Union of India (1) and it has received its most expansive interpretation in Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors,(2) where it has been held by this Court that the right to life guaranteed under this Article is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive any one of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. That leaves for consideration the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act 1948. We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen.

Article 23 enacts a very important fundamental right in the following terms :

"Art. 23 : Prohibition of traffic in human beings and forced labour-

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and

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any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Now many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found inter alia in Articles 17, 23 and 24. We have already discussed the true scope and ambit of Article 24 in an earlier portion of this judgment and hence we do not propose to say anything more about it. So also we need not expatiate on the proper meaning and effect of the fundamental right enshrined in Article 17 since we are not concerned with that Article in the present writ petition. It is Article 23 with which we are concerned and that Article is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting this provision in the chapter on fundamental rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The Constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by well nigh two centuries of foreign rule, were living in abject poverty and destitution with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society

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with little respect for the dignity of individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating social economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It

was with this end in view that the constitution makers enacted the Directive Principles of State Policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which, "We the people of India" were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of State Policy, because then the outlaying of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and values until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution makers therefore decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the chapter on fundamental rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in Article 23 was included in the chapter on fundamental rights. The prohibition against "traffic in human beings and begar and other similar forms of forced labour"
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is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.

The question then is as to what is the true scope and meaning of the expression "traffic in human beings and begar and other similar forms of forced labour" in Article 23? What are the forms of 'forced labour' prohibited by that Article and what kind of labour provided by a person can be regarded as 'forced labour' so as to fall within this prohibition ?

When the Constitution makers enacted Article 23 they had before them Article of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Article 23 much wider than- that of Article 4 of the Universal Declaration of Human Rights. They banned 'traffic in human beings which is an expression of much larger amplitude than "slave trade" and they also interdicted "begar and other similar forms of forced labour". The question is what is the scope and ambit of the expression 'begar and other similar forms of forced labour ?" In this expression wide enough to include every conceivable form of forced labour and what is the true scope and meaning of the words ''forced labour ?" The word 'begar' in this Article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word begar' but there can be no doubt that it is a form of forced labour under which a person is compelled to work

without receiving any remuneration. Molesworth describes 'begar' as "labour or service exacted by a government or person in power without giving remuneration for it." Wilson's glossary of Judicial and Revenue Terms gives the following meaning of the word 'begar': "a forced labourer, one pressed to carry burthens for individuals or the public. Under the old system, when pressed for public service, no pay was given. The Begari, though still liable to be pressed for public objects, now receives pay: Forced labour for private service is prohibited." "Begar" may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for 'it. That was the meaning of the word 'begar' accepted by a Division Bench

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of the Bombay High Court in S. Vasudevan v. S.D. Mital.(1) 'Begar' is thus clearly a film of forced labour. Now it is not merely 'begar' which is unconstitutionally prohibited by Article 23 but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. It is interesting to find that as far back as 1930 long before the Universal Declaration of Human Rights came into being, International Labour organisation adopted Convention No. 29 laying down that every member of the International Labour organisation which ratifies this convention shall "suppress the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No. 105 adopted by the International Labour organisation in 1957. The words "forced or compulsory labour" in Convention No. 29 had of course a limited meaning but that was so on account of the restricted definition of these words given in Article 2 of the Convention. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit forced or compulsory labour. Article 23 is in the same strain and it enacts a prohibition against forced labour in whatever form it may be found. The learned counsel appearing on behalf of the respondent laid some emphasis on the word 'similar' and contended that it is not every form of forced labour which is prohibited by Article 23 but only such form of forced labour as is similar to 'begar' and since 'begar' means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words 'other similar forms of forced labour. This contention seeks to unduly restrict the amplitude of the prohibition against forced labour enacted in Article 23 and is in our opinion not well founded. It does not accord with the principle enunciated by this Court in Maneka Gandhi v. Union of India(2) that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their

(1) AIR 1962 Bom. 53:

(2) [1978] 2 SCR 621.

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meaning and content. It is difficult to imagine that the Constitution makers should have intended to strike only at

certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all it should be regarded as a pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article ? If this were the true interpretation, Article 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article 23. We do not think it would be right to place on the language of Article 23 an interpretation which would emasculate its beneficent provisions and defeat the very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour are used in Article 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour." If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they p would straightaway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour." These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which as the effect of rendering any words used by the legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Article 23 by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour 'begar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the per-

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son who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the

employer without breaching the injunction of Article 23. This was precisely the view taken by the Supreme Court of United States in Bailv v. Alabama(1) while dealing with a similar provision in the Thirteenth Amendment. There, a legislation enact ed by the Alabama State providing that when a person with intent to injure or defraud his employer enters into a contract in writing for the purpose of any service and obtains money or other property from the employer and without refunding the money or the property refuses or fails to perform such service, he will be punished with of fine. The constitutional validity of this legislation was challenged on the ground that it violated the Thirteenth Amendment which inter alia provides: "Neither slavery nor involuntary servitude shall exist within the United States or any place subject to their jurisdiction". This challenge was upheld by a majority of the Court and Mr. Justice Hughes delivering the majority opinion said:

> "We cannot escape the conclusion that although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those . who simply fail or refuse to perform contracts for personal service in liquidation of a debt, and judging its purpose by its effect that it seeks in this way to provide the means of compulsion through which performance of such service may
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> (1) 219 U.S. 219: 55 L. Ed. 191.

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be secured. The question is whether such a statute is constitutional".

The learned Judge proceeded to explain the scope and ambit of the expression 'involuntary servitude' in the following words:

> "The plain intention was to abolish slavery of whatever name and form and all its badges and incidents, to render impossible any state of bondage, to make labour free by prohibiting that control by which the personal service of one men is disposed of or coerced for another's benefit, which is the essence of involuntary servitude."

Then, dealing with the contention that the employee in that case had voluntarily contracted to perform the service which was sought to be compelled and there was therefore no violation of the provisions of the Thirteenth Amendment, the learned Judge observed:

> "The fact that the debtor contracted to perform the labour which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute. The full intent of the constitutional provision could be defeated with obvious facility if through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the statute inhibits, for when that occurs, the condition of servitute is created which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labour."

and proceeded to elaborate this thesis by pointing out:

> "Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the Service of his creditor. The other is forced upon the debtor by some provision of

law. But peonage however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the pay-

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ment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labour or rendering of services in payment of a debt. In the latter case the debtor though contracting to pay his indebtedness by labour of service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service."

It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise to continue to perform such service, as that would be forced labour within the inhibitian of Article 23. This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service Vide Pollock v. Williams.(1) The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore says that no one shall be forced to

(1) 322 U.S. 4:88 Lawyers Edition 1095.

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provide labour or service against his will, even though it be under a contract of service.

Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wager when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced

to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would we 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes hims way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour.' There is no reason why the word 'forced' should be read in a narrow and

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restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socioeconomic justice for all and every one shall have the right to work, to education and to adequate means of livelihood. The constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in capitalist society economic circumstance exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be constructed to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets- what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. Such a person

would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23.

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Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right, which is enforceable against private individuals such as, for example a fundamental right enacted in Article 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly. when he belongs to the weaker section humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners indicating the cause of the workmen are entitled to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected.

Having disposed of these preliminary objections, we may turn to consider whether there was any violation of the provisions of the Minimum Wages Act 1948, Article 24 of the Constitution, the Equal Remuneration Act 1976, the Contract labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 by the contractors. The Union of India in its affidavit in reply admitted that there were certain violations committed by the contractors but hastened to add that for these violations prosecutions were initiated against the errant contractors and no violation of any of the labour laws was allowed to go unpunished. The Union of India also conceded in its affidavit in reply that Re. 1/- per worker per day was deducted by the jamdars from the wage payable to the workers with the result that the workers did not get the minimum wage of Rh. 9.25 per day. but stated that proceedings had been taken for the purpose of recovering the amount of the short fall in minimum wage from the contractors. No particulars were however given of

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such proceedings adopted by the Union of India or the Delhi Administration or the Delhi Development Authority. It was for this reason that we directed by our order dated 11th May 1982 that whatever is the minimum wage for the time being or if the wage payable is higher than such wage, shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not

be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. He would also direct in addition that if the Union of India or the Delhi Administration or the Delhi Development Authority finds and for this purpose it may hold such inquiry as is possible in the circumstances that any of the workmen has not received the minimum wage payable to him, it shall take the necessary legal action against the contracts whether by way of prosecution or by way of recovery of the amount of the short-fall. We would also suggest that hereafter whenever any contracts are ' given by the government or any other governmental authority including 2 public sector corporation, it should be ensured by intro ducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention of any jamadars or thekadars and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadars from the wage of the workmen. So far as observance of the other labour laws by the contractors is concerned, the Union of India, the Delhi Administration and the Delhi Development Authority disputed the claim of the petitioners that the provisions of these labour laws were not being implemented by the contractors save in a few instances where prosecutions had been launched against the contractors. Since it would not be possible for this Court to take evidence for the purpose of deciding this factual dispute between the parties and we also wanted to ensure that in any event the provisions of these various laws enacted for the benefit of the workmen were strictly observed and implemented by the contractors, we by our order dated 11th May 1982 appointed three ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficient statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three ombudsmen, this Court could give further direction in the matter if found necessary. We may

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add that whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from the workmen in regard to nonobservance of any such provision before proceeding to take action against the erring officers or contractor, but they should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a government or a governmental authority or a public sector corporation is expected to do in a social welfare state.

These are the reasons for which we made our order dated 11th May 1982.

S.R. Petition allowed.

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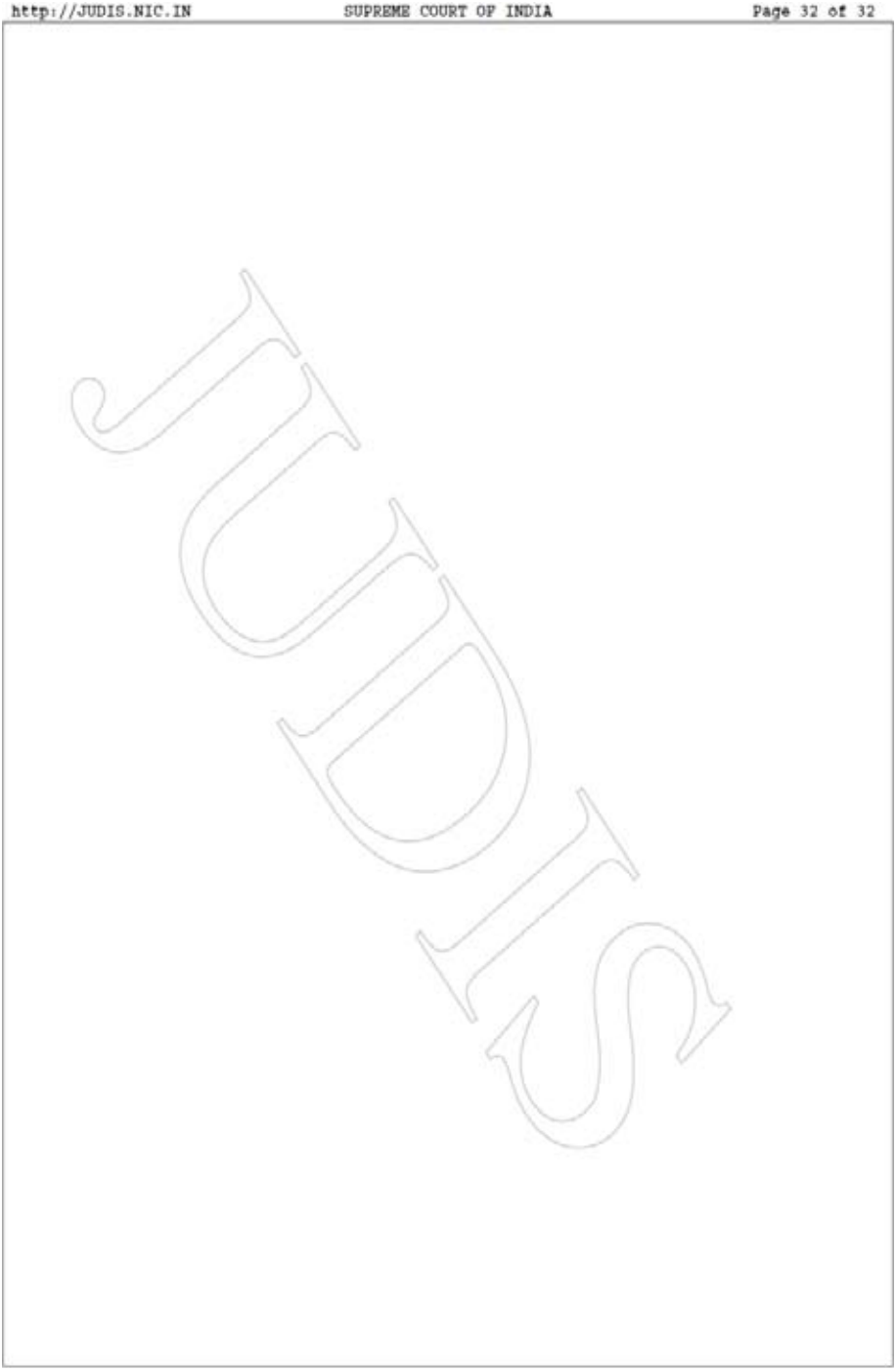
JUDIS

Annexure-9

Relevant Pages of Wages of Code on Wages, 2017

AS INTRODUCED IN LOK SABHA

Bill No. 163 of 2017

THE CODE ON WAGES, 2017

A

BILL

to consolidate and amend the laws relating to wages and bonus and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Code on Wages, 2017. Short title, extent and commencement.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Code, unless the context otherwise requires,—

(*a*) "accounting year" means the year commencing on the 1st day of April;

(*b*) "Advisory Board" means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42;

(*c*) "agricultural income-tax law" means any law for the time being in force relating to the levy of tax on agricultural income;

(*d*) "appropriate Government" means,—

(*i*) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set-up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government;

(*ii*) in relation to any other establishment, the State Government;

(*e*) "company" means a company defined in clause (*20*) of section 2 of the Companies Act, 2013; 18 of 2013.

(*f*) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;

(*g*) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies; 2 of 1912.

(*h*) "corporation" means anybody corporate established by or under any Central Act, or State Act but does not include a company or a co-operative society;

(*i*) "direct tax" means—

(*I*) any tax chargeable under the—

(*A*) Income-tax Act, 1961; 43 of 1961.

(*B*) Companies (Profits) Surtax Act, 1964; 7 of 1964.

(*C*) agricultural income-tax law; and

(*II*) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification, to be a direct tax for the purposes of this Code;

(*j*) "employee" means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union; 52 of 1961.

(*k*) "employer" means a person who employs one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of

such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

(*i*) in relation to an establishment which is a factory, the occupier of the
63 of 1948. factory as defined in clause (*n*) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (*f*) of sub-section (*1*) of section 7 of the said Act, the person so named;

(*ii*) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director; and

(*iii*) contractor;

(*l*) "establishment" means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;

(*m*) "Facilitator" means a person appointed by the appropriate Government under sub-section (*1*) of section 51;

(*n*) "factory" means the factory as defined in clause (*m*) of section 2 of the
63 of 1948. Factories Act, 1948;

(*o*) "Government establishment" means any office or department of the Government or a local authority;

43 of 1961. (*p*) "Income-tax Act" means the Income-tax Act, 1961;

(*q*) "industrial dispute" means,—

(*i*) any dispute or difference between employers and employers, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and

(*ii*) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;

(*r*) "minimum wage" means the wage fixed under section 6;

(*s*) "notification" means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly;

(*t*) "prescribed" means prescribed by rules made by the appropriate Government;

(*u*) "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 employees and the difference if any, between the skill, effort and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;

(*v*) "State" includes a Union territory;

(*w*) "Tribunal" shall have the same meaning assigned to it in clause (*r*) of section 2
14 of 1947. of the Industrial Disputes Act, 1947;

(*x*) "wages" means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—

(*i*) any remuneration payable under any award or settlement between the parties or order of a court;

(*ii*) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any period of leave;

(*iii*) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;

(*iv*) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(*v*) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(*vi*) any house rent allowance,

but does not include—

(*A*) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court or Tribunal;

(*B*) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(*C*) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(*D*) any travelling allowance or the value of any travelling concession;

(*E*) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(*F*) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (*iv*):

Provided that, for the purposes of Chapter IV, "wages" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living, but does not include,—

(*i*) any other allowance which the employee is for the time being entitled to;

(*ii*) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(*iii*) any travelling concession;

(*iv*) any bonus including incentive, production and attendance bonus;

(*v*) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(*vi*) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex gratia* payment made to him;

(*vii*) any commission payable to the employee:

Provided further that for calculating the wages under the first proviso for the purposes of payment of bonus, if the payments made by the employer to the employee under clauses (*i*) to (*vii*) exceeds one-half of the all remuneration

specified under the said proviso, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under that proviso.

Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purposes of the first proviso, be deemed to form part of the wages of such employee;

(*y*) "worker" means any person (except an apprentice as defined under clause (*aa*) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (*f*) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (*d*) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, but does not include any such person—

52 of 1961.

45 of 1955.

11 of 1976.

(*i*) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

45 of 1950.
46 of 1950.
62 of 1957.

(*ii*) who is employed in the police service or as an officer or other employee of a prison; or

(*iii*) who is employed mainly in a supervisory or managerial or administrative capacity.

Prohibition of discrimination on ground of gender.

3. (*1*) There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.

(*2*) No employer shall, for the purpose of complying with the provisions of sub-section (*1*), reduce the rate of wages of any employee.

Determination of disputes with regard to same or similar nature of work.

4. Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.

CHAPTER II

MINIMUM WAGES

Payment of minimum rate of wages.

5. No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government for the area, establishment or work as may be specified in the notification.

Fixation of minimum wages.

6. (*1*) Subject to the provisions of section 9, the appropriate Government shall fix the minimum rate of wages payable to employees.

(*2*) For the purposes of sub-section (*1*), the appropriate Government shall fix—

(*a*) a minimum rate of wages for time work; or

(*b*) a minimum rate of wages for piece work; or

(*c*) a minimum rate of wages to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis.

(*3*) The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:—

(*i*) by the hour, or

(*ii*) by the day, or

(*iii*) by the month.

Annexure-10

Workers with Family Responsibilities Convention, 1981 (C-156)

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)

Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Entry into force: 11 Aug 1983)

Adoption: Geneva, 67th ILC session (23 Jun 1981) - Status: Up-to-date instrument (Technical Convention). Convention may be denounced: 11 Aug 2023 - 11 Aug 2024

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity", and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of

the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are " aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women", and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms dependent child and other member of the immediate family who clearly needs care or support mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as ***workers with family responsibilities***.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term ***discrimination*** means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken--

(a) to enable workers with family responsibilities to exercise their right to free choice of employment; and

(b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken--

(a) to take account of the needs of workers with family responsibilities in community planning; and

(b) to develop or promote community services, public or private, such as child-care and family services and facilities.

Article 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

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Note

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The Equal Remuneration Act, 1976:
Identifying the Affirmative Initiative & Challenges in the Implementation of the Act

ISBN:978-93-82902-66-9

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