

# **THE ILO CONVENTIONS ON DISCRIMINATION (EMPLOYMENT AND OCCUPATION) AND EQUAL REMUNERATION: A LEGAL REVIEW OF ITS IMPACT AND IMPLICATIONS IN BANGLADESH**

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## **1. Introduction**

The pursuit of the ideal of social justice involves the rejection of discrimination against workers of any race, colour or creed and the refusal to support inequality of treatment for women workers. Consequently the removal of discrimination and the creation of equality of opportunity have been implicit in all ILO's activities. In explicit terms it has affirmed its belief in equality of opportunity and treatment in various declarations of principles, in numerous convention and recommendations. Finally, in 1958 the Conference adopted the Discrimination (Employment and Occupation) Convention (No. 111) and the accompanying Recommendation, both of which deal with discrimination in a comprehensive manner. Equality of treatment for women workers involves, amongst other things, equal remuneration for work of equal value. This principle has been the subject of well-known Convention concerning Equal Remuneration for Men and Women Workers for Equal Value (No. 100) adopted by the ILO in 1951.

## **2. An Overview of the ILO Conventions Concerning Discrimination (Employment and Occupation) and the Equal Remuneration for Men and Women for the Work of Equal Value**

Under the Equal Remuneration Convention and Recommendation of 1951, following the words of the Preamble to the ILO Constitution, equal remuneration for men and women workers is to be established "for work of equal value". Thus, unlike a number of other instruments on equal treatment, the ILO standards go beyond a reference to "the same" or "similar" work, in choosing the value of the work as the point of comparison. According to

article 1 (b) of the Convention, 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. While clearly excluding any consideration related to the sex of the worker, this definition provides no positive indication as to how the ‘value’ of work is to be determined.<sup>1</sup> According to article 1, paragraph (a) of the Convention, “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”. This definition, which is couched in the broadest possible terms, seeks to ensure that equality is not limited to the basic or ordinary wage, nor in any other way restricted accordingly to semantic distinctions.

Discrimination in employment and occupation has been prohibited by the Discrimination (Employment and Occupation) Convention (No. 111). Article 1, paragraph 1(a), of the convention defines discrimination as “any distinction, exclusion or preference made on the basis of certain criteria which has the effect of nullifying or impairing or equality of opportunity or treatment in employment or occupation”. This purely descriptive definition contains three elements:

- a) A factual element (the existence of a distinction, an exclusion or a preference, without specifying whether this arises from an act or an omission) which constitutes a difference in treatment;
- b) A ground on which the treatment is based;
- c) The objective result of this difference in treatment (the nullification or impairment of equality of opportunity or treatment).

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1. ILO, *Equal Remuneration*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 1986, p. 10.

Through this broad definition, the 1958 Convention Discrimination (Employment and Occupation) Convention (No. 111) cover all the situations, which may affect the quality of opportunity and treatment that they are to promote.

### **3. Ratification of the Conventions Concerning Discrimination (Employment and Occupation) and the Equal Remuneration for Men and Women by the Government of Bangladesh**

The government of Bangladesh has ratified the Discrimination (Employment and Occupation) Convention (No. 111) on 22 June 1972. It may however be emphasised that the Convention was in force in the territory now comprising Bangladesh since 24 January 1961 as being ratified by the then government of Pakistan. While ratification of Convention concerning Equal Remuneration for Men and Women Workers for Equal Value (No. 100) is more recent i.e., on 28 January 1998. It may be emphasised that adoption of international labour Conventions and their ratification by member states are not academic exercises. Their objects are to bring about effective and harmonised progress in the national law and practice.

### **5. Implications of Ratification of ILO Conventions Concerning Discrimination (Employment and Occupation) and the Equal Remuneration by the Government of Bangladesh**

Whatever effect the unratified Conventions can have in the absence of binding obligations,<sup>2</sup> it is in connection with the formal act of ratification that their impact is likely to be tangible and lasting. This is due to the fact that ratification involves the formal commitment of states to give effect to the Conventions within their territory and it sets in motion the regular supervisory

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2. On the influence of unratified Conventions, see, Landy, E. A., "The Influence of International Labour Standards: Possibilities and Performance", in *International Labour Review*, 1970, Vol. 101, pp. 561-570; ILO, *The Impact of International Labour Conventions and Recommendations*, Geneva 1976, pp. 11-26.

machinery of the ILO.<sup>3</sup>

A state which ratifies a Convention gives an undertaking that it will make its provisions effective as from the date of its entry into force for the country concerned, which is twelve months after the registration of its formal ratification with the Director-General of the International Labour Office.<sup>4</sup> The assumption of obligations under a Convention will have noticeable repercussions at the national level whenever the law or practice of the country needs to be modified in order to ensure compliance with the terms of the instrument. Such modifications may occur in four circumstances: they may precede the decision to ratify; they may be concurrent with it; they may occur during the period between ratification and entry into force; or they may take place when the Convention is already binding. The last mentioned alternative, although unsatisfactory from a legal point of view, none the less represents a case of influence and one where the effect of ILO standards is liable to be particularly clear-cut.

### **6. Status of ILO Conventions Concerning Discrimination (Employment and Occupation) and the Equal Remuneration in the Domestic Legal Regime**

The Constitution of Bangladesh was adopted on 4 November 1972 and came into force on 16 December 1972. Human rights agenda had been in the fore-front of the country's liberation struggle. The country's respect for human rights and fundamental

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3. For a detailed account of the supervisory machinery of the ILO, see, Valticos, N., *International Labour Law*, Deventer 1979, pp. 225-261; Tikriti, A., *Tripartism and the International Labour Organisation*, Stockholm 1982, pp. 274-333; Samson, K.T., "The Changing Pattern of ILO Supervision". in *International Labour Review*, Vol. 118, 1979, pp. 569-587.

4. International Labour Office is the permanent secretariat of the ILO, and is expressly provided for in the Constitution of the ILO which in Article 2 stipulates: "the permanent organisation shall consist of... an International Labour Office ...". For a detailed study on the structure of the ILO, see, Osieke, E., *Constitutional Law and Practice in the International Labour Organisation*, Dordrecht 1985, pp. 79-141.

freedom dates back from the Proclamation of Independence of 10 April 1971. The Proclamation, *inter alia* reads "... we undertake to observe ... and to abide by the Charter of the United Nations".<sup>5</sup> The Constitution in its Preamble provides "... it shall be a fundamental aim of the state to realise ... a society in which the rule of law, fundamental human rights and freedom, ... will be secured for all citizens". Article 11 envisages that the republic shall be a democracy and in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.<sup>6</sup> Article 25 delineates that the "state shall base its international relations on the principles of ... respect for international Law and the principles enunciated in the United Nations Charter ...".<sup>7</sup> Article 145A specifies that "all treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament".

From the above provisions, it is evident that the Constitution is silent on the status of International law upon the domestic legal regime, even though it does make reference to human rights and respect for international law. Accordingly, under the general principles of international law and the municipal legal regime, international treaties can become part of the domestic law in Bangladesh only if they are specifically incorporated in the law of the land. In other words, they are not self-operating in Bangladesh i.e. treaty obligations concluded by Bangladesh cannot *ipso facto* be put into effect unless an enabling legislation is passed or enacted.<sup>8</sup> Further, the Constitution does not contain any specific provision, which obliges the State to enforce or implement international treaties and Conventions including implementation and enforcement of the ILO Conventions concerning Discrimination (Employment and Occupation) and the Equal Remuneration.

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5. See, 24 DLR, 1972.

6. For details see, *The Constitution of the People's Republic of Bangladesh 1972*.

7. For details see, *Ibid*, Article 25.

8. See, Rashid, H., *International Law*, Dhaka, 1998. p.23.

## **7. The Legal Regime Regarding Discrimination and Equality and the Implementation and Application of Relevant ILO Conventions**

The framers of the Constitution of Bangladesh took up the issue of the rights of the working class, as a matter of priority. Article 14 of the Constitution talk about emancipation of peasants and workers in the following manner “it shall be the fundamental responsibility of the state to emancipate the toiling masses – the peasants and workers and background section of the people from all forms of exploitation”. Article 19 of the Constitution lays down equality of opportunity as one of the fundamental principles of state policy. It provides: (1) The state shall endeavor to ensure equality of opportunity to all citizens. (2) The state shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the republic.

According to Article 20 everyone shall be paid for his work on the basis of the principle “from each according to his abilities to each according to his work”. According to Article 27 all citizens are equal before and are entitled to equal protection of law. Article 29 of the Constitution deals with equality of opportunity in public employment in the following manner:

- (1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.
- (2) No citizen shall, on grounds only on religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the republic.
- (3) Nothing in this article shall prevent the state from:
  - (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the republic;
  - (b) giving effect to any law which makes provision for receiving appointments relating any religious or

denominational institution to persons of that religion or denomination;

- (c) receiving for members of one sex any class of appointment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

In light of the above constitutional provision the government of Bangladesh has taken some special measures for women to ensure their presence in the employment sector. A quota system was introduced for them to increase the number of women in the administration and as well as other sectors. Under this arrangement, 10% of the recruitment to gazetted posts and 15% of recruitment to non-gazetted posts is reserved for women.

The government of Bangladesh has declared the National policy of the Advancement of Female on 8 March, 1997. The main objective of the policy is to bring equality among male and female in every sphere of life. It has addressed to 14 different relevant issues where employment of female and administrative empowerment of female has been given special emphasis. In view of the creation of employment opportunity for the female following measures have been suggested:

- a) Take all-out efforts all to employ educated and uneducated female.
- b) Increase female quota and ensure its effective implementation.
- c) Motivate all appointing authority to follow government quota and to provide equal facilities to female under the purview of government employment policy.
- d) Create congenial atmosphere to sustain the entry of female in job market and make necessary amendment to relevant laws, regulations and policies to ensure female comprehensive employment.

For administrative empowerment of female, the following policies have been undertaken.

- a) Make provisions for contracts and lateral entry to facilitate female access to government service at the higher level of

administrative structure.

- b) Appoint female at the higher position of judiciary, University Grants Commission, Planning Commission, Ambassadors and UN leaders.
- c) Continue the quota system and increase quota at all level.
- d) Take all-out efforts for appointing 30% female at all levels of decision-making including policy level posts.

The government in October 1998 declared a National Action Plan (NAP). The main theme of the National action Plan is to identify some of the tasks, which should be done for bringing equality among the females.

Concerning the labour force participation of women, the government in its report for a number of years to the ILO Committee of Experts states that, generally speaking, employment opportunities are unequal for women, as a large majority of women live below poverty level and do not receive education. Social constraints and norms relating to women's role also contribute to their lower employment outside the home, but women are major contributors to the household economy.<sup>9</sup>

In its previous comments, the Committee noted that quota provisions have been introduced to increase the recruitment of women in public service. In addition to recruitment on merit, ten percent of the officers' post and fifteen percent of staff positions at the entry level are reserved for women. The age limit for women to be eligible for entry to a government job is thirty years, whereas it is twenty-seven years for men.<sup>10</sup>

According to the government's report, on the Convention on the Elimination of all forms of Racial Discrimination Against Women (CEDAW), although women's reserve quotas are being filled, the percentage of women recruited generally in the civil service has

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9. See, ILO, *Report of the Committee of Experts on the Application of the Conventions and Recommendations*, Report, III (Part I A), Geneva, 1996 p., 274; 1998, p.327; 1999, p. 447.

10. Id.



been higher than the fixed quotas which is accounted for by the extent to which women are recruited on the basis of merit. At present, women constitute seven percent of gazetted officers and 7.4% of other posts. The government also states that the “impact of the quotas is negligible, as very few posts are available. Over the last five years women have comprised only 14.4 percent of all recruits into the public service”.<sup>11</sup>

In relation to other employment, the Committee of Experts notes that women’s participation in the industrial sector is largest in the construction industry where mostly they work as manual labourers. Women comprise nearly 24% of all manufacturing workers and have been joining the sector as they have been partly displaced from agricultural sector due to impoverishment and the adoption of new technologies. In urban areas, women are found mostly contracted in low paid manufacturing sector activities or in the recently emerged export oriented labour-intensive industries. The garment and shrimp processing industries are the highest employers of women labourers. Women are also found in electronics, food processing, beverages, apparels, handicrafts and similar areas. The government states that these industries are predominantly filled by women due to traditional perceptions about how such work is suited to their ‘natural abilities’ and because these industries absorb unskilled and low paid labour. The government also indicates that the manufacturing sector does not always provide the minimum required wage level and work environment as stipulated in the labour legislation. As concerns other employment, 43% percent of women work in the agriculture, fisheries and livestock sectors but 70% of those women work as unpaid family labourers. The government’s report on the CEDAW provides detail information on the measures taken by the government agencies and NGO programmes to promote employment opportunities for women in the rural areas.<sup>12</sup>

The Committee of Experts notes the government’s statement that women’s socio-economic status differs from their legal status.

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11. Ibid, 1998, p.327; 1999, p. 447.

12. Id.

While the government expresses its determination to take steps to eliminate discrimination against women through legal measures, it also concedes that women cannot even enjoy those rights provided by existing laws due to lack of enforcement. According to the government, the disparity between the rights women have by law and what they actually enjoy arises partly from the lack of knowledge of women and men about internationally and nationally recognized women's rights and the lack of commitment by the judiciary and law enforcement agencies. Moreover, the government states that various procedures make it difficult for women to access and use the judicial system.<sup>13</sup>

## **8. Conclusion**

The Constitution of Bangladesh has given equal rights and opportunities for female employment as like as their male counterparts. The government established the Bangladesh Women's Rehabilitation Foundation in 1974. Since 1975 the focus of the government activities has shifted from relief to development. In 1976 the women's affairs Division was created under the President's Secretariat and the government of Bangladesh had the distinct credit of establishing full-fledged Ministry of Women's Affairs in the Asia Pacific region in 1978. The Ministry has been renamed subsequently as the Ministry of Women and Children Affairs. The formulation of National Action Plan (NAP), setting up of National Council for Women's Development (NCWD); and the announcement of National policy for Advancement of Women and the Institutional Review (IR) of Women in Development (WID) capability (IR-WID) are some of the major initiatives taken by the government in recent years. The government certainly has taken the issue as a matter of priority. Legally speaking, there is no discrimination regarding employment and occupation & remuneration. However, in order to ensure that women in practice enjoy the same right of employment and remuneration with their male counter-part, there still remains a lot more to be done.

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13. Ibid, 1998, p.328; 1999, p. 448.