

Unions of States compared on social labour policy

**A comparison on Equal Remuneration of social labour policy,
law, the content & the scope of India and the European Union.**

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Summary

What impact does a further enlargement of the European Union by states which are poorer, meaning having a higher percentage of people living under the poverty line, have on social labour policy? Could this result into a modification of the system and the regulations, and could this lead to a situation in which the current legal (social) system cannot function as it does now?

Since India is also a union of states, with a huge difference in percentages of people living under the poverty line per state, I compare the social labour policies of these two 'super states' with each other in order to see whether the above can be expected.

The main question of this thesis is whether the specific Indian Act and the specific European Union Directive on equal remuneration can be compared on both content and scope, and what the comparisons and differences are.

Also the history, the legal system and the non governmental actors are discussed in order to compare the types of citizenship given by Marshall namely the civil, political and social citizenship.

This thesis shows that a large difference between India and the European Union is that in India there exists the caste system in which different groups had and in practice still have different rights. But this thesis also shows that there are many comparisons between the EU and India. In both union states both the states and the union have legal powers to (co)decide on social labour policies and regulations. Regarding the legal system we see that India and the European Union are very much alike looking at the system and the legislative organs.

There seems to be a greater difference in power of the different non governmental actors in making and influencing social policies because in India the employers seem to have more power to influence policies and legislation than employees do. In India a whole group of individuals is even neglected by the Governments and the Country, namely the Domestic Workers which are often women.

Regarding Marshall this thesis shows that the three types of citizenship both India and the European Union seem to be pretty much the same, except for the Domestic Workers (partly through indirect discrimination) and not regarding the caste system.

The Equal Remuneration Act in India and the Directive equal pay for men and women in the EU have many similarities, their legal impact is much alike.

This thesis shows that the structure, content and scope of these specific Act and Directive are very much alike, same as for the legal structure in which it is embedded, which brings me to the conclusion that an enlargement of the EU by 'poorer' countries will not affect this.

This thesis shows that it doesn't matter what the differences in the percentage of people living under the poverty line per state are, since the social policies, social labour laws, and the structure in which these are embedded are much alike in India and the EU.

Samenvatting

Welke impact heeft een uitbreiding van de Europese Unie met 'arme' staten, staten met een hoger percentage van de bevolking levend onder de armoedegrens, op sociaal arbeidsbeleid? Kan dit resulteren in een modificatie van het huidige systeem en de regelgeving, en zou dit kunnen leiden tot een situatie waarin het huidige (sociale) rechtssysteem niet zou kunnen functioneren zoals het dat nu doet?

Aangezien India ook een statenunie is, met een groot verschil in het percentage van de bevolking levend onder de armoedegrens tussen de staten onderling, vergelijk ik het sociale arbeidsbeleid van deze twee 'super staten' met elkaar om zo te kunnen bekijken of het bovenstaande te verwachten valt.

De hoofdvraag van dit onderzoek is of de Indiase *Act* en de EU *Directive* over gelijke beloning/vergoeding met elkaar kunnen worden vergeleken op het gebied van de inhoud, de omvang/reikwijdte, en wat de overige verschillen en overeenkomsten zijn.

Ook wordt de geschiedenis, het rechtssysteem en de niet-gouvernementele actoren besproken teneinde ook de drie types van burgerschap van Marshall te vergelijken.

Dit onderzoek toont een groot verschil tussen India en de EU, namelijk het kasten systeem date en stempel op de samenleving drukt. Dit onderzoek toont echter ook een groot aantal overeenkomsten: In beide statenunies kunnen zowel de unie als de staten (mede) besluiten over sociaal arbeidsbeleid en bepalingen. Betreffende het rechtssysteem kan worden gezien dat India en de EU veel overeenkomsten vertonen met betrekking tot het systeem en de rechtsorganen.

Er lijkt een groter verschil te zijn in de macht en invloed van verschillende niet-gouvernementele actoren aangezien in India de werkgevers meer invloed blijken te hebben dan werknemers. Tevens wordt er in India een hele groep individuen genegeerd door de overheid en de unie, namelijk de *Domestic Workers*, de huishoudsters meestal van het vrouwelijke geslacht.

Met betrekking tot Marshall toont dit onderzoek aan dat de drie types burgerschap in India en de EU vaak overeenkomen, behalve dan voor de *Domestic Workers* (deels door indirecte discriminatie), en het kasten systeem buiten beschouwing gelaten.

De *Equal Remuneration Act* in India en de *Directive equal pay for men and women* in de EU hebben veel overeenkomsten en de (uit)werking is nagenoeg hetzelfde.

Dit onderzoek toont aan dat de structuur, de inhoud en de omvang/reikwijdte van deze specifieke Act en Directive veel overeenkomsten hebben, mede als het rechtssysteem waarin deze geldend zijn. Dit leidt tot de conclusie date en uitbreiding van de EU met 'arme' landen geen invloed hierop heeft.

Dit onderzoek toont dan ook aan dat het niet uitmaakt dat er verschillen zijn tussen de staten in de unie met betrekking tot het percentage van de bevolking dat onder de armoedegrens leeft. Dit omdat India en de EU op het gebied van sociaal beleid, sociaal arbeidsrecht, en de structuur/ het systeem waarin deze geldend zijn veel overeenkomsten hebben.

Introduction	5
Research Method.....	11
India	13
The Law System in India.....	17
<i>Civil citizenship</i>	18
The non governmental players in making social labour policies in India.....	20
<i>Political citizenship</i>	23
The content and scope of the Equal Remuneration Act.....	26
<i>Social citizenship</i>	27
The European Union	32
The Law System in the European Union.....	35
<i>Civil citizenship</i>	36
The non governmental players in making social labour policies in the European Union.....	39
<i>Political citizenship</i>	40
The content and scope of the Directive: Equal pay for men and women, 1975.....	43
<i>Social citizenship</i>	44
Conclusions	47
Reference List	53
Literature.....	53
Interviews.....	54
Websites/Internet Sources.....	55
Further Reading.....	56

Introduction

What impact does a further enlargement of the European Union by states which are poorer, meaning having a higher percentage of people living under the poverty line, have on social labour policy? Could this result into a modification of the system and the regulations, and could this lead to a situation in which the current legal (social) system cannot function as it does now?

The European Union is a union of States, Member States to be correct; India is also a union of states. This leads to the question whether these two 'Super states' can be compared with each other, and what the European Union might learn from India based on the results found in this thesis.

The idea is that they can be compared, and that is why this thesis is written, namely to try to compare a specific part of both the Indian and the European Union. In this thesis I compare an Act of India with a Directive of the European Union; The Equal Remuneration Act in India of 1976 and the Directive: Equal pay for men and women of 1975. Both are about remuneration in the labour field. I will compare whether in both India and the European Union workers, especially women have certain rights which give them equal remuneration and equal citizenship. For that I have to research different aspects which I will outline below.

The first thing that can be noted is that the years of the implementation of both of the Act and the Directive is within two years from each other. When we take a look at the income levels between the different states in India and in the European Union and the differences between the poor and the rich we see that in India 29% of the population is below the poverty line, while in the European Union this is currently 16% (for the EU-25).¹

Specific numbers of states in India under the poverty rate from 1999-2000 show that in rural areas in the State Assam is 40,3%, in Bihar 44,0%, in M.P. 37,3%, in Orissa 47,8% which makes these states having a far larger percentage of people living under the poverty rate in rural areas in comparison with the nationwide average. Also there are huge differences

¹ <http://devdata.worldbank.org/>

between urban and rural areas except for Orissa where the percentage of persons living under the poverty line in urban areas is also high, 43,5%. As the figures show several states have far higher percentages of persons living under the poverty line than other states like Kerala with only 9,4 % and Punjab with only 6,0%.²

When we add the possible membership of Turkey into this comparison we see that also 29% of the Turkish population lives below the poverty line, also according to the World bank data, which brings us to the question whether such a relative poor country like Turkey would affect the way in which the current legal system and the impact of a Directive, in this case the Directive on equal pay for men and women and the influence of different actors, in the European Union works.

When we take a look at the 'poorer' recent joined Member States of the European Union we see that, taking a look at the available data from Eurostat, the at-risk-poverty rates after social transfers of these States are consequently about 18% for Estonia, 17% for Lithuania, 16% for Poland, 16% for Bulgaria and 17% for Romania with the average for the EU-25 of 15% according to Eurostat. Also some 'older' Member States like Greece, 19%, Spain, 18%, Ireland, 21%, Italy, 18%, Portugal, 20% and the UK with 18% do have higher percentages than the average in the EU-25 regarding the at-risk-of-poverty rate after social transfers while countries like Denmark, 10%, Luxembourg, 12% and Sweden, 8%, which is half of the percentage of the 'poorest' Member States.³ So also in the European Union there are huge differences between the Member States regarding the percentage of persons living under the poverty line and at risk of living under the poverty line. Also noted should be that figures are based on the national, so Member State, median equalized disposable income, while in India this is based on the Nation, thus total India, level. Finally, it should be noted that indeed is a difference between 'below poverty rate' which I use for India and Turkey here, and the 'at risk-of-poverty rate' which I use for the Member States of the European Union, however being unable to find either one of the figures for all I will use these different percentages in order to get a view on the differences between (member) states and between India and the European Union.

² Economic Survey 2000-01 from Indiastat

³ Europe in figures - Eurostat yearbook 2005

I shall thus compare India and the European Union in order to see if they can be compared as such and whether, theoretically speaking, the membership of a poor country like Turkey, and the joining of the new 'poorer' countries would disrupt the current situation in the European Union. If this thesis shows that in India the system is quite the same and works quite the same the assumption can be made that the joining of new 'poorer' Member States and the possible future joining of Turkey (or other 'poor' countries) would not affect this and might give an indication on whether the legal (social) system will keep on functioning the coming years.

The main question of this thesis will be whether the specific Indian Act and the specific European Union Directive can be compared on both content and scope, and what the comparisons and differences are. Therefore I will discuss these in thesis, but also will I discuss the environment in which these two were implemented in order to see whether the outcome can be compared for India and the European Union.

The sub questions which need to be answered in this thesis in order to give a good conclusion are first what and how India and the European Union are and have become, since the background and the possibility to implement both the Act and the Directive can be crucial for the Act and the Directive.

Another sub question which needs to be answered is how the legal System in both India and the European Union works, this also is of great importance for the Act and Directive since without a legal System the Act and Directive would have no legal status and can formally not be compared on content which means that the rights for the (female) workers would be void. The third sub question which needs to be answered is the role of non governmental actors in both India and the European Union in order to get a better view of the way in which Acts and Directives are made and implemented, and to be able to give a more social conclusion on whether the Indian Act and the EU Directive can be compared.

That is also the reason why when comparing the Act and the Directive, the types of citizenship given by Marshall play an important part since this gives the possibility to compare the Act and Directive in the social context in which the labour related legal issues will be compared in this thesis. In what way do the different aspects I shall discuss, the legal System, the nongovernmental players and the Indian Act and the EU Directive affect the three different types of citizenship according to Marshall? Marshall says that there are three types of citizenship namely civil, political and social citizenship which exist in that order in a

community, a Nation (England). Marshall states that the civil element is composed of ‘the rights necessary for freedom- liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice’ which shows according to Marshall that the courts of justice are most directly associated. The political element means ‘the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body’, which is most directly associated with the parliament and councils of local government. The social element means ‘the whole range from the right to a mediocrum welfare and security to the right to live the life of a civilized being according to the standards prevailing in the society’ which is most directly associated with the educational system and the social services.⁴

Marshall states that the feudal society cannot be compared with modern society since class decided status and the measure of inequality, instead of the principle of equality of citizens to be set against the inequality of classes. Marshall also indicates that the three types of citizenship travel their own speed, but he states that civil citizenship was the first, political the second and social citizenship the third in the time frame, with some overlap.

An important thing about Marshall is that he discusses the exemptions of citizenship, like the Poor Law which takes care of the old and poor but with the consequence that they could no longer rely on their citizenship. Also the Factory Act he discusses, leads to better working conditions and a reduction of working hours and thus to a stronger and better status of citizenship, but only working men had those rights instead of all the citizens.

Women were also protected because they were not citizens meaning that if they wanted full citizenship the protection they had would be gone.

Also for children education indeed is a citizens right according to Marshall because it shapes the future adult and thus the opportunities and possibilities.

These things about Marshall are important because it gives a better view on his thoughts and the situation on which he wrote his essays.

In this thesis I will research the different situations in India and the European Union, two ‘big countries’, and how citizenship developed and what influenced this, especially looking at women (in labour). Do we see the same development of the three parts of citizenship and in what way do different institutions and laws contribute to that?

⁴ Marshall (p.77)

On the part on India I will first discuss the background information on India, in which I will first outline the history, structure and the country with its people, because this is necessary information to understand the country. Especially the Reservations policies should be noted here because due to the caste system, which is an important aspect of the Indian society, the Indian Government implemented Reservations policies in order to support the backwarded castes. In the first part on India I shall discuss the existing and the meaning of the caste system and the consequences for the society and thus the different citizens. In fact, the caste system cannot be neglected in order to make a comparison between India and the EU on labour laws and the consequences for specific groups in society, more specific: women in labour. In this context also indirect discrimination should be looked at, since indirect discrimination could exist for specific groups like women in labour or the lowest castes in India.

Therefore I shall also discuss the Constitution and its different Articles on reservation for scheduled castes and the way these try to reduce the caste differences and thus try to establish equality in the Indian society.

Secondly, I will discuss the Law System in India and discuss whether this gives the citizens (especially the female workers) in India civil citizenship according to Marshall in order to see the possible inequalities or equalities between different groups and castes in Indian society. As well as Marshall, Bleijenbergh states that the Civil rights are ‘associated with the institution of the Courts of Justice’⁵, which means that the Legal System is connected to the civil citizenship and shows whether there can be civil citizenship (especially for women, in labour) in India according to the Legal System there, thus this will therefore be discussed in the second part.

Thirdly I will discuss the actors in social policy making and discuss whether the different roles of the actors give the citizens (especially the female workers) political citizenship according to Marshall. According to Bleijenbergh these rights are associated with institutions as Parliaments and Councils of local Government (see bookmark 1), but I will also associate the different employers and employees institutions with political citizenship since via this way citizens can also influence the political authority and thus the political outcome.

⁵ Marshall (p. 77)

Fourthly I will discuss the Equal Remuneration Act, its scope and content and discuss whether this Act gives the citizens (especially the female workers) in India social citizenship.

After that I will take the same steps for the European Union and the Directive Equal pay for men and women which is the counterpart of the Indian Equal Remuneration Act.

In this part I will also first outline the history, structure and the Union with its people.

Furthermore I will discuss the legal System in the European Union on the European level, the role of non-governmental actors in Europe also called the Social Partners, the Directive equal pay for men and women and the three different types of citizenship related to those in order to see how these affect the (female) workers status and whether possible indirect discrimination occurs.

The third part will be, as said above, the conclusion in which I shall compare the findings of this thesis and make assumptions, recommendations and critical analysis of this thesis, and I will conclude whether the possible differences or comparisons between India and the European Union say something about the influence of differences between the States regarding the percentage of citizens living under the poverty line. If the conclusion should be that indeed India and the European can be compared on all points discusses in this thesis, and thus in both Nations according to Marshall citizens do have citizenship, the membership of the new 'poor' states of the EU would probably not affect the functioning of the (labour) law system and the position and types of citizenship for the citizens in the European Union as a whole.

Research Method

The information collecting for the part on India and the part on the European Union differed from each other.

For the part on India there was little specific information available in the different libraries in The Netherlands and on Picarta. Although there were some articles available on the Internet, and one book called 'Dominance and State Power in Modern India' by Frankel and Rao of 1989, this information could only be used as an introduction for the India part, as no specific information about the Equal Remuneration Act could be found.

Therefore I had to travel to Mumbai, India, to do research and to collect useful and specific information for this thesis.

I would like to thank the persons and the institutions for helping me and giving me the specific information. However I do realize that the information given might not all be objective and this is the reason why I interviewed and had meetings with persons from different institutions with different interests on the field of social labour policies.

I had several interviews and meetings with lawyer Mr. Gopala Krishnan of the Labour Lawyers Institute in Mumbai; Mr. Hedge, the Advisor - and Mr. Patil, the Director of the Employers' Federation of India; Dr. Devos, Director of the National Domestic Workers Movement; Mrs. Prakash, Head of the department of the Somaiya College of Science and Prof. Vasista of the Somaiya College in Mumbai.

I interviewed persons from the different institutions representing government (education, the Somaiya College), employers (the EFI), employees (The NWDM) and the legal system (the Labour Law Institute), and asked them their view and findings mainly regarding their own institution, and the influence, ideas and role of their institution, in order to compare the different findings and to be as objective and reliable as possible.

Being in Mumbai also made it possible for me to find specific articles and books for my thesis, some of them recommended by the persons I met, others I felt to be useful myself.

Given the information I received from the different persons and the literature I got in Mumbai I felt that I had sufficient information to write this thesis.

For the part on the European Union the information was better available. Compared to the information retrieving for the part on India this was rather easy, but of course thorough research was also needed. The information I got from my different classes at the University of Twente, from Dr. Bannink, from the Books on the European Union directly available, and via Picarta I collected sufficient information for the part on the European Union.

The main criticism on the used resources could be that for the two different parts different forms of recourses have been used, and due to the more complex information collecting for the part on India it might be argued that perhaps for the European Union part there were more resources available, however I feel that a well-balanced use of information was needed for this thesis because otherwise the parts cannot be compared since one part would perhaps go deeper into details then the other regarding jurisprudence, state details and other factors.

India

India is a country which is independent from the mid 1947; it's a Union of States.

Basically due to the social conditions prevailing in India, in this period a number of the citizens had no rights to equality, neither social, economic nor political.

The Framers of the Constitution and the State Governments function under a written Constitution which is the highest law of the land. I will describe different Articles of the Constitution regarding Reservations in order to understand the way the Government (tries to) deal(s) with the caste system and the consequences for the people in the society.

The framers of the constitution of India were aware of the need to set right the social inequality: The preamble of the Constitution of India set out to secure to all citizens: 'Justice, Social, Economic and Political; liberty of thought, expression, belief, faith and worship; Equality of status and of Opportunity'.

The inequality in the Indian community is due to the caste System, which I shall explain briefly here in order to understand the background of the Indian society and the reason why Reservation policies have been enacted before going back to the Articles in the Constitution.

The first literature on the caste system can be found in the Rig-Veda, where three groups are mentioned: the 'Brahma' (Priests), 'Ksatra' (Kings or Rulers) and 'Vis' (common people).⁶ Each group had their own function and position in the Indian society.

The Brahma's were the highest caste as being priests able to communicate with the gods.

In fact every caste is believed to come from a certain part of the Gods.

The Kings or Rulers were there to rule the parts of the country while the common people were there for doing daily things in life.

Currently we define four castes. 'In the Puranas, it is said that the creator of the universe, Lord Brahma, created some humans from his head - they took to education in a big way and became the Brahmins. Then he created other humans from his biceps, they became the Kshatriyas, bearers of arms, the warrior and ruling class.

Brahma then created some from his abdomen, who became the Vaishyas or merchants. Finally, Brahma created humans from his feet. They served the other castes even as the feet serve the man; they came to become the Sudras

⁶ Srinivas (p.3)

(manual laborers and artisans). Thus, the whole universe is held to be one organic entity, the body of the almighty.⁷

To support the text of the preamble, further in the Constitution Article 330 till 342 are about the reservations in the public sector. These Articles aim to reduce the inequality and eventually thus aim at equality in India by creating reservations in different parts of the public sector.

Article 330 is about the reservation of seats in Parliament, Article 331 and 333 are about reservations for the Anglo Indian Community (a minority) in Parliament and State Assembly, Article 332 about the Scheduled castes and the scheduled tribes in State Assembly.

Article 334 limits the reservation to Houses of State and Central Government only for 50 years. This means that in 1997 these reservations could have been ended, however the Government felt the reservations are deemed to be necessary and thus they were extended.⁸

Article 335 and 336 set out the reservation in employment in State and Central Services for Scheduled castes, Scheduled Tribes and the Anglo Indian Community.

All the above can be regarded as an improvement for political citizenship since it gives the lower castes the opportunity to take a seat in a political institution to influence politics, however I will discuss this further in one of the next parts.

Article 337 speaks of provisions extending educational grants for scheduled castes, scheduled tribes and Anglo Indian Community, which is extended for three years.

Education being a subject of List III of the Constitution, it means it is on the concurrent list and thus both Central Government and State Governments can formulate enactments (See also the next part). The provision of Article 337, which will prevail over any State enactment as long as the latter is inconsistent with Article 337 of the Constitution of India, can be regarded as an improvement of social citizenship since it shapes the future adult and thus the possibilities to live a mediocrum life.

Article 338 provides for consultation of a National Commission for determination of Scheduled Castes and Tribes.

⁷ wikipedia

⁸ Krishnan

Article 15 (4) empowers the State to make further special provisions for advancement of any socially or economically back warded classes of citizens or for the Scheduled castes or tribes. It is under this Article that the Central and State Governments have enacted legislations providing for reservations of seats in Educational institutions. These reservations are 50%. This reservation policy as it is constitutionally mandated is applicable only to organs of the Central or State Government. Any extension of this mandate to the private sector industries is liable for challenge under Article 19 (9) of the Constitution, because the right to carry on trade or business means the right to carry on the same in the manner chosen by the trader or businessman, so having a reservation on the choice who to choose as an employee does not seem legal and according to this Article.⁹ On the other hand it is remarkable to notice the fact that such kind of provision has indeed been enacted by the State of Maharashtra and approved by the Central Government and thus implemented. However the strange fact is that no one seems to do anything with this provision and no industry has applied this provision yet¹⁰, which gives an indication about the way provisions and legislation are made and functioning in India. But even when this provision will be ‘really’ implemented in the State Maharashtra and perhaps other States the questions raise whether:

First this is legal according to the Constitution of India which has to be determined by the High Court and eventually the Supreme Court.

Second whether this helps the country economically and socially, because economically this could lead to a situation where not always the best employees can be hired (on the other hand far most of the Indian citizens are in the scheduled castes) and thus national and global disadvantage¹¹, socially this could lead to a situation where different castes are competing and rivaling with each other, a situation which has just currently occurred concerning the reservation policies in the Educational sector in which the possibility of increasing the percentage of reservations has been discussed and led to big riots between the police and scheduled castes, and especially the upper castes.¹²

Besides the difference in castes the Preamble of the Constitution of India ‘Justice, Social, Economic and Political; liberty of thought, expression, belief, faith and worship; Equality of status and of Opportunity’ also relates to the gender issue: Equality of status and opportunity the same for men and women.

⁹ Krishnan

¹⁰ Hedge

¹¹ Thorat, Aryama and Negi (p.158)

¹² The Times of India (10.05.06 p.4)

Article 39 of the Constitution of India envisages that 'that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women'. This means that Acts/law should be made to ensure the equality for both men and women, and thus making regulations which ensure that women are not oppressed or backwarded. Unlike the Maternity Benefit Act which had prior central and state Acts before being implemented nation wide, the Equal Remuneration Act of 1976 had only one central Ordinance prior to it. Because effect had to be given to the Constitutional provision, the President promulgated on the 26th September, 1975, the Equal Remuneration Ordinance, so that the provisions of article 39 of the Constitution could be implemented in the year which is being celebrated as the International Women's Year. The Ordinance provided for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on grounds of sex.¹³ One year later the Parliament of India dealt with the Equal Remuneration Act which passed through the Parliament and was then implemented Nation wide.

So concluding this part, since the Independence of India in 1947 and the awareness of the framers of the Constitution to adapt the Preamble about equality and several Articles about reservations in the non-private, political and educational sector, the possibility for the Indian Government and the State governments to deal with inequality and the differences in castes and gender was created. In fact Article 15 and 39 envisaged that the State (of India) Government should create laws/Acts in order to ensure the equality for all castes and both men and women. This means that the Constitution can be regarded as the basis for the building of citizenship for all in India and thus also the vulnerable groups like women (in labour).

In the next part I shall discuss the law system in India and who is allowed to make laws in different areas, especially the labour laws, and I will go deeper into the consequences for the civil citizenship of women given by the Constitution and the law system.

¹³ Office of Labour Commissioner

The Law System in India

In this part I shall discuss the law System in India in order to see how this is arranged, as mentioned in the former part. Also I shall discuss the civil citizenship associated with the law System in India in order to see whether this law System gives Indian citizens civil citizenship.

The power of enacting legislations on subject under the Central List and Concurrent List – 7th schedule of the Constitution- vests with Parliament which is the legislature of the Central Government. The Parliament of the country consists of two houses, the lower house or the Lok Sabha and the upper house or the Rajya Sabha. The lower house or the Lok Sabha consists of elected representatives from the various constituencies of the country. The upper house or the Rajya Sabha on the other hand consists of nominated and indirectly elected representatives. While the legislature of some of the States is bicameral, the legislature of some others is unicameral. The State legislature is empowered to enact legislations on the subjects listed under the State List and Concurrent List – 7th Schedule of the Constitution.

The Constitution of India mentions three different lists of policies or areas of which acts/laws can be made, respectively the National Parliament, the States, or both (the concurrent list). Social and labour policies are on the concurrent list. This means that both the Nation and the different States in India have the power to make acts and laws on labour. So it could indeed be that one State makes a different law on labour compared to another State, however these laws have to be approved by the Nation in order to be implemented, which is mostly just a formality. The Nation can however also make law which overrules the State law, and this means that formally at the Nation level the final decision can be made, and that the States have to imply these National laws.

Where the provisions of a State legislation is contrary to and inconsistent with the provisions of a Central Legislation, the provisions of the State legislation will (officially) be called null and void to the extent the same is inconsistent with the central legislation.¹⁴ Most of the time however States make some exceptions in order to get the result needed in their own State. It can also happen that at Nation level the laws for something which is on the concurrent list, which is of a certain State, are being implemented nationwide.

¹⁴ Krishnan

An example of the difficulty in the law System is the fact that last April the dancing bars in Mumbai (Maharashtra) were shut down. The High Court (which is the State Court in India) decided that they could be opened again, but the city of Mumbai appealed the decision at the Supreme Court (National Court of India). The Supreme Court still has not decided upon this case since it feels it should be investigated deeply.¹⁵ The strange thing is that it nevertheless decided to keep the dancing bars closed till it makes a decision, even though the High Court decided otherwise.¹⁶

Although the law System is on paper arranged quite well, in practice you can see that in India things happen that should not happen according to Nation (central) legislation.

Civil citizenship

The Preamble of the Constitution of India, as said before, states: ‘Justice, Social, Economic and Political; liberty of thought, expression, belief, faith and worship; Equality of status and of Opportunity’, so one might say that all Indian people had civil citizenship from that based on Marshall’s civil citizenship. Before that, some castes were privileged to work in particular sectors and institutions and lower castes had fewer rights than higher castes like being obliged to walk on other streets and to buy food in other stores, and to work for higher castes or where the higher castes expected them to work. On the one hand this was a logic thing in India before the independency, but on the other hand it meant that lower castes did not have real civil citizenship in the way Marshall defines it even though they had their own right, freedoms and justice in their community.

After the founding of the constitution all Indians are equal on paper, however in practice this is different. Scheduled castes needed official support since, even nowadays, in some villages scheduled castes cannot walk, work and come everywhere without having the chance of being humiliated or punished by higher castes, so reservation policies were enacted. So, the laws and policies in India which were being implemented starting from the Constitution of India give all Indian men the same civil citizenship, but in practice this could be otherwise still. Regarding women, although the caste differences have been removed through law since the implementation of the Constitution of India, there still was no ‘real’ civil citizenship for

¹⁵ Hedge

¹⁶ Hedge

women economically speaking. The Equal Remuneration Act however is an important addition to the rights of women, especially women from scheduled castes and tribes but also for the Indian women in general. The Equal Remuneration Act gives women the right to work anywhere and not being discriminated in the recruitment stage or being treated and paid less as men, but I shall go deeper into that later. The status of women is hereby thus (re)confirmed as equal to that of men. Women can now command equal status in labour via law, and make complaints when they feel that they are being treated otherwise, but as just said, I shall go more deeply into that later in this thesis in the part about the Equal Remuneration Act.¹⁷

The above shows that in India it seems that all citizens have civil citizenship according to Marshall and also Bleijenbergh since they all have the rights associated with civil citizenship laid down in the Indian Constitution and the Indian Supreme and High Court which are the institutions associated with these rights and thus with civil citizenship. The Constitution of India clearly gives all citizens the rights necessary for freedom and the right to justice, and it provides for equality to be set against the inequality of the caste system prior to the Constitution of India. However, as we shall see in the next two parts, some groups do not possess full citizenship even though the Constitution states that all should have this.

In the next part I will outline the different non-governmental actors and the roles they play in making social labour policies in order to see the status of political citizenship in India. As mentioned in the first part on India reservations have been made for scheduled castes and tribes to take a seat in parliament and regional committees, so in the next part I will describe whether and how political citizenship is given to the people in India and especially women.

¹⁷ The Equal Remuneration Act

The non governmental players in making social labour policies in India

In this part I shall discuss the different non governmental players in policy making in the field of social labour policies in order to see which actors decide and formulate these policies.

I shall also discuss whether the roles of the different players give the Indian citizens political citizenship, especially the working women.

The Unions:

Unlike in Europe the Unions in India are not one of the biggest players in the social labour policy making. In fact, Unions don't really have a distinct statement, because also in the Unions there are different castes represented, and the members of the different castes have different preferences, which makes it impossible for the Unions to express with one voice into the public arena. Members of the highest caste prefer to for instance not have any reservations in both the private and public sector for backward castes while members of these backward castes which are also represented in the same Unions do prefer more reservation in the public sector and also reservations in the private sector.

This means that Unions can never demand specific needs or changes and thus cannot play an important role in the policy making, since they cannot offer a policy which is supported by a large part of the members of the Union. So, Unions can play a role in social/labour policy making for instance in the tripartite meetings on Labour in India, but due to the fact that they are not one caste bind, definitely do not play a role as large as in Europe.¹⁸

The unions therefore only seem to play a minor role in the labour policy making, after the law is made, before the implementation.¹⁹

The employers:

In India the Employers' Federation of India, the EFI, which is suited in the famous Army & Navy Building in Mumbai, represents and guards the interests of the employers. The EFI was founded in 1933 as an association of autonomous organizations of industry.

The aim of the EFI is to advise on key issues on Human Resources Management, regulating the relations between employers and workers, promoting and protecting the legitimate interests of employers, maintain harmonious relations between Management and Labour and to initiate and support productivity improvement schemes and measures, and to collect and

¹⁸ Hedge

¹⁹ Devos

disseminate information affecting employers and to advise members on their employer/employee relationships and other similar problems.

The EFI has periodical dialogues with the Government and other organizations in which it tries to get more attention for education, possibilities and the economy instead of too much attention for scheduled and backward castes.²⁰ It is a key player in different tripartite meetings like the Standard Labour Committee and the India Labour Conference.

The private sector is acting united against reservations and feels there are better ways to create more equality, like giving everyone the possibility to study and go to college.²¹ However not in a way so that scheduled caste students, which can normally not complete a study, still get a diploma. Instead the private sector feels that equality should be established in a fair way in which every student, no matter the caste he or she is from, has the same chance. So policies for labour should be on skills and not on castes.

Via Lobbying the EFI influences the policy making processes and plays a role in these where it finds necessary, and although the EFI acts in different organizations and meetings, according to Hedge the EFI and employers are not directly involved in making policies or laws. Only till after a law is made the EFI starts lobbying and gets involved, so it can influence the content of the law or the law as a whole before it is being implemented. The EFI does (often) not play a part in the process in which an issue is being put on the agenda.²²

NGOs:

Concerning national NGOs I shall only discuss the National Domestic Workers Movement (NDWM), since this Movement seems to be rather relevant for the topic of this thesis and it was one of the few being easy to find and (thus) seeming to have some influence in the policy making.

The National Domestic Workers Movement (of India) was founded in 1985 by Dr. Devos from Belgium to create a voice for thousands of Domestic Workers because household chores are not seen as 'real work', which means that the Acts that are made to protect minorities and oppressed groups in labour cannot be applied on this group. This f.i. means that overwork and underpay of domestic workers are not being recognized. Before the formation of the NDWM, domestic work was widely regarded as a solution for poverty of children and women from poor backgrounds. This opinion was influenced by the views of employers, as domestic

²⁰ Hedge

²¹ Hedge

²² Hedge

workers themselves had no voice at this time. Recognition of the Domestic workers as real workers was triggered in part by international influence by organizations such as the ILO, the IWD and the UN. The issues faced by the domestic workers began to be discussed in international communities and the decision was made by the ILO and the UN to change the legal term for maids and servants into 'Domestic Workers', which together with the awareness raising initiatives of the NDWM and other NGO's resulted into that the government and media began to adopt the use of this term. Currently the rights and status of domestic workers are being discussed in political arenas:

- ... The ILO convention 182 outlining the worst forms of child labour as well as the ILO convention no 29 about forced and compulsory labour and the UN Convention on the rights of the child are all relevant to children in domestic work. These standards have been used by the NDWM to pressurize the Indian Government into recognizing (child) domestic workers.
- ... In the year 2000 the central government passed legislation stating that no government employee should employ a child less than 14 years in his or her home. Although this sends a clear and positive message about the government's feelings about children in domestic work, the policy is not enforced and has not yet been publicized to the general public; neither does it do something about the domestic workers group as a whole. (The National Domestic Workers' Movement, 2005)

Where first the employers were reluctant about the NDWM, after twenty years, there seems to be a shift in the power balance which has lead, in some cases, to a shift in attitudes by employers where the domestic worker is valued as an employee and a person. However, most of the employers are still reluctant to do so, partly because of the fact that the central government does not require to do so and also partly because of the culture and feelings of pride. The domestic workers are regarded as 'simpler' because they have smaller chances from where they came from and the way they are treated by the families is believed to be far better than if they were to live in the small villages where they came from. In fact, most families will feel that they treat the domestic worker good and even help them, so until there is no legal obligation the employers will not act differently.²³

For adult domestic workers there have been significant improvements in terms of empowerment, treatment and to a certain extent status. As domestic workers organized themselves through the movement, they have gained strength. By working together and

²³ Patil

sharing their concerns they have created a strong voice with which they can challenge the behavior and opinions of employers and the general public. Domestic workers gained awareness of their rights and the confidence to challenge employers about their working conditions.

In 2005 legislation was passed in the States Kerala, Karnataka and Tamil Nadu which affected the rights of domestic workers including the introduction of the minimum wage. In Tamil Nadu they can even form workers unions.²⁴

However since domestic work is still a mandatory part of everyday life and the domestic workers are still not 'real workers' and have a low status and often are from the lowest caste, media and general public are not fully interested in the issues regarding domestic workers.²⁵

Although the NDWM did play an important role in introducing the Domestic Workers' Bill which has been introduced in 1998, it is still pending for more than 7 years now and final approval has not yet been given. In this bill paid leave, medical benefits, social security, regularized working hours and other labour benefits are asked for.²⁶

The NDWM thus does play a role in putting issues on the agenda of the government and in the whole process from then till the implementation.

Political citizenship

Marshall describes political citizenship as 'the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body.' (T.H. Marshall)

As said in the introduction, according to Bleijenbergh these right are associated with institutions as Parliaments and Councils of local Government (see bookmark 1), but I will also associate the different employers and employees institutions with political citizenship since via this way citizens can also influence the political authority and thus the political outcome. The employers' institutions, at least the EFI, do play a role in the policy making and thus influence the politics, which contributes to the political citizenship of employers along with the rights written down in the Constitution which give all citizens the right to take seat in Parliament and other political institutions.

²⁴ Jameson & D'Hooghe (p.16)

²⁵ Devos

²⁶ Kramer, Spehar and Suonpera (p. X-XI)

The Unions however, in which the employees are represented, play a less significant role in policy making and politics as mentioned above. But since all these employees have the right to vote and take place in the Parliament - the reservations policies even ensure this - in general employees do have political citizenship.

According to research of the National Institute of Advanced Studies-Gender Studies Unit (NIAS), Women's Voice National Alliance of Women (NAWO) and Initiatives-Women in Development (IWID) the representation of women in the National assemblies does not exceed 10%, while in the State assemblies the representation of women is even lower. Also, most of the time these women in the political areas do not have very important portfolios in their agendas. Women tend to vote less often than men, and when voting their decision is, more than with men, influenced by others. Their political participation is also low because of the inability to receive information due to illiteracy and economic independence (which on its turn makes political citizenship less easy because the funding for campaigns of women is therefore often less than that of men). They also recognize that although the law, the Constitution of India as well as the Equal Remuneration Act do proclaim equality and non discrimination of women in India, law alone cannot change the status of women totally.²⁷

It seems that Indian citizens are divided into four groups regarding political citizenship: Employers have political citizenship via Parliament and Committees but also via their employers' institutions, male employees have political rights via Parliament and Committees notwithstanding their caste, female employees not always have political citizenship due to illiteracy and under representation, and finally the Domestic Workers, which are women and girls from the lowest castes, do not have any political rights at all since they do not have the possibility to vote or take a seat in Parliament or Committee.

Regarding women in labour it can thus be said that, apart from the Domestic Workers (women from the lowest castes) who do not have any political citizenship at all despite the law, which has several provisions and reservations for backwarded castes in which domestic workers are and provides equality for all men and women in India also regarding politics and governmental institutions; the recognition of Domestic Workers as workers by the ILO and the UN and following the adoption of this term by the media and government in India; and the awareness of the rights of Domestic Workers and the influence the NDWM tries to have in getting recognition and more rights for the Domestic Workers, although illiteracy is high

²⁷ Baseline Report on Women and Political Participation in India

under women, female workers seem to get more political citizenship which can be noted from the slightly increasing representation in politics and regional governments, and the fact that the Constitution of India along with the different Acts proclaim full political citizenship for women which means that they should have the same political citizenship as male workers. So after we have seen in the previous part that all citizens, both men and women from high and low castes do have civil citizenship, we now see that the Domestic Workers, which are women from the lowest castes, are an exception and do not have civil nor political citizenship at all. Regarding political citizenship we see that improvement is needed for women's political citizenship but that the basis for this is definitely there in the Constitution of India and the other laws.

In the next part I shall discuss the content and the scope of the Equal Remuneration Act and the way this influences the social citizenship of women. I shall also discuss the social citizenship for people in India as a whole in order to see the status of that. So after concluding that civil and political citizenship is proclaimed in the law system, the Government and in a smaller form by the impact of non governmental actors, except for the Domestic Workers (which are women from the lowest castes), we shall now see whether social citizenship is established in Indian society, so a comparison can be made with the European Union and the status of women regarding labour policies can be defined.

The content and scope of the Equal Remuneration Act

The Equal Remuneration Act of 1976 is a gift of the 'International Women's Year' to women workers in India. It is enacted to give effect to the provision of Article 39 of the Constitution of India. The Act provides for the payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the ground of sex against women in the matter of employment.

Article four of the Equal Remuneration Act says:

'No employer shall pay to any worker employed by him remuneration at rates less favorable than those at which remuneration is paid by him to the workers of the opposite sex for performing the same work or work of a similar nature.' Men and Women are paid the same for the same work or work of similar nature, in which equality of work is based not only on the nature of work alone but also other factors like qualifications, responsibilities, reliabilities, experience, confidentiality, functional need and requirements commensurate with the position in hierarchy.²⁸

In order to provide increasing employment opportunities for women, Advisory Committees are being constituted to advise the Government on whether women may be employed in certain establishments. The Government decides what measures are to be taken.

Also, the appropriate Government can appoint officers for the hearing and deciding of complaints regarding contravention of any provision of this Act and '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.' Both employers and employees can make such complaints which means that the provisions of this Act can really have an impact and do give effect to the provision of Article 39 of the Constitution of India 'equal pay for equal work for both men and women'.

This Act thus gives effect to the Constitution of India, and gives provisions for how equal pay for equal work is arranged and what the standards are. 'The provisions of this Article 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' (Article 3 Equal Remuneration Act). This means that the Equal Remuneration Act has a nationwide and all including scope, notwithstanding any other laws, arrangements

²⁸ Case Law: Union of India vs. Tarit Ranjan Das, 2004 I.C.L.R. (12) S.C.

in any form or reservation policies. So regarding reservations, this means that no matter in what caste women are, they should be treated equally as men from the same caste should it otherwise be inconsistent with this Act. Women and Men from different castes and from the same castes get equal remuneration for equal work, but reservation policies cannot be affected by the provisions on recruitment in this Act. This means that first reservation policies have effect (based on the law which not necessarily means in practice), and within this reservation policy recruitment there can be no discrimination of men or women workers.

Social citizenship

By social citizenship Marshall meant the 'whole range from the right to a mediocrum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society.' (T.H. Marshall)

First the last words of this meaning have to be explored: the 'standards prevailing in the society'. What were the standards in the time the Act came into force? As mentioned above, there were and still are different castes in India. This means that all these castes had their own standards of living. With the Constitution being implemented, officially the standards of living became equal for all citizens in India, however this still is not really the case. Also, women do not always have the same standards of living as men in the same caste. The Reservations in the Educational sector, which imply that in (higher) education reservations for backward and scheduled castes and tribes of 50% are made, do have an impact on social rights since this is a genuine social right according to Marshall; 'The aim of education during childhood is to shape the future adult' (T.H. Marshall). However, Reservations were made for castes, not for women and girls.

The Equal Remuneration Act gives women the right to have equal chances and equal pay for the same work. With having the same chances, they will also have more chances of being able to live as per the standards prevailing in the society, i.e. the standards of men in the same castes, since working status and money are not the most important norms of being able to live the highest standards in the society. But, having the chance is important, because then when women want, they will be more likely to find a job and get paid equal to men doing the same.

Regarding women and education in relation with the Equal Remuneration Act, it shows that a particular group of women and girls definitely have no social rights at all. This concerns the Domestic Workers: women and girls who are locked in the households of different families in India. Domestic work is not recognized as real work, and therefore there is and can be no equality of work, or more or less the same work. Instead, these women and girls are being oppressed by the families for which they work and do not get money or far too less (the recent minimum wages for domestic workers changed something about this, however the question is whether all domestic workers get this, see also the part about the NGO NDW). These women also do not have any rights and opportunities to live according to any living standards common in India, they cannot share in the full national heritage and neither do they have their own economic welfare and security, not to mention their freedom. Girls are being integrated in the household, and do not get any education whatsoever. While the children in the household get education, these girls have to wash clothes, do the dishes, wipe the floor etc. This group cannot influence the political process, which means that they cannot co-decide on what laws and policies should be made for them. This can be seen in the current legislation which does not give the Domestic workers a legal status and the possibility to rely on the Equal Remuneration Act.

Since the groups of domestic workers consist of persons from the lower castes, this means that indirect discrimination occurs: 'indirect discrimination generally occurs when a rule or condition, which is applied equally to everyone, can be met by a considerably smaller proportion of people from a particular group, the rule is to their disadvantage, and it cannot be justified on other grounds,'²⁹. This applies because Domestic workers are not being regarded as real workers in the way that they can rely on all the labour legislation in India and this is discrimination of the lower castes because the domestic workers are women from those lowest castes.

According to Marshall's three types of citizenship these women and girls have no citizenship at all. They don't have civil citizenship since they live in a way very much the same as, if not equal to, captivity with the family's house as prison. Also, they do not have any social rights as mentioned above. The political citizenship also can be excluded for most of the domestic workers, since as they live in captivity, although they can sometimes go out on the street, they cannot participate in the political process due to the obligation to remain doing the domestic

²⁹ <http://www.sussex.ac.uk/equalities/documents/whatisindirectdiscrimination.doc>

work in their households.³⁰ The domestic workers are therefore a group which seems to be excluded from citizenship. Although there have been some improvements in the situation of the Domestic workers and their legal status, now they are still indirectly being discriminated. Even though the Domestic Workers' Bill has been introduced eight years ago it might still take a long time before this Bill is accepted and implemented and Domestic workers get full recognition as 'workers' in the way that they can rely on the labour laws and the Equal Remuneration Act.

Concluding, the Constitution of India and the reservations proclaim the same full social citizenship for all in India. This means that also women have social citizenship the way men have this. Especially the Equal Remuneration Act ensures that women in labour have the same social rights as men in labour. This means that that female workers do have social citizenship according to Marshall and Bleijenbergh and the Reservations in Education ensure that children from all castes get the same education so that the future adult can be shaped. However, the above shows that although reservations in education are made for scheduled castes, some of the girls from these castes work as Domestic workers which means that they get no education, so no shaping of the future adult; don't get any chance of living to the standards prevailing in the Indian society; and they cannot rely on the Equal Remuneration Act because the work they do is not being regarded as real work.

Having discussed the background information; the law system; whether women in labour have civil citizenship; the different actors in the social labour policy making; the political citizenship of women in labour; the content of the Equal Remuneration Act and the status of social citizenship, we see that the Independent India with the own Constitution tries to deal with the Caste system in India by making arrangements for Reservations. The Constitution of India also describes the equality for all citizens in India, thus of all castes and both men and women. Furthermore, different Acts and other legislation have been made in order to ensure the equality and full civil citizenship for all in India.

The law and the law system in India do provide all with civil citizenship, meaning that also women do have civil citizenship. The Indian Constitution and the Supreme and High Court in India ensure the rights associated with civil citizenship as can be read in the part on the law system in India.

³⁰ Devos

Regarding political citizenship, also the Constitution and the legislation proclaim political citizenship, however this being connected with Parliament and regional committees we see that women are being underrepresented and the impact of employees on making social labour policies seems to be rather small while employers do have more influence than the employees. Finally regarding the Equal Remuneration Act, we see that this Act arranges equality in labour between men and women nationwide notwithstanding any other laws or policies. This implies that women have the same chance of being able to live according to the standards prevailing in the Indian society since they should be able to get the same jobs as men living according to those standards already. The Reservations in education support the social citizenship by making sure that also backwarded citizens can get proper education, although this does not necessarily mean that girls are being equally represented in education. An important finding of this part is that there is one group in particular which is being ignored regarding all types of citizenship and the content and scope of the Constitution, namely the Domestic Workers. In this part we can see that the Domestic Workers are a different group, a group of the lowest castes, which do not have civil citizenship because they are practically being held prison in the family houses they work in. They do not have any political citizenship due to the lack of education which leads to illiteracy. Also, they do not have the possibility to vote or take seat in the Parliament or a Regional governmental Committee, although the NDWM tries to change this situation by making the media and the government aware of the cruel position of this group. Further, the Domestic Workers do not have social citizenship partly due to the lack of education which means no prospects of living according to the standards prevailing in the society and partly because they cannot rely on (labour) legislation and the Equal Remuneration Act since they are not being regarded as real workers thus far.

So overall, this part on India shows that in general the people of India do have civil citizenship, political citizenship (although this can be improved regarding the position of women), and social citizenship based on the legislation and the arrangements made for backwarded castes and women in labour. Of course the position of women, but also men, not being workers, is more fragile since the citizenship, especially social citizenship, is connected to labour as can be read in this part. Furthermore, as just said, the Domestic Workers are a group which is being neglected regarding citizenship, and the fact that this group consists of women and girls from the lowest castes makes this a form of (indirect) discrimination of these

backwarded castes . This shows that in India citizenship still is not the same for all the people of India.

In the next part I shall discuss the situation in the European Union and I will take the same steps in order to see whether the situation in the European Union can be compared with the situation in India.

The European Union

In 1951 the predecessor of the European Community, the European Coal and Steel Community, was established by the Benelux countries, France, Germany and Italy. Despite the collapse of the proposed European Defense Community and the European Political Community in 1954, in 1957 the European Economic Community Treaty was signed by the ECSC member states in which the attention was mainly focused on economic integration. In 1973 three more countries joined the EEC treaty and many more countries followed in the years after that. In 1992 the Treaty of Maastricht was founded, followed by the Treaty of Amsterdam in 1997 and the Treaty of Nice in 2000. These new Treaties were the follow-up of the prior Treaties and were more and more specific and arranged, for example, the institutional changes, the enlargement, and the recognition of the ECHR. The reason for the European Integration initially was to secure safety and ruling out the chance of a new war in Europe, but this was soon followed by the idea that Europe needed Economic Integration which can be seen as the main impulse for the European Integration.^{31 32}

Like in India, also in the European Union the lawmakers realized that it was necessary to write an article on discrimination and equality. Therefore, in the EC Treaty Article 13 is about the obligation for the European Community to combat discrimination.

Article 13 of the EC treaty states: ‘Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’

This Article is the starting point for the equal remuneration in the EU. As can be seen, this starting point is rather different than the starting point in the Constitution of India in which the Preamble speaks of liberty, freedom and equality.

This means that where in India the assumption was that everyone should be treated equal from the equality and liberty perspective - in which women probably would not be treated equal when they would go to work, in the European Union the assumption seemed to be that also everyone should be treated equal and get paid the same but from the perspective that women are already being discriminated and this discrimination has to be fought against. In short, it

³¹ Weiler (p.3-5)

³² Pisuisse & Teubner (p.12-14)

could follow from both that in India women were at the time of the writing not that much integrated in the workforce in which they do the same work as men, whereas in the European Union this already seemed to be the case. Still, in 2005 this was almost ten percent more than twelve years ago: 56,3 % of the woman in the EU-25 were in the labour force in 2005, this is 36,6 % of the overall working force (although women tend to work more part-time than men), and it shows that men are overrepresented in the industry sector (38,0) and women in the non market service (44,2%),³³ actual evidence of this presumption cannot be given for Europe as a whole. For The Netherlands percentages are available from 1981 when 30% of the women were participating in labour, which means almost a doubling of the percentage till now.³⁴

In 1957 Article 141 (119) of the treaty of Rome was introduced originally to prevent unfair competition from cheaper seasonal workers from abroad.³⁵ Point 1 of this Article says: 'Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.' When we compare this with Article 39 of the Constitution of India we see that these Articles are much the same on this point except for one important point: Article 39 CoI speaks of equal pay for equal work whereas Article 141 (119) EC Treaty speaks of equal pay for equal work or work of equal value.

To see whether there really is a difference between the two Articles on the point of equal pay for work of equal value, a closer look has to be given to Directive 75/117 of the European Economic Community of February 10th, 1975, and the decision in the case Union of India vs. Tarit Ranjan Das of 2004.

The EEC Directive of 1975 stated that: 'The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter called 'principle of equal pay', means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.' Only after the Treaty of Amsterdam amendments in 1997 when Article 141 (119) says 'equal work or work of equal value' this has been changed,³⁶ which means that before that, equal pay for work of equal value was not arranged in Article 141 but only in the Directive.

Indian Case law shows that regarding to equality of work related to the Equal Remuneration Act similar 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,

³³ Statistics in Focus

³⁴ CBS StatLine

³⁵ Blijenbergh (p.82)

³⁶ Deards & Hargreaves (p.329)

by a man or a woman and the differences, if any, between the skill, effort and responsibility required for a man and those of a woman are not of practical importance in relation to the terms and conditions of employment' (comment of the SC in case law of 1992) and 'the equality of work is not based on the designation or the nature of work alone. There are several other factors, which are equally relevant. They are qualifications, responsibilities, reliabilities, experience, confidentiality, functional need and requirements commensurate with the position in hierarchy.' (Comment of the SC in case law of 2004)

These comments given by the Supreme Court in India indicate that indeed in India work of equal value is also seen as equal work since even when the requirements regarding skill, effort and responsibility for men and women are not exactly the same this work can be seen as same work or work of similar nature if other factors like qualifications, responsibilities, reliabilities, experience and confidentiality are equal.

The above shows that the European Union was mainly based first on security in the region but after that economic principles and the economic integration. The EC Treaty says that the European Community may take action to combat discrimination which indicates that further policies and laws can be made in order to ensure equality in the European Union, with Article 141 being the starting point for equal remuneration of men and women in labour.

In the next part I shall discuss how the law system of the European Union is arranged, how it works and what the consequences are for European civil citizenship.

The Law System in the European Union

In this part I shall discuss the Law System in the European Union and discuss whether this leads to European civil citizenship, in order to see whether India and the European Union can be compared on this part and what the consequences are of the systems. I will first discuss the law system, and the institutions connected with the law system and the way the European Law works through in the Member States. After that I shall discuss the consequences of this system for European civil citizenship, especially regarding women (in labour).

The main legislative organ of the European Community is the Council, which exists of members representing the Member States. However in practice much is delegated, and the Council mostly makes regulations which lay down principles and policies to be followed. The Commission then can adapt implementing measures to fill in the details. To keep control the Council often creates a committee which monitors the Commission on that issue. Most Community legislation is adopted either by the Council acting alone or by the Council and the Parliament together.

The EC currently specifies three legally binding types of measures: regulations, directives and decisions.

Regulations are directly applicable, apply to everybody and are laid down in general rules.

Decisions are fully binding but only to whom they are addressed, so they are more for particular cases in which decisions are being made in order to fulfill the regulation.

Directives are binding on the Member States as to the result to be achieved, which means that the Member States can themselves choose which way to achieve the result.³⁷

However it could be the case that a Member State did not implement the directive or did not implement it in a correct way. When that happens a case can be brought up to the European Court of Justice and this will give a judgment whether the appeal is valid. The European Community has two Courts, the European Court of Justice, and the Court of First Instance which deals with simpler cases to diminish the work pressure on the ECJ.

The European Court of Justice decided that in certain circumstances a Directive can have direct effect. In such a case the directive should be sufficiently clear and unconditional and the deadline for implementation must have been passed. When this is the case and still the Member State failed to implement the Directive in a correct way, individuals can bring a case up against a Member State in the ECJ, which will give a ruling on that case. Also a Directive

³⁷ Hartley (p.45-46)

may be used in the Member States' national court in interpreting the relevant national legislation.³⁸

There are two different law Systems used by the different Members States, the one is the monist system in which the European Legislation is being considered as a part of the Members States' national law, the second is the dualist system in which the European legislation is considered as international (higher) law and this goes above the (lower) national law. In the monist view, the European law can have the force of law in the State concerned without needing any national legislation, while in the dualist view additional national legislation is necessary in order to let the European law be applicable and effective.³⁹

In both cases the European legislation is considered as 'higher' than the national legislation, since it says so in the national legislation or it's a part of the legislation and thus makes other national legislation contrary and thus void. This means that national legislation in general cannot be contrary to European legislation. If this is the case, this can be brought up to the European Court of Justice which will give a judgment which is binding for all parties.

Civil citizenship

Before the Directive: equal pay for men and women, it was, as also mentioned above, unclear whether Article 119 was directly applicable for residents/citizens in the European Union. Although there might have been national legislation arranging more equality for men and women, it was unclear whether European Union law could be applied by individuals in the matter of disputes. In the case *Defrenne v. SABENA* which was about the obligation to retire for women at the age of 40, where this did not apply for men, Ms Defrenne alleged that the loss she sustained in terms of salary and pension entitlement was in breach of Article 119. The ECJ held that Article 119 to be directly effective which meant that individuals could make claims based on this Article. After the Directive came into force the ECJ held that these provisions were also in Article 119 itself, so indirectly the Directive had vertical and horizontal direct effect, whereas the Directive itself only is capable of having vertical direct effect. Nowadays the Article 119 (now called 141 after the Treaty of Amsterdam) also

³⁸ Deards & Hargreaves (p.80-85)

³⁹ Hartley (p.136)

incorporates the equal pay for work of equal value which makes the Directive even less important except for the meaning of work of equal value as mentioned before.⁴⁰

So before the test case of *Defrenne v. SABENA* and the implementation of the Directive, the European civil citizenship has been stated in that Article 13 says: ‘Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’ and Article 119 (now 141). So the Council could take appropriate action to combat discrimination and thus secure European civil citizenship, but since it was not clear whether individuals could rely upon these actions/articles European civil citizenship seemed to be rather unclear and especially for women not obvious since they did not know whether they could rely on Article 119 in case of discrimination. This meant that women in particular at that time did not fully have European civil citizenship. Until the European Court of Justice made judgments about the possible effect of Articles in fact none of the individuals in the European Union or outside it had a real European civil citizenship since, according to the association with the Court of Justice made by *Bleijenbergh*, judgments of and the possibility to rely on European Union Law in the European Court of Justice made the European civil citizenship possible. Even though the Articles were there, if no one can rely on the Articles, there can be no European civil citizenship.

This all clearly changed after the case of *Defrenne v. SABENA*, the following interpretations of the ECJ and the implementation of the Directive equal pay for men and women which gave residents of the European Union European civil citizenship since from then on they could rely on the Articles.

I therefore state that currently citizens in the European Union do have civil citizenship since the association with the European Court of Justice shows that the EU citizens can rely on this institution although it must also be stated that currently this is mainly for the labour force, that is, the EU citizens who participate in labour.

So concluding this part, it shows that in the European Union the European Court of Justice is the highest legal organ which can decide and make laws which work through into the Member State’s legal system. Since the *SABENA* case the citizens could really rely on the Articles

⁴⁰ Deards & Hargreaves (p.223-224)

which meant for the women in labour that from now on they could rely on all European Union law regarding equality in labour.

More generally, since the Articles of the EC Treaty could be relied upon, and the European Court of Justice being the highest court in the European Union available for all citizens in the EU, full civil citizenship is there for all citizens in the European Union.

The non governmental players in making social labour policies in the European Union

In this part I shall discuss the role and influence of the different employers and employees and how and with what they can influence the social policy making. After that I will discuss whether this aids giving the EU citizens political citizenship according to Marhsall.

In the European Union the different interest groups play an important factor in making policies. Through lobbying these interest groups seek to establish close relations with the European Commission which is the main policy setter in the EU.⁴¹

In the field of social policies and labour in the European Union the Social Partners, that is the government, the employers and the employees, also play an important role. Policy making in the EU at the start can best be described as the garbage can model in which ideas and interest are all being brought together and out of this the EU makes its policy, thus after talking with the different partners and interest groups.⁴²

With social policies, due to the Social Agreement of Maastricht, the social partners, employers and employees, are getting involved into the policy making. The Commission has legal obligation to consult both social partners before submitting social policy proposals and the partners may also inform the Commission of their wish to initiate negotiations in order to reach agreements instead of EC legislation.⁴³ So instead of the normal EC pattern which can be described as the garbage can model along with the lobbying, concerning social policy making the employers and employees are being represented at the EU level and a part of the policy making, 'the interest associations are incorporated within the process of authoritative decision making and implementation'. (B. Kohler-Koch & R. Eising)⁴⁴

The Social Agreement institutionalized a new legal base for the Social Dialogue, which guarantees representation of the interests of management and labour⁴⁵. According to Keller and Sorries this means prioritizing consultation, negotiations and agreements by the social partners instead of legislative enactment proposed by the Commission and adopted by the Council without the legal interference of private actors' which grants the social partners more influence within the 'political machinery'.⁴⁶

⁴¹ Richardson (p.98, p. 218)

⁴² Richardson (p.13)

⁴³ Falkner(p.90)

⁴⁴ Falkner (p.91)

⁴⁵ *ESP*: Keller & Sorries p. 112

⁴⁶ see 45

This makes that apart from the government players, including the Member states governments, the management and the labour force have influence in making social policies at the European level in that they are being involved in the policy making from the start. In fact they have to be consulted when formulating proposals twice: First, and more generally, prior to submitting any proposal, on the possible direction of Community action and second, and more specifically, on the content of the planned proposal.⁴⁷ However it has to be noted that till now the social partners do not participate actively in the process and don't make use of their increased and improved opportunities to conclude agreements as arranged in the Social Agreement. And although the Commission has handed power over to the social partners, it also remains the political entrepreneur in the 'political machinery', the change in decision making from unanimity to majority ruling seems to make the real difference, according to Keller and Sorries, a change I shall not go into here.⁴⁸ Whether the new arrangements are effective in practice thus remains doubtful, fact is that these arrangements are there and are clearer than in India where the different players have to lobby or get attention in any way to get involved, while in the European Union both employers and employees get involved based on the Agreement.

Political citizenship

Marshall describes political citizenship as 'the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body.' (T.H. Marshall) The Council represents the Member States. The Council exists of representatives, often Ministers, of the Member States. These Ministers have been indirectly chosen by the citizens of the nations during the national election. The European Commission is appointed by the Council however with approval of the European Parliament. This European Parliament can be considered as the House of Representatives or the Chamber. Since 1976 there are direct elections for the EP. This means that the citizens of the different Member States can choose their representative for the EP every five years. This gives the impression that indeed the individuals in the European Union do have to exercise in the political power both passive as active. However there is a resembling difference between the Member States parliaments and the European Parliament in that in the national systems

⁴⁷ ESP: Keller & Sorries p. 113

⁴⁸ ESP: Keller & Sorries p. 122

the opinions and attitudes of the electorate can influence government policy through elections of the parliament. In the EU this is not the case since voting for the European Parliament does not directly influence the position of the Commission, thus the Commission cannot be seen as and in fact is not seen as a real government of the EU by the citizens. This makes the political citizenship for citizens of the different Member States a bit fragile, since it seems that although they can participate in the political processes in different ways, they cannot directly change their European government.⁴⁹

Also when we take a look at the representation of women in the European Parliament we see that in 1979, 16,5% of the members of the EP was female, in 1996 this was 27,5%, 29,7% in 1999 and currently 30,3% of the members of the EP is female. This means that the percentage of women in the EP has almost doubled since 1979.⁵⁰ Interesting to note is that in that year the Directive: equal pay for men and women was implemented.

Whether the implementation of the first Directive talking about equality between men and women can be regarded as a reason for this can not be proven just like that, but the suggestion seems to be there since after this Directive many more Directives followed which secured more and more equality for women compared to men. So although there is no direct effect of the Directive for the European political citizenship of women, it seems that indirectly this Directive did play a part in that.

The Social Agreement however, as read above, does give the citizens (both employer and employee) institutionalized influence in the policy making and in the 'political machinery' although this still doesn't mean that in practice these actors use this which also makes this influence fragile and thus similarly the European political citizenship. Moreover this means that only employees or employers have influence, thus not non-working citizens.

Concluding it shows that although on paper there appears to be European political citizenship since Member States' citizens can vote and take place in the EP; women representation is rapidly growing in the EP and the Social Agreement gives (only) employers and employees more influence in the social policy processes, in practice it shows that voting percentages for the EP are low; the European Commission is not directly chosen by the citizens and citizens do not see the EC as their European Government; women representation is still low in the EP although it doubled in the last twenty years, and the Social Agreement is not that effective as it should be.

⁴⁹ Hartley (p.41-43)

⁵⁰ Europees Parlement

So after we have seen that civil citizenship is ensured in the European Union by the EC Treaty and the European Court of Justice, the political citizenship (for employers and employees) is being empowered by the Social Agreement and the fact that the representation of women in the EP is rising rapidly, due to the everlasting great influence of the European Commission which cannot be elected on European level by the European citizens, and the low voting percentage for the EP makes the political citizenship not that strong as might be proclaimed by the European Union itself.

However, regarding civil and political citizenship, there seems to be no huge difference in the status of men and women.

In the next part I will discuss whether especially women have social citizenship in the European Union. I will discuss the content and scope of the Directive equal pay for men and women in order to conclude whether women are being treated equally to men in labour, and to be able to compare this with the status of women in labour in India and the possible differences in social citizenship.

The content and scope of the Directive: Equal pay for men and women, 1975

Although the Indian Equal Remuneration Act is also about no discrimination to be made while recruiting men and women workers, which indicates a link with the Directive: Equal treatment in employment, the title of the Act which says Remuneration makes it more obvious to compare this Act with the Directive: Equal pay for men and women, and when a closer look is given this is the case.

It should be noted that a Directive strictly cannot be compared with an Indian Act since such an Act seems to be more like a Regulation since it has general rules for everyone. On the other hand does the Act give the States the power to make the necessary rules and arrangements in order to implement the Act, the same as a Directive does.⁵¹⁵²⁵³

Due to the Belgian Women's Movement, which brought up test cases to court which led to the ruling of the European Court of Justice that 'the principle of equal pay is directly applicable to all the residents of the European Union' the European Commission used this interpretation as the goal of the Social Action Program of 1974 which led to the Directive on equal pay in 1975. Initially the Directive also dealt with equality of social security rights and positive discrimination but these points were deleted and partly included in future Directives.⁵⁴

The Directive equal pay for men and women of 1975 says in Article one: 'The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter called "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.' So Article one clearly says that regarding all forms of remuneration there can be no difference between male or female workers if they do the same work or work of equal value.

Article two and three say: 'Member States shall introduce into their national legal Systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after

⁵¹ Krishnan

⁵² Deards & Hargreaves (p.47)

⁵³ Samant (p.121)

⁵⁴ Blijenbergh (p.82-83)

possible recourse to other competent authorities. Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions which is contrary to the principle of equal pay.’ This means that the articles and meaning of this Directive should be regarded as the law and that contrary national law should not exist, also this Directive (gives the task to Member states that it) takes the measures necessary so that employees can have a judicial process to secure their rights given by this Directive. This means that women can go to the European Court of Justice when they feel they are being discriminated and thus a violation of an Article occurs.

The Directive hence ensures that women get paid equal as men, and any possible violation can be brought up to the European Court of Justice in order to claim equal pay.

After describing the most important parts of the Directive equal pay for men and women, I shall now discuss whether this contributes to European social citizenship, especially for women in labour.

Social citizenship

By social citizenship, as said above, Marshall meant the ‘whole range from the right to a mediocrum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society’ (T.H. Marshall). Article 13 EC empowered the Council to take action against different forms of discrimination and, as said before, Article 119 (now 141) EC deals with women discrimination of in labour related issues. Although there are many statements of policy, the European Community sex discrimination law remains focused on these issues on employment.⁵⁵

This does contribute, together with the Directive on equal pay for men and women and the following Directives, to the right to a mediocrum of economic welfare and security, share in the social heritage and to live the life of a civilized being according to the standards prevailing to the European society which says that all European citizens are equal and should be treated equal. Especially the Directive equal pay for men and women secured this for women since before the Directive was implemented they did not have the same right to economic welfare in

⁵⁵ Deards & Hargreaves (p.322)

that they were or at least could be paid less than men who were doing the same work or work of equal value according to the EC law. With Article 13 and 119 EC, the standards prevailing for women were set the same as for men which meant women should indeed have the same share to the full in the social heritage. The Directive on equal pay for men and women did not change that directly, but it did reconfirm it in that sense that the Directive states that men and women should get equal paid and thus considered as the same.

Regarding the right to live the life of a civilized being, this Directive ensured that men and woman get paid equal for equal work and thus giving both men and woman equal rights and opportunities to live as anyone else who does the same work.

However there existed a situation in which part-time workers were not being regarded as real workers since the legislation and Directive only applied for full-time workers and not for them. This is indirect discrimination, because at that time most part-timers were female workers and thus this group was being discriminated indirectly by not regarding part-time workers as real workers.

The Part time work Directive of 1997 ensures that also part-time workers get those same rights; before that, only fulltime work gave citizens full social rights which meant that a significant group was been neglected, even though part-time work was being encouraged by the Governments. Especially, the Directive on Part-time Work facilitates time for care but according to Bleijenbergh it still does not fully apply to social citizenship since it doesn't guarantee a minimum level of economic welfare for all the citizens but only to those who work (full-time or part-time), also the minimum income for part-time workers is not guaranteed in the event of sickness, disability, or old age since the statutory social security rights are not being protected.⁵⁶

Thus the Directive equal pay for men and women eventually gave male and female workers social citizenship according to Marshall, since the Directive on Part-time Work also the part-time workers got social citizenship according to Marshall, however not fully according to Bleijenbergh.

However I conclude that in my opinion the Directive equal pay for men and women, along with the Directive on Part-time Work has given both men and women in labour social citizenship according to Marshall because they now do have the chance of living to the

⁵⁶ Bleijenbergh (p.148-149)

standards prevailing in society and get the same minimum wage, although in certain situations this not guaranteed.

So regarding European social citizenship, both men and women in labour do have this although part-time workers don't have full social citizenship yet, it indeed shows that also in the European Union social citizenship seems to be connected strongly with labour since European Union sex discrimination law is only focused on employment issues and not on sex discrimination in general, which means that non workers might not be able to live according to the standards prevailing in the society (the question then rises whether living according to those standards can be realized without working, a question I shall not go into).

After seeing that all citizens in the European Union do have full civil citizenship, and both men and women seem to have more or less the same political citizenship which is a bit fragile due to the political system of the European Union, we now see that both men and women do have the same social citizenship. However, this is mainly regarding labour related issues and not fully for part-time workers, which are mainly women, so also in the European Union social citizenship is connected with labour, the same as in India.

This part furthermore shows that in the European Union both European legislation and Directives established equality and the three types of citizenship for both men and women. The EC Treaty proclaims equality and the possibility to combat inequality, the European Court of Justice made it possible to rely on these Articles, the Social Agreement gave both employers and employees a significant role in making social labour policies and the Directive equal pay for men and women ensures equality for both men and women in the labour field.

So after having discussed the background information, the law system, the status of civil citizenship, the non governmental actors and the way they influence or try to influence the social labour policy making, the status of political citizenship, the equal remuneration related Act and Directive and the status of social citizenship for both India and the European Union, in the next part a conclusion can be given on whether these different aspects can be compared, and whether an overall comparison can be made and what final conclusions can be made out of that.

Conclusions

A large difference between India and the European Union is that in India there exists the caste system in which different groups had and in practice still have different rights. The Reservations in the public sector in India are the proof and also the result of the caste system, while in the European Union there is no such thing arranged in the law because this does not seem necessary.

In India the National Government and the States' governments both have different powers, in some cases the National Government can decide, in some cases the State government can and in other cases both the National Government and the State government co decide (Concurrent List). In the last case State governments can make policies as long as they are within the scope of the National policies and Acts.

In the European Union also in some cases the Members States decide, in some cases the European Union can decide and in other cases they can co decide or at least the Members States can implement the policy in their own way, as long as it is within the scope of the EU-level policy (Directive). As well as in India in the European Union the States' policies cannot overrule the Union's policies in such cases if this would be contrary to these.

Also both in India and the European Union there is a Supreme Court, in India called the Supreme Court and in the European Union the European Court of Justice which can decide on possible contradictions or validity of state legislation. The difference between the two however is the access to the Court and the working of the system in practice. In India things do not always go as it is described and should go according to the legislation which the examples in this thesis show.

So concluding the legal system we see that India and the European Union are very much alike looking at the system and the legislative organs, however based on different types of legislation procedures, when looking at this in practice we see that in the European Union the legal system seems to be more transparent and accessible.

Also there seems to be a greater difference in power of the different non governmental actors in making and influencing social policies because in India the employers seem to have more power to influence policies and legislation than employees do, which links up with the prior

conclusion of access options. This lack of power to influence the policy making is for a part due to the caste system and the regulations related to this caste system which in fact makes it more difficult for employees to unite and by that influence the policy making.

Secondly the illiteracy, especially under women, makes it less easy to access and influence the policy and legislations.

In Europe illiteracy is not that much a problem that real large parts of the population cannot access and influence policies and legislation due to that. Also in the European Union the employees unite in Labour Unions which play an important role in the policy making and this role is even written down, so on this sub question the differences between India and the European Union are clear, added by the fact that in India also a whole group of individuals is somewhat neglected by the Governments and the Country, namely the Domestic Workers which are often women. In the EU the part-time workers were being neglected for years but this has been dealt with by the Directive on part-time Work.

When we compare the forms of citizenship in India and the European Union according to Marshall we see that in India men and women do have civil citizenship however very much overshadowed by the caste system while in the European Union men and especially women have European civil citizenship since the Case Defrenne v. SABENA.

Regarding political citizenship in India also due to the Reservations all men have political citizenship since also the lower castes are represented in the Parliament and other Governmental institutions, however women are being underrepresented in politics and government. In the European Union political citizenship for men and woman is equal but the European democratic deficit makes this European political citizenship a bit fragile.

Finally comparing the social citizenship, it shows that in India men and women do have equal chances, if in the same caste, since officially lower or backwarded castes should be treated equal, in practice these differences still are present. Apart from the fact that in India a whole group of women called Domestic Workers is being ignored and having no citizenship at all, Indian law does constitute equal citizenship for men and women. The fact that India still has the caste system which creates different degrees for the three types of citizenships of Marshall makes it that in India, even though f.i. the Equal Remuneration Act has been implemented in 1976, different groups in India have (slightly) different degrees of civil and social citizenship in practice, not formally.

In the European Union both men and woman have European social citizenship although anti discrimination (on the basis of gender) is only focused on labour, now also part-time labour.

The closer look at the Equal Remuneration Act and the Directive equal pay for men and women shows that both have the same effect on the types of citizenship: They can be both be regarded as a starting point social (labour) citizenship and play a role in the civil citizenship, although the Constitution and the Treaty are the initial starting points for civil citizenship. The political citizenship is not clearly affected by the Act or the Directive although I do suspect that giving women equal opportunities and remuneration for labour will help them in getting more involved into politics since they will receive money for themselves and they will get a better social status due to the equal pay for work.

So regarding the three types of citizenship both India and the European Union seem to be pretty much the same, except for the Domestic Workers and not regarding the caste system. In both the European Union and India it seems that civil citizenship is ensured by the law and the legal system. In both India and the European Union citizenship, especially social citizenship is connected with labour, and the emancipation is in progress although faster in the European Union than in India, based on the figures shown in this thesis. Notable is that in both the European Union and India, political citizenship is, especially for women, not fully established since in the European Union the democratic deficit plays a role, and both in the European Union and more in India the representation of women in politics and government is low. So it seems that, leaving the fact that Domestic Workers in India do not have any kind of citizenship at all, in both the European Union and India political citizenship is the most fragile part of citizenship since civil is proclaimed in the law and the legal system and social is proclaimed by the legislation and policies on labour for working men and women.

When we take a look at the three types of citizenship described by Marshall we see that he states that although these types traveled their own speed, civil citizenship was the first; political citizenship was the second and social citizenship was the third in the time frame. However, as I just stated, in both the European Union and India, even though the first steps taken to establish political citizenship might have been taken before the steps taken to establish social citizenship, social citizenship seems to have traveled with a larger speed. As a result, it now seems that social citizenship is better established for women than political citizenship. It might even be the case that now, due to the social citizenship of women and along with that better education for women, the social citizenship of women contributes to the process of political citizenship for women since being able to live the standards prevailing in the society might enforce women to play a more active role in politics and policy making

either by taking seat in the Parliament and regional committees or by non governmental groups having influence in these.

The Equal Remuneration Act and the Directive equal pay for men and women have many similarities since: their legal impact is much alike, the states in India and the Member States of the EU both could implement the policies/legislation in their own way as long in was within the scope of the Act cq. Directive; the effect of both the Act and the Directive can be proclaimed at the state Court as well as at the Union level Court; both the Act and the Directive say that equal work is equal work of work of equal value; and both ensure that this Act/Directive is binding to secure equal pay for men and women in all cases which can be ensured by legal steps and support of Committees. So the content and formal scope of the two are very much alike, also because the systems in which they are led down have many similarities.

The difference between the Equal Remuneration Act and the Directive equal pay for men and women lies in the scope of the Act and Directive for those for which the Act and Directive has been written, namely the women. Due to the social system in India women are still not treated the same although they legally should get paid equal because women from lower castes often are not in the position to get to work and thus get paid equal. Especially, the women and girls who are Domestic Workers will barely even get one chance of trying to get a job and being paid equal. A group which is from the lowest castes, which means that indirectly this lowest caste is being discriminated, because in a situation in which there are no different castes in India, this group of Domestic Workers would either not exist or it would be regarded as a group of real workers having all the rights other people in labour have.

Legally speaking the Act and the Directive are thus very much the same. Also given the structure of the European Union and India, socially speaking there are indeed differences in the scope of the Act and the Directive which could be argued to be due to the caste system in India and also the way the Member States in the EU already arranged different anti discrimination rules in their own ways.

I suspected that India and the European Union had resemblances in the way this thesis shows, but that even a specific social labour policy would be that much the same, notwithstanding the role of the nongovernmental women/employee actors and the caste system and the following reservation policies, is a conclusion which on the fore hand would not seem as a logical

conclusion. But in fact, the structure, content and scope of these specific Act and Directive are very much alike, same as for the legal structure in which it is embedded.

This also brings me to the conclusion that this is not affected by the number of citizens living under the poverty line or by the differences between the percentages of citizens living under the poverty line in different member states because in India a large percentage is in fact living under the poverty line, especially in rural areas/states and this does not seem to affect the way the legal system and the social policies exist. Of course it should be noted that I do not wish to prove that this means that this system both in India and the European Union works good and is considered perfect but this does mean that the joining of the new states with a higher percentage of the at-risk-of-poverty rate and the possible joining of Turkey also with a high percentage of citizens living under the poverty line, it will not necessarily break down the legal system and the social policies thus far.

In fact, following the results of this thesis I tend to state that it doesn't seem to matter how many citizens live under the poverty line or how large the percentage of the at-risk-of poverty rate is in general but also especially per state, based on the percentages given in this thesis. It can be seen that the current social policies and social labour laws and its structures in India and the European Union are pretty much alike, as stated in this thesis above, although the percentage of citizens living under the poverty line is quite different both per state as per union of states.

Further research should be done in a more social context in which not the formal comparisons are made, but perhaps a more practical and 'real life' comparison, although I do suspect that such a comparison would be difficult to make due to the caste system in India because this system has the most important impact on the Indian society. I tried to make a comparison by not letting the caste system overrule my comparison, but the fact is that this cannot be done when giving a closer look at the practical social scope of legislation and policies. Therefore also further research should be done on making a comparison between the Indian society and the European Union society on the basis of the caste system versus the Marxist and/or Weberian class system theories in which there might also be differences in the status of nationalities of the different Member States due to a difference in classes based on labour relations. While in India persons cannot move from one caste to another during their life, regarding classes in the European Union this can be the case, but in practice this might also be a fixed division depending on the theory and the situation.

Also I feel that further research on the different legislations and policies in both the Indian states as well as in the EU member states should be done in order to see whether some states ensure a more complete citizenship also for non workers and other atypical workers than part-time workers. Since this thesis is about the comparison on union level I did not include such research into this text but nonetheless I feel that this could show a more detailed and specific outcome regarding especially social citizenship.

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