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Positive Discrimination in Labour Law: A Comparative Study between Egyptian and Saudi Legislation

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Abstract

Purpose – The purpose of this paper is to explore positive discrimination in labor law. It points out that women, children and the disabled are positively discriminated in terms of working conditions and leave so that to highlight their legal status and working conditions in Egyptian and Saudi legislation.

Design/methodology/approach – The paper analyses the literature on the social, economic and physical conditions of children, the disabled and women, especially in Egypt and Saudi Arabia.

Findings – The paper analyses that the legislator in Egypt and Saudi Arabia took into account the social, economic and physical conditions of some workers and then established positive discrimination for them.

Research limitations/implications – The research uses an analytical approach based on some empirical data.

Originality/value – This paper describes the objectives and the reasons why the legislator, in Egypt or Saudi Arabia, regulates positive discrimination for some workers.

Paper type – A Mixed Method Approach (Quantitative and Quantitative data collection) has been adopted in this paper.

Keywords – *Positive discrimination; Vulnerable working groups; Child labor; Disabled persons; Women's leave; Working conditions*

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1. Introduction

Labor Law is considered to be one of the branches of social law that aim to protect the working class. It ignores the principle of power of will in the contractual relationship between the worker and the employer, and considers this relationship to be a link between two parties. The law imposed a set of restrictions on the employer's freedom to contract and organize for the protection of workers.

Labor Law did not only regulate this organization but also interfered and organized the working conditions of vulnerable groups in the labor relationship; women, children, and the disabled were regarded as weak parties, all requiring legal protection. Labor Law has regulated and prohibited women from working at night, in hazardous conditions, and along with affecting their employment after childbirth, and on certain holidays. As for children and the disabled, the legislator considers their weakness and lack of physical ability to perform work to be similar to the adult worker. Therefore, we are exposed to categories dealing with special rules in Labor Law, through the following divisions:

Chapter I: Rules of Child Labor in the Labor Law.

Chapter II: Rules Related to the Employment of the Disabled.

Chapter III: Rules Concerning the Employment of Working Women.

The Concept of Positive Discrimination in Labor Law

Positive discrimination means a set of guarantees and benefits that the legislator regulates in labor law and provides protection to vulnerable groups that are not equal in relation to others, whether because of their social status or the circumstances surrounding them. Accordingly, affirmative action does not mean discrimination or racial discrimination between two sexes and their preference over the others. This means that the legal relationship is unequal because of the presence of a vulnerable party or a party that is surrounded by certain circumstances that require protection and a range of guarantees.²

The Wisdom of Positive Discrimination in Labor Law

The Labor Code is realistic in that it regulates the factual situation of workers and the working conditions of each worker. Therefore, when the legislator of the Labor Code regulated labor rules, he did not regulate them in a single way

² Salama Abdul Tawab, Ola Farouk Azzam: Introduction to Social Legislation, Dar al-Nahda al-Arabiya, Cairo, Egypt, 2013, p.94.

but organize them by distinguishing certain groups and treating them according to certain circumstances.

Women, children and the disabled are grouped by circumstances protected by the legislator when organizing their work. The prohibition of work in hard and hazardous conditions or at night provides for some exceptions for women, as they may work at night under certain circumstances and under certain conditions, because of the social status they hold. Women have been given several holidays that have not been given to men as a result of their being a mother or a wife. Conversely, disabled persons have been allocated a proportion of the employment to other workers.

Chapter I. Rules of Child Labor in Labor Law

Children are the future. Their protection and the opportunity for their physical and mental development is their aspiration. International organizations across the world have been alerted by this fact. Firstly, they sought to regulate child labour through laws, international conventions on the protection of children, and the prominent role played by the International Labor Organization (ILO)³. The protection of child labor requires the regulation of age-related norms in terms of determining a minimum age and the constraint of employment before that age. Conditions of child labor are followed by a ban on employment in hard or hazardous labor, as well as in night work; in addition, it is important to determine the daily and weekly hours of child labour, as well as organizing their vacations and rest times. The protection of children also requires the provision of medical care, given the possibility that they may be at higher risk than other workers, for their early employment.⁴

Minimum Age for Child Labor (and Exceptions)

Working environments affect children growth, especially at an early age; they need to be given the opportunity to grow and develop before engaging in labor. The law has therefore set a minimum age for child labor. The definition of a minimum age for child labor is not limited to Unified Labor Law, No. 12 of 2003, which provided a rule limiting this age, prohibiting the employment of children before the end of development, and specifying exceptions to this age,

³ There are many recommendations and conventions that have been adopted in order to protect children from the prohibition of child labor and restrictions on juvenile labor. No. 182 of 1999 on the Prohibition of the Worst Forms of Child Labor.

⁴ Hossam Eddin Kamel Ahwani: Explanation of the Labor Law, without publisher, 1991, p.3.

but also the provisions of Egyptian Child Law.⁵ While the Saudi legislator organized child labor in the new Saudi labor system (Act No. 219 of 1422H).⁶ Both the Labor Law and the Children's Law have regulated the rules of child labor, which cannot be derogated. These rules are similar in several respects and differ from others, but Children's Law is the latest version of Standard Labor Law.

Minimum Age for Child Labor: Prohibition of Employment of a Child Under the Age of 15

There has been a change in the minimum age of child labor in Egypt; the law has witnessed an upward spiral in determining the minimum age that does not prohibit child labor before reaching a predetermined age. This change is to raise the minimum age for child labor in both Labor Law and the Children's Law.⁷ One might note that there is a correlation between compulsory education laws and labor and child laws, particularly in terms of determining the age of employment. Article 98 of the Unified Labor Law states: "In the application of the provisions of this Law, a child shall be deemed to be a 14-year-old child or a person who has passed the age of completion of basic education and has not attained the age of eighteen years". Thus, every employer who uses a child under the age of 16 is obliged to give him documentation proving that he works for him, and the picture of the child is attached to it and approved by the competent manpower office.⁸ Article 99 of the Labour Law states that: "the employment of female and male children shall be prohibited before reaching the age of completion of basic education, or fourteen years or older. However, they may start training at the age of twelve". In order to complete the above, the Saudi legislator required fulfilment of certain conditions in Child Labor, namely that: "1. No person under the age of 15 shall be employed and shall not be allowed to enter the workplaces. The

⁵ The legislator saw the need to provide more protection for the children. Their work was regulated by a law of their own, No. 12 of 1996, as amended by Law No. 126 of 2008. And the article 1 of this Act stipulated that: "The State shall ensure the protection of children and mothers, take care of children and provide for the right conditions for their formation in all aspects of freedom and human dignity." The State also guarantees, as a minimum, The Convention on the Rights of the Child and other relevant international instruments in force in Egypt".

⁶ The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

⁷ Salah Ali Hassan: Labor Inspection and Protection of Labor Rights, Comparative Study between Arab Legislation and International Standards of Work, Supplement No. 20/21, Journal of Law, Helwan University, Egypt, January / December 2009, p. 103.

⁸ Egyptian Labor Law No. 12 of 2003, Official Gazette No. 14, dated 7/4/2003.

Minister may raise this age in certain industries or regions or for certain categories of juveniles.

2. Notwithstanding paragraph (1) of this Article, the Minister may permit the employment or employment of persons between 13 and 15 years of age in light work, taking into consideration the following:

2/1. They are not likely to be harmful to their health or growth.

2/2. Work does not interfere with their attendance at school and their participation in vocational guidance or training programs, and does not impair their ability to benefit from the education they receive.⁹

Legislation has set a minimum age for child labor, linking this to the completion of basic education, taking into consideration the age of basic education, and leaving the child with the opportunity to complete the necessary teaching of writing and reading. The Uniform Labor Law requires that a contract of employment be prohibited for every child under the age of 14 or under the age of primary education as well as his training before the age of twelve years.

Thus, the Child Law No. 126 of 2008 defines the child in Article (1) of the Law. It states that: "The child in the field of care provided for in this Law shall mean any person under 18 years of age. Article 1 of the Saudi Labor Law defined the event as a person who has completed the age of 15 years and has not attained the age of 18 years. Age shall be established by birth certificate, national identity card or any other official document. If the official document does not already exist, age shall be determined by one of the parties specified by a decision of the Minister of Justice in agreement with the Minister of Health".

Additionally, the Saudi legislator required fulfilment of certain conditions related to child labor, stating in Article 163 of labour law that it is prohibited to employ juveniles during the night for twelve consecutive hours, except in cases determined by the Minister. Article 164 states that juveniles may not be employed more than six hours per day, except for the month of Ramadan. The actual working hours shall not exceed four hours.

Working hours shall be organized so that the juvenile does not work for more than four consecutive hours, without a period or more for rest, food and prayer, not less than one hour for half an hour and not to remain in the workplace for more than seven hours.

Juveniles may not be employed on weekly rest days, holidays, public holidays, and annual leave. The exceptions provided for in Article 106 of this Law shall not apply to them".¹⁰

⁹ Section X: Run the events/ Article 162, of The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

In light of that text, it is clear that the Child Law has raised the minimum age of employment for juveniles. Therefore, an employer may not employ a child under the age of 15 years or who has not reached the level of education, whichever is greater, and his training is prohibited before the age of thirteen years.

The Penalty for Violations of the Minimum Age for Child Labor

The rule relating to the establishment of the minimum age for child labor concerns public order. The legislator aimed at allowing time for the childhood development and the protection of his health, as well as for the necessary amount of education. Therefore, violating this rule is punishable with two penalties, a civil and a criminal one:

(1) Criminal Punishment: Article 74 of the Children's Law provides for this penalty: "Any person who contravenes the provisions of Part 5 of this law shall be punished by a fine not less than one hundred pounds and not more than five hundred pounds. Moreover, in case of repetition, the punishment shall be increased by the number of cases and shall not be suspended. The Saudi legislator in the Labor Law/ Article (152) argues that: "The employer shall be punished by a fine of not less than five hundred riyals and not more than three thousand riyals, the fine shall be multiplied by the number of workers who have committed the violation".

It is clear that the Egyptian and Saudi legislators have agreed on the criminal penalty (being a monetary fine). This penalty is not sufficient to compel the employer to respect the provisions of the law and the rules on child labor.

(2) Civil Punishment: Since the rule relating to the determination of the minimum age for child labor is a peremptory norm of public order, it follows that it violates the contract of employment, and therefore any employer employing children below the thresholds referred to above is infringing the law.¹¹

¹⁰ Also the article (156) states that: The employer shall, prior to the operation of the event, collect the following documents:

1- National identity card or official certificate of birth.

2- A certificate of health suitability for the required work, issued by a competent doctor, and certified by a health authority.

3 - The approval of the guardian of the event.

These documents must be saved in the event file.

Section X: Run the events/ Article 163-164, of The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

¹¹ El-Said Eid Nayel: The Mediator in the Explanation of the Labor and Social Security Schemes in Saudi Arabia, Al-Rashed Publishers, Saudi Arabia, Second Edition, 2014, p. 78.

Exceptions to the Minimum Age for Child Labor

The minimum age for child labor shall apply to all workers. However, children may be employed before reaching this limit, if those exceptions concern training or employment in some work or in connection with the employer.

(1) Training Exceptions

Article (99) of the Unified Labor Law prohibits the training of children before the age of twelve years. Article 64 of the Egyptian Child Law prohibits the training of children before the age of thirteen. Thus, an employer may conclude a training agreement with a child who is thirteen years old and may not train the juvenile before that age.

The Saudi legislator in the Labor Law/ Article 167 sets forth that: “the provisions of this section shall not apply to the work performed by children and juveniles in schools for the purposes of general, vocational or technical education and in other training institutions, and shall not apply to work performed in enterprises by persons who have attained the age of at least fourteen years if such work shall be carried out in accordance with conditions determined by the Minister. The work shall be an essential part of the following:

1. An educational or training course with primary responsibility for a school or training institution.
- 2 - A training program implemented in the largest part, or all in a facility if the competent authority has approved it.
3. An orientation or orientation program designed to facilitate the choice of profession or type of training”.

Therefore, the reason for the legislator's reduction of the minimum age for training juveniles from the age of employment is that training does not require considerable physical strength and therefore does not affect the health and development of the child. Moreover, training is often not done in the workplace but in educational institutions, e.g. VET institutions. The legislator may also exclude this age group from lifelong training. Egypt lacks schools for work training, so the training of children at an early age is reflected before their involvement in the world of work.¹²

¹² Hossam El-Din Kamel El-Ahwani: Op.cit, p. 346.

(2) The Exception to Hidden Laws

The legislator excluded from the application of the minimum age children employed in the agricultural sector and the work of pure agriculture (103 unified work). Moreover, the legislator excluded from the application of the provisions of the law, and thus the age of employment, domestic workers (M4).

(3) Family Burden Exception

Article 3 of the Unified Labor Law stipulates that the provisions of this law shall not apply to members of the employer's family, and thus excludes such persons from applying the minimum age for employment of children. The legislator's position on this exception is justified by the fact that the relationship of kinship is stronger than the law.

The employer is more knowledgeable than others about determining the age of his relatives. This exception requires that the child be a member of the employer; that is to say, working in a nearby establishment, and that the employer is compelled to provide food, water clothing and so on. In other words, the first is obliged to support the second legally.

Chapter II. Child operating rules

The Labor Law authorizes the Minister of Manpower and Immigration to issue a decree defining the system of employment of juveniles, conditions of employment, work and occupations in which children may be employed. The Minister of Manpower Decree No. 118 of 2003 promulgated the rules governing child labor. Among these regulations are:

(1) Health Care and Medical Examination

Every child has the right to health, social, and treatment services. The employer who employs children to work in the facility is obliged to provide them with such care and treatment. The Egyptian Child Law stipulates that each child has the right to care. According to Article 1 of the Ministerial Decision, the employer is obliged to conduct a medical examination of the child before they are employed, in order to ensure their physical and health safety, especially when children are engaged in certain environments that may endanger them. Health care and medical examinations are carried out at the

expense of the employer through the General Authority for Health Insurance.¹³

The employer's obligation to perform the medical examination does not in itself provide sound protection for the working juveniles. Article 65 of the Egyptian Child Law and Article 3 of the aforementioned Ministerial Decision require the employer to take the necessary measures to carry out a regular medical examination of the child who works for him, through the General Authority for Health Insurance, at least once a year. The article also states that work shall not cause pain or physical or psychological harm to the child or deprive him of his opportunity to attend school and recreation and develop his abilities and talent. The employer shall be required to insure him and protect him against the harm of the profession during his period of employment;

(2) Providing a Safe and Healthy Working Environment

In order to complete the process of protecting the working child, the State shall guarantee to the child, in all fields, the right to a healthy and clean work environment and to take all effective measures to eliminate harmful illegally by providing employers with all necessary information, measures and procedures of the Egyptian Child Law.

(3) Identification of Working Hours, Rest Times and Prohibition of Overtime

Article 101 of the Unified Labor Law and Article 66 of the Egyptian Child Law prohibit the child from working more than six hours a day, provided that the working hours include periods of eating and rest, not less than one hour in total, and that children are not working for four consistent hours. The legislator also banned the child from working overtime or carrying out work on weekly rest days and public holidays. Article 65 of the Egyptian Child Law stipulates annual leave for the seven-day worker, which may not be postponed or denied for any reason.

Imposing an employer's obligation to work hours, rest times, and statutory holidays, the legislator sought to protect the working child for his physical well-being and provided him with the opportunity to complete his growth. Therefore, it is prohibited to employ the juvenile in times other than those specified by law or on holidays or to assign him additional work, in addition to depriving him of his annual leave or postponing it for any reason.

¹³ Salah Ali Hassan: General Principles in Social Legislation, faculty of law, Helwan university, Egypt, 2011, p.107.

(4) Prohibition of Night Work for Working Children

Article 101 of the Unified Labor Law and article 66 of the Egyptian Child Law prohibit the night-time operation. The child may not work between 7 pm, and 7 am. Perhaps this time has been designated for child development, so as not to be exposed the child if he worked at night to disturbances in his sleep and change habits to unhealthy habits. The child is more in need of night rest than other workers, and the night is full of dangers that may be inflicted on the child if he works at night, at the premises of the establishment or on the way home or to work. If the employer has the power to regulate the work of his or her establishment and to take such measures as may be necessary for the organization of the work, he shall set the working hours for his employees, but he may not employ the child between 7 pm, and 7 am.

(5) Other Obligations for the Employer

In addition to the previous obligations of the employer, which are regulated by law and the Ministerial Decision for the organization of child labor, other obligations are intended to control the duties of the employer and to provide real protection for the working child. These include:

- obligations imposed on the employer under the labor law:

the legislator (in article 102 of the Unified Labor Law) requires the employer, who employs one or more children in his or her enterprise:

to produce a copy containing the provisions contained in Chapter III of Part VI on child labor (articles 98, 103, consolidated), which shall be posted in the workplace;

to release a statement explaining the working hours and rest periods adopted by the competent administrative authority, e.g. the directorates of the labor force in whose district the place where the child works is located;

to inform the competent administrative authority of the names of the children working for it, the work assigned to them and the names of the persons entrusted with supervising their work, in order to facilitate the supervision of the employer's implementation of the provisions of the law on the employment of children.

The employer shall also be bound by the delivery of the child working in the establishment, remuneration, and such other rights to whom the child is legally entitled.

In order to complete the above, the Saudi legislator required fulfilment of the conditions laid down in Child labor/ Article 146. In this sense, juveniles may

not be employed in hazardous work or industries, or in occupations and businesses that are likely to endanger their health, safety, or morals due to their nature or the circumstances in which they are performed. Article 106 states that “the employer shall inform the competent labor office of each event he occupies during the first week of his employment, and shall keep in the workplace a register of juvenile workers indicating the name and age of the juvenile, the full name of his guardian, his place of residence and the date of his employment”;¹⁴

- preparation of documents and documents for children

In this regard, Article 68/5 of the Egyptian Child Law states that the employer shall keep official documents attesting to the age and health of all his workers and provide them upon request. He shall be responsible for ascertaining the age of his working children;

- providing accommodation for working children

Article (68/4) of the Egyptian Child Law provides for the provision of separate accommodation for child workers from other adults if the working conditions require their stay;

- prohibition of child labor in hazardous work

Article 65 of the Egyptian Child Law prohibits the employment of children in any type of work which, by their nature or circumstances, can endanger the health, safety or morals of the child. The employment of any child in the worst forms of child labor, defined in Convention No. 182 of 1992, is specifically prohibited. The Saudi legislator in the Labor Law (Article 136), specified that no person may be employed in the mine or quarry under 18 years of age, and no woman may be employed in any mine or quarry;

- occupational health and safety precautions for child labour

Article (68/6) of the Egyptian Child Law stipulates that all occupational health and safety reserves shall be provided at the workplace, in addition to its commitment to the training of child laborers in their use and how to deal with them. Egyptian and Saudi legislators agreed to protect children in terms of

¹⁴ Section X: Run the events/ Article 106/146, of The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

allowing them to obtain sufficient education to familiarize themselves with the rules of writing and reading before entering the labor market, as well as prohibiting them from operating at night to complete their physical development or employment in hazardous work.

Rules Relating to the Employment of Disabled Persons

Legislation is keen to address the problem of disabled persons, who are partially unable to perform the work and who need rehabilitation in order to be able to perform the appropriate work with their physical condition (see the Vocational Rehabilitation Law for Disabled Persons, No. 14 of 1959, 39 of 1975, as amended by Law No. 49 of 1982). The legislator also allocated the sixth chapter of the Egyptian Child Law No. 126 of 2008 to regulate the rehabilitation and work of the disabled.

Definition of the Disabled

Article 2 of the Rehabilitation of Persons with Disabilities Law, No. 39 of 1975 defines the disabled person as: "any person who has become unable to rely on himself in the performance of work or other work and stability in it, and his ability to do so due to organic, mental, sensory or congenital disability since birth".

Protection and Rehabilitation of the Disabled

A disabled person, a child or a young person, deserves health, economic, and social care by the State; it is his or her right ; it is obliged to provide or facilitate the provision of medical, psychological, social and educational services.¹⁵

In this regard, article 72 of Egypt's 2012 Constitution states: "The State commits itself to the care of the disabled with health, education, economic and social rights, provides them with employment opportunities, promotes social culture and provides public facilities to suit their needs".

Article 75 of the Egyptian Child Law stipulates that the State shall ensure that the child is prevented from being injured and from any work that may harm his or her health or physical, mental, spiritual or social development. The State shall take the necessary measures for the early detection of disability and the rehabilitation and employment of disabled persons upon reaching the age of employment. The state will also take appropriate measures for the contribution

¹⁵ Ola Farouk Azzam: Social and Professional Integration of Workers with Special Needs in the Labor Market, Journal of the Faculty of Law, Ain Shams University, V. 2017, Egypt, p.22.

of the media to awareness-raising and counseling programs in the field of prevention of disability and to promote awareness of the rights of children with disabilities, and to sensitize them and their caregivers to facilitate their integration into society.

The Right of the Disabled Child to Rehabilitation

Rehabilitation is one of the most fundamental rights that must be guaranteed to the disabled child. Rehabilitation is meant to provide the social, psychological, medical, educational and professional services that must be provided to the disabled child and his family to enable him to overcome the effects of his disability. The State performs rehabilitation and compensatory services for the disabled for free, within the limits of the amounts included for this purpose in the general budget of the State, as stipulated in Article (77) of the Egyptian Child Law.

Qualified authorities are committed to the rehabilitation of the disabled child by handing him a certificate, free of charge, to each child who has been rehabilitated, as well as the relative certificate, in addition to other data (79) of the Egyptian Child Law. This certificate obtained by the disabled child is handed over to the Manpower Office upon registration.¹⁶

Disability Employment Provisions

Under the Rehabilitation of Persons with Disabilities Law No. 39 of 1975, the employer is obliged to employ a percentage of disabled persons (5%); employers employing 50 or more workers in the private sector must use 5% of the total number of workers in the unit workforce to work. Article 82 of the Egyptian Child Law stipulates that an employer who employs 50 or more workers, whether working in a place or a single town or village, can use disabled children nominated by the labor force offices, with a minimum of two percent and up to five percent, as stipulated in the Rehabilitation of Persons with Disabilities Law. Taking into account the requirements and benefits of free choice of the worker, the employer may fill this percentage by means candidates other than those nominated by the labor force offices. The disabled person who received the certificate of qualification, under Article 8 of the Rehabilitation of Persons with Disabilities Law, registers his name with the

¹⁶ Ola Farouk Azzam: Social and Professional Integration of Workers with Special Needs in the Labor Market, op.cit, p.62.

Manpower Office in which his residence is located¹⁷. The scope of the employer's obligation to employ a disabled person is limited only to employers, who use at least 50 workers under the Labor Law. This obligation is therefore not applicable in cases where the labor law does not apply to individual workers, such as casual workers.¹⁸

The Manpower Office is obliged to register the names of the disabled in a special register.

The employer who uses a disabled person shall notify the competent office of the disabled person with a letter of acknowledgment of arrival within ten days from the date of receipt of the work (9/2), in order for the Manpower Office to inventory and count the number of workers Disabled.

In order to provide protection for the disabled, the legislator stipulates, under Article 83 of the Egyptian Child Law, to compel the employer to maintain a particular register for the names of persons with disabilities who have obtained the qualification certificates that have been attached to him. Also, this office should be informed of the total number of employees and the number of jobs held by the disabled persons and the remuneration they receive. The Saudi legislator in the Labor Law (Chapter II) sets forth that "employment of disabled persons, pursuant to Article 28, refers to each employer employing 25 or more workers". The nature of his work enabled him to employ disabled persons who have been professionally rehabilitated to occupy at least 4% of his total number of disabled persons who are professionally qualified, whether by nominating employment units or others. It shall send to the competent labor office a statement of the number of jobs and jobs occupied by persons with disabilities who have been professionally rehabilitated and their remuneration.

Article 29 also specified that: "if a worker suffers a work injury resulting in a lack of his normal abilities, he shall not be prevented from performing any work other than his previous work. This shall not prejudice the compensation he deserves for his injury".

The Penalty for Violating Provisions Relating to the Employment of Disabled Persons

Article 84 of the Egyptian Child Law provides for the punishment of anyone who contravenes the provisions of the two previous articles relating to the rate of employment of disabled children and obliging the employer to keep a record for the registration of disabled workers and handing it over to the

¹⁷ Fatma Mohamed Al-Razzaz: Explanation of Labor Law, Helwan University, Egypt, 2004, p.98.

¹⁸ Hossam El-Din Kamel El-Ahwani: Op.cit, p. 329.

administrative authority upon request with a fine not less than one hundred pounds and not exceeding one thousand pounds.

The employer may be ordered to pay the disabled person an amount equivalent to the prescribed or estimated salary for the work for which he is nominated, monthly, as of the date of proving the violation and for a period not exceeding one year.

Under article 86 of the Egyptian Child Law, the legislator exempts prosthetic devices, aids, spare parts, means, production equipment and means of transportation necessary for the use and rehabilitation of disabled children of all types of taxes and fees.

A comment on the organization of Egyptian and Saudi legislators for the work of the disabled

In our view, the Egyptian and Saudi legislators still lack more social protection for the disabled and their working conditions, but they have identified a certain percentage of jobs for the disabled, although this percentage is not sufficient, especially in Egyptian law. In Saudi law, the ratio is 4%, while in Egyptian law the percentage of each establishment employing 50 workers is a small share that does not achieve adequate employment for the disabled.

Chapter III. Rules Concerning the Employment of Working Women

Women are men's sisters at work; equality between men and women in the performance of work is required in terms of the legal provisions regulating the employment of workers. Women are a human force whose work must be organized in order to make the best use of them. The last decades have witnessed their involvement in all fields of work. International organizations have taken notice of this early and have concluded several agreements.

Although the principle of equality and non-discrimination in the workplace must be enforced, women workers need some kind of positive discrimination in terms of their labour regulations because of their physical weakness compared with men, and the working woman is a wife and mother at home. Most family tasks, which are not borne by the working man, necessitated the special treatment of women in proportion to their abilities and circumstances. In order to provide the necessary protection for women, the legislator imposed several restrictions on the employment of women. The organization of women's labor legislation is one of its sources in international conventions to ensure equality and non-discrimination. Thus, we address the rules relating to the employment of working women, through two requirements.

First requirement: legal regulation of women's work.

Second requirement: Prohibition of the Employment of Women in Hazardous or Harmful Laws.

Legal Regulation of Women's Work

The law establishes the principle of equality and non-discrimination between men and women in the field of labor relations. Article 88 of the Unified Labor Law stipulates that all provisions of this law shall be applied to female workers, in the same way as workers (corresponding to article 122/5 of the French Law).¹⁹

First: Banning Women's Night Work

The legislator has established a general principle of equality and non-discrimination among all workers in the field of work; it applies to women workers with the same rules as all workers, including the exclusion of the employment of workers at night. However, since some work is performed by nature at night, workers may be employed at night to perform these tasks. With regard to women, they may not be employed at night except in legally prescribed cases.

Therefore, it is not permissible to employ women, as a rule, at night; because night work has negative effects on women's health, and stress, in addition to night work, this leads to increased sensitivity of the body to the effects and damage of the work environment.²⁰

Moreover, night work has an evident effect on the role of women as wives and mothers, the role that is superior to the performance of work and any other social duty. The work of women at night causes them to leave to their husbands and children their family duties. Night work may also expose women to risks in when going to or returning from work.

For all of this, the subject of women's work has been widely welcomed by international and Arab organizations. Many agreements have been concluded to regulate the work of women, and this concern has not only been on the international side, but on the internal level.

¹⁹ L'article 122/5 du code du travail française 2008, et Jean-Maurice Verdier et autres: Droit du travail, 12 édition, Dalloz, Paris, 2002, pp.264.

²⁰ Fatma Mohammed Al-Razzaz, d. Salama Abdel Tawab Abdel Halim: General principles in social legislation, d., 2006, p.107.

(1) International Organizations related to the Work of Women at Night

International conventions have banned women's work at night, as this has a clear effect on women's physical health and family responsibility. Under Convention No. 4 of 1919, the night is meant for rest hours, not less than eleven consecutive hours, and the employment of women is prohibited between 10 pm, and 5 am. The agreement aims to achieve the welfare of working women and the health of all workers, and increase the productivity of workers who receive the necessary rest. Convention, No. 90 of 1948, authorized the competent authority to determine the night rest of working women within limits established by the Convention.²¹

These three conventions prohibit the employment of women, at any age, at night in all establishments, except for an establishment where only members of the same family work. The two Conventions set out two exceptions to the rule prohibiting women at night: the first is the case of force majeure; and the second takes place if the facility uses raw materials or materials in the process of preparation and is susceptible to rapid damage, requiring women to work at night to keep them from being damaged.²²

Despite the efforts of the International Labor Organization (ILO) concerning the exclusion of night work for women, there is a trend calling for the abolition of this restriction, which violates the principle of equality of opportunity between women and men, as well as the principle of equality and non-discrimination. The International Convention on the Elimination of all Forms of Discrimination Against Women, 1976, which called for the revision of laws aimed at the protection and discrimination of women and men, and the 1985 International Labor Conference on equal opportunities and equal treatment of men and women.²³

(2) Internal Organizations concerning the Work of Women at Night

Legislation prohibits the employment of women between 7pm and 7 am (m. 89), except in cases, works and events that are determined by a decision of the competent minister, where they may not be operated at night except within the limits of the specific works and events. This article authorizes the Minister of Manpower and Immigration to issue a decision specifying the conditions and

²¹ In this regard, the ILO conventions such as the Convention No. 4 of 1919 concerning the work of women at night, as amended by Convention No. 41 of 1934, amended by Convention No. 89 of 1948, Convention No. 103 of 1952 on the Convention on the Protection of Maternity, 171 for the year 1990 ..., and also the ILO website: www.ilo.org.

²² Salah Ali Hassan: Op.cit, p. 115.

²³ Loc. cit.

jobs in which women may be employed at night. The decision of the Minister, No. 155 of 2003, concerning the regulation of the employment of women at night was issued. The decision on the principle of banning women's night work also included two exceptions:

a) Article 4 of the Ministerial Decision stipulates that the rules on the work of women at night in cases of force majeure shall not apply if the work in the establishment ceases for an unforeseeable reason.

b) Article 5 of the said resolution stipulates that the provisions of this resolution shall not apply to women workers who hold administrative or technical supervisory positions.²⁴

Thus, women may be employed in night work when specified by the competent minister, e.g. between 7 pm and 7 am, such as work in hospitals, hotels, restaurants, entertainment houses, pharmacies, media and work to avoid the loss of perishable material or the unavailability of male labor.²⁵

We can mention what the Saudi legislator has written in article 194: "Subject to the provisions of Article 4 of this Law, women shall work in all fields that are compatible with their nature and prohibit their operation in hazardous works or harmful industries. The Minister shall determine by profession the occupations and works that are harmful to health or that may expose women to specific dangers, prohibiting their employment or restricting them under special conditions".

The legislator wanted to ban the employment of women at night to observe the marital and family duties of the worker, to allow her to perform her household duties and to take care of the children and the family, especially at night. When women are employed at night, a permit must be obtained from the competent administrative authority to employ women at night, and the employer is obliged to provide all the protection and security guarantees for working women at night.²⁶

²⁴ Dr. Hammam Mohamed Mahmoud Zahran: Labor Law, Individual Employment Contract, New University House, Alexandria, 2007, p.172.

²⁵ Hossam El-Din Kamel El-Ahwani: Op.cit, p. 314.

²⁶ Eid Nile: Op.cit, p. 101104, d. Hammam Mohamed Mahmoud Zahran: previous reference, p. 167174, Jean-Maurice Verdier et autres: Droit du travail, Op.cit, pp.264-267.

Prohibition of the Employment of Women in Dangerous or Harmful Work

(1) Role of International Conventions in Banning the Employment of Women in Hazardous Work

The International Labor Organization (ILO) has issued several conventions and recommendations that prohibit the employment of women in hazardous or arduous work, which may affect the health or physical integrity of women or adversely affect their employment as mothers and wives.²⁷

Convinced of the non-employment of women in dangerous or harmful acts, the Saudi legislator agreed with the Egyptian legislator, and in Article 150 he stresses that: “Women may not be employed during the night for eleven consecutive hours except in cases where the Minister issues a decision”.

(2) Prohibition of the Employment of Women in Hazardous Work in the Unified Labor Law

The law prohibits the employment of women in work that are harmful to them; this may be due to the weakness of women’s physical power. They are less able to bear the hardships of some work, so the legislator took into account the ability of women to make this effort. Article (90) of the Minister of Manpower and Immigration, No. 155 of 2003, specified in Article 1 that hazardous work, for which women cannot be employed, is subject to the flaw that women workers are exposed to illness, accident, shame, or endangering their morals (e.g. work in tourism, mining, industry or dealing in metals).²⁸ Also, the Saudi legislator in Article 136 of Labor Law states that “no person may be employed in the mine or quarry under 18 years of age, and no woman may be employed in any mine or quarry”.

Protection of the Motherhood of Working Women

The legislator has established positive discrimination in the area of labor relations for the benefit of women; this may be due to their circumstances, in terms of their limited physical capacity, in addition to their role as housewives, wives and mothers, a social duty that is beyond any other obligation. The legislator gave her leave in which she played her role as a mother, as a wife,

²⁷ Fatma Mohammed Al-Razzaz, Salama Abdel Tawab Abdel Halim: Op.cit, p. 110.

²⁸ Hammam Mohamed Mahmoud Zahran: Op.cit, p. 177, Salah Ali Hassan: Op.cit, p. 119.

maternity leave and leave to care for her child. It also included provisions for the care of the infant and the establishment of nurseries.

First: Vacation Status

Article 91 of the Unified Labor Law, as well as Article 70 of the Egyptian Child Law, provides for the granting of maternity leave lasting ninety days (three months) to the working woman.

In the Labor Law and the Egyptian Child Law, the legislator provided for maternity leave, which was consistent with international labor standards; it always sought to protect vulnerable groups, such as working women, as stipulated in article 3 of Convention No. 103 of 1952 on maternity protection, which stated the following:

“1. Maternity leave shall be granted to every woman to whom this Convention applies and a medical certificate shall indicate the possible date of the situation.
2. Maternity leave shall not be less than twelve weeks and shall include a compulsory leave period after discharge”.

The prohibition on the employment of women during the 45 days following the situation is related to public order, and therefore it cannot be agreed that it is contravened because the purpose of this prohibition is to protect the health of both the worker and the child.

Although the worker does not perform work during pregnancy and maternity leave, she is not entitled to a wage but receives compensation equivalent to the comprehensive wage on maternity and maternity leave and her employment contract is suspended during this leave. The Labor Law has determined that the worker shall receive compensation equal to the comprehensive wage, to be complied with by the insurance body and not by the employer, while the Child Law has determined that the worker shall be entitled to full-time maternity leave. In any case, what the worker receives, whether paid or compensated, shall be equal to the wage.²⁹

Article 91 of the Unified Labor Law stipulates that the worker shall be entitled to maternity leave for ten months in the service of one or more employers.

Labor Law limited the right of workers to obtain leave that was granted only twice during the period of their service, with one or more employers, and perhaps the wisdom sought by the legislator behind that provision is not to exhaust the employer and not disturb the work in his establishment.

Note that the provisions on maternity leave are the minimum of what should be provided to the worker, and therefore it may be agreed to increase the

²⁹ Fatma Mohammed al-Razzaz: op.cit, p. 353.

duration or number of the days of leave, and should not be derogated. However, the legislator once again rearranged the status of the Egyptian child law, and Article 70 of the law stipulates that the worker has the right to receive maternity leave in any sector or any establishment, provided that it does not exceed three times the length of her service. In this case, the legislator of the Child Law, in 2008, increased the number of days off for agreed upon in the 2003 Labor Law.

Article 90 of the Unified Labor Law provides for the prohibition of dismissal or termination of employment during maternity leave since the employment of the worker is a right established by law and does not entitle the employer to dismiss her or to terminate her service. This does not mean that this provision adds absolute immunity to the worker, but it constitutes temporary immunity for the leave period. This provision is a specific application of the prohibition provided for in Article 127 of the Labor Law³⁰.

Article 115 of the Saudi Labor Law stipulates that: “A working woman is entitled to maternity leave for the four weeks prior to the possible date of delivery and the subsequent six weeks. The likely date of delivery shall be determined by the doctor of the establishment or by a medical certificate certified by a health authority. The employment of women is prohibited in the six weeks following birth”.³¹

Also, Article 122 specifies that: “the employer shall pay the working woman during her absence from work on maternity leave the equivalent of half of her wage, if she has a year's or more service with the employer, and the full wage if the period of her service is three years or more on the day of commencement of leave. If she has benefited in the same year from full-paid maternity leave and is paid half of her pay during the annual leave if she has benefited in the same year from half-paid leave”. Furthermore, Article 135 sets forth that “the employer shall provide medical care to the working woman during pregnancy and childbirth”.

Moreover, the Children's Law reduces the day-to-day working hours of the pregnant woman, of at least one hour, from the sixth month of pregnancy, and prohibits her from working overtime during the pregnancy until the end of the sixth month from the date of birth.

The employer may impose a penalty on the worker, which is to deprive her of her full compensation for the duration of maternity leave. The purpose of the legislator to grant the worker the right to leave is to provide her with the opportunity to recover after pregnancy and childbirth, and the burden and

³⁰ Salah Ali Hassan: Op.cit, p. 122.

³¹ Section IX/ Women run: Article 115: The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

effort she requires, in addition to caring for her young child. Therefore, the employer decides to apply this penalty if she violates the rule³².

Additionally, Saudi Labor Law stipulates that the contract shall be terminated in accordance with the provisions of this section if she works for another employer during the period of her authorized leave. In this case, the original employer may deprive her of her wages for the period of leave.

Second: Baby Care

In order to complement the protection of working women and their children and their families, the legislator gave the child who breastfeeds her child in article 93 of the Unified Labor Law, as well as in article 71 of the Egyptian Child Law, the right to two daily breaks to feed her child and the duration of each half-hour period. The worker has the right to combine these two periods. These two working hours shall be calculated in addition to the prescribed rest periods.³³ The employer may not refuse the worker's request to take the comfort period or to include it. It is a right given to him by the legislator, and he is not entitled to deprive him of it. This period is considered to be an increase in the daily rest of the workers according to article 81.

As for the Saudi Labor Law, it stipulates that: "A woman who has returned to work after her maternity leave has the right to take a period or periods of rest not exceeding one hour per day in addition to the rest periods granted to all workers. This period or periods of working hours shall be calculated, entailing a reduction in wages".³⁴

The worker is required to take care of the infant and to breastfeed her child, so if it is proved that she does not breastfeed, she is not granted this rest.

Third: Childcare Leave

Taking into consideration the role of women working as mothers, and the child who is the hope of the future, and his need for the mother for proper education and upbringing, the worker might decide to take leave to take care of

³² Ahmed Hassan El-Borai: *Al-Wajeez in explaining social law, Labor Law and Social Insurance*, Cairo University, Egypt, 2003, p.684-686.

³³Article 71 of the Egyptian Child Act provides that: "A woman who breastfeeds her child during the two years following the date of the situation, as well as the prescribed rest period, shall have the right to two other periods for this purpose, each of which shall not be less than half an hour. The worker shall have the right to combine these two periods , And these two periods of working hours are calculated, and this does not entail any reduction in wages. "

³⁴ Section IX/ Women run: Article 114: The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

her child. The legislator granted this leave to a worker under article 94 of the Unified Labor Law, and article 72 of the Egyptian Child Law. According to the former, a worker who employs 50 or more workers has the right to receive unpaid leave for a period of not more than two years to take care of her child, which can only be given twice during her period of service and three times according to the Egyptian Child Law in 2008. The worker does not perform work during childcare leave, so he is not paid or compensated for. Childcare leave is unpaid, and the contract of employment is suspended during this leave.³⁵

Accordingly, the employer for whom the worker works shall pay social insurance contributions or pay compensation equal to 25% of her salary on the date of commencement of leave, depending on the worker's choice.

The fact that the worker is on childcare leave does not negate the continuity of her relationship with the establishment. She is still employed at the establishment, and therefore this leave is calculated from her period of service and her seniority. The period of leave shall expire at the end of the period or the reason for such leave, such as the child's 18 years or the transfer of custody of the child to the non-mother.

Fourth: The Obligation of the Employer to Provide a Nursery

Following article 96 of the Unified Labor Law and article 73 of the Egyptian Child Law, the employer is obliged to provide a nursery for the children of his workers, during the period of work, and the organization of the implementation of this commitment. In the text of the Labor Law and the Child Law, the legislator has divided the employer's implementation of his obligation to provide a nursery for the children of his workers, between two cases: the first case relates to the employer who employs one hundred workers or more in one place of work. In this case, the employer is obliged to establish a nursery for them. The employer is compelled to establish a nursery if he employs one hundred workers, whether in a single establishment or many establishments in one place. The road is in a unit where this number of workers is concentrated, not in the establishment unit or its multiplicity. The legislator requires that such a number of workers is available to the employer so that the latter has a high financial capacity to perform the obligation.³⁶

As for the second case, the employer who employs less than 100 workers in one area of work. Employers in one work area must participate in the provision of a nursery to care for the children of the workers. They have the

³⁵ Fatma Mohammed al-Razzaz: op.cit, p. 353.

³⁶ Salah Ali Hassan: Op.cit, p. 125.

option of establishing a nursery or entrusting a nursery to shelter the children of the workers.

Saudi Labor Law (article 115) stipulates that: In all places where women work and in all professions, the employer shall provide them with seats, in order to secure their rest.³⁷ Article 149 also established that: 1. Every employer who employs 50 workers or more should create a suitable place where there are a sufficient number of nannies to take care of the children of workers under the age of six, if the number of children is ten or more.

Leave for the Woman who has lost her Husband (widows/ Edaa):

The Saudi legislator has aligned himself with other legislators to organize special leave for women, which is the one for the woman who loses her husband. Article ((106)) of the Saudi Labor Law stipulates that: A working woman whose husband dies shall be entitled to leave with full pay for a period four months and ten days from the date of death.

The Saudi legislator alone organizes such a holiday, which he organized for religious reasons, according to which a widowed woman should not leave her house four months and ten days (for three months, his wife is saddened by forty days of mourning for her deceased husband), before this period.

The Egyptian legislator did not provide for leave to the woman who loses her husband, although there was many in the religious circles opined that a woman should not leave her home before four months and ten days have passed by since her husband's death.

Penalty for Violating Provisions Relating to the Employment of Women

Article (74) of the Egyptian Child Law stipulates that anyone who contravenes the provisions of Part Five concerning the provisions of women's employment shall be punished by a fine of not less than one hundred pounds and not more than five hundred pounds. The fine shall be multiplied by the number of workers who have committed the offense. In the event of repetition, the penalty shall be increased by the number of cases and shall not be suspended. Moreover, the work of women in hazardous work, which is forbidden to work, leads to the nullity of the contract of work absolutely nullifying the violation of public order and public morals, in addition to the criminal liability of the employer according to the provisions of Article 248 of the Unified Labor Law.

³⁷ Section IX/ Women run: Article 194: The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

Comment on the Organization of Egyptian and Saudi Legislators for the Work of Women

Egyptian and Saudi legislators have made great strides in providing social protection to working women. Arranging working conditions that are consistent with their nature of a woman, their work has been banned in hazardous and harmful acts such as mining, oil, and others. He also gave her a range of days of leave commensurate with her nature as a mother, such as maternity leave, child care, and breastfeeding.

The Saudi legislator alone regulates leave following the death of the husband, which is given to the wife (4 months and ten days). The reason for organizing this leave is purely religious; it is the religious opinion that prohibits the woman from leaving her home at the time of her husband's death (4 months and ten days), which is the period for the widow. The Egyptian legislator, despite the state's adherence to the Islamic religion, did not organize such leave and took the other religious approach that allows women to deal with the all aspects of life, including performance of work. The position of the Egyptian legislator is the right and the first to follow, as women have many other days of leave and the interest of the establishment in which it works is not to disrupt or stop the work of women.

Conclusion

The study dealt with positive discrimination in the labor law through three chapters. The first considered the rules on child labor, which set out the provisions for determining the age at which the child may be employed, the exceptions to this age in terms of training (e.g. prohibiting their work in hazardous and arduous work and prohibiting their work at night and providing medical care for them).

The second chapter deals with the conditions and rules of work of the disabled, in terms of allocating a compulsory percentage of the employment rates for them, and prohibiting their engagement in hard work or in activities not suitable to their nature. Finally, the third chapter deals with the rules of women's work and shows the benefits they receive as a worker both in terms of prohibiting work in hazardous or arduous work or work at night, as well as granting them leave such as maternity leave, nursing or childcare. This study has reached several conclusions and recommendations.

Results

- Positive discrimination does not mean discrimination and racial preference in the contractual relationship, but rather means a set of guarantees and benefits regulated by the law in the labor law granted to vulnerable groups that are not equal in relation to others, whether because of weakness or the circumstances surrounding them.
- Both the Egyptian and Saudi legislators agreed to prevent the employment of women, children and the disabled in hazardous or arduous work or mining.
- Egyptian and Saudi legislators have agreed to ban child labor before they reach the age of 15 years, with the exception that they may be employed before this age in light work. Training may be from the age of 13.
- It is prohibited to employ women, children and the disabled at night from 7:00 p.m. to 7:00 a.m., except for women, who may sometimes be employed for some purposes such as nursing or working in the media.
- The Egyptian and Saudi legislators disagreed about the rate of employment of the disabled. The Egyptian legislator allocated a percentage of 5% for each establishment employing 50 workers, while the Saudi legislator allocated 4% for each establishment employing 25 workers.
- Egyptian and Saudi legislators agreed to organize some leave for working women, such as maternity leave and breastfeeding. The Saudi legislator alone regulated the leave of the woman who lost her husband.

Recommendations

- We recommend that the Egyptian and Saudi legislators organize the employer's commitment to adjust work at the establishment to provide employment opportunities for the disabled and benefit from it and transform it into a productive capacity in society.
- We recommend the Egyptian legislator intervenes and raises the employment quota for the disabled from 5% for each facility employing 50 workers to 4% for each facility employing 25 workers, similarly to Saudi legislation.
- We recommend that the Saudi legislator repeals leave for women who have lost their husband. It is long leave (four months and ten days) and may make some establishments refuse to employ women after many days without working.

- We recommend that everyone concerned with educating women, children and the disabled be informed about their rights and that they be given these rights and not be deprived of them.

Adapt International Network



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