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## INDIAN LEGAL REGIME TO ENSURE ‘EQUAL PAY FOR EQUAL WORK’ WITH SPECIAL REFERENCE TO IMPLEMENTATION OF THE EQUAL REMUNERATION ACT, 1976

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*“I do not demand equal pay for any women save those who do equal work in value. Scorn to be coddled by your employers; make them understand that you are in their service as workers, not as women.”*

- Susan B. Anthony

### ABSTRACT

Under the Industrial Laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and also biologically. As the Constitution of India, 1950 is the basic law of land which enshrines number of provisions of prohibiting gender discrimination and protect the interest of women, whether it is political field or industrial field. The State under its constitutional power had formulated number of legislations pertaining to women engaged in industrial activities. There are important legislations covering the women involved in industrial activities which among are as follows:

1. Equal Remuneration Act, 1976
2. Maternity Benefit Act, 1961
3. Factories Act, 1948
4. Employees Provident Fund Pension Linked Insurance Fund Act, 1952

This article seeks to concentrate on the concept of ‘equal pay for equal work’ and analyse the various provisions and extent of implementation of Equal Remuneration Act, 1976 in our country.

### Introduction

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Though labour welfare enactments have provided various protections, safeguards and benefits to working women in our country, there was an emergent need to give more protection to female workers who are discriminated as regards employment and wages.<sup>1</sup>

Generally speaking, the wages of women have traditionally tended to lag behind those of men, except in a very few cases. Moreover, the net earnings of women invariably happen to be lower than those of men. Women all over the world, had till recently been very much inarticulate and were prepared to accept lower wages even when they were employed on the same jobs as men.<sup>2</sup> Even in the economically and socially advanced countries while remarkable progress has been made, discrimination still exists. The principle of equal value has not been always fully implemented. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and social handicaps of the poorer classes, recruited women on a large scale at lower wages and made them work under inhuman conditions. Discrimination against women workers has hampered our economic growth and social development for too long.

With the gradual decay of the joint family concept, the unfortunate widows, the dependent and uneducated women began to seek employment in the agricultural and allied industries. Plantations, Mining, Building and Construction Industries also provided employment to such women. Women were employed in large numbers on lesser wages and exploited by the employers because they were aware of circumstances under which they had come to seek employment. The women accepted these low wages to keep their body and soul together. There was a clear discrimination in the wages paid to women. They were taken on labour jobs carrying lesser wages and there was no avenue of promotion to them nor protection or security of employment.

There are various reasons, why the employment of women has not been up to the mark. In a developing country like India the income, by and large, is low but social conventions weigh against employment of women. Due to labour surplus the unemployment and under employment problems, many men are available, hence, the problem of participation of women, economic activity becomes serious. Secondly, technological changes, fixation of minimum work load and standardisation of wages, rationalisation and mechanisation schemes and certain occupations being found hazardous, they have necessitated retrenchment of women workers. The economic reasons involving additional cost is an impediment to women employment. Some employers recruit unmarried women only. on condition to resign their post on getting married. This has been discriminatory, unfair and unjust.<sup>3</sup>

In order to vanish these discriminatory practices, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labor Laws. Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay of equal work for both men and women. To give effect to this

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<sup>1</sup> <https://labour.gov.in/womenlabour/about-women-labour> accessed on 20<sup>th</sup> August 2023.

<sup>2</sup> <https://www.coursehero.com/file/p6mqitjs/The-bonded-labour-system-has-been-abolished-from-25th-October-1975-and-every/> accessed on 9<sup>th</sup> September 2023.

<sup>3</sup> [https://www.researchgate.net/publication/343319909\\_APPLICATION\\_AND\\_ENFORCEMENT\\_OF\\_INTERNATIONAL\\_LABOUR\\_STANDARDS\\_IN\\_INDIA\\_A\\_CRITIQUE/](https://www.researchgate.net/publication/343319909_APPLICATION_AND_ENFORCEMENT_OF_INTERNATIONAL_LABOUR_STANDARDS_IN_INDIA_A_CRITIQUE/) accessed on 10<sup>th</sup> September 2023.

Constitutional provision and also to ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 was enacted by the Parliament.

Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. In fact, the Act embraces the philosophy of equal pay for equal work without discrimination on the basis of sex.

## **International Conventions**

Gender Justice is an important ingredient of every civilized society. It's no longer the popular mindset that the female is a weaker sex. To imbibe this principle in the society, various steps were taken at the international level:

- The ILO Convention No. 100, "The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, or Equal Remuneration Convention, 1951";
- The ILO Convention No. 111 regarding Discrimination in Employment and Occupation, 1958;
- The Universal Declaration of Human Rights, under Article 23 ensures that everyone without any discrimination has the right to equal pay for equal work;
- The Convention on Elimination of all form of Discrimination, 1979 has it's the main objective to prevent discrimination especially in the case of women.

## **The Indian Constitution**

The Apex Court in *Associate Bank Officers Association v. State Bank of India*<sup>4</sup>, has explained the history and evolution of the principle "equal pay for equal work". Historically, equal pay for equal work has been/a slogan of the women's sex-based discrimination in the pay scales of men and women doing same or equal work in the same organisation. It is meant to prevent discrimination on the ground of sex, against women in the matter of employment.

At the national level, certain legislations were enacted by the British India. But it's the national leaders, freedom fighters and intellectuals and the democratic movements sweeping the world over brought about positive changes in the position of women and in achieving equality.

### ***The Principle of "Equal Pay for Equal Work"***<sup>5</sup>

The principle of equal pay for equal work is contained in Clause (d) of Article 39 of the Indian Constitution which envisages that the State shall, in particular, direct its policy

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<sup>4</sup> 1998 (1) SCC 429

<sup>5</sup> Article 39(d) of the Constitution of India

towards securing that there is equal pay for equal work for both men and women. This principle implies that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

In *Randhir Singh v. Union of India*<sup>6</sup>, the Supreme Court held that the principle of equal pay for equal work though not a fundamental right is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of the Constitution. Article 39 (d) of the Constitution proclaims “equal pay for equal work for both men and women” as the directive principle of State policy. Equal pay for equal work for both men and women mean equal pay for equal work for everyone and as between sexes. Directive principles, as has been pointed out in some of the judgment of this court have to be read into the fundamental rights as the matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast minority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay get. To them the equality clauses will have some substance if equal work means equal pay. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a sovereign socialist democratic republic. Again the word 'socialist' must mean something. Even if it does mean 'to each according to his need' it must at least mean 'equal pay for equal work'.

In *Surinder Singh v. Engineer-in-chief C. P. W. D.*<sup>7</sup> the doctrine of equal pay for equal work is applicable to persons employed on a daily wage basis. Daily wagers are entitled to the same wages as other permanent employees in the department employed to do the identical work.

Equal pay for equal work finds its place in the Directive Principles of State Policy and it is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless, the abstract doctrine of equal pay for equal work cannot be read in Article 14. Reasonable classification based on intelligible criteria, having nexus to the object sought to be achieved, is permissible.

### **Salient Features of the Equal Remuneration Act, 1976**

With a view to give effect to the goal of equal pay for equal work set out in clause (d) of Article 39 of the Constitution and Equal Remuneration Convention of the ILO, the President of India promulgated on 26<sup>th</sup> September, 1975, the Equal Remuneration Ordinance, 1975 so

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<sup>6</sup> (1982) LLJ 344

<sup>7</sup> (AIR 1986 SC 534)

that the above Directive Principle could be implemented in the year which was being celebrated as the International Women's year. The above Ordinance was later converted into an Act as Act No. 25 of 1976. The Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. The Act ensures against discrimination in recruitment and promotion of men and women. It provides for the setting up of Advisory Committees to promote employment opportunities for women. It consists of III Chapters and 18 Sections.

### **Object of the Act**

The preamble of the Act states that it is an Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

### **Extent and Commencement<sup>8</sup>**

The Act extends to the whole of India including the State of Jammu and Kashmir. Subsection (3) of Section 1 provides that the Act shall come into force on such date, not being later than three years from the passing of the Act, as the Central Government may, by notification, appoint and different dates may be appointed for different establishments or employments.

### **Important Definitions<sup>9</sup>**

S.2(a) "appropriate Government" means –

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

S.2(g) "remuneration" means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

S.2(h) "same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and

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<sup>8</sup> Section 1 of the Equal Remuneration Act, 1976

<sup>9</sup> Section 2 of the Equal Remuneration Act, 1976

responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

### **Over Riding Effect of the Act**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.<sup>10</sup>

In *Mackinnon Mackenzie and Co. v. Andrey D'Costa*<sup>11</sup>, it has been held that a settlement arrived at between the management and the employees cannot be a valid ground for affecting discrimination in payment of remuneration between male and female employees performing the same work or work of a similar nature.

### **Duties of Employer**

*(A) Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.*<sup>12</sup>

As per Sec. 4 of the Act, no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature. Further no employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

In *M/s. Mackinnon Mackenzie and Co. Ltd. v. Andrey D'Costa and another*<sup>13</sup>, a female confidential stenographer after the termination of her services filed a petition under sub-section (1) of Section 7 of the Equal Remuneration Act, 1976 complaining that during the period of her service she was paid remuneration at lesser rates than those of male stenographers who were also performing same or similar work. The employer contended that the lady was working as a Confidential Stenographer and is part of a different class. The court rejected the plea of the employer that the woman was in a different class. It held, 'If only women are working as Confidential Stenographers, it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographers nor disqualified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographer such practice cannot be relied on to deny them equal remuneration due to them under the Act.'

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<sup>10</sup> Section 3 of the Equal Remuneration Act, 1976

<sup>11</sup> [(1987) 2 SCC 469]

<sup>12</sup> Section 4 of the Equal Remuneration Act, 1976

<sup>13</sup> Supra note 11

Therefore, the Court applied the Equal Remuneration Act to grant equal salary to female stenographers.

➤ **Exception**<sup>14</sup>

Regarding the power to make declaration of differences Section 16 of the Act provides that:

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

In *C. Girijambal v. Government of AP*,<sup>15</sup> it has been held that the principal of equal pay for equal work is not applicable in professional services.

In *M/s. Mackinnon Mackenzie and Co. Ltd. v. Andrey D’Costa and another supra*, it was also held that the Act does not permit the Management to pay to a section of its employees doing the same work or work of a similar nature lesser pay contrary to Section 4(1) of the Act because of its financial position which does not permit payment of equal remuneration to all. The applicability of the Act does not depend upon the financial ability of Management to pay equal remuneration as provided by the Act.

In *Ashok Kumar Garg v. State of Rajasthan*,<sup>16</sup> it has been observed that the question of equal work depends on various factors like responsibility, skill, effort and condition of work.

In *State of AP and others v. G Sreenivasa Rao & others*,<sup>17</sup> it was held that equal pay for equal work does not mean that all the members of the same cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.

**(B) No discrimination to be made while recruiting men and women workers**<sup>18</sup>

As provided under Section 5 of the Act, no employer shall be allowed to make discrimination while making recruitment for the same work or work of a similar nature or make any discrimination on the basis of sex unless that particular employment of women or men is restricted or prohibited by any statute. Therefore, in matter of recruitment policy and condition of service such as promotions, training or transfer, the employer is not authorised

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<sup>14</sup> Section 16 of the Equal Remuneration Act, 1976

<sup>15</sup> [(1981) 2 SCC. 155]

<sup>16</sup> [(1994) 3 SCC 357]

<sup>17</sup> 1989 SCC (2) 290

<sup>18</sup> Section 5 of the Equal Remuneration Act, 1976

to make discrimination against women only on the basis of sex. This provision is similar to the provision contained in Article 16(1) of the Constitution of India, 1950.

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

***(C) Duty to Maintain Registers<sup>19</sup>***

As per section 8, it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

***Advisory Committee<sup>20</sup>***

- (1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf.
- (2) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.
- (3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment, and such other relevant factors as the Committee may think fit.
- (4) The Advisory Committee shall regulate its own procedure.
- (5) The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit.

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<sup>19</sup> Section 8 of the Equal Remuneration Act, 1976

<sup>20</sup> Section 6 of the Equal Remuneration Act, 1976



### **Power of Appropriate Government to Appoint Authorities for Hearing and Deciding Claims and Complaints<sup>21</sup>**

The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding—

- (a) complaints with regard to the contravention of any provision of this Act;
- (b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, and may, by the same or subsequent notification, define the local limits within which each, such authority shall exercise its jurisdiction.

The complaint has to be made in such manner as may be prescribed. Every authority appointed under this section have all the powers of a Civil Court under the Code of Civil Procedure, 1908.

### **Inspectors<sup>22</sup>**

The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation. Every Inspector shall be deemed to be a public servant, they have certain powers to enter the premises of establishments and inspect and investigate the affairs pertaining to equal remuneration.

### **Penalties<sup>23</sup>**

- A) If any employer after the commencement of this Act omits or fails to maintain or fails to produce any register or other documents etc. shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.
- B) If any employer –
  - (a) makes any recruitment in contravention of the provisions of his Act, or
  - (b) makes any payment or remuneration at unequal rates to men and women worker, for the same work or work of a similar nature, or
  - (c) makes any discrimination between men and women workers in contravention of the provisions of this Act, or

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<sup>21</sup> Section 7 of the Equal Remuneration Act, 1976

<sup>22</sup> Section 9 of the Equal Remuneration Act, 1976

<sup>23</sup> Section 10-12 of the Equal Remuneration Act, 1976

- (d) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of Section 6, he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which

shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

- C) Omitting or refusal to produce any register or other documents to an Inspector or to give any information shall be punishable with fine which may extend to five hundred rupees.

## **Implementation of the Act**

The implementation of the Equal Remuneration Act, 1976 is done at two levels.

**Central Sphere:** The Act is being implemented by the Central Government in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oil field or major port or any corporation established by or under a Central Act.

In the Central sphere, the enforcement of Equal Remuneration Act, 1976 is entrusted to the Chief Labour Commissioner (Central) who heads the Central Industrial Relations Machinery (CIRM). The Central Government has appointed Labour Enforcement Officers as Inspectors for the purpose of making investigation by causing production of relevant registers/records as to whether the provisions of the Equal Remuneration Act, 1976 are being complied with by the employers, who are required to maintain the roll of employee in Form-D. Assistant Labour Commissioners have been appointed as authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provision of the Act, claims arising out of nonpayment of wages at equal rate to men and women workers. The Regional Labour Commissioners have been appointed as appellate authorities to hear complaints in respect of cases decided by the ALCs.<sup>24</sup>

**State Sphere:** In respect of all employments other than those where the Central Government is the appropriate Government, the implementation rests with the State Governments. In the case of employments where the State Government are appropriate authorities, the enforcement of the provisions of the Equality Remuneration Act, 1976 is done by the officials of the State Labour Department. The Central Government monitors the implementation of the provisions of the Equal Remuneration Act, 1976 by the State Governments.<sup>25</sup>

### **Central/State Advisory Committee**

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<sup>24</sup> <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976#:~:text=Central%20Sphere%3A%20The%20Act%20is,or%20under%20a%20Central%20Act.> Accessed on 12<sup>th</sup> September 2023.

<sup>25</sup> *Ibid*

A Central Advisory Committee has been set up at the Centre under the Act to advise the Government on providing increasing employment opportunities for women and generally reviewing the steps taken for effective implementation of the Act. The Committee has been reconstituted vide Gazette Notification dated 12.10.2010. The first meeting of re-constituted Committee was held on 22.02.2011 under the Chairmanship of Hon'ble LEM.<sup>26</sup>

## **Conclusion**

In order to vanish discriminatory practice of unequal pay for women, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labor Laws. Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay of equal work for both men and women. To give effect to this Constitutional provision and also to ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 was enacted by the Parliament.

The Doctrine of 'equal pay for equal work' has emerged as a fundamental right. Equal remuneration for men and women is the right of an employee without any qualification. The Act of Equal Remuneration, 1976 was enacted to comply with the provisions of Directive Principle of State Policy under Article 39. The Act, being a beneficial legislation, ensures adequate payment or remuneration to be made irrespective of the physical strength of employee and removing the scope of social and economic injustice merely on the ground of sex, thereby working to establish a just society in the country.

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<sup>26</sup> *Ibid*