

LEGISLATIVE FRAMEWORK ON EQUAL REMUNERATION IN INDIA: AN OVERVIEW

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ABSTRACT

The Equal Remuneration Act, of 1976, is one of the substantial legislations in India relating to the question of compensation without discrimination on the ground of sex. It provides for pay for equal work to both males and females, aimed at preventing the exploitation of women in matters of employment. Articles 14 and 16 of this Act can be satisfactorily applied to a case of unequal pay scale because of no classification or irrational classification. The Minimum Wages Act gives a basic wage to all employees irrespective of sex, caste, or any other feature that may be discriminating in nature. Enforcing minimum pay under the Act ensures women receive remuneration at a minimum amount and reduces wage inequities. The stereotyping of gender roles, societal biases, and underrepresentation of women in managerial positions; hence, inequality. Women are still discriminated against at work concerning hiring, promotions, and remuneration since they have fewer opportunities to bargain for better pay or benefits. Strengthening existing laws and making new laws is another solution to this problem. Measures that ensure equal sharing of household chores and childcare need to be undertaken, for that matter, policies like paid parental leave, flexible working hours, and reasonably priced childcare services can play a very important role. Programs and schemes have been put in place by the government to lessen this gender pay gap, such as the Working Women Hostel Scheme and other schemes.

INTRODUCTION

Equal pay for equal effort is a labour rights concept that argues that workers in the same workplace ought to be paid equally for their efforts. It is most commonly applied to sexual discrimination and the gender pay gap¹. All types of compensation, including bonuses,

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¹ US Equal Employment Opportunity Commission, Equal Pay/Compensation on Discrimination, NA, <www.eeoc.gov/equal-paycompensation-discrimination>

allowances, non-salary benefits, and basic pay, are referred to as "equal pay". In terms of equitable compensation, some countries have progressed faster than others².

Equal Remuneration means mandating that men and women who work in the same workplace receive equal pay for equal work. Although not quite the same, the jobs must be about equal. When two positions are nearly identical, it's the content, rather than the names that counts. This act covers all forms of compensation, including life insurance, paid time off, holiday pay, commissions, bonuses, stock options, profit-sharing and bonus schemes, lodging reimbursement for travel expenditures, and allowances for cleaning or gas. If there is a salary difference between men and women, employers are not permitted to reduce the earnings of either sex to equalize compensation.³

HISTORY

Even while labour laws have given working women in our nation several perks, rights, and safeguards, there has been a growing need to offer additional protection to female employees who face discrimination in the workplace and discrimination⁴.

The pay gap between men and women has historically been rather narrow, with very few exceptions. Furthermore, women's net earnings are almost always less than men's⁵. Globally speaking, women have recently shown a marked lack of articulation and a willingness to take lesser pay, even for tasks that they performed alongside males⁶. Discrimination persists despite the notable advancements in economically and socially developed nations. Equal value has not always been applied in its entirety⁷. When labour laws were first introduced in India, industrial owners took advantage of the social injustices and backwardness of the lower classes to hire huge numbers of women at low rates and subject them to cruel working conditions⁸. For far too long, discrimination against female employees has impeded both our social and economic advancement⁹.

² US Equal Employment Opportunity Commission, Equal Pay/Compensation on Discrimination, NA, <www.eeoc.gov/equal-paycompensation-discrimination>

³ US Equal Employment Opportunity Commission, Equal Pay/Compensation on Discrimination, NA, <www.eeoc.gov/equal-paycompensation-discrimination>

⁴ Dr. V. G. Goswami, Labor and Industrial Laws (first published 1980, 11th edn, Central Law Agency),

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

As the idea of the joined family gradually faded, dependent, ignorant, and unhappy widows started looking for work in the agricultural and related industries. These women were employed by the building, construction, mining, and plantation industries¹⁰. Because the employers knew the conditions behind the women's employment search, they took advantage of them and engaged a significant number of them at lower rates¹¹. To keep their bodies and souls together, the ladies put up with this meagre pay¹². The pay given to women was discriminatory. They were placed in labour positions with lower pay, and they had no path to advancement, job stability, or protection¹³.

Despite these initiatives, discrimination persists throughout India in one way or another. Pay and employment discrimination is a widespread occurrence¹⁴. It was necessary to establish the Equal Employment Commission to investigate the issue of discrimination, even in a society as industrially developed as America¹⁵. Wage discrimination is far more serious. Around the world, the I.L.O., I.C.T.U., and several women's organizations advocate for equal pay in the face of all forms of discrimination. It is noteworthy that the Equal Pay Act was passed in England in 1970, granting women the ability to demand equal compensation for comparable labor¹⁶. The Flavoural Pay Act, which was passed in the US and went into effect in June 1963, has contributed to the elimination of sex-based wage disparities¹⁷.

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In 1951, the I.L.O. adopted a convention stating that equal pay for equal work was required. Numerous nations have approved it¹⁸. Since then, there have also been real-world applications of the equal wage principle. In 1951, the I.L.O. Convention No. 100 on fair compensation was ratified. India approved of it in 1958. Article 39 (d) of the Indian Constitution states, "that there is equal pay for equal work for both men and women," and enshrines the idea as a Directive Principle of State Policy. It is illegal to differentiate minimum pay rates based on a person's sex according to the 1938 Minimum Wages Act¹⁹. But in practically every industry—including

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

the coal mining sector, plantations, weeding, and agricultural transplanting—there is discrimination in wages²⁰.

The equal compensation for equal work principle is acknowledged in the preamble of the I.L.O. Constitution as one way to improve conditions that cause so much injustice, suffering, and deprivation for a large number of people that it threatens global peace and harmony²¹. After interpreting Articles 14 and 16 in the context of the Preamble and Article 39(d), it can be believed that the principle of equal pay for equal work can be inferred from those articles²². This means that it can be appropriately applied to situations where there are unequal pay scales due to a lack of classification or an irrational classification, even when the people who are paid differently for the same work are employed by the same company²³.

A National Committee was established, chaired by the Prime Minister, to guarantee more efficient execution of the policies aimed at improving the lot of women in the nation. Chief Ministers are to chair similar State Level Committees²⁴.

EARLY FOUNDATIONS

The Constitution of India

Article 14

Under Article 14 of the Indian Constitution, any person naturalized in India has equal protection of law and the principle of equality before the law. It means due and equal treatment to everybody and against discrimination²⁵. It forbids discrimination against any person on account of his religion, race, caste, sex, or place of birth²⁶. It also ensures equal protection of the law for every individual²⁷. Effective enforcement of equal pay is dependent on the non-discrimination guaranteed under Article 14 of the Constitution²⁸. It ensures equality before the law for every individual without any gender bias. It provides the legal basis for 'the people' to

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Constitution Of India, Article 14.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

challenge wage discrimination and to fight for their rights in the event of their receiving less pay for the same job.

Article 16

Under Article 16, all citizens have equal opportunities regarding public employment. Article 16 prohibits any kind of discrimination in employment based on religion, race, caste, sex, descent, place of birth, or place of residence²⁹. The principle involves the proposition that every individual shall have equal opportunity and access to employment and appointments to all state offices³⁰. It gives the State the power to reserve posts for any backward class of citizens. Article 16 ensures equal opportunities in public employment³¹. This is important for equal remunerations as it forbids segregation in recruitment, promotions and pay scales in public service employment. It also justifies revenue policies of Affirmative Action, which may help the deprived groups achieve employment equity and thus promote equal pay

Article 39

Article 39 of the Directive Principles of State Policy enjoins upon the State the obligation to ensure certain social and economic policies for the good of the people³². Clauses (a) and (d) therein draw particular attention to the citizens' equal rights to men and women an adequate means of livelihood and equal pay for equal work³³.

Clause a

The State shall direct its policy particularly to ensure that all, men and women equally, have the right to an adequate means of livelihood³⁴.

Clause d

The State shall direct its policy in particular to ensure equal pay for equal work to men and women³⁵.

²⁹ Constitution Of India, Article 16.

³⁰ Ibid.

³¹ Ibid.

³² Constitution Of India, Article 39.

³³ Constitution of India, Article 39(a) and 39(d).

³⁴ Constitution of India, Article 39(a).

³⁵ Constitution of India, Article 39(d).

Article 39 authorizes the State to undertake legislation that promotes social and economic welfare with a special orientation toward ensuring equal pay for equal work. Indeed, this provision guides legislation or policymaking for wage equality³⁶. Subsection (a) lends support to the legislation or any other law that ensures equal pay for women and their entry into the workforce³⁷.

The combined provisions of Articles 14, 16, and 39 establish a complete legal framework for supporting equality in all facets of employment and compensation. While Article 14 gives the general concept of equality, Article 16 deals with its application in the sphere of equal opportunities in public employment, and Article 39 directs state measures for establishing actual economic equality³⁸. These provisions in the Constitution further strengthen the Equal Remuneration Act of 1976 and subsequent laws and policies for ensuring equal emoluments. They support and justify legislative initiatives aimed at upholding equal pay and prohibiting wage discrimination.

The courts are further empowered by Articles 14, 16, and 39 to impose the principle of equal pay for equal work. These provisions are the judges with powers to invalidate any discriminatory act to ensure that the laws and policies remain impervious to the dictates of equality and principles of non-discrimination.

Randhir Singh V Union Of India³⁹

Facts of the case

After being dismissed from the army, the appellant was engaged as a driver by the Delhi Police. As part of the selection process, he was required to take a driving license test. He was also asked to provide his private heavy vehicle driver's license. After being appointed as a Driver (Constable) and subjected to mandatory discipline in the Delhi Police, he was assigned to a unit and promoted to Constable. The Delhi Police wage scale for unregistered drivers, registered drivers, Railway Protection Corps, Non-secretarial, Call Commission Drive Fire and Beacon truck drivers are all paid differently. They maintained that even though they

³⁶ Constitution of India, Article 39(a) and 39(d).

³⁷ Constitution of India, Article 39(a).

³⁸ Constitution of India, Articles 14, 16, and 39.

³⁹ Randhir Singh v Union of India, 1982 AIR 879

worked in different departments, they should have earned comparable salaries for performing similar or virtually identical activities.

The petitioners and other drivers concur that their pay scale ought to be the same as that of HHGV's other department apartments. When that offer was rejected by the Government, the applicant for an injunction under Article 32 of the Constitution.

Judgement Of The Case

Although the principle of equal pay for equal work was, per se, beyond the ambit of the Fundamental Rights, as a constitutional goal it is still can be filed under the constitutional remedies process under Article 32 Thus, this entitlement may be upheld in situations involving unfair compensation scales based on illogical categorization.

The notion of equal pay for equal work is derived from Articles 14 and 16 of the Constitution, and it is a constitutional aim as stated in Article 39(d).

Minimum Wages Act, 1948

The Minimum Wages Act of 1948, ensured that workers in different industries and establishments must be paid at a rate that would yield a minimum living wage⁴⁰. Protection of workmen, better standards of living, promotion of economic stabilization without poverty, and provision for fair-waged good justice are the main aims of the Act⁴¹.

Section 3 of the Minimum Wages Act establishes a basic wage that applies to all workers regardless of their sex, caste, or other discriminating features. It shall be made in a way in which justice and equality in employment are trusted. On the lines of reducing the gender wage gap, the Act fixes minimum remunerations. The fact that there is a minimum wage that is enforced helps ensure that women earn a minimum level of remuneration, hence minimizing wage inequities. In many instances, women are paid less than males for the same work. The Act acts in the capacity of the law to stop wage discrimination and exploitation. Moreover, the Act disapproves of any employer who pays his or her workers less than the minimum wage with the intent to end pay discrimination based on sex, ethnicity, or any other discrimination⁴². The minimum wage, first of all, levels all workers at a certain platform, hence enabling some

⁴⁰ The Minimum Wages Act of 1948.

⁴¹ Ibid.

⁴² Ibid.

degree of economic equality⁴³. It tends to close income gaps between various socioeconomic groups and therefore ensures that the benefits of growth are more equitably distributed in a more inclusive economy⁴⁴. The Minimum Wages Act supplements the Equal Remuneration Act, of 1976, which was limited only to discriminatory wage practices on grounds of sex.

Thus, the two Acts provide comprehensive legislation for wage equity: equal pay for similar work and, at the same time, a minimum wage threshold. The Minimum Wages Act provides for workers to claim fair wages legally. It also strengthens the mechanisms necessary for ensuring fair remuneration by providing for labour inspection secure compliance and taking action against employers who violate the provisions. The Minimum Wages Act sets criteria and concepts that guide broader pay policy and labour legislation. It creates a precedent for subsequent laws in support of fair and just remuneration practices for various industries.

Factories Act, 1948

The Factories Act mainly addresses issues related to health, safety, and welfare; nevertheless, it also subtly reflects the ideals of equitable compensation in the domain of labour practices⁴⁵. It will involve creating safe and fair working environments that allow all employees, regardless of gender or country of origin, to work and enjoy themselves in a setting where their contributions are appropriately recognized⁴⁶. The Factories Act does not specifically address equal pay, but it does establish a foundation for equitable treatment at work by outlawing worker exploitation and mistreatment. Equal pay methods will fall under this category as they relate to justice and equity in the workplace.

The Equal Remuneration Act of 1976 can be implemented more effectively with the support of the Factories Act, which offers a foundation for a just and regulated workplace. In actuality, the Equal Remuneration Act strengthened the provisions of the Factories Act by combining nondiscrimination with welfare and safety concerns.

The Factories Act requires welfare facilities, such as canteens, restrooms, and creches, to be supplied⁴⁷. These stipulations all benefit female employees. The Factories Act addresses gender

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Factories Act, 1948.

⁴⁶ Ibid.

⁴⁷ Ibid.

disparities in the workplace by giving female employees a welcoming and safe atmosphere⁴⁸. This is closely related to receiving equal pay because they will undoubtedly receive fair remuneration if they are not subjected to unfair treatment or dangerous working conditions.

Maternity Benefit Act, 1961

The Maternity Benefit Act, of 1961, was introduced with the object of regulating the work of women during the period of pregnancy and maternity and granting them certain maternity benefits⁴⁹.

Women can take maternity leave under the Maternity Benefit Act without facing job loss or wage decrease. Women's economic security is threatened by both job loss and income reduction, which is why protection against a decline in their financial situation is planned for. In this sense, requesting maternity benefits guarantees gender parity in the workplace. Additionally, because it ensures that women are not penalized for taking time off for childbirth, it aligns with women's rights to pay equity⁵⁰.

It aids in reducing the gender pay gap. In the absence of these advantages, women are more susceptible to salary loss due to pregnancy, which would be difficult for them to recoup over time, leading to wage disparities with men. The lady will be encouraged to advance in her career and keep working under this Act. Since women who work consistently are more likely to get promotions and salary increases, it is their consistent labour that may finally lead to equal compensation. In this manner, the female employees' productivity could be increased even further. Women who feel valued by their employers, as seen by higher salaries and professional advancement, tend to be more productive and have higher morale.

The Maternity Benefit Act is a comprehensive labour law that addresses a number of gender equality issues and integrates with other labour laws such as the Equal Remuneration Act. The Act protects women throughout their pregnancy, so enabling and strengthening the overarching idea of equal pay for equal effort.

⁴⁸ Ibid.

⁴⁹ Maternity Benefit Act, 1961

⁵⁰ Ibid.

EQUAL PAY FOR EQUAL WORK

Equal Remuneration Act, 1976

One major legislation in India barring discrimination in compensation on grounds of sex has been operational since 1976 under the Equal Remuneration Act. That is to say, for comparable work, or for the same work, men and women shall be paid equally under the Act⁵¹. With the intention of "providing for the payment of equal remuneration to men and women workers and the prevention of discrimination, on the ground of sex, against women in the matter in the matter of employment and for matters connected therewith or incidental thereto⁵²," The Indian Parliament passed the Equal Remuneration Act of 1976 on February 11, 1976. It extends to the whole of India and applies to every establishment, public or private, with an employment strength of ten or more employees⁵³.

The act aims to facilitate fair and decent working conditions for men and women by way of the promotion of gender pay equity. Furthermore, this Act disallows employers from practising discrimination against women regarding recruitment, assignments as trainees, promotion, and transfer. We shall examine the main points and importance of the Act in this post⁵⁴.

Duties Of An Employer

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Must pay equally

Section 4 of the Equal Remuneration Act, 1976 states explains the duties of an employer⁵⁵. Clause a of Section 4 states that No employer may pay compensation, whether payable in cash or kind, to any employee in an establishment or employment at a rate that is less favourable than the rate at which he pays compensation to employees of the other sex in the same establishment or employment for performing the same work or work of a similar nature⁵⁶.

While doing so the employer cannot decrease the remuneration already given⁵⁷. To illustrate, A and B are two employees in XYZ company. They both are teachers, who take 4 hours classes in a week. A gets 20,000 rupees more than B. To not be in breach of section 4(a) of the act the

⁵¹ Equal Remuneration Act, 1976.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Equal Remuneration Act, 1976, s4

⁵⁶ Equal Remuneration Act, 1976, ss 4(a).

⁵⁷ Equal Remuneration Act, 1976, ss 4(b).

employer decreases A's remuneration by 20,000 rupees. This act of the employer will violate section 4(b) of the act. It is the duty of the employer to not reduce the remuneration of the employees to meet the requirement of section 4(a).

When the rates of compensation that men and women workers in an establishment or employment received prior to the start of this Act for the same work or work of a similar nature differ only based on their sex, the higher of the two rates—or, in some cases, the highest rate—of those rates shall be the rate at which compensation will be paid to those men and women workers on and from the commencement of this Act⁵⁸.

In *Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India*⁵⁹, this Court observed that "Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative differences as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion that has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasize that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right⁶⁰."

Duty To Not Discriminate

The employer cannot discriminate against women when hiring them for the same or similar jobs, or in any post-hire conditions of employment, such as promotions, training, or transfers, unless doing so would be against the law or in situations where hiring women for such jobs is currently prohibited⁶¹.

In *Air India Officers Association v. Air India Ltd.* and other instances where appeals were filed against the Division Bench ruling of the Bombay High Court were branded as *Air India Cabin*

⁵⁸ Ibid.

⁵⁹ *Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India*, 1988 SCC (L&S) 673.

⁶⁰ Ibid.

⁶¹ Equal Remuneration Act, 1976, s5.

Crew Association v. Yeshaswinee Merchant and others⁶². In a series of cases brought by the respondents, the Air India Air Hostesses Association and its members, the High Court ruled that the choice for air hostesses to accept employment for ground duties after 50 years of age and up to 58 years of age constitutes discrimination against them on the basis of their gender, in violation of Section 5 of the Equal Remuneration Act, 1976, Articles 14, 15, and 16 of the Indian Constitution, as well as the mandatory directives issued by the Central Government under Section 34 of the Air India Corporation Act, 1953⁶³.

The Air Corporation Act of 1953 allowed for the establishment of two Corporations operating under the names Air India (which operated international flights) and Indian Air Lines (which operated domestic flights). Air India set the retirement age for air hostesses at thirty years old by Regulation 46(1) when the Corporation was established. It enables the General Manager to extend up to 35 years the retirement age of air hostesses who are medically fit⁶⁴.

The issue relating to the retirement age of air hostess employees of Indian Air Lines was raised by the Air Corporation Employees' Union during the year 1972. A settlement between the management and the workers gave power to the General Manager to increase the retirement age of single, healthy air hostesses from 35 to 40 years⁶⁵.

A government of India notification dated 12 April 1980 had specified 35 years as the minimum age for retirement of air hostesses of Indian Air Lines. It was stipulated that air hostesses would retire when they were 35, get married within four years of starting their jobs, or become pregnant for the first time, whichever comes first. Similar changes were made to Air India's regulations. The male members of the cabin crew were expected to perform flight responsibilities until they became 58 years old⁶⁶.

Together with her colleagues and air hostesses, Ms. Nergesh Meerza filed a writ suit in the Bombay High Court, alleging that the retirement and other terms of employment violated Articles 14, 15, and 16 of the Constitution due to discrimination⁶⁷. The petition was forwarded to the Supreme Court, which concluded that the service regulations were unconstitutional under Article 14 of the Constitution because they were arbitrary in that they allowed for the

⁶² 2003 SCC (L&S) 840.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Air India v Nergesh Meerza, 1981 SCC (L&S) 599 affirmed.

termination of service upon the Managing Director's first pregnancy and the extension of service beyond years at his or her discretion⁶⁸.

Because some of the legal principles had already been addressed and some legal concerns had already been resolved, the Supreme Court deemed it important to take note of the Nergesh Meerza decision. The Supreme Court dismissed its claim that air hostesses' shorter retirement age under service conditions was unfair to flight attendants, who are the male crew members on board and have a retirement age of 55 or 58⁶⁹. It was decided that there isn't any sex-based discrimination against air hostesses. It additionally found that neither Section 4 of the Equal Remuneration Act nor Articles 15 and 16 of the Constitution are violated by the service requirement⁷⁰. The Central Government's notification issued under Section 16 of the Equal Remuneration Act was cited by the Court. It supported the employer's position that the disparities in retirement ages and pay scales between male and female employees at Air India are due to their various service circumstances rather than just their gender⁷¹.

Employers are not allowed to pay male and female employees differently for the same or similar tasks under Section 4 of the Equal Remuneration Act. Employers are not allowed to discriminate against men and women when hiring for the same or similar jobs, according to Section 5 of the Act. The Amendment Act 49 of 1987 included a change to Section 5, which forbade employers from discriminating against men and women based on their employment status for the same or similar jobs once they were hired⁷².

The Court concluded that the terms and conditions of service of flight pursers and air hostesses are not "same or of a similar nature" because they constitute two different cadres with different methods of recruitment, salary structures, avenues for promotion, and terminal benefits. The Court also challenged the fixation on the lower age of air hostesses compared to flight pursers in the case of Nergesh Meerza⁷³.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

Duty To Maintain Registrar

Each employer is required to keep the registers and other records pertaining to the employees they employ in accordance with any authorized procedures⁷⁴.

Advisory Committee

The appropriate Government shall establish one or more Advisory Committees to advise it on issues pertaining to the Act's execution and enforcement⁷⁵. The Advisory Committee advises the government on "which women may be employed in such establishments or employments as the central government may, by notification, specify on this behalf" and makes sure that women have access to employment prospects⁷⁶. Each advisory committee will have 10 members minimum, nominated by the appropriate government, with half of those members being women⁷⁷. The Advisory Committee will consider the following when submitting its recommendations⁷⁸:

the number of women working in the relevant establishment or employment;

the type and hours of work;

the suitability of women for employment, if applicable;

the necessity of expanding the employment opportunities for women, including part-time employment;

and any other pertinent factors the Committee deems appropriate.

The Advisory Committee will control how it operates⁷⁹. The Appropriate Government may issue any directives regarding the employment of women workers that it deems appropriate after taking into account the advice that the Advisory Committee has presented to it and providing a chance for the parties involved in the establishment or employment to make representations⁸⁰.

⁷⁴ Equal Remuneration Act, 1976, s8.

⁷⁵ Equal Remuneration Act, 1976, s6.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

Powers Of Appropriate Government

The government may appoint officers, not below the rank of a Labour Officer, to hear and decide complaints about violations of this Act, as well as claims about equal wages for men and women workers for similar work⁸¹. According to the Act, "same work or work of a similar nature means work in respect of which the skill, effort, and responsibility required are the same when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort, and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment"⁸². The government may also define the local limits within which each such authority shall exercise its jurisdiction⁸³. Complaints regarding violation of any provision of this Act; the hearing shall be for complaints regarding the violation of any provision of this Act, as well as claims arising from the non-payment of wages at equal rates to men and women workers for the same or similar work⁸⁴.

Inspectors

Section 9(1) states that The Appropriate Government may designate individuals as Inspectors to investigate whether employers are complying with the provisions of this Act or the rules made thereunder⁸⁵. The appropriate Government may also specify the local boundaries that an Inspector may work within to conduct such an investigation⁸⁶.

Section 9(2) Section 21 of the Indian Penal Code (45 of 1 860) will be interpreted to mean that every Inspector is a public servant⁸⁷.

Section 9(3) states that Within the local boundaries of his jurisdiction, an Inspector may, at any time⁸⁸:

Enter any building, factory, premises, or vessel with reasonable assistance

⁸¹ Equal Remuneration Act, 1976, s7.

⁸² Equal Remuneration Act, 1976, ss 2(h).

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Equal Remuneration Act, 1976, ss 9(1).

⁸⁶ Ibid.

⁸⁷ Equal Remuneration Act, 1976, ss 9(2).

⁸⁸ Equal Remuneration Act, 1976, ss 9(3).

Examine any employer's register, muster-roll, or other documents relating to worker employment;

Take evidence from any person to ensure compliance with this Act;

Examine the employer, his agent,

Copy any registers or other documents kept in connection with the establishment under this Act, or take excerpts from them.

Section 9(4) states that Any individual who is asked by an inspector to provide information, provide a register, or produce another document must abide by this request⁸⁹.

Penalties

Employers must comply with the Act if they: (a) fail to maintain a worker register, (b) fail to produce a register, muster roll, or other document related to worker employment, (c) refuse to provide evidence or prevent their agent, servant, or other person in charge from doing so, or (d) refuses to give any information. He will be punished 1 [by a fine of up to ten thousand rupees, by simple imprisonment for a time that may extend to one month, or by both]⁹⁰.

If any employer—(a) engages in any recruitment activity that violates its provisions, (b) pays men and women workers differently for the same or similar work, (c) engages in any discriminatory hiring practices against women workers that violate this Act's provisions, or (d) neglects to follow any instructions issued by the appropriate government under section 6(5), He shall be punished with a fine of not less than ten thousand rupees but not exceeding twenty thousand rupees, or with imprisonment for a term of not less than three months but not exceeding one year, or with both for the first offence and with imprisonment for two years for the second and subsequent offences⁹¹.

If any individual is obliged to do so but fails or refuses to produce any register or other document or provide any information, he shall be fined up to five hundred rupees⁹².

⁸⁹ Equal Remuneration Act, 1976, ss 9(4)

⁹⁰ Equal Remuneration Act, 1976, ss 10(1).

⁹¹ Equal Remuneration Act, 1976, ss 10(2)

⁹² Equal Remuneration Act, 1976, ss 10(3).

Cognizable And Trail Of Offences

This section of the Act was changed by the Equal Remuneration (Amendment) Act of 1987. Article 12(1) reads as follows: "No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."⁹³ It indicates that a Metropolitan Magistrate or a Judicial Magistrate of the First Class will have the lowest level of power when reviewing the case⁹⁴. Further, Section 12(2) demonstrates that "No court shall take cognizance of an offence punishable under this Act except upon (a) its own knowledge or upon a complaint made by the appropriate Government or an officer authorized by it in this behalf, or (b) a complaint made by the person aggrieved by the offence or by any recognized welfare institution or organization."⁹⁵ It indicates that the Court can only take cognizance of an offence based on its own knowledge or a complaint filed by an appropriate government, authorized officer, aggrieved individual, or recognized welfare institution⁹⁶. The Court will not hear any further complaints under the provisions of this Act⁹⁷.

CHALLENGES AND SUGGESTIONS

Even after the commencement of this Act, it can be still seen that the Gender pay gap has not been greatly affected. According to an IIM-Ahemadabad study, "While women at individual contributor level earn only 2.2% less than men working in similar roles, the gap widens to 3.1% for managers/supervisors and 4.9-6.1% for directors and senior executives"⁹⁸. According to another report by ILO Global Wage Report 2018/19, "Women earn on average about 20 per cent less than men, although there are wide variations across countries"⁹⁹. There can be many reasons for the existent Gender Pay gap in India. First of all, the rate of participation of women in the workforce. According to Employment Statistics¹⁰⁰, it shows that "out of the total females of age group 15-59 years, 35.6% females were in the labour force during 2021-22 as compared to 81.8% males." However, in comparison with the females in the labour force in 2017-18, which was 25.3%, the participation of women had increased. Even then it is nowhere close to

⁹³ Equal Remuneration Act, 1976, s 12.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Sarahbeth George, 'Why is a woman's salary less than a man's? A gaze down the gap', The Economic Times Online (April 02, 2023).

⁹⁹ ILO, ILO Global Wage Report 2018/19 what lies behind gender pay gaps, Part II, Page 23.

¹⁰⁰ Ministry of Labor and Employment, Female Labor Utilization in India, Employment Statistics in focus-April 2023, Part III, Page 11.

the percentage of males in the labor force¹⁰¹. Secondly, Gender role stereotyping is another factor contributing to injustices. Resignation to raise children happens across the globe among working women. Also, women predominate in low-wage jobs and part-time jobs due to structural barriers and societal biases around gender roles. They are underrepresented in management positions. All this means that a woman, as much as having the same qualifications and experience as a man, may still face discrimination at work concerning hiring, promotions, and pay, or, In order to look after their children or elderly relations, women are more likely to stop work or work part-time. This disrupts their career profiles and reduces overall earnings. Because women have fewer opportunities, making them less likely to bargain for better pay or benefits, the possibility exists that compensation packages will be lower.

To stop gender pay discrimination, current laws can be strengthened and new ones can be introduced. To guarantee equal compensation for equal labour, for example, the Equal Remuneration Act of 1976 can be more strictly enforced. Encouraging women and men to share household chores and childcare responsibilities more equally is crucial. Policies like paid parental leave, flexible work schedules, and reasonably priced childcare services can help achieve this.

The government has already taken up many initiatives to decrease the gender pay gap, Working Women Hostel Scheme is implemented by the Government to provide safe and conveniently located accommodation for working women, with daycare facilities for their children, wherever possible, in urban, semi-urban, or even rural areas where employment opportunity for women exist. There are more schemes such as, “Pradhan Mantri Matru Vandana Yojana (PMMVY)”, “Mahila Shakti Kendra (MSK)”, “Beti Bachao Beti Padhao(BBBP)”, etc.

CONCLUSION

It is one of the major legislation in India that attempts to achieve gender pay equity by making certain that there is equal remuneration paid to men and women for the same or similar work. The Act extends to the whole of India. In its place, comparable worth holds that employers must pay equal wages for comparable work and cannot discriminate against women at the point of hiring them for the same or similar job conditions of employment.

¹⁰¹ Ibid.

Every employer shall maintain registers and records regarding his employees in such manner and in accordance with the rules made therefor. The appropriate government shall constitute one or more Advisory committees comprising of such representatives as it thinks suitable to advise on the administration and enforcement of this Act, taking into account the number of women employed in that establishment or employment, nature and hours of work, suitability of women for employment, the necessity of extending additional facilities to women for employment etc.

The government may appoint officers to hear and decide on complaints about violations of the Act and claims about equal wages for male and female workers for similar work. The Inspectors may be appointed to investigate whether the employers are complying with the provisions of the Act or the rules made thereunder. The penalties for non-compliance include fines and imprisonment to the extent of fines up to five hundred rupees.

This, therefore, summarizes the Equal Remuneration Act as this relationship aimed at establishing or guaranteeing just and lower fine working conditions between men and women, in particular, women workers. Maintaining registers, avoiding discriminatory practices at workplaces against women, and other provisions under this Act are necessary for every employer to maintain equal remuneration to all workers.

