

LEGALFOXES LAW TIMES

CHALLENGES IN IMPLEMENTING OF EQUAL REMUNERATION ACT

By Pragadeeshwaran K J

Abstract

The Equal Remuneration Act (ERA) was passed with the intention of eradicating gender-based wage discrimination and advancing workplace equality. There are still a number of difficulties in the Act's implementation, notwithstanding its provisions. Using case studies and current research, this article examines the difficulties with the ERA's implementation critically. The essay emphasises the difficulties in defining and evaluating "equal work" and "equal pay" as well as the lack of specific rules for companies to adhere to. Additionally, it looks at how difficult it is for employees to find out about pay scales and benefits packages and how poor the grievance procedures are. The essay also examines the difficulties brought on by cultural and sociological factors that support gender-based wage discrimination, such as unintentional assumptions and biases, a lack of knowledge about women's rights, and the continuance of gender segregation in some industries. The limitations of the resources available to enforcement agencies and the absence of sanctions for non-compliance are some of the difficulties in monitoring and enforcing the ERA that are covered in the article. In order to achieve gender equality in the workplace and advance social and economic justice for all, the article emphasises the importance of addressing the challenges in the implementation of the ERA. The article then suggests recommendations for overcoming these challenges, including the need for increased collaboration between government agencies.

Introduction

The term "gender equality" refers to men and women having the same opportunities, rights, and responsibilities. Equality does not imply that men and women will become equal, but rather that each gender's rights, obligations, and opportunities will be independent of the gender they were given at birth. In order to achieve gender equality, one must recognise the diversity of various groups of women and men and take into account their needs, priorities, and interests. A

prerequisite for ensuring gender equality and human rights is gender equity, which gives men and women the same opportunities to achieve equal outcomes. Making sure that men and women have equal access to and benefits from society's resources, opportunities, and rewards is gender equality's ultimate goal. Women must also participate equally in defining what is valued and how this might be accomplished. Equities are a tool. The end consequence is equality. Gender equity refers to a component of social justice that is typically based on tradition, custom, religion, or culture, and which most frequently works against women. The gender pay gap is typically used to describe equal pay for equal work, not just in India but globally. Understanding the distinction between sex and gender is necessary before one can fully grasp the idea of gender wage gap. While gender refers to differences between men and women that are influenced by culture and society, sex refers to traits that are determined by biology.¹ A fundamental labour and human rights principle centred on gender-based discrimination is equal compensation for equal effort. Equal pay for equal work is based on the premise that any two people who work in the same organisation or industry and put in the same amount of effort with the same set of skills should receive equal compensation. males and women generally experience this inequality, so for the same type of labour, males are paid more and women are paid less. Therefore, the equal pay for equal labour principle was introduced in order to eliminate this pay parity or gender-based discrimination. Through the interpretation of Articles 14, 15, and 16, which provide equality before the law, protection from discrimination, and equality of opportunity in terms of public employment, it has been included into the Constitution. According to Article 39(d) of the Indian Constitution, both the "principle of equal pay for equal work for men and women" and the "right to work" are recognised. In this article, we will explore the various challenges that arise in implementing the Equal Remuneration Act and examine the ways in which organizations and policymakers can work towards overcoming these obstacles. From societal attitudes towards gender roles to institutional barriers, we will examine the root causes of these challenges and propose potential solutions to ensure that equal pay becomes a reality for all.

Lack of awareness

¹ Ahmad, M., Equal pay for equal work with special reference to India and UK.

In order to guarantee equal compensation for equal work for men and women, India passed the Equal Remuneration Act in 1976. However, despite nearly 50 years since the Act's introduction, there is still a dearth of knowledge about its provisions among the general population, particularly among employers and employees. The Act's poor information and education dissemination is one of the main causes of this lack of awareness. Many firms continue to pay women employees less than males for the same work because they are unaware of the precise provisions of the Act. Additionally, even if employers are aware of the Act, they might not properly implement it because of a lack of commitment or comprehension of its significance. The Act's ineffective enforcement is another factor leading to the lack of awareness. Employers who disregard the Act's rules must face harsh punishment from the government and the relevant authorities. This would assure compliance with the Act and serve as a deterrent to other businesses. In order to inform people about the significance of gender equality and the terms of the Act, more awareness campaigns and workshops must be held. By highlighting discriminatory situations and emphasising the advantages of equal pay, the media can contribute significantly to the dissemination of awareness. To ensure the Equal Remuneration Act is implemented correctly, there is a need to raise public awareness and educate people about it. The Act's rights and obligations must be explained to both employers and employees, and anyone found in violation of its terms should face harsh penalties.

Gender bias

Many women in the workforce are impacted by gender bias in the application of the Equal Remuneration Act. Women still experience unequal pay and few possibilities for promotion in many industries despite the Act's existence. Due to historical and ongoing tendencies connected to gender segregation, the Equal remuneration Act, which mandates equal compensation for equal labour, has had limited success². We shall analyse the causes of gender bias in the application of the Equal Remuneration Act in this article and offer solutions to the problem. The lack of understanding of the Act among employees and employers is the first major element causing gender bias in the application of the Act. Many workers, particularly women, are

² Mello, J.A., 2019. Why the equal pay act and laws which prohibit salary inquiries of job applicants can not adequately address gender-based pay inequity. *Sage Open*, 9(3), p.2158244019869106.

unaware of their legal rights under the Act and are therefore unable to advocate for equal pay. Similar to employees, employers sometimes do not know what they must do to comply with the Act, which can result in inadvertent discrimination against women. Second, prejudice in hiring and promotion procedures and gender stereotypes both contribute to the gender wage discrepancy. Many businesses still adhere to the antiquated notion that women are less talented and committed to their professions than males. Even though they have the same credentials and experience as their male counterparts, this mentality results in women being undervalued and underpaid. Thirdly, it is challenging to spot and resolve instances of unfair pay due to the lack of transparency in pay structures and bonuses. Many firms don't make their pay scales or bonus requirements public, which permits discrimination against women and subjectivity in decision-making. Several steps must be made to address gender bias in the Equal Remuneration Act's implementation. First and foremost, both employers and employees need to be made more aware of the Act. This could be accomplished by informing people and by giving both employers and employees training. Second, it's important to overcome gender bias and preconceptions in hiring and promotion procedures. Employers should be encouraged to develop gender-neutral hiring and promotion practises, and all staff members participating in the hiring and promotion process should get unconscious bias training. Finally, there has to be more openness regarding bonus and pay arrangements. Employees should have the opportunity to contest instances of unfair labour practises, and employers should be forced to reveal pay scales and performance criteria for incentives.

Resistance to change

An important law that tries to guarantee that men and women are paid equally for equal labour is the Equal Remuneration Act. Equal compensation for equally valuable work has revolutionary potential, but its implementation and effects are inconsistent. The power of this strategy, as one strand among many needed to stop the repetition of gender pay inequalities, lies in its capacity to challenge gendered norms ingrained in wage-setting practises and a broader understanding of equality³. Despite the Act's well-intended goals, businesses and employees alike frequently

³ Whitehouse, G. and Smith, M., 2020. Equal pay for work of equal value, wage-setting and the gender pay gap. *Journal of Industrial Relations*, 62(4), pp.519-532.

oppose its implementation. Lack of knowledge or comprehension of the necessity for the Equal Remuneration Act is one of the main causes of resistance to change. Employees might not comprehend the benefits of the Act or why it is important. By outlining the guiding principles of the Act and how they will affect the workplace, communication and education initiatives can assist solve this. Resistance to change can also be attributed to personal beliefs and ideals. Some people could hold deeply rooted values and views that are incompatible with the foundational ideas of the Equal Remuneration Act. Even if it can be more difficult to resolve, it is crucial to engage in an honest and polite discourse in order to look for areas of agreement. Employers can provide staff members the chance to express their worries and join in constructive discussion in an effort to come up with solutions that benefit everyone. Resistance to change can also stem from personal convictions and values. The Equal Remuneration Act's guiding principles may be incompatible with some people's deeply rooted ideas and values. Addressing this matter can be more difficult, but it is crucial to have an honest and courteous discussion in order to look for areas of agreement. In order to attempt and discover solutions that work for everyone, employers might offer opportunities for employees to express their concerns and join in constructive discourse. Implementing the Equal Remuneration Act may encounter strong resistance from managers or leaders. If they believe it would upset the status quo or make their work harder, managers or leaders could be hesitant to change. It is crucial to involve managers and leaders in the transformation process and aid them in comprehending the advantages of the new policy. To help managers and leaders understand the guiding principles of the Act and how it can be applied successfully, employers can offer training and support.

Ambiguity to the provisions

In order to guarantee equal compensation for men and women performing the same or similarly characterised work, the Equal Remuneration Act of 1976 was passed. Nevertheless, there have been some uncertainties in the Act's application and interpretation, including:

1. Definition of "same work or work of similar nature": The Act doesn't give a precise definition of what "same work or work of similar nature" entails, which causes ambiguity

and disagreements when the duties and obligations of the jobs aren't exactly the same but are nevertheless comparable.

2. Wage comparison: The Act mandates that employers pay men and women the same wages for the same labour or employment that is comparable in nature, but it does not specify how to make such comparisons. Determining what makes a fair and objective comparison has become difficult as a result of this.
3. The Act includes penalties and fines for firms who violate its rules, but it doesn't specify how employees who aren't paid equally should be compensated. Because of this, there have been instances where employees have been unable to file complaints about pay discrimination.
4. Implementation and enforcement: The Act depends on other labour laws' enforcement mechanisms, and ineffective implementation and enforcement have resulted in numerous infractions.

In fact, the Equal Remuneration Act was a major step in the right direction towards achieving the goal of equal pay for equal work in India. However, it was considered that many organizations and occasionally the state itself were failing to strictly uphold the legal requirements set down in the Equal Remuneration Act of 1976⁴. In order to ensure that the Act is successfully enforced and that men and women are paid equally for the same work or labour of a comparable nature, there is a need for greater clarity and guidance. These ambiguities have made it difficult to implement and enforce the Act.

Recommendations

The Equal Remuneration Act of 1976 is a statute that mandates that men and women receive equal pay for equivalent work in an effort to end gender discrimination in the workplace. In order to overcome the difficulties in putting this act into effect, the following suggestions are made:

⁴ Ahmad, M., Equal pay for equal work with special reference to India and UK.

Education and Awareness: It is important to educate the public, employers, and workers about the act's provisions. To help people understand the value of equal pay for equal work, the government can plan training and awareness campaigns.

Wage Transparency: Employers ought to be obligated to uphold an open wage and salary structure. This will assist in preventing wage discrimination based on a person's gender. This data should be made available to employees so they may assess if they are being paid properly.

Audits on a regular basis: Regular audits of employers' pay structures can aid in locating any gender pay discrepancies and serve as a foundation for corrective action. To make sure employers abide by the rules of the act, the government can set up an auditing system. Any lapse in judgement, delay, or filing of inaccurate returns shall result in harsh punishment.⁵

Enforcement of Penalties: The government needs to make sure that those who break the act's rules face consequences. For employers who are proven to be breaking the law, this might take the form of fines or jail time.

Collaboration with Women's Organisations: Women's organisations can be very helpful in raising awareness of the law and ensuring that it is followed. The government can collaborate with these groups to establish a network that would aid in monitoring compliance and offering assistance to women who might experience job discrimination.

Inclusion of Gig Workers: The growth of the gig economy and the informal sector has brought forth new difficulties for the act's implementation. The government should look into ways to bring these workers inside the act's purview so that they, too, can benefit from equal pay for equivalent labour.

The government can resolve the difficulties in implementing the Equal Remuneration Act of 1976 and advance gender equality in the workplace by putting these ideas into practise.

Conclusion

⁵ Mir, G.Q., Protective discrimination of women workers with special reference to Jammu and Kashmir.

To ensure that women are paid equally for the same job as men, the Equal Remuneration Act was passed. The Act's implementation has been difficult despite its well-intentioned goals. The lack of knowledge about the Act among companies and employees is one of the main problems. As a result, there haven't been many complaints or charges brought under the Act. Comparing tasks that aren't identical but nevertheless valuable presents another difficulty. Due to this, employers are uncertain about what constitutes equivalent work, and it is challenging for employees to demonstrate discrimination. Additionally, the lack of precise criteria for calculating equal pay has resulted in inconsistent Act implementation. Finally, the Act has to be enforced with greater discipline. The Act's current limited sanctions for non-compliance provide employers with little motivation to do so. Stronger sanctions and better monitoring systems are thus required to guarantee that the Act is being followed. In conclusion, it has proven difficult to execute the Equal Remuneration Act. Gender equality in the workplace has come a long way, notwithstanding the progress that has been accomplished. To ensure that the Act is applied efficiently and fairly, it will be necessary for businesses, employees, and the government to work together to address these issues.

