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EQUAL PAY FOR EQUAL WORK (EQUAL REMUNERATION ACT, 1976)

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Abstract :

"Equity", When we talk about it, we mean treating people equally and unequally. That is what the Equal Remuneration Act of 1976 does. Equal pay for men and women is offered, with the understanding that it will not overtake any particular treatment given to women in the nation. In the past, women in India experienced severe pay inequality. However, since the passing of this Act, women have had access to the legal system to pursue claims related to workplace misconduct.

To close the pay inequality between male and female workers, the Indian government passed the Equal Remuneration Act 1976. The primary objectives of this Act were to provide equal pay for men and women based on the nature of the work, equal opportunity in the workplace, protection from employment or occupational discrimination, and the prohibition of sex-based discrimination in the workplace. No woman may be dismissed just because of her gender. This Act promotes and upholds gender equality for both sexes, whether they are male or female. This article speaks how this act gave birth to equality, how it eliminates the gender discriminatory and what are the main objectives of this act.

Equal remuneration act 1976 :

We have known for a long time that men dominate over women and that women have a very low position in society. This inequality extends to the workplace, where women are allowed to work with men but get pay that is less than what men earn. As women's contributions to sectors have increased, it has become clear that there needs to be legislation that protects women from workplace discrimination.

It was brought to the attention of the legislature, and as a result, they created the "Equal Remuneration Act in 1976" , which mandated equal compensation for equally-sized jobs, regardless of gender. Thus the employer should pay equal for the work done only on the basis of employment by the employees not on the basis of gender and there should not be gender discrimination in recruitment also. Therefore after this act there is no such gender discrimination and everyone are equally treated.

Constitutionality right :

Equal pay for equal work is neither a fundamental nor a constitutional right, but the court has determined through a number of judgements that by interpreting Articles 14, 15, and 16 of the Constitution of India 1950, which are fundamental rights, it can be inferred that equal pay for equal work is also a constitutional right for every person because no one is allowed to be discriminated against on the basis of gender, and for this protection, parliament passed the Equal Remuneration Act in 1976. This policy is based on Article 39 of the Indian Constitution, which stated that it is the responsibility of the states to create laws that guarantee equal pay for comparable labour. This policy is based on Article 39 of the Indian Constitution, which stated that states have a responsibility to implement legislation to ensure equal pay for equal work.

In the 1962 case of *Kishori Mohanlal Bakshi vs. Union of India*¹, the court established for the first time that there would be a policy on article 39(d) of the Indian constitution, which is a DPSP that is ordinarily not enforceable by law. Nevertheless, executive played a role under article 39 and enacted a policy for equal pay. This was not enough as there was no such enforcement on equal pay for equal work. The Supreme Court of India's Apex Court ruled in *Randhir Singh v. Union of India*² that the court could enforce this policy since it is based on Articles 14 and 16 of the Indian Constitution, which state that equality is a basic right and that Article 32 of the Indian Constitution can be used to seek remedy. Additionally, Justice J. S. Khehar and SA. Bobde expanded the policy's applicability in the case of *State of Punjab And Ors v. Jagjit Singh and Ors*

¹ *Kishori Mohanlal Bakshi vs. Union of India*

² *Randhir Singh v. Union of India*

³to include casual and daily wage workers, who frequently face pay discrimination even when they perform work that is equivalent to that of permanent employees.

The Salient Features of Equal Remuneration Act, 1976:

1. To pay remuneration equally : A woman cannot be paid less than male employees of the same grade who are engaged in the same establishment, if the nature of the employment is not essentially distinct. Pay should be different if employment is essentially distinct, but it should also be based on performance.
2. No discrimination in favour of men : Under the Equal Remuneration Act, no one should be discriminated between men and women and there should not be done in favour of men by paying women less wages for the same work or employment.
3. No discrimination on the ground of sex : Under this act, it prohibited the discrimination and also offers guarantee to the women workers against such exploitation. And also it states that no women shall not be dismissed only under the ground of sex.
4. No discrimination in employment : That is every employee is equal, there should not be a discrimination when it comes to the employment, that is everyone should be paid based only on the nature and performance of the workers and not on the gender.



PAYMENT OF REMUNERATION AT EQUAL RATES TO MEN AND WOMEN

WORKERS AND OTHER MATTERS : (CHAPTER 2)

Duty of employer to pay equal remuneration to men and women workers for same

work or work of a similar nature (sec 4) ;

When it comes to compensation offered for the same amount and type of work, the employer is not allowed to discriminate based on gender. There were many instances of women being paid less than their male colleagues, which led to the passage of this Act.

³ State of Punjab And Ors v. Jagjit Singh and Ors

Case law: *People's Union of Democratic Republic v. Union of India 1982*⁴; In this case male were paid 9.25 per day and women were only paid 7 per day. Justice P.N. Bhagwati after hearing both sides, held that the authorities should ensure that both are paid equal for similar amount of work.

No discrimination to be made while recruiting men and women workers (sec 5) ;

It says that while recruiting the employees there should not be discrimination on the basis of gender. Women can not be discriminated regarding work expect the nature of certain work are prohibited for the women employee rather than that the employer should not recruit based on the gender discrimination.

Advisory Committee (sec 6) ;

Sec 6(1) - The Government can constitute one or more Advisory Committee for the purpose of providing increasing employment opportunities for women, it helps the women to give an opportunity to work in the employment.

Sec 6(2) - Every Advisory Committee shall consist of more than 10 persons, they will be nominated by the Government and one-half of the members shall be women.

Sec 6(3) - This committee have a eye on following;

- Number of women employed
- Nature of work
- Hours of work
- Suitability of work for women

These cases are noted by the committee including part-time employment and it takes decision if there is necessary.

Sec 6(4) - The committee can regulate its own procedure also.

⁴ *People's Union of Democratic Republic v. Union of India 1982*

Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints (sec 7) ;

The appointed officer has the power to hear the case, deciding the claims etc. The complaints are made to him if there is any infringement of this act. There should be proof or proper evidence against such complaints and therefore the offenders are sued for any inequality of payment. The appointed officer can decide the consequences if there is a discrimination made in two or more works.

It that duty of the appointed officer to hear the cases on both sides that is the opposite party is also given opportunity to explain his part. This officer has a power like a civil courts as mentioned under sec 195, code of civil procedure and XXVI of code of criminal procedure.

If any party is aggrieved by the said order by the appointed officer then within 30 days from the date of such order, can go for an appeal against such order to the authority which is specified by the government.

Miscellaneous :

There are several miscellaneous powers and duties under this act.

Duty of employers to maintain registers :

Sec 8 deals with duty of the employers to maintain registers, that is every employee should maintain record of the employees in detail that should also involve detail about the remuneration. This is done to gauge, if there is any payment is made on the basis of gender discrimination.

Inspectors :

According sec 9 of the act, the appropriate government may appoint a person as a inspector if it thinks fit ,for the purpose of investigation. He may investigate at any time within his limits. As per 9(2) every inspector is a public servant.

The inspector has powers they are as follows,

- He can enter the premises at any reasonable time.
- He can call for any official documents for examination.

- He can also call for any evidence at any point.
- He can examine the employer.
- He can also make copies of the required documents.

These powers help him to carry out his duty in fair manner.

Penalties :

Sec 10 of the act deals with penalties, it is charged to the employer if he fails to follow the normal as per this act. Some of the following reasons are;

- If the employer fails to maintain a register.
- If the employer fails to produce the register when it is required.
- If he refuses to give evidence.
- If the employer refuses to give information.
- If he makes payment at unequal rates.
- If he fails to carry any direction as per the act.
- If the employer makes any gender discrimination.

If he does any of the above then the employer shall be punished with at least fine amount of 10,000 - 20,000 or an imprisonment which is not less than 3 months and which may extend to 1 year. If the employer is liable of more than one offence then the punishment will increase.

Offences by companies :

Section 10 of the act says, with the offence is committed by any firm, body corporate or association of individuals, then they shall be deemed to be guilty of such offence. He is liable unless he proves that the act was done without his or her knowledgeable or he or she done something in order to prevent the act from happening.

Power to make rules

In order to protect the interest of the employees, the Central Government has the power to make regulations. This section deals with the powers of the government to form policies and in regulation of changes. Further the houses of the parliament can implement those changes by following due procedures. And thus the employers will have to follow the norms provided under this act.

Power of Central Government to give directions :

Section 14 of the act deals with the powers of the central government, it has the power to direct the state government and it should be followed by the State government. So the state government should act as per the direction given by the central government.

Offences	Penalty
If the employer fails or omits to maintain or produce the register or other documents or fails to give any evidence or any information.	Maximum rupees of 10,000 or imprisonment of 1 year or both.
If the employer recruit any employee in contravention of the provisions in this act or made any payment under discriminatory of gender or doesn't carry the directions of the appropriate government.	Maximum rupees of 10,000 or 20,000 or minimum imprisonment of 3 months and maximum 1 year or both. If the offence is done again and again then the imprisonment is 2 years.
Fails to produce registers or any other documents or fails to give any information to the inspector.	Maximum rupees of 500.

Case laws :

*State of Haryana v. Rajpal Sharma*⁵

⁵ *State of Haryana v. Rajpal Sharma*

In this case the court held that the teachers working in a private school which is aided by the government will get the equal pay that of the teachers who are employed in government school.

*Supreme Court Employee's Welfare Association v. Union of India*⁶

The court held that unequal pay is a violation of article 14 of constitution, it is not a violation of constitution if the classification is reasonable and proper in the eye of law.

*State of Punjab v. Jagjit Singh*⁷

The court held that as the responsibility discharge by the temporary and permanent employees are same, therefore the equal pay for equal work is applicable to Temporary employees.

*Mackinnon Mackenzie & Company Ltd. v. Audrey D Costa & Others*⁸

The court held that the male and female stenographer should be paid equal as based on this Doctrine of Equal pay for Equal work

Conclusion :

The Equal Remuneration Act 1976, helps in filling the gap between the unequal remuneration which is often faced by the women. After the implementation of this act the gender discrimination came to an end and the women also treated as equally and also all are paid only based on the nature of the employment. And the fact that female are physically weak and they should be paid less than their male counter parts this was broken after commencement of the act. So the inequality came to an end.

⁶ *Supreme Court Employee's Welfare Association v. Union of India*

⁷ *State of Punjab v. Jagjit Singh*

⁸ *Mackinnon Mackenzie & Company Ltd. v. Audrey D Costa & Others*