

## **EQUAL PAY FOR ALL WITHOUT ANY DISCRIMINATION BASED ON SEX UNDER THE EQUAL REMUNERATION ACT, 1976**

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### **Abstract**

In this article, the author explained the Equal Remuneration Act, 1976. The main theme of the act provides to avoid discrimination between men and women workers for wages or remuneration. Remuneration means a basic salary or wage and additional emoluments payable in kind to a person employed, in the terms of the contract of employment. Whether it is fulfilled under implied or expressed. Both men and women have to do some work and the same working conditions in some workplaces, but the payment of wages or remuneration is different between men and women. A woman has to receive less amount of salary compared to men, but men can receive a double amount of salary compared to women. So the equal remuneration act, 1976 rectifies discrimination on the grounds of sex. The doctrine of “equal pay for equal work” is mentioned in the constitution of India Article 39(d). This Article 39(d) also said that equal payment of salary for the equal amount of work and no discriminates between men, women and any individual. After implementation of the equal remuneration act, 1976 any malpractice prevailing in the workplace, women have been able to sue or claim under this act.

### **Introduction**

The equal remuneration act, 1976 contains 18 sections and 3 chapters. The 1st chapter is a preliminary, 2nd chapter is a payment of remuneration at equal rates to women and men workers and other matters, and finally, the 3rd chapter is miscellaneous. This act was implemented in act 25 of 1976 and the act was amended by act 49 of 1987. In this act, it relates to the constitution-related provisions these are

- Article 14 deals with equality before the law, that is both men and women have equal rights and provide opportunities in the economic, political and social spheres.
- Article 15(1) deals with which it talks about the prohibition on the grounds of sex or caste
- Article 15(3) deals with the mention of the various provision laid down which grants various power of the state to make positive discrimination in favour of women.

- Article 16 deals with which provides special rights and which includes laws to be made for the benefit of children and women.
- Article 39 deals with equal pay for both sexes

These are the articles in the constitution that relates to the Equal remuneration act, 1976. The main important constitution provision which relates to this act is “Equal pay for equal work” under article 39 (d). Under section 1 of the act apply to the whole of India and also to Jammu and Kashmir.

### **Section 2 definition clause**

- Section 2(a) defines appropriate government. An appropriate government has both the central and state government.
  1. Under the central government authority like railway administration, and related to a banking company, oilfields, mines are some major ports and any corporation which is established under the central act, and this corporation comes under the authority of the central government.
  2. And the other categories of employment come under the state government.
- Section 2(b) defines the Commencement of this Act.

It means which date the act has been coming into force in respect of the establishment or employment.

- Section 2(c) defines an employer

The employer defined in the Payment of Gratuity Act, 1972 under section 2(f)

- Section 2(d) defines a man and woman.

Men and women mean male and female human beings for any age group.

- Section 2(e) defines notification.

Notification means any notification or message published in an official gazette.

- Section 2(f) defines prescribed

Prescribed means prescribed rules made under this act.

- Section 2(g) defines remuneration

Remuneration means a basic salary or wage or additional emoluments whatsoever payable, either in cash or in-kind, a person who is employed in respect of work or employment is done in such employment, whether the terms of the contract of employment are implied or an express was fulfilled.

- Section 2(h) defines the same work or work of a similar nature

Same work or work of a similar nature means work in which respect of the effort, skill and responsibility to require the same, when performing under similar working conditions, by a woman or men the difference if any between the effort, skill and responsibility to require of a man and those required of a woman are in not of practical importance in related to the terms and conditions of employment.

- Section 2(i) defines worker

Worker means a worker in any employment and establishment in respect of this act comes into force.

- Section 2(j) defines words and expressions

Words and expressions are used under the act but not defined under the act. The term words and expressions are defined under the industrial disputes act, 1947.

### **Section 3 – Act to have overriding effect**

The chief Labour commissioner also the central industrial machinery has provided the effect of this act. This act was not affected by any terms and conditions for any other laws. The act provides special treatment for women. In section 3, the statement suggests that it will have an effect under all circumstances. And it also provides any special treatment for women in connection with the birth or expected birth of a child or the conditions and terms related to marriage, retirement, death or any of them will not affect that the present act.

**Payment of remuneration at equal rates to women and men workers and other matters (chapter II) of the act deals with Section 4 to 7**

Chapter II of the act provides that the payment of remuneration at an equal amount pay both women and men workers and other matters.

**Section 4 – Duty of the employer to provide equal remuneration to both men and women workers for the same work and in a similar nature**

The employer has been no discriminating against the employees on the grounds of sex, the remuneration is must be providing the same amount of nature of work. In this case of **the People's Union of Democratic Republic vs. Union of India 1982[1]**, the employer has to pay the salary for women workers is 7 per day, and the employer has to pay the salary for male workers is 9.25 per day. The court held that both men and women do the same amount of work, employers pay an equal salary for both workers.

**Section 5 – No discrimination to be made while recruiting men & women workers**

The act provides that there must not discriminate the recruiting for personnel based on grounds of sex. Section 5 states the no discriminate in remuneration. And also the act provides some exceptions related to the employment of women is prohibited. In certain places, there are hazardous working conditions. Women and children are not able to do the work in such places. So the section provides immunity from employment at those places.

**Section 6 – Advisory Committee**

The main aim to create the advisory committee is the duty to increase employment opportunities. The government has taken some possible steps to change the remuneration policies in India. An advisory committee is appointed by the appropriate government. The appropriate government is already defined in section 2(a)(1). The advisory committee consists of at least 10 members. The members of the committee must be one-half women members in such a committee. For example, the committee has 10 members and that committee has compulsory for 5 women members. Because it will help to frame policies it will help people who are the real stakeholders. The factors which make a difference in the decision are the number of women at work, nature of work, hours of work, suitability of work and need to provide the opportunities. After considering

the factors, the committees decide to bring an appropriate norm into effect. The advisory committee brings reform by understanding the requirements of the employees. The advisory committee is free to regulate its procedures. The appropriate government will implement the policies under the suggestion of the advisory committee.

### **Section 7 – Power of appropriate government to appoint authorities for deciding claims and hearing and complaints**

Any claims and complaints arising under the act shall be addressed to the appointed officer. Mainly the offenders were sued under the inequality of payment. The appointment officer was collecting accurate proof for the commitment of the offences. In case the discrimination was made in two or more works, the appointed officer decided the consequences. The appointed officer was inquired from both sides of parties, and the appointed committee was provided with the opportunities to tell the suggestions of both sides of the parties. The appropriate officer power is equal to the civil court; it is mentioned under chapter XXVI of the code of criminal procedure and section 195 of the civil procedure code 1908. The appointed officer provides the decision on the offence, and the decision is not satisfied, the parties go to appeal within 30 days from the date of order which is specified by the appropriate government.

### **Miscellaneous (Chapter III) of the deals with Section 8 to 18**

And the several miscellaneous powers and duties provided under chapter III of the Act.

#### **Duty of employers to maintain registers Section 8**

Section 8 provides that every employer has to be compulsory to maintain registers or records is a duty. These registers contain detailed information regarding the remuneration. If there is an employee discriminate to pay the number of employers based on sex. The ascertainment of the offence is important to impose the correct amount of liability.

#### **Inspectors Section 9**

Any offences were committed. The appropriate government has appointed inspectors. The inspectors are responsible for taking over the investigations. Inspectors must be public servants; the public servant is defined under section 21 of the IPC. The inspector post must be believed. Otherwise, his or her appointment will be considered unauthorized.

The inspectors have certain powers for investigation, and the following powers of investigation are

1. Inspectors have entered the premises at reasonable hours.
2. Inspectors may call for any official document for examination.
3. Inspectors may examine the employers
4. Inspectors may call of any evidence at any given point
5. Inspectors make a copy of certain documents.

These are the power of inspectors to investigate the offences in such a manner.

### **Penalties Section 10**

Under section 10 of the act has to be provided with some norms the employer could not follow the norms the employer must pay a penalty under this section. These norms are

1. Fails to maintain registers
2. Fails to produce a register when required
3. Omits or refuses the evidence as per requirements
4. Fails to give any information
5. Make any of the requirements in contravention of the provision of this act
6. Payment makes unequal rates
7. Any discrimination based on sex
8. Fails to follow any direction of the mentioned act.

Employers who could not follow such norms shall be punishable with a fine of at least 10,000 and may extend to 20,000 or imprisonment, not less than 3 months, may extend to 1 year. In case the employers make more than one offence, punishment will increase based on the offences.

### **Offences of companies Section 11**

Section 11 of the act provides that if the offence is committed by anybody corporate, which includes industries or firms shall be deemed to be guilty of the offence if any person of such an industry or firm proves that such act was done without his or her knowledge or he or she exercises due diligence to prevent the act from happening.

**Cognizance and trial of offences Section 12**

The equal remuneration act, 1976 was amended in 1987, section 12 of the act was amended during this amendment. This act also suggests that the judicial magistrate or metropolitan magistrate of the first class will be the authority at the lower position for review of such a case under the act. The court is allowed to take cognizance only on its knowledge or any complaint made by an appropriate government. An authorized officer can complain to such authority. The aggrieved person who is authorized is also authorized to take his complaint to the court. In this type of case, the court shall not entertain any complaints under the Act. The court involved in these matters must take immediate action to protect the employees from discrimination.

**Power to make a rule Section 13**

Section 13 has provided power to the central government. The central government has the power to make regulations for the protection of the interest of the employees. This section provides the powers to the government to make policies and regulate any changes in that Act. The house of parliament has the power to implement the changes following due procedure. The employers have to employ those norms, so provided.

**Power to the central government to give directions Section 14**

Section 14 of that act provides that the central government has the power to give direction for the state government as to the execution of the Act. The state government has complied with the directions, so provided.

**Exclusion of certain cases Section 15**

In this section 15 was amended by The Equal Remuneration Act, 1987 in the section states that “Nothing in this act shall apply.

- a) To case affect any terms and conditions of the women's employment in compliance with those requirements of any law giving special treatment to those women
- b) To an any special treatment accorded to women in connection with
  - (i) The expected or birth of a child
  - (ii) The conditions and terms relating to marriage, retirement or death or to any provision made in connection with that marriage, retirement or death.

The act provides that all possible exclusions are provided which helps with that protection of the interest of those women who can require special treatment. This emanates the idea of equity and the spirit of the protection of all kinds of rights.

#### **Power to make a declaration Section 16**

In this act, section 16 provides an exception from the employer's liability in certain circumstances. The act provides a situation where that the employer has discriminated based on the ground, but sex will be exempted from prosecution if, after complete consideration of that case, the government deems fit.

#### **Power to remove difficulties Section 17**

Section 17 has the power to remove difficulties for the necessary circumstances of that case. Such an act must be necessary to remove such difficulty. The implementation provisions must be carried out smoothly, without any difficulties.

#### **Repeal and saving Section 18**

The equal remuneration ordinance, 1975 which was the act governing, before the implementation of the present act, stands repealed by the effect of this section of the current act. Any actions taken under the ordinance which are repealed will be deemed to be under the provisions of that present Act.

#### **Conclusion**

The equal remuneration act, 1976 has removed the discrimination depends on the sex for equal pay for equal work without any discrimination. This act ratified the problems of unequal remuneration for women. After the act, both men and women workers are equally treated. This act provides that some exceptions for employers and the employers have come under the exception category, and the employer was not liable under the act. The act only deals with discrimination for unequal payment.



**Reference**

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