

Diversity Requirements under Indian Laws on Wages

Equal Remuneration Act

- 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
- Article 39 of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women.
- Act to have overriding effect

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- “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;
- Code - "same work or work of a similar nature" means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;

Equal Remuneration Act

- Section 4 provides that 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.
- Employer cannot reduce wages of employees to comply with this Act.

Equal Remuneration Act

- **Code on Wages, 2019, Section 3**

There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.

Equal Remuneration Act

- **Mackinnon Mackenzie & Co. Ltd vs Audrey D'Costa**
- Whether a particular work is same or similar in nature as another work can be determined on three considerations:
 - the Authority should take a broad view;
 - in ascertaining whether any differences are of practical importance, the Authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed not those theoretically possible. In making comparison the Authority should look at the duties generally performed by men and women.
 - Where however both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts.

Equal Remuneration Act

- **Mackinnon Mackenzie & Co. Ltd vs Audrey D'Costa**
- We do not suggest that there can be no discrimination at all between men and women in the matter of remuneration. There are some kinds of work which women may not be able to undertake. Men do work like loading, unloading, carrying and lifting heavier things which women cannot do. In such cases there cannot be any discrimination on the ground of sex. Discrimination arises only where men and women doing the same or similar kind of work are paid differently.
- If the two jobs in an establishment are accorded an equal value by the application of those criteria which are themselves non-discriminatory (i.e. those criteria which look directly to the nature and extent of the demands made by the job) as distinct from criteria which set out different values for men and women on the same demand and it is found that a man and a woman employed on these two jobs are paid differently, then sex discrimination clearly arises.

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- **Janta Shikshan Prasarak Mandal v. Industrial Court – Temporary nature of employment not relevant**
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Equal Remuneration Act

- No discrimination to be made while recruiting men and women workers. –
- On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Equal Remuneration Act

- **Code on Wages, 2019, Section 3**

(2) No employer shall (ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Equal Remuneration Act

- **Air India v. Nergesh Meerza** - Retirement marriage and pregnancy regulations of Air Flight Pursers and Air hostess – difference between positions and not only sex – held not discriminatory – S.16 differential treatment allowed if factor is not just sex — did not consider that these other factors were a consequence of sex discrimination
- **Air India Cabin Crew Association v. Yeshawinee Merchant** - Age of retirement from flying duties of Air hostesses at the age of 50 years with option to them to accept post for ground duties after 50 and up to the age of 58 years; held that it does not violate ERA S.5, and would anyway be saved by S.15 – AHs consented to diff retirement age for the pre 1997 cadre

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Equal Remuneration Act

- Navtej Singh Johar v. UOI:
- This narrow view of [Article 15](#) strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context. For example, a rule that people over six feet would not be employed in the army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex and height. Such a formalistic view of the prohibition in [Article 15](#), rejects the true operation of discrimination, which intersects varied identities and characteristics.

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Equal Remuneration Act

- Advisory Committee for increasing employment opportunities for women, regarding establishments specified by appropriate government (6(1)).
- The advisory committee must consist of at least 10 people, which will be nominated by the appropriate government. Women must consist of one-half of this committee because that will help in formulation of policies with the help of people who are the real stakeholders.
- Section 6(3) states, the factors which make a difference in the decision are:
- Number of women at work; 2. Nature of work; 3. Hours of work; 4. Suitability of women; Need to provide opportunities

The Transgender Persons (Protection of Rights) Act, 2019

Section 3 - Prohibition against discrimination.—No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

- (b) the unfair treatment in, or in relation to, employment or occupation;
- (c) the denial of, or termination from, employment or occupation;

Section 9 - Non-discrimination in employment.—No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

Further required to provide facilities as prescribed.

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The Transgender Persons (Protection of Rights) Act, 2019

12. Equal opportunities in employment.-

(1) Every establishment shall implement all measures for providing a safe working environment and to ensure that no transgender person is discriminated in any matter relating to employment including, but not limited to, infrastructure adjustments, recruitment, employment benefits, promotion and other related issues

(2) Every establishment shall publish an equal opportunity policy for transgender persons.

(3) The establishment shall display the equal opportunity policy, including the details of the complaints officer, preferably on their website, failing which, at conspicuous places in their premises.

(4) The equal opportunity policy of an establishment shall, inter alias, contain details of- (a) infrastructural facilities (such as unisex toilets), measures put in for safety and security (transportation and guards) and amenities (such as hygiene products) to be provided to the transgender persons so as to enable them to effectively discharge their duties in the establishment. (b) applicability of all rules and regulations of the company regarding service conditions of employees; (c) confidentiality of the gender identity of the employees; (d) complaint of the officers.

Rights of Persons with Disabilities Act, 2016

20. Non-discrimination in employment.—

- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.
- (2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.
- (3) No promotion shall be denied to a person merely on the ground of disability.
- (4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service: Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
- (5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

Rights of Persons with Disabilities Act, 2016

21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

Rights of Persons with Disabilities Act, 2016

Vikash Kumar v. Union Public Service Commission

Section 2(s) unlike Section 2(r) is not tagged either with the notion of a specified disability or a benchmark disability as defined in Section 2(r). Section 2(s) has been phrased by Parliament in broad terms so as to mean a person with a long term physical, mental, intellectual or sensory impairment which in interaction with various barriers hinders full and effective participation in society equally with others.

4 principles: i. Needs to be considered on case-by-case basis, ii. the burden rests on the person denying equality; iii. Obligation is immediate in nature; iv. Meaningful dialogue is required.

Rights of Persons with Disabilities Act, 2016

Vikash Kumar v. Union Public Service Commission

Rahul Bajaj - Test of undue burden is to be assessed in an objective manner that covers all the pertinent considerations. This includes the practical feasibility of providing the accommodation, as measured by factors such as financial costs, available resources, third-party benefits, size of the accommodating party, amongst others.