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The Equal Remuneration Act 1976: Progressive Promise or Performative Equality?

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Received 12 December 2025; *Accepted* 14 January 2026; *Published* 19 January 2026

The Equal Remuneration Act was brought in the light of constitutional provisions. The Act was brought into effect with a view to Article 39(d) of the Constitution, which ensures equal pay for equal work. Apart from the constitutional mandate, the judicial pronouncement has also shaped its interpretation. However, even after comprehensive legislation, its implementation remained largely ineffective due to various factors, including weak enforcement, an ambiguous definition of ‘same work’, lack of awareness, and caste-based discrepancies, among others. The international reports, such as that of the ILO shows that there has been a steep decline in the employment of women. In fact, the Code on Wages, 2019, has also remained a missed opportunity. Rather than inducing a stronger gender responsive wage framework, it has undermined the effectiveness of the advancement of the wage and the protection of the labour specifically. The analysis makes it clear that the act can succeed only when there is a better enforcement mechanism along-with sensitization programme, particularly in the light of the fact that a large number of labourers in India are informal and uneducated. Not only this, but the situation also demands that there be a dedicated framework for gender-based disparity. In a nutshell, the article critiques the policy of the government by highlighting the legislative intent and ground-level implementation.

Keywords: *weak enforcement, equal pay, equal work, labour law.*

INTRODUCTION

Wage disparity is a major problem in India and the central issue in the labour market. In India, the problem of wage disparity has been very predominant. The situation has always demanded the incorporation of the principle 'equal pay for equal work.' The principle is a constitutional concern and within the Directive Principles of State Policy (DPSP). Although it is non-justifiable, however, the courts have constantly laid stress upon equality, dignity and fair working conditions. It has been held to be a part of Article 21 as well, over time, in various judgments of the Supreme Court.

The enactment of the Equal Remuneration Act has marked a significant milestone in the Indian labour law regime. It was for the first time that gender discrimination was actively looked upon as a separate legal issue. It brought with it principles of equality along with the mechanism to redress. Thus, the act was clearly brought up as a corrective measure to mitigate the historical and systematic disadvantages faced by women at the time of employment and thereafter. However, the effectiveness of the act became weak over time owing to various reasons. The weak enforcement mechanism is one of the reasons for its failures. Alongside this, the ambiguity in definitions and limited awareness among the labourers are the issues that have resulted in its failure. To cope with this issue, the legislature, in 2019, came up with a consolidated bill, 'Code on Wages'. It aimed to consolidate and simplify India's labour laws.

The bill sought to expand the formal scope of wage regulation and administrative efficiency. However, the code has institutional deficiencies that seriously undermine its effectiveness of the code. The code has many lacunae, such as it adopts a formalist gender-neutral approach, which has diluted the substantive framework of equality. Further, it lacks a dedicated mechanism for addressing wage discrimination. It was formerly present in a full-fledged dedicated manner; however, it has been diluted in the new code. Additionally, the definitions and language still remain vague and indeterminate; there are no affirmative obligations on the employees and lack of clarity in implementation, plus federal coordination. Thus, the policy has remained a missed opportunity to introduce better regulation and strengthen gender-responsive wage regulation.

NORMATIVE FOUNDATIONS OF THE ACT

The concept of equal pay for equal work is not a new concept. Its history dates back to ancient history, whereby we can find the mention of this concept in Kautilya's Arthashastra (in the 3rd century BCE). It has a codified salary scale and a penalty for wage default.¹ This idea has propagated while drafting our constitution as well. Dr BR Ambedkar, the chairman of the drafting commission, intended to add this clause to correct the social inequalities.

The Constitution has provided myriad safeguards for workplace equity. Despite the constitutional provisions, the gender-based disparity persists in India, especially when it comes to the informal or unorganised sector. In order to address this, the parliament came up with the Equal Remuneration Act, 1976, in response to Article 39(d) of the Constitution. The article expects the state to ensure that there is equal pay for equal work for both men and women.² The object of the act is to provide for equal remuneration to both men and women on the ground of sex, in the matter of employment and for matters connected or incidental thereto.³

In the case of *Dharwad District PWD Literate Daily Wages Employees' Association v State of Karnataka* (1990), Justice Raganath Mishra said, 'the act is a legislation providing equality of pay for equal work between men and women, which certainly is a part of the principle equal pay for equal work.'⁴

In addition to the Directive Principles, the guarantee of wage equality is implicitly reinforced through the Fundamental Rights enshrined in Part III of the Constitution, particularly Articles 14, 15, 16, and 21. Article 14 that enshrines the principle of equality, Article 15 that prohibits discrimination and gives special protection to women, Article 16 further states equality in public opportunity and lastly Article 21 guarantees the right to live with dignity.

Justice Bhagwati in the case of *Francis Coralie Mullin v Union Territory of Delhi*,⁵ gave an expanded meaning of the Right to Life enshrined under Article 21. He pointed out that the right to life doesn't merely mean animal existence, but has a broader connotation. It includes

¹ *India Wage Report: Wage policies for decent work and inclusive growth* (International Labour Organization 2018)

² Constitution of India 1950, art 39(d)

³ Equal Remuneration Act 1976

⁴ *Dharwad District PWD Literate Daily Wages Employees v State of Karnataka & Ors Etc* (1990) 2 SCC 396

⁵ *Francis Coralie Mullin v The Administration, Union Territory of Delhi & Ors* (1981) 1 SCC 608

the right to life with dignity. It inherently includes just and humane working conditions. Thus, forming a constitutional backbone for just and fair working conditions. Even though this case does not discuss the principle of equal pay for equal work, it propagates the idea that unequal pay hurts the constitutional dignity.

LEGISLATIVE PROMISE AND PRACTICAL REALITIES

The legislature clearly intends that it wants to give effect to the principles mentioned in DPSP as well as fundamental rights. The preamble of the Act itself says that both male and females would be provided equal remuneration irrespective of gender. In addition to that, Section 4 highlights the 'Duty of the employer to pay equal remuneration to men and women for the same work or of a work of similar nature.'⁶ It ensures that no worker is paid less solely based on sex. While Section 5 further states that 'No discrimination is to be made while recruiting men and women workers.'⁷

The legislature has undoubtedly succeeded in incorporating the provisions that are in consonance with the constitutional provisions and the judicial pronouncements. However, there exists a significant gap between the objective of the act and reality. It seems that the goals sought to be achieved have been largely affected due to a few reasons. These reasons speak volumes about the Act's half-hearted success. Weak enforcement mechanisms, lack of awareness among beneficiaries, and persistent structural inequalities stand as the most prominent reasons contributing towards its failure.

Despite the enactment of the Equal Remuneration Act, the real-world data from various international organisations reveal that there remains a huge gender wage disparity. The data released by the International Labour Organisation (India Wage Report based on NSSO) reveals that women in India earn 34% less (in 2011-12) than men. There has been a steep decline from 48% in 1993-94 to 34% in 2011-12,⁸ but on the other hand, it is also pertinent to note that females in India earn nearly ₹103/day less than male workers.⁹ However, it reduced to 28% in 2018-19. This again underwent a shift when the COVID-19 pandemic hit the globe.

⁶ Equal Remuneration Act 1976, s 4

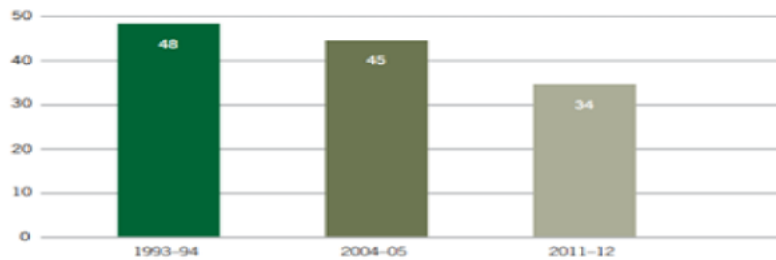
⁷ Equal Remuneration Act 1976, s 5

⁸ 'ILO: Strong wage policies are key to promote inclusive growth in India' (ILO, 20 August 2018) <<https://www.ilo.org/resource/news/ilo-strong-wage-policies-are-key-promote-inclusive-growth-india>> accessed 28 July 2025

⁹ India Wage Report: Wage policies for decent work and inclusive growth (n 1)

This reversed years-long progress. The data from the Periodic Labour Force Survey (PLFS) 2020-21 show an increase in the gap by 7% between 2018-19 and 2020-21.^{10 11}

Figure 12. Gender wage gap in India, 1993–94 to 2011–12 (percentages)



Source: ILO estimates based on NSSO data.

According to the most recent data of the UNDP Human Development Report (2025), it is pertinent to note that India's Gender Inequality Index (GII) stands at 0.403 for the year 2023. It ranks 102nd among 193 countries. There is a significant improvement from the year 2022, when India's GII was 0.437 and ranked 108th among 193 countries.¹² However, it still ranks very low and requires significant improvements.

Notably, GII captures disparities in various sectors such as health and education. One of the sectors that it covers is labour market participation. There remains a huge disparity between the employment of men and women. Only 41.7% of women aged 15 and above participated in the workforce during 2023–2024, as compared to 78.8% of men, as per the Periodic Labour Force Survey (PLFS). Further, the Worker Population Ratio (WPR) among women had seen a rise from 22% in 2017-18 to 40.3% in 2023–24, which is still low compared to the male WPR, which is 76.3%.¹³

Further, according to the Global Gender Gap Report 2024, released by the World Economic Forum, India ranks 129 out of 145 countries in the gender gap. According to the report, women earn half of what male earns. It is 39.8% of what men earn in the country, reflecting

¹⁰ Dagmar Walter and Susan Ferguson, 'The gender pay gap: hard truths and actions needed' *The Hindu* (19 September 2022) <<https://www.thehindu.com/opinion/op-ed/the-gender-pay-gap-hard-truths-and-actions-needed/article65907149.ece>> accessed 28 July 2025

¹¹ India Wage Report: Wage policies for decent work and inclusive growth (n 1)

¹² *Human Development Report 2025: A Matter of Choice: People and Possibilities in the Age of AI* (United Nations Development Programme 2025)

¹³ Ministry of Statistics and Programme Implementation, *Periodic Labour Force Survey (PLFS): Annual Report* (2024)

a gap of almost 60% gap.¹⁴ The graphs below reveal the Gender Gap Index that includes various factors. This strongly indicates the weak laws in India.



Global Gender Gap Index Indicators							2024
Indicator	Rank	Score*	Compare with Global average	Difference F-M	Female vs Male		Min Max
Economic Participation and Opportunity	142nd	0.398		-	Min	Max	-
Labour-force participation rate %	134th	0.459		-41.32	35.09	76.41	0-100
Wage equality for similar work 1-7 (best)	120th	0.521		-			-
Estimated earned income int'l \$ 1,000	135th	0.286		-7.76	3.11	10.87	0-150
Legislators, senior officials and managers %	136th	0.144		-74.84	12.58	87.42	0-100
Professional and technical workers %	122nd	0.494		-33.86	33.07	66.93	0-100

SYSTEMIC DISCREPENCIES

These statistics clearly showcase the half-hearted success of the Equal Remuneration Act. The framework, despite providing for equal pay, remains largely ineffective. The major reason for its failure remains weak enforcement mechanisms. However, other reasons have played a prominent role in its failure. Some of the reasons are highlighted as follows.

Weak Enforcement Mechanisms: Section 9 of the ERA has imposed a duty on the inspectors to look after the proper enforceability of the provisions of the act (enforcement mechanism). However, there has been a significant decline in the number of labour inspectors in the past

¹⁴ World Economic Forum, *Global Gender Gap Report 2024* (2024)

decades. There has been a decline of 0.25 to 0.19 inspectors per thousand workers. This is a major reason for weak enforcement and therefore results in poor enforcement.

Ambiguity in the Definition: The term ‘same work or work of similar nature’ has been defined under section 2 (h) of the act. It reads, ‘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.’¹⁵ However, this definition is extremely vague and lacks clarity. It permits employers to discriminate based on job title. This defeats the whole object of the act.

Low Awareness among Workers: This is one of the most prominent issues whereby many female workers (particularly in rural areas) remain unaware of their rights and the remedies in case of violation of such rights.¹⁶ A significant number of female workers remain unaware of their statutory and constitutional rights, as well as the remedies available in cases of violation. In order to ensure that the benefits are received by such marginalised groups, the government must take proactive steps to ensure that they are entitled to equal remuneration and equal pay via sensitisation in the rural areas. These sensitisations should not be limited just to statutory rights but also must include the constitutional rights relating to equality and non-discrimination. However, merely sensitisation is not sufficient to help such marginalised groups. It must be accompanied by a better grievance redressal mechanism with minimal procedural formalities, reducing the hurdles that they may face.

Caste-Based Discrepancies: Caste-based discrepancies exist even within the urban labour market. The 2007 study of Madheswaran uses the Blinder-Oaxaca decomposition¹⁷ technique to show that there is a difference in wage between a Scheduled Caste worker and a non-schedule caste worker. Notably, the discrimination follows both the private and public sector

¹⁵ Equal Remuneration Act 1976, s 2(h)

¹⁶ Rohit Kashinath Pithale, ‘Bridging the Wage Gap: The Role of Minimum Wages in Reducing Income Inequality in India’ (2025) 7(1) International Journal for Multidisciplinary Research <<https://www.ijfmr.com/research-paper.php?id=37559>> accessed 20 November 2025

¹⁷ Paul Attewell and S Madheswaran, ‘Caste Discrimination in the Indian Urban Labour Market: Evidence from the National Sample Survey’ (2007) 42(41) Economic and Political Weekly <<https://www.epw.in/journal/2007/41/caste-and-economic-discrimination-special-issues-specials/caste-discrimination>> accessed 20 November 2025

although it is slightly higher in the private sector. This shows the failure of the act in the fair recruitment process. Its findings showcase that caste-based discrimination is neutralized thereby exposing limited legal effectiveness and institutional safeguards.

THE APEX COURT ON DISCRIMINATORY PRACTICE

Gender based discrimination has always existed. Therefore, the court has laid down and reinforced the principle of 'equal pay for equal work' through various judgments.

In the case of *Mackinnon Mackenzie & Co. Ltd. v Audrey D'Costa*,¹⁸ whereby male and female stenographers, having the same responsibility, were paid differently. The court held that the job was the same and paying the two on two different scales is discriminatory. Hence, reinforcing the principle of equal pay for equal work.

In the case of *Randhir Singh v Union of India*,¹⁹ the court held the principle of equal pay for equal work. It is not merely an abstract but an established doctrine under Articles 14 and 16 of the Constitution. The case involved a driver working as a driver constable under the Delhi Police Force. He performed the same duty as those employed in the Delhi Administration and other Central Government services. The court, while upholding the principle of equal pay for equal work, directed equal remuneration.

In another case of the *Dharwad District. PWD Literate Daily Wages Employees' Assn. v State of Karnataka*,²⁰ the court directed the state to frame a scheme to regularise service and ensure equality in wages, as it is a part of equal pay for equal work. The case was filed by an association representing literate daily-wage employees working in the Public Works Department (PWD) of Karnataka, particularly in the Dharwad district. They worked on a daily wage basis performing perennial and permanent nature identical to those of the permanent employees. However, they were denied regularization and therefore, the court said long-term employment of a daily wage worker to perform permanent work violates Article 14 as it leads to unequal treatment and arbitrariness. And hence, a scheme for the regularisation of service must be drafted to address the unequal treatment.

¹⁸ *Mackinnon Mackenzie & Co Ltd v Audrey D'Costa & Anr* (1987) 2 SCC 469

¹⁹ *Randhir Singh v Union of India & Ors* (1982) 1 SCC 618

²⁰ *Dharwad District PWD Literate Daily Wages Employees v State of Karnataka & Ors Etc* (1990) 2 SCC 396

THE SHIFT TOWARDS CODE ON WAGES, 2019

The code has finally come into effect and has repealed the old acts. The code discusses the various provisions, including minimum wages, payment of wages, bonuses, and equal remuneration. It has indeed covered various issues; however, it has failed to address the core issue of pay parity in any meaningful manner.

The ambiguous definition is still one of the major problems whereby the problem subsists. The term 'equal pay for equal work' is usually not interpreted as intended. The term used in the definition same work or work of similar nature is vague in itself. It does a two-fold job:

1. enables employers to exploit the workers and
2. makes the judicial enforcement inconsistent.

In fact, the court in the case of *State of Punjab v Piarra Singh* (1992) refused to apply the principle of equal pay for equal work. The court basically said that it is difficult to determine the nature of a job solely based on the title. This is indicative of the vague and ambiguous nature of the definition.

Firstly, the code has no procedural safeguards as outlined in the Equal Remuneration Act. The flawed definition of 'equal remuneration for work of a similar nature' still holds the same position. The definition is vague and does not give wide provision on enforcement mechanisms, grievance redressal mechanism or wage audits to ensure compliance. The absence of any grievance redressal mechanism speaks volumes about its failure in advance.

Secondly, the issue of gender wage parity has not been discussed anywhere in the act. It is arguably very employer-centric. This is mainly because there is no mention of affirmative action from the employer's side to keep an eye in gender related issue. It was not the case in ERA.

Lastly, one of the classic failures of the act is that it does not mention anything about the implementation. It is largely on the employer's implementation or the state government's decision. Therefore, there is no uniform mechanism of its implementation, which is a huge loophole. The code doesn't mention the informal sector. It remains untouched, and hence, there is no holistic approach to the act.

COMPARATIVE ANALYSIS: ERA V CODE ON WAGES

The Equal Remuneration Act was a dedicated legislation on equal payment. As is known, it had a dedicated preamble which aimed at providing equal remuneration for men and women and aimed at preventing discrimination on the grounds of sex alone. With the enactment of the Code on Wages Act, there is no preambular emphasis on gender equality.²¹ Thus, dilution of the legislation. Apart from this, other serious dilutions have abandoned the normative centrality of gender justice.

Discrimination at the Recruitment Stage: Section 5 of the ERA²² explicitly prohibited discrimination against women in recruitment, training and transfers. However, this is one of the major dilutions whereby The Code on Wages, 2019 has introduced a consolidated provision under section 3. Although the language of the provision is the same as that of ERA, it still is a dilution of the former provision in a way that there is a neutral approach for all the issues.²³ Formerly, the provision aimed at historical disadvantages that women had faced historically. However, as of now, it is merely a formal declaration without specific institutional support.

Ambiguous Definition: Section 2(h) of ERA²⁴ defined the term, 'same work or work of Similar nature' based on skill, effort, responsibility and working conditions. It was a vague definition that had no clarity in it. The Code on wages defines the same term under section 2(v),²⁵ and has almost identical language without clarity, as was the case earlier.

Enforcement Mechanism: Sections 7, 8 and 9 talked about the appointment of inspectors specially in charge of dealing with matters of wage discrimination. Also, it provided for claims and complaint mechanisms.²⁶

Under the Code on wages, the same has been incorporated under sections 51-56.²⁷ It introduces Inspector-cum-facilitator, a consolidated role for all wage matters. There is no

²¹ Equal Remuneration Act 1976, preamble

²² Equal Remuneration Act 1976, s 5

²³ Code on Wages 2019, s 3

²⁴ Equal Remuneration Act 1976, s 2(h)

²⁵ Code on Wages 2019, s 2(v)

²⁶ Equal Remuneration Act 1976, ss 7, 8 and 9

²⁷ Code on Wages 2019, ss 51-56

special emphasis on equal remuneration or gender discrimination. It has thus again diluted the enforcement, whereby wage is just one of the concerns among others.

Grievance Redressal Mechanism: Section 7²⁸ enabled the workers to file a complaint with respect to matters relating to unequal remuneration. However, as far as the Code on wages is concerned, access to justice has again been diluted, whereby there is no specialised or simplified grievance redressal for wage discrimination claims.

Penalties and Deterrence: Sections 10 and 11²⁹ provide for penalties if there is any violation of equal remuneration obligations. However, the Code on wages has a generic and consolidated provision for wage violations and no heightened penalty for gender-based discrimination.

Therefore, it can be said that the Code on Wages, 2019, has merely consolidated and simplified the legislation without any specific emphasis on the real-world issues and practical implications. It has now become a formal, neutral and administratively driven regime.

RECCOMEDATIONS

The Code on Wages, 2019, is a big failure because it has been insufficient to address the core issue of gender pay parity. The code must and should adopt a substantive quality approach to wage regulation. It is actually a systemic concern and must coincide with the constitutional mandates under articles 14, 15(3) and 39(d). Apart from this, other things are necessary to ensure that the constitutional commitments are fulfilled.

To begin with, the first and the gravest mistake that must be rectified is the legislative omissions. Section 5 of ERA was a dedicated provision with respect to matters relating not only to unequal wage treatment, but also to promotion, recruitment, training and transfer. However, the exclusion of a dedicated provision for the same has created a vacuum in the law itself. Hence, the law must and should be defined for better compliance. Further, the enforcement framework under sections 51-56, which has incorporated Inspector-cum-facilitator model, may promote compliance, but it lacks the institutional focus necessary to

²⁸ Equal Remuneration Act 1976, s 7

²⁹ Equal Remuneration Act 1976, ss 10 and 11

address wage discrimination effectively. The former system (though imperfect) was a dedicated forum for complaints and its addressability.

In addition to this, an affirmative obligation of employers is equally necessary. Currently, there is no mechanism that can keep a check on the arbitrary action of the employers. It must be mandatory for the employers to maintain registers, record and periodic disclosures. This would enable an easy track on wage disparity. This is also in line with international best practices. The importance of sensitisation among the labourers is again an important point that must be incorporated as well. A large number of the labour population remain uneducated and illiterate, for that matter. Even if we have the best legislation, we could not ensure its effective implementation if the labourers remain unaware of the legislation.

Lastly and most importantly, the penalties prescribed under Sections 51-53 of the Code on Wages, 2019 must and should reflect the seriousness of the matter. This is because it is a constitutional breach and not merely a regulatory lapse. Thus, enhanced and differentiated penalties could help in such a scenario.

CONCLUSION

The ERA was normatively strong but institutionally weak. Although the provisions lay down a foundational structure to address the foundational framework for wage disparity between men and women. However, some problems persist that have failed in the act. Lack of proper grievance redressal mechanism and unawareness among the workers about their rights are among the central issues that have resulted in its failure. In fact, even the new legislation, which is the Code on Wages Act, has also failed to inculcate the provisions regarding its effective implementation; it is very likely that the new legislation may result in failure.

There is a need to pay special emphasis on a gender-responsive and corrective framework. The Code on Wages has done nothing but consolidate the labour legislation. What we actually have is a change in the legal system. The Equal Remuneration Act was indeed a better legislation, whereby there were gender specific provisions. However, its weak enforceability was a major reason for its failure.

Therefore, the new code requires more than just legislative consolidation. The situation demands that there is a better substantive equality, consistent with Articles 14, 15 and 39(d)

of the Constitution. Without robust institutional support, accessible grievance redressal mechanisms, and proactive enforcement strategies, the right to equal remuneration risks remaining declaratory rather than effective.