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## Equal Pay & Equal Work-Doctor's Rights

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### Abstract:

This Research Paper focuses on the Law that prevails with respect to “Equal pay for Equal Work”. The Equal Remuneration Act of 1976 provides for equal pay for men and women for their equal work. The paper will also highlight Constitutional as well as the International Perspective and will cover Article 14 read with Article 39 of the Indian Constitution Act. International Trends with respect to Equal pay are covered and Effective and Promising Actions will be discussed for reducing the gender pay gap. This Research Paper will be concluded by the decided case laws for equal pay irrespective of gender. In this article, we will be discussing equal pay for equal work and the Supreme Court’s recent judgement that ayurvedic doctors cannot have equal pay as allopathic doctors.

**Keywords-** Constitutional Perspective, Equal Payment, Equal Remuneration, Indian Constitution Act, International Perspective, International Trends

### Introduction

We are well aware that our Indian Constitution has conferred various rights on every citizen of the nation that are called fundamental rights. Fundamental duties as well as Directive Principles of State Policy are also enshrined in our Constitution. One of the dpsps is **equal pay for equal work**, which is enshrined under **Article 39(d)** of the Indian Constitution. In this article, we will be discussing equal pay for equal work and the Supreme Court’s recent judgement that ayurvedic doctors cannot have equal pay as allopathic doctors.

### Equal Pay For Equal Work

The expression “equal pay for equal work” refers to the principle that each person hired for the work assigned to him should receive the same wages or remuneration as other employees. There should be no discrimination when it comes to getting paid. It is most often used when it comes to gender inequality, like when it comes to the pay gap between men and women. As mentioned, Article 39(d) of the Constitution of India deals with equal pay for equal work for both men and women.

The apex court in the State of Punjab and Ors. V Jagjit Singh and ors., held that an individual who is employed for the same purpose cannot be remunerated at a lower rate than another individual who carries out the same duties and obligations, especially not in a country with a welfare state.

The Parliament has enacted the Equal Remuneration Act, 1976. The main object of the Act is to make sure that men and women are paid the same amount of money. This Act was introduced to prevent discrimination against women and to ensure that women are treated fairly and equitably.

### **Supreme Court Judgement:**

Ayurvedic Doctors cannot have equal pay as Allopathy Doctors:

State of Gujarat & Ors. V Dr. P.A. Bhatt & Ors.

Facts of the case:

The Gujarat High Court has issued an order pursuant to which doctors holding a BAMS degree are deemed to be treated on an equal basis with MBBS degree holders and are entitled to benefit from the recommendations of the Tikku Committee.

A high-level committee was set up under Dr. R. K. Tikku in order to improve the service conditions and opportunities of doctors in government services. The Committee held numerous meetings and presented its recommendations in a report on October 31, 1990.

The recommendations were limited to those doctors who held MBBS degrees, post-graduate medical diplomas, super-specialty diplomas, and diplomas on the teaching side as well as non-teaching diplomas.

Subsequently, under Dr. Tikku's guidance, another high-level committee was established under a separate order of November 19, 1990, to help and improve the career and cadre structure of practitioners of the Indian system of medicine and homeopathy. The report was submitted on February 26, 1991, and the scope of the recommendations was restricted to those who held diplomas in Ayurvedic medicine, Unani medicine, Siddha medicine, and homoeopathy.

The government of India accepted the recommendations of the report concerning allopathic doctors only. Subsequently, the government of Gujarat also accepted the report relating to allopathic doctors and issued an order stating that non-MBBS doctors are also entitled to the benefits. Writ petitions were filed in the Gujarat High Court, where the Division Bench rejected all the pleas in the form of an interlocutory order that

1. Doctors who have MBBS and those who do not are part of the same group, so there is no need to discriminate based on educational qualifications.
2. Doctors who are not mbbs are also doing the same job as MBBS doctors and even running primary health centres on their own, so they should be paid the same amount of money.

An appeal against the above-mentioned judgement was filed in the Supreme Court. In this appeal, two main issues were raised which are:

- i. Can different pay rates be established for officers assigned to the same grade based on the educational qualifications of the officers?
- ii. Whether allopathic physicians and indigenous physicians can be classified as performing equivalent work in order to be eligible for equitable remuneration?

Analysis of the case:

While considering the first issue, the Court relied on the judgement passed in **State of Mysore v. P. Narasinga Rao (1968) 1 SRC 407**, in which the question arose as to whether

Setting up two scales of tracer in the new state of Mysore who were performing the same task constitutes discrimination, which is contrary to the provisions of Articles 14 and 16 of the Constitution. The apex court in this context held that such classification was not violating Articles 14 and 16 of the Constitution.

In **Dr. C. Girijambal vs. Government of Andhra Pradesh (1981) 2 SCC 235**, the Hon'ble Supreme Court held that the principle of equitable remuneration for equal work does not apply to professional services.

In **Mewa Ram Kanojia vs. All India Institute of Medical Science (1989) 2 SCC 235**, the apex court held that the classification of employees is a matter for the state to determine according to the qualifications, responsibilities, and duties of the positions in question.

In **Shyam Babu Verma vs. Union of India (1994) 2 SCC 521**, the Supreme Court held that the type of employment may be similar; however, the amount of remuneration may be different depending on the academic qualifications or experience that necessitates the classification. In light of these judgements, the Court held that the allocation of allowances on the basis of educational qualifications does not infringe Articles 14 and 16 of the Indian Constitution.

While considering the second question, the court relied on the affidavit submitted by the state government, showing a comparative analysis of duties performed by allopathic doctors and Ayurvedic doctors, and observed that allopathic physicians are obligated to fulfil their emergency responsibilities and provide trauma treatment, which cannot be performed by Ayurvedic doctors.

Further, Ayurvedic doctors can neither conduct complex surgeries nor assist surgeons in doing so, while MBBS doctors can do so. The Court further said that it is not in a position to suggest that one system of medicine is better than another, nor is it in its purview to evaluate the merits of the two systems of medical science. No Ayurveda doctor is needed for a post-mortem or an autopsy.

When you go to a general hospital in a city or town, you'll see a bunch of MBBS doctors who have to look at hundreds of patients. But that's not the case for Ayurveda doctors. Section 174 of the Criminal Procedure Code (crpc) deals with how the police investigate and report on suicides, while Section 176 of the same code deals with how magistrates investigate and report on causes of death.

Judgement

The order passed by the Gujarat High Court was set aside by the Divisional Bench of the Supreme Court, consisting of Justice **V. Ramasubramanian** and Justice **Pankaj Mithal**. It was held that even though Ayurvedic doctors are important and there is a need to support alternative or domestic systems of medicine, this fact cannot be ignored: these two categories of doctors are not doing the same work to deserve the same pay.

**Conclusion**

From the above discussion, it can be concluded that both categories of doctors perform different duties and have different functions to carry out, for which they are not entitled to get paid equally. They have their own spheres of work, which they carry out. Doctors holding MBBS degrees are responsible for different duties that might not be necessary for Ayurvedic doctors to perform. However, this does not mean that doctors with MBBS degrees are in any way superior to those who do not possess MBBS degrees.

## Reference

- Hari, Equal Pay for Equal Work, Legal Service India, available at: <https://www.legalserviceindia.com/legal/article-2767-equal-pay-for-equal-work.html>
- Suraj Kumar, 'No Error In Judgment That Ayurved Doctors Aren't Entitled To Equal Pay As Allopathy Doctors' : Supreme Court Dismisses Review Petitions, livelaw, 3 November 2023, available at: <https://www.livelaw.in/top-stories/supreme-court-dismisses-review-plea-ayurveda-doctors-equal-pay-allopathy-doctors-241515>
- Abraham Thomas, Ayurveda practitioners not entitled to same pay as doctors with MBBS degrees: SC, Hindustan Times, 27 April 2023,

