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Gender Pay Gap in India: A Critical Analysis

AMANDEEP VERMA¹

ABSTRACT

Gender pay gap works as a common indicator of gender inequality in terms of employment and it is also referred to screen the advancement towards gender equality at the National and International level. The term Gender Pay Gap can be defined as the difference between the amounts of money paid to women and men for doing the same work. Women tend to suffer more inequality in wages as compared to men in unorganized sector. This inequality in wages is more prevalent in I.T. sector, manufacturing & agriculture sector where they are paid less than men, pointing out to their difference in capabilities. Women are deemed to be less powerful than men, it is a stigma attached with women. Until the social stigma against women at work environment and society is not removed, the gender justice cannot be done and the pay gap may show no signs of closing. Gender inequality is a grave issue globally. It serves as a hurdle in achieving better working conditions and economic equality. Though India has improved its gender inequality but the Constitutional mandate of Equal pay for work of equal value has to be strongly promoted and implemented for closing the gender pay gap. The present paper will analyze the reasons of pay gap in India, international commitments of gender equality to which India is a signatory, legal and constitutional mandates, response of Indian Judiciary on the issue, conclusion and way forward.

Keywords: *Gender pay gap, Equal pay for Equal work, disparity, gender justice, gender inequality.*

I. INTRODUCTION

Gender pay gap is the difference in the wages being paid to women and men for doing the work of same value or equal work.² There should be equal pay for equal work. Our Constitution mandatorily sets out the principle of equal pay for equal work in refuses to do any discrimination to any gender, race, caste, class or religion in employment. Gender inequality is still a prevailing problem across the world today. India is one country among the many engaging in the race for gender equality. One prominent issue within this gender struggle is the

¹ Author is an Assistant Professor at Universal Law College, Mohali, India.

² "Quick Facts About Gender Wage Gap", CAP, www.americanprogress.org/article/quickfacts-gender-wage-gap/ (24/12/2023)

disparity in pay.

In India, the reasons for Gender pay gap are a little more complex ranging from socio-economic to the structural. Female child is sometimes made to drop out from the school early. Even if the women are well educated, only few steps out to work due to restrictions from families and to fulfill family obligations. Women who choose to work often need to take leaves for maternity and child care and also the healthcare of their family. All these factors lead to women falling behind men when it comes to their wages over time. Therefore, in our country the gender gap is very wide. Efforts are being made to create gender equality at the National and International levels. The theme for International Women's Day every year centers on the varied aspects of gender equality and women empowerment. The Theme for International Women Day'2022 is "Gender equality for a sustainable tomorrow".³ This is suggestive of the fact that gender equality in all aspects need to exist for a better and sustainable tomorrow and the struggle for equality within the country requires a greater focus on closing the gender wage gap in India. Main key areas for improvement lie within the education system and job market. In order to diminish the pervasive gender wage gap in India, the country's educational and occupational discrepancies between men and women need to be addressed. The rewards of an equally-paid workforce are rewarding. It promises a more justifiable, varied and lucrative establishment if the gap is narrowed and there is equality in wages.

II. LEGAL AND INTERNATIONAL PARAMETERS

Closing the gender pay gap is an aspiration found in many international policy documents. Gender pay gap is a common indicator of gender inequality in terms of employment and is also referred to monitor the progress towards gender equality at the national and international level. Our fundamental right to Equality guaranteed by the Indian Constitution under Article 14 talks about the concept of Equal pay for equal work irrespective of the gender.⁴

Article 39(d) of the Directive Principles of State Policy mentioned in our Constitution provides that the state shall in particular direct the policy towards securing that there is equal pay for equal work for both men and women.⁵

ILO Equal Remuneration Convention (No.100)⁶: India is a signatory to ILO. It has also ratified

³ International women's day 2022, NDTV, www.ndtv.com/world-news/international-womens-day-2022-date-and-this-year-s-theme-2803725 (24/12/2023)

⁴ Pal, Uma. "Right to equality", Legal Service India, Legal Services India. <http://www.legalservicesindia.com/article/1688/Right-To-Equality--A-Fundamental-Right.html> (06/12/2023)

⁵ Thakur, Nikhil. "Article 39 of the Indian constitution", [www.blog.ipleaders.in/article-39-of-the-indian-constitution/#:~:text=%5BArticle%2039\(d\)%20of,for%20specific%20age%20or%20strength](http://www.blog.ipleaders.in/article-39-of-the-indian-constitution/#:~:text=%5BArticle%2039(d)%20of,for%20specific%20age%20or%20strength) (06/12/2023)

⁶ILO "C100 - EQUAL REMUNERATION CONVENTION, 1951 (No. 100)", ILO, WWW.ILO.ORG/DYN/NORMLEX/EN/F?P=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100 (06/12/2023)

the convention number 100 of the ILO, which casts an obligation on her to comply with the requirements of the convention to ensure that no gender discrimination takes place. The principle of equal remuneration for men and women for work of equal value, as set out in the Equal Remuneration Convention, 1951 (No. 100), needs to be implemented if gender equality and decent work for all is to be achieved.

However, while the principle of equal pay for work of equal value has been widely endorsed, and is included under Goal 8⁷ in the 2030 Sustainable Development Agenda, a key problem is that the policy mechanisms needed to achieve this objective are not well understood and in fact are both multifaceted and vary according to the institutional context. Specific gender equality policies are certainly required, but these are only likely to be effective if embedded within a general policy environment which is promoting equal and inclusive labor markets. For example, trends towards greater inequality in wage structures, more individualized pay determination and more variable working hours in higher level jobs are likely to be increasing the gender pay gap, offsetting to some extent the more beneficial effects of women's rising educational attainment and more continuous participation in employment. While the gender pay gap is difficult to measure, the ILO estimates that if the current trends prevail, it will take more than 70 years before the gender wage gap is closed completely (ILO 2016). The principle of equal remuneration may be applied by making stringent national laws or regulations, legally established or recognized machinery for wage determination, by arriving at collective agreements between employers and workers or a combination of these various means.

III. REASONS FOR GENDER PAY GAP IN INDIA

Gender pay gap is the product of manifold reasons, including but not restricted to job-related seclusion, prejudice against employed mothers, and uninterrupted pay shrewdness. To add to the reasons besides this are racial prejudice, incapacity, childbearing and other career breaks, access to education and age come into play. Hence, different groups of women experience gaps in wages due to numerous reasons. Gender bias is fabricated in layers of time, and is rooted in the societal prejudice against women. Gender inequality is still a prevailing problem across the world today. India is one nation amongst the several engaging in the contest for gender equality. One prominent issue within this gender inequality tussle is the difference in pay. In India where, male chauvinism is highly prevalent even today, the reasons for gender pay gap are more complicated as being linked to socio-economic or organizational discrepancy. Females suffer

⁷ "Decent Work and Economic Growth", www.globalgoals.org/goals/8-decent-work-and-economic-growth/ (06/12/2023)

further disparity in wages in the unorganized sector as compared to the other gender. This inequality in wages is more predominant in I.T. sector, industrial & farming sector where they are paid less than men, pointing out to their dissimilarities in capabilities. Across the unorganized sector and especially in agricultural work and labour work, women are paid less wages as compared to men.⁸ Until the social stigma against women at work environment or in society is not removed, the gender justice cannot be done and the pay gap may show no signs of closing. Gender inequality cultivates through a sequence of small, silent cuts. Any amount of study, resources and thoughtful social media dialogues can only scratch the surface of the gender pay gap subject. Only awareness and the will to make changes could result in going a long way to narrow the gap.

IV. JUDICIAL RESPONSE

The Constitution of India lays down exhaustive guidelines to make gender equality a reality in India. A country shall never be successful in its race towards development if any section of the society is left behind. Judiciary can play a remarkable role in making this De jure reality a De facto one. Thus, throwing light on the practical judicial outlook towards women becomes important at this juncture. The issue of equal pay for equal work irrespective of gender discrimination was considered in 1962 in the case of *Kishori Mohan Lal Bakshi v. Union of India*⁹ where the Supreme Court declared it not capable of being enforced in the court of law. However, it received due recognition in 1987 in the case of *Mackinnon Mackenzie v. Audrey D'costa and Anr.*¹⁰ In this case the Supreme Court found that the women had paid much lower than her male colleagues performing the same nature of work. The fact that there was no man employed on the same post in the company was irrelevant, since the principle of equal remuneration presupposed that the same level of pay be guaranteed not only to persons performing identical jobs but also to persons performing identical jobs but also to persons performing work that was considered to be of equal value. In the case of *Randhir Singh v. Union of India*¹¹ the Supreme Court held that the principle of Equal Pay for Equal work though not a fundamental right, it is certainly a constitutional goal and therefore, capable of enforcement through Constitutional remedies mentioned under Article 32 of the Constitution. In *Grih Kalyan Kendra v. Union of India*¹² it was held that in view of the Directive Principles

⁸CHAKRABORTY, NILANJANA. "WHAT IS GENDER PAY GAP AND WHY IS IT SO WIDE IN INDIA", WWW.LIVEMINT.COM/MONEY/PERSONAL-FINANCE/WHAT-IS-GENDER-PAY-GAP-AND-WHY-IS-IT-SO-WIDE-IN-INDIA-115753566339-00.HTML (06/12/2023)

⁹ Equal pay for equal work, <https://bhattandjoshiassociates.com/equal-pay-for-equal-work/>, (10/12/2023)

¹⁰ 1987 SCR (2) 659

¹¹ 1982 SCR (3) 298

¹² 1991 SCR (1) 15

of State Policy as contained in article 39(d) of the Constitution Equal pay for Equal work has assumed the status of fundamental rights in service jurisprudence having regard to the constitutional mandates.

V. CONCLUSION

Gender pay gap is the outcome of many undercurrents, including but not narrow to work-related isolation, bias against working mothers, and direct pay discernment. To top it, things such as racial bias, disability, maternity and other career breaks, access to education and age come into play. Hence, different groups of women experience gaps in pay due to myriad reasons. Gender bias is often built in layers of time, and is rooted in the societal prejudice against women. Gender inequality is still a prevailing problem across the world today. India is one country among the many engaging in the fight for gender equality. One prominent issue within this gender struggle is the disparity in pay. In the World Economic Forum's Global Gender Gap Report 2021, India was one of the worst performers in South Asia. It is ranked 140 amongst 156 countries of the world.¹³ The struggle for equality within the country requires a greater focus on the gender wage gap in India. Two key areas for improvement lie within the education system and job market. In order to diminish the pervasive gender wage gap in India, the country's educational and occupational discrepancies between men and women need to be addressed. The gender pay gap has deepened during the COVID-19 pandemic, with women being left behind on pay raises and bonuses, says an ADP study. According to ADP's study 'People at Work 2021: A Global Workforce View', in India only 65 percent of women received a pay rise or bonus for taking on extra responsibilities or a new job role compared to 70 percent of men. This disparity exists despite the study finding that men and women were just as likely to take on additional responsibilities or a new role due to Covid-19.¹⁴

Gender inequality at both conscious and sub-conscious levels is still alive, across the globe. Even though a Harvard study ranks women higher than men when it comes to leadership qualities, communication skills, problem-solving and inventiveness, they are ironically still looked down upon by employers on competitiveness index and that reflects in their hiring and

13 PTI. "WEF's gender gap index: India slips 28 places, ranks 140 among 156 countries", www.thehindu.com/news/national/wefs-gender-gap-index-india-slips-28-places-ranks-140-among-156-countries/article34206867.ece (09/12/2023)

14 "PANDEMIC HURT GENDER PAY-GAP IN INDIA FURTHER; MORE WOMEN FAILED TO GET DESERVING PAY HIKES, BONUSES", **THE ECONOMIC TIMES**, WWW.ECONOMICTIMES.INDIATIMES.COM/MAGAZINES/PANACHE/GENDER-PAY-GAP-DEEPENS-DURING-COVID-WOMEN-LEFT-BEHIND-ON-PAY-HIKE-BONUSESSTUDY/ARTICLESHOW/88187690.CMS?UTM_SOURCE=CONTENTOFINTEREST&UTM_MEDIUM=TEXT&UTM_CAMPAIGN=CPPST (09/12/2023)

pay decisions. Even if returning mothers find a job that suits them, they are less likely to get an interview compared to fathers and women with no children. This means that they often turn to jobs that offer them flexibility with the compromise of a lower salary. Companies that address the gender gap in hiring with a healthy intention see a climb in collective intelligence, skills diversity, and eventually, the bottom line. Studies have proved that corporations with women in top business positions are profitable sustainably. A talented woman who knows that her employer believes in fairness is more likely to stick to the organization. Monetary evaluation of an employee is one of the critical indicators that they are valued, and inspires them to stay longer. Working on correcting a gender pay gap definitely helps organizations retain talent and practice transparency. The sharpest recruiting tool is employer branding. The main reasons for gender pay gap are discrimination, occupational segregation, workforce participation, negotiation, inferior access to education and training, inability to work on odd hours, lack of transportation facility, breaks in experience due to familial responsibilities etc.

(A) Suggestions

This pay gap is perpetuated by multiple factors which must be tackled from a variety of angles. Two key areas for improvement lie within the education system and job market. In order to diminish the pervasive gender wage gap in India, the country's educational and occupational discrepancies between men and women need to be addressed. To eliminate the pay gap:

Legislation: there should be stronger advocacy for gender pay gap through new laws or the existing laws like the Equal Remuneration Act, 1976 should be strengthened.¹⁵

Education and training: Two key areas for improvement lie within the education system and training for work. In order to diminish the pervasive gender wage gap in India, the country's educational and occupational discrepancies between men and women need to be addressed.

Women Empowerment: Only awareness and the will to make changes could result in going a long way to narrow the gap. Before change can happen, there needs to be an increase in awareness of the issue and women empowerment. Women should be recruited to leadership roles as for patriarchal mindsets the working world was created for men by men.

Transparency: A woman will never be able to ask for an equitable pay raise if she has no idea what her male counterparts are earning. When pay is treated as a closely guarded secret, women are the ones to suffer the most. By publishing the wage ranges for all levels of roles, you are equaling the playing field. Transparency is proven to shrink the gender pay gap.

¹⁵ Tackling the issue of gender pay gap, <http://www.drishtias.com/daily-updates/daily-news-editorials/tackling-the-issue-of-gender-pay-gap#> (28/12/2023)

Salary history: The Questions about salary history shouldn't be asked. The salary history enquiry is a contentious issue in the recruiting industry. Some recruiters feel this is a vital question to ask. No part of the hiring process helps the recruiters to assume that the previous employer got things right. Equal pay advocates believe that the salary history question extends the pay gap. Each time an employer asks that question, they should know they are widening the gap.
