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EQUAL PAY FOR EQUAL WORK: LEGAL CHALLENGES IN CLOSING THE GENDER PAY GAP IN INDIA

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Abstract:

This article critically examines the persistent gender pay gap in India, analyzing the effectiveness of existing legal frameworks and identifying systemic barriers to wage equality. It explores constitutional mandates, legislative measures, enforcement challenges, and judicial precedents. Comparative analysis with international practices and a set of policy recommendations are also included to guide future reforms. Bridging the pay gap is essential for inclusive development and economic justice.

Keywords: Equal Pay, Gender Wage Gap, Indian Labour Law, Legal Reform, Gender Equality, Wage Discrimination

Introduction

Gender inequality in the workplace continues to be a significant concern worldwide, manifesting in various forms—one of the most persistent being the gender pay gap. The principle of "equal pay for equal work" asserts that individuals performing the same or substantially similar job should receive equal compensation, regardless of their gender. Despite global recognition of this principle and its formal inclusion in Indian legal and constitutional frameworks, disparities in pay between men and women persist. In India, the issue is compounded by a combination of socio-cultural, economic, and institutional factors that prevent women from achieving financial parity with their male counterparts. This article delves into the current state of the gender pay gap in India, analyzes the legal and regulatory frameworks, explores enforcement challenges, examines global comparisons, and presents comprehensive recommendations for achieving wage equality.

Understanding the Gender Pay Gap

The gender pay gap represents the difference between the average earnings of men and women in the workforce. While the raw gender pay gap compares median earnings without accounting for job type or qualifications, the adjusted pay gap considers factors like experience, education, and industry. In India, even after accounting for these factors, women consistently earn less than men.

According to the Monster Salary Index 2019, Indian women earned, on average, 19% less than men. The pay disparity is even more pronounced in sectors such as manufacturing (34%), healthcare (26%), and education (21%). Several contributing factors include occupational segregation—where women are concentrated in lower-paying roles—and the "motherhood penalty," where women are perceived as less committed due to family responsibilities. Furthermore, cultural biases and gender stereotypes often limit women's access to leadership roles and high-paying jobs.

Legal Framework Supporting Equal Pay

India has made several constitutional and statutory provisions to safeguard the principle of equal pay:

1. Constitutional Provisions:

- **Article 14:** Guarantees equality before the law and equal protection of laws.
- **Article 15:** Prohibits discrimination on the grounds of sex, caste, religion, or race.
- **Article 16:** Ensures equal opportunity in matters of public employment.
- **Article 39(d)** (Directive Principles): Directs the State to ensure equal pay for equal work for both men and women.

Though the Directive Principles are not enforceable by courts, they guide legislative and policy measures.

2. Equal Remuneration Act, 1976:

- A landmark statute aimed at abolishing gender-based wage discrimination.
- Prohibits employers from paying men and women differently for the same work or work of a similar nature.
- Also prohibits discrimination in hiring practices.
- Empowers the government to appoint advisory committees to increase women's employment opportunities.

3. Code on Wages, 2019:

- Consolidates previous wage-related laws, including the Equal Remuneration Act.
- Reinforces the principle of non-discrimination on the basis of gender.
- Ensures timely payment of wages and standardizes definitions related to remuneration.
- However, critics argue that it weakens some of the earlier provisions related to proactive measures for women.

Challenges in Implementation

Despite robust legal provisions, ground-level implementation remains a challenge due to several structural and systemic factors:

1. Limited Awareness:

- Many women, particularly those in rural or unorganized sectors, are unaware of their rights.
- Lack of legal literacy and access to redressal mechanisms hampers reporting of wage discrimination.

2. Inadequate Enforcement:

- Labour law enforcement remains weak, especially in the informal sector.
- Inspectors often lack training or resources to monitor gender-based wage violations.
- Penalties for non-compliance are minimal and rarely enforced.

3. Informal Sector Employment:

- More than 90% of India's female workforce is employed in the informal sector.
- These jobs often escape regulatory oversight, making legal protections ineffective.

4. Occupational Segregation and the Glass Ceiling:

- Women are overrepresented in caregiving, teaching, and administrative roles, which are traditionally undervalued.
- Underrepresentation in high-paying industries like technology, finance, and management contributes to the overall wage gap.
- Even in similar roles, men are more likely to be promoted and receive bonuses.

5. Cultural and Social Norms:

- Traditional gender roles often place the burden of household responsibilities on women.
- Many women face career interruptions due to marriage or childbearing.
- Employers may perceive women as less committed or reliable.

6. Lack of Transparency and Data:

- Companies are not required to publicly disclose gender-disaggregated wage data.
- Without data, it becomes difficult to identify and address pay disparities.

Judicial Interpretation and Case Law

The Indian judiciary has played a significant role in interpreting and reinforcing the principle of equal pay:

1. Mackinnon Mackenzie & Co. Ltd. V. Audrey D'Costa (1987)

This landmark case involved female stenographers who were paid less than their male counterparts. The Supreme Court held that gender-based pay discrimination violates Article 39(d) of the Indian Constitution. The Court emphasized that equal pay for equal work is a constitutional goal and directed the company to revise wages accordingly. The ruling highlighted the systemic undervaluation of women's work and stressed that differentiation solely based on sex is impermissible. This case served as a strong precedent for future litigation and policy reforms on gender pay equity. However, its implementation faced challenges due to lack of uniform job classifications and private sector intransigence, exposing the gaps in regulatory oversight and enforcement mechanisms.

2. Randhir Singh v. Union of India (1982)

In this case, a driver in the Central Industrial Security Force claimed unequal pay compared to drivers in other departments. The Supreme Court held that the principle of 'equal pay for

equal work' is a constitutional right, drawing strength from Articles 14, 16, and 39(d). Although the case did not involve gender directly, it laid the foundational principle later applied in gender-based pay discrimination cases. The judgment stated that pay disparities must be justified by rational classification and not arbitrary distinctions. This broadened the scope for challenging discriminatory practices and laid the legal foundation for addressing the gender pay gap. Still, implementation remains inconsistent, especially in unorganized sectors and contractual jobs.

3. State of Madhya Pradesh v. PramodBhartiya (1993)

In this case, teachers employed in government schools were paid less than those in aided schools despite doing similar work. The Supreme Court reiterated that differences in pay must reflect differences in responsibilities, not arbitrary classifications. Though not gender-specific, the case reinforced that unequal pay for identical work is unconstitutional. Its reasoning applies to many gender pay disparity cases, where women are paid less despite similar roles. The case highlights how administrative practices can create pay inequalities, and that classification must be real, not illusory. For gender-related issues, this case helps challenge disguised justifications used to pay women less, especially in education and healthcare sectors.

4. State of Punjab v. Jagjit Singh (2016)

This case addressed the rights of temporary and contractual employees to equal pay. The Supreme Court held that temporary employees performing similar duties as permanent employees are entitled to equal wages. Though not directly about gender, this judgment has major implications for women, who are overrepresented in contractual roles. It underlines that the nature of employment should not justify pay disparity when the work performed is identical. The ruling supports efforts to challenge precarious employment conditions disproportionately affecting women,

contributing to the gender wage gap. The Court also criticized the misuse of casual employment to bypass fair compensation, a practice that often targets women.

5. **Vishaka v. State of Rajasthan (1997)**

Though primarily about sexual harassment at the workplace, the Vishaka judgment indirectly impacts the gender pay gap by addressing broader gender equality issues. The Supreme Court acknowledged that gender discrimination in all forms impairs women's right to work with dignity. A hostile work environment often discourages women from pursuing or continuing in employment, limiting their career growth and income. The Vishaka guidelines ensured safer workspaces, which is crucial for retaining women in the workforce, a key factor in reducing the pay gap. While not a direct "equal pay" case, it created a legal culture more sensitive to workplace gender issues, laying the groundwork for addressing wage inequalities.

6. **Air India v. NargeshMeerza (1981)**

This case involved discriminatory service conditions for air hostesses, including early retirement and unequal promotional opportunities compared to male staff. The Supreme Court struck down these provisions as violative of Article 14. While the case did not directly concern pay, it demonstrated how structural discrimination limits women's career progression, affecting lifetime earnings. The judgment emphasized that employment policies must not reinforce gender stereotypes. By challenging institutional rules that curb women's professional longevity, this case addressed indirect contributors to the gender pay gap. It highlights how employment benefits and promotions, often denied to women, are integral to achieving true wage parity.

7. **Municipal Corporation of Delhi v. Female Workers (Muster Roll) (2000)**

In this case, female workers employed on a muster roll demanded maternity benefits. The Supreme Court ruled that denial of maternity leave is discriminatory and violates the principle

of gender equality. It expanded the interpretation of right to life and dignity under Article 21, establishing that social benefits are an essential component of employment equality. Though not a direct equal pay case, the ruling addressed structural barriers that lead to wage disparities, like lack of maternity protection. The decision bolstered the case for inclusive labor policies and emphasized the need for uniform labor rights, especially for informal sector women workers, who are most vulnerable to wage discrimination.

These landmark cases have shaped the legal discourse but have not led to widespread behavioral change among employers.

Government and Institutional Measures

The government has introduced several policies and schemes to address gender disparities:

1. **Skill Development Programs:**

- **Skill India Mission** and **PMKVY** focus on enhancing employability.
- Special training modules are designed for women to enter non-traditional sectors.

2. **Entrepreneurship Initiatives:**

- Schemes like **Stand-Up India** and **MUDRA loans** support women entrepreneurs.
- **Mahila E-Haat** offers a platform for women entrepreneurs to market products.

3. **Maternity and Workplace Welfare:**

- The **Maternity Benefit (Amendment) Act, 2017** extended paid leave to 26 weeks.
- Mandates crèche facilities in workplaces with more than 50 employees.

4. **Awareness and Sensitization Campaigns:**

- Programs by the Ministry of Women and Child Development aim to raise awareness about gender equality.

- Collaborations with civil society and NGOs help disseminate information on labor rights.

Global Comparisons and Best Practices

Learning from international examples can help India strengthen its own mechanisms:

- **Iceland:** The first country to legally mandate that companies prove they offer equal pay.
- **United Kingdom:** Requires organizations with over 250 employees to publish gender pay gap data.
- **Australia:** Through the **Workplace Gender Equality Agency (WGEA)**, monitors and supports workplace equality.
- **Germany:** Enacted the **Wage Transparency Act** to empower employees to compare salaries.

These countries emphasize data collection, transparency, and strong enforcement—lessons that India could adapt to its context.

Recommendations for Bridging the Gap

1. Legal Reforms and Strengthening Enforcement:

- Empower labour inspectors with gender sensitivity training.
- Introduce stricter penalties and real-time tracking of wage complaints.
- Ensure coverage of all sectors, especially informal and gig work.

2. Mandatory Gender Pay Audits:

- Require companies to conduct annual audits.
- Public disclosure of wage structures to foster accountability.
- Provide incentives for companies that demonstrate pay equity.

3. Promoting Female Education and Employment:

- Encourage participation in STEM and higher education.
- Offer scholarships and mentorship programs.
- Collaborate with the private sector for inclusive hiring practices.

4. Cultural Change and Social Awareness:

- Incorporate gender sensitivity in school curriculums.
- Media campaigns to challenge gender stereotypes.
- Encourage shared responsibilities at home to enable women's careers.

5. Corporate Sector Initiatives:

- Encourage diversity and inclusion policies.
- Establish internal grievance mechanisms for wage-related issues.
- Link executive bonuses to diversity and inclusion performance.

6. Community and Grassroots Engagement:

- Mobilize community-based organizations to educate women on their rights.
- Promote self-help groups and women's cooperatives.
- Engage male allies in advocacy efforts

Suggestion

The principle of "Equal Pay for Equal Work" is a cornerstone of workplace equality, yet the gender pay gap remains a persistent issue across the globe. Despite legal frameworks intended to ensure fair compensation, women often continue to earn less than their male counterparts for performing the same or equivalent work. One of the major legal challenges lies in the ambiguity surrounding the definition of "equal work," which makes it

difficult to prove pay discrimination in court. Additionally, many workplaces lack transparency in their pay structures, preventing employees from identifying wage disparities.

Enforcement of equal pay laws is often weak, with limited resources for regulatory bodies and a reluctance among employees to report due to fear of retaliation. Intersectionality further complicates the issue, as women from marginalized communities face compounded wage discrimination. Although recent developments—such as pay transparency legislation and mandatory wage audits—offer hope, much work remains. Strengthening legal definitions, improving enforcement mechanisms, and fostering a culture of openness and equity are essential steps forward. Closing the gender pay gap is not just a legal battle—it is a societal one, requiring collaboration from lawmakers, employers, and civil society to achieve true workplace equality.

Conclusion

The journey toward achieving equal pay for equal work in India is fraught with legal, social, and economic challenges. While the constitutional and legislative provisions provide a strong foundation, gaps in implementation and deep-rooted societal norms continue to hinder progress. Closing the gender pay gap is not just a matter of justice and fairness—it has profound implications for economic growth, poverty reduction, and human development. A multi-dimensional approach involving legal reforms, education, societal change, and corporate accountability is essential. By addressing these challenges systematically, India can move closer to realizing the constitutional vision of equality and justice for all its citizens—men and women alike.

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