

Equal Pay for Equal Work in India

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ABSTRACT:

We live in a country like India which is one of the fastest growing economies of the world and aims to become an economic superpower. However, we forget to take into account the fact that it is not possible for India to become an economic superpower unless we are able to achieve 'equal pay for equal work'. After all, a recent McKinsey study found that advancing women's equality can add US\$12 trillion (S\$16.8 trillion) to global growth.

The problem of unequal pay for equal work can be studied under various heads like how the constitution guarantees it, where can discrimination be allowed and where it can't be and most importantly in terms of gender pay gap.

Also, various industries, including entertainment industry, which is considered to be a progressive one faces the problem of gender pay gap as actresses, even in many women centric films earn much less than the male actors in the film. This fact holds true for various other industries too.

This paper thus attempts to give importance to these issues along with finding various legislations that are there to solve the problem at hand. Certain case laws, articles, statistics and other data including interviews would be collected and analyzed to enhance the research and come up with a meaningful research paper.

I. INTRODUCTION

In India, the constitution does not expressly state equal pay for equal work as a fundamental or even constitutional right. It has been read into the Constitution through the interpretation of Articles 14, 15 and 16 – which guarantee equality before the law, protection against discrimination and equality of opportunity in matters of public employment.¹²

Though the constitution of India did mention in its Directive Principles of State Policy, under Article 39 that all states ideally direct their policy towards securing equal pay for equal work for both men and women, and also ensuring that men and women have the right to an adequate means of livelihood, this right being only a Directive Principle was not enforceable in the court of law. They are crucial to the governance of the country and a state is duty bound to consider them while enacting laws. Thus, it was only through interpretation of Articles 14, 15 and 16 of the constitution through various judgements of the court that equal pay for equal work became a fundamental right.

Equal pay for equal work is usually understood in terms of gender pay gap not only in India but around the world. To understand the concept of gender pay gap, it is important to first understand the difference between sex and gender. Sex denotes biologically-determined characteristics, while gender indicates culturally and socially shaped variations between men and women.³

¹ Devi, Kovuru, 'Women's Equality in India: A myth or a reality', 2000, pg49-50

² The Constitution of India, Articles 14-16

³ Vlassoff, Garcia Moreno, 'Placing gender at the centre of health programming: challenges and limitations', soc sci med 2002

1951 Equal Remuneration Convention, Convention 100 of the International Labour Organisation, a United Nations body states that,

*Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.*⁴

Equal pay for equal work is also covered by Article 7 of the International Covenant on Economic, Social and Cultural Rights,⁵ Article 4 of the European Social Charter,^[5] and Article 15 of African Charter on Human and Peoples' Rights.⁶ The Constitution of the International Labour Organization also proclaims "the principles of equal remuneration for equal value".⁷

The EEOC's four affirmative defenses allows unequal pay for equal work when the wages are set "pursuant to

- a seniority system;
- a merit system;
- a system which measures earnings by quantity or quality of production;
- or any other factor other than sex."⁸

A pay differential due to one of these factors is not in breach of the Convention.

Thus, equal pay for equal work is accepted as a good practice around the world and has got recognition of various organizations including UN. Equal pay day is celebrated every year in this spirit and it falls on 10 April this year.

II. CRITICAL SURVEY

Most of the earlier research done related to this topic has not specifically focused on India but has rather been done focusing on different countries like USA, Canada, Singapore, Australia etc.

Also, most of the earlier researches have not given any special attention to case studies or legal aspects of the problem.

None of the research regarding this topic has focused on the film and television industry and problems of gender pay gap in them which is in fact the USP of this research paper.

All these aspects have made my research different from other researches done on similar topics earlier.

⁴“Equal Pay and Compensation Discrimination”, www.eeoc,2018

⁵ International Covenant on Economic, Social and Cultural Rights, Article 7

⁶ African Charter on Human and Peoples' Rights, Article 15

⁷ ILOLEX:Constitution

⁸ US Equal Employment Opportunities Commission, EEOC Facts About Equal Pay and Compensation Discrimination,2011

This research paper is thus unique and has tries to cover most of the relevant sub-topics and aspects of the problem. However, it may not have covered all the sub-topics under the broader topic of gender discrimination at workplace in order to keep the paper brief and precise.

III. DOES THE LAW IN INDIA PROVIDE FOR EQUAL PAY?

“Equal pay for equal work” as a phrase is not expressly mentioned in the chapter on Fundamental rights of Indian Constitution yet there can be no second thought on the point whether it is fundamental right or not. There are a number of provisions in the Constitution of India that ensure that there is equal pay for equal work in India especially when we talk of gender pay gap. These articles of the Constitution are as follows:

- **Article 14:** Men & women to have equal rights & opportunities in the political, economic & social spheres.
- **Article 15(1):** Prohibits discrimination against any citizen on the grounds of religion, race, caste, sex etc.
- **Article 15(3):** Special provision enabling the State to make affirmative discriminations in favour of women.
- **Article 16:** Equality of opportunities in matter of public appointments for all citizens.
- **Article 39(a):** The State shall direct its policy towards securing all citizens men and women, equally, the right to means of livelihood.
- **Article 39(d):** Equal pay for equal work for both men and women
- **Article 42:** The State to make provision for ensuring just and humane conditions of work and maternity relief.
- **Article 51 (A) (e):** To renounce the practices derogatory to the dignity of women.

The right of equal pay for equal work was earlier available only through Directive Principles of State Policy under Article 39 of the constitution. While these Directive Principles are not enforceable by any court of law, they are crucial to the governance of the country and a state is duty bound to consider them while enacting laws.⁹

However, now without a doubt it is a fundamental right under Right to Equality under Articles 14,15 and 16 as mentioned above. The right to equal pay for equal work has taken the shape of a fundamental right through various court judgements.

⁹ Devi, Kovuru, 'Women's Equality in India: A myth or a reality', 2000, pg49-50

The principle of Equal Pay for Equal Work was first considered in *Kishori Mohanlal Bakshi v. Union of India*¹⁰ in the year 1962 where the Supreme Court declared it incapable of being enforced in the court of law. However, it received due recognition only in 1987 through *Mackinnon Mackenzie's case*¹¹. Here the issue of concern was a claim for equal remuneration for Lady Stenographers and Male Stenographers. This was ruled in favour of lady stenographers as the Court was in favour of equal pay.

In case of *Randhir Singh v. Union of India*¹², the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution as a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39(c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification.

In another case of *Frank Anthony Public School Employee's Association v. Union of Indian*¹³, the court struck down section 12 of the Delhi School Education Act as unconstitutional on the ground that it was violative of Article 14 as it made discrimination in pay and other conditions of service of school teachers mainly on the ground of aided schools and unaided minority schools.

In *Dhirendra Chamoli v. State of UP*¹⁴, it has been held that the principle of equal pay is also applicable to casual workers employed on daily wage basis. Thus, it was held that persons employed in Nehru Yuwak Kendra in the country as casual workers on daily wage basis were doing the same work as done by Class IV employees appointed on regular basis and therefore entitles to same salary and conditions of work.

In a significant verdict, in state of Punjab and Ors v *Jagjit Singh and Ors*¹⁵ the Supreme Court has held that the principle of 'equal pay for equal work' has to be made applicable to those engaged as daily wagers, casual and contractual employees who perform the same duties as the regulars. Terming the denial of equal pay for equal work as "exploitative enslavement", "oppressive, suppressive" and "coercive", the apex court said that in a welfare state, the principle has to be extended to temporary employees as well. "In our considered view, it is fallacious to determine artificial parameters to deny fruits of labor. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity," a bench of Justice J S Khehar and S A Bobde said.

Not only courts but also legislature has performed its task towards the cause of equal pay for equal work by passing various legislations in order to ensure equal pay for equal work. The following Acts have been passed:-

¹⁰*Kishori Lal Mohan Lal Bakshi v. Union of India*, A.I.R. 1962 S.C. 1139.

¹¹*Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'Costa and Others* (1987) 2 SCC 469

¹²*Randhir Singh v. Union of India*, AIR 1982 SC 879

¹³*Frank Anthony Public School Employee's Association v. Union of India*, (1986) 4 SCC 707

¹⁴*Dhirendra Chamoli v State of UP*, (1986) 1 SCC 637

¹⁵*Jagjit Singh and ors v State of Punjab*,(2017) 1 scc 148

- ***Workmen's Compensation Act, 1923:***
 - Aimed at providing financial protection to the workmen & his / her dependants in case of accidental injury by means of payment of compensation by a certain class of employers.
 - Due to the difference in bargaining power there are chances that the woman may be subject to exploitation. This act helps to avoid that risk.
- ***Minimum Wages Act, 1948:*** To provide for a statutory fixation of minimum wages, since workers are poorly organized & have a less bargaining power in India. There is no different wages paid for women workers.
- ***Factories Act, 1948:*** Introduced to regulate the condition of labourers employed in the factories.
- ***Contract Labour (Regulation and Abolition) Act, 1970:*** Provides for the separate provision for utilities and fixed working hours for women.
- ***Equal Remuneration Act of 1976***
 - Provides for equal pay to men & women for equal work.
 - Act was enacted keeping in mind the unequal physical & sociological burden a woman faces at the time of child bearing & rearing.

IV. EXCEPTIONS TO EQUAL PAY FOR EQUAL WORK

Equal pay for equal work is a fundamental right now. However, it is not an absolute right. It has some exceptions. These exceptions are not expressly listed anywhere and they too have developed through a series of cases. According to some these are not actually exceptions but just instances where the principle of equal pay for equal work does not apply.

In case of *F.A.I.C and C.E.S. v. Union of India*¹⁶, the Supreme court held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality. The court further said that equal pay depends on the nature of work done and not mere volume of work. There may be qualitative differences as regards reliability and responsibility.

In *Mewa Ram v. A.I.I.M.S*¹⁷, the Supreme court has held that if the duties and functions are of similar nature but if educational qualifications prescribed for the two posts are different and there is difference in measure of

¹⁶*F.A.I.C and C.E.S. v. Union of India*, (1988) 3 SCC 91

¹⁷*Mewa Ram v. A.I.I.M.S*, AIR 1989 SC 1256

responsibilities, the principle of equal pay for equal work would not apply. Thus, different salaries can be given to Hearing Therapists and Audiologists in A.I.I.M.S due to difference in educational qualifications.

In *Associated Bank Officers Association v. State Bank of India*¹⁸, it has been held that the officers of the State Bank of India and officers of subsidiary banks of State Bank of India are not in a comparable position considering responsibilities of officers of the State Bank of India. Thus, principle of equal pay for equal work could not be applied in this case.

V. GENDER PAY GAP

Though equal pay for equal work is mentioned in the constitution of India as an important objective to be achieved, this does not happen in reality in India.

Gender pay gap refers to the difference in earnings between women and men in the paid employment and labor market¹⁹. For the year 2013, the gender pay gap in India was estimated to be 24.81%. A report by the World Economic Forum highlights that in the corporate sector in India, a woman is paid only one-third of what a man in the same position is paid. Further, while analyzing the level of female participation in the economy, this report slots India as one of the bottom 10 countries on its list.

As childcare is viewed primarily as a woman's job, women often take part-time jobs or take time off during their careers to take care of their families. When women return to work after a break, they are paid lower wages than their male colleagues. Women employed full-time ordinarily already earned 34% less than men, but when compared to part-time working women, the pay gap further increased as they earned almost 42% less than men. Additionally, even if women do not have children, it has been observed that they still face pay discrimination as they are viewed as potential mothers, who may require a break from work in the near future.²⁰

The gender pay gap in India is also due to the fact that there is a difference between male and female literacy rates in the country. As men are considered as the future bread-earners of the family, people especially in rural areas prefer spending more on the education of their sons rather than their daughters which later on leads to women earning less. However, contrary to this, it has been seen from a report that gender pay gap in fact increases with increase in qualification.

India has been a permanent member of the ILO Governing Body from 1922. In September 1958, India ratified the C100 Equal Remuneration Convention, 1951 (No. 100), which addressed the issue of equal pay between men and women for work of equal value. This convention requires all member states to direct their national

¹⁸ *Associated Bank Officers Association v. State Bank of India*, AIR 1998 SC 32

¹⁹ Dutta, Puja, 'Accounting for wage inequality in India', The Indian journal of labor economics, 2005

²⁰ Anand, Leeja, Varkkey, Biju, Korde, Rupa, 'Gender pay gap in the formal sector: preliminary evidence from paycheck India data', WageIndicator data report, 2012

laws and policies towards guaranteeing equal remuneration to all workers, regardless of gender. In an attempt to ensure compliance with this convention and in response to the report by the Committee on status of women in India, the government enacted the Equal Remuneration Act.

This act has been a major government step or legislation towards 'equal pay for equal work'. In 1976, **the Equal Remuneration Act** was passed with the aim of providing equal remuneration to men and women workers and to prevent discrimination on the basis of gender in all matters relating to employment and employment opportunities. This legislation not only provides women with a right to demand equal pay, but any inequality with respect to recruitment processes, job training, promotions, and transfers within the organization can also be challenged under this Act

Companies and individual employers can both be held accountable to maintain the standards prescribed under this Act. In various cases, the Supreme Court of India has also held that discrimination on the basis of gender only arises when men and women perform the same work or work of a similar nature.

The Equal Remuneration Act aims 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. According to the Act, the term 'remuneration' means "the basic wage or salary and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled". Nothing in this Act shall apply:-

- to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women; or
- to any special treatment accorded to women in connection with the birth or expected birth of a child, or the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

The main provisions of the Act are as follows:-

- No employer shall pay to any worker, employed by him/ her in an establishment, a remuneration (whether payable in cash or in kind) at rates less favourable than those at which remuneration is paid by him/ her to the workers of the opposite sex in such establishment for performing the same work or work of a similar nature. Also, no employer shall, for the purpose of complying with the provisions of this Act, reduce the rate of remuneration of any worker.
- 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.

- Every employer shall maintain such registers and other documents in relation to the workers employed by him/ her in the prescribed manner.
- If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.
- Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed, to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, despite of these efforts by the government the situation has not changed much. Although in most of the government jobs there are equal wages for equal work, the same is not true for private sector jobs. There is still some kind of discrimination in private sector, especially in low paid jobs and in unorganized sector which is not organized according to government norms.

Apart from this, one thing which must be noticed is that the situation of unequal pay is also there in the industries which are considered to be progressive and modern like the Hindi film industry or Bollywood. The situation is no different in other film industries of the country. According to a 2016 report, India's highest paid actress, Deepika Padukone, earned approximately Rs 14-16 crores per film, while our highest paid actor, Salman Khan, takes nearly Rs 60 crores for the same. The situation has not changed even now and this fact is visible from the data shown below regarding the per film fee taken by top ten bollywood actors and actresses.

Top 10 actresses of 2016-2017

1. Deepika Padukone – 14-16 Crores
2. Kangana Ranaut – 10-12 Crores
3. Kareena Kapoor – 8-10 Crores
4. Priyanka Chopra – 7-9 Crores
5. Vidya Balan – 6-7 Crores
6. Katrina Kaif – 5-7 Crores

7. Anushka Sharma – 5-6 Crores
8. Alia Bhatt – 4-6 Crores
9. Shraddha Kapoor – 3-5 Crores
10. Sonakshi Sinha– 3-4 Crores

Top 10 bollywood actors of 2016-2017

1. Aamir Khan – 60 Crores
2. Salman Khan – 60 Crores
3. Shahrukh Khan – 50 Crores
4. Akshay Kumar – 45 Crores
5. Hritik Roshan – 40 Crores
6. Amitabh Bachchan – 29 Crores
7. Ranbir Kapoor – 25 Crores
8. Ajay Devgn – 25 Crores
9. Ranveer Singh – 20 Crores
10. Shahid Kapoor – 16 Crores

The above data clearly shows the difference in the money paid to Bollywood actors and actresses. From the data one can clearly infer that even the least paid actor among the top ten actors is paid more per film than the highest paid actress.

As pointed out by various reports and analysis of fees paid to actors and actresses in the above data one can see that for movies where both male and female stars have equally important roles and share equal screen presence, like Ae Dil Hai Mushkil where both Ranbir and Anushka had equal screen presence, Ranbir was paid 5 times more than what Anushka was.

This data is true not only for hero centric but also for women centric movies. Thus, one can see that despite of the fact that Dear Zindagi was a women centric film with Alia Bhatt being the main lead and Shah Rukh Khan having only the role of a supporting actor, Shah Rukh Khan earned much more than Alia.

So, despite of the fact that this industry is going through some positive changes regarding giving actresses more important roles in the movies and reduced objectification of actresses, this change would be worth only if coupled with a change regarding the fees paid to actors and actresses by reducing the gender pay gap.

Even if we talk of Hollywood, there is a huge gender pay gap there as well. This is visible from a Hollywood actress' statement at 87th Academy Awards. Boyhood actress Patricia Arquette made a powerful statement about wage equality for women. However, the situation in Bollywood is worst than in Hollywood but with coming up of more and more women centric movies which are earning well, it is believed that the situation will change soon.

VI. CONCLUSION

The problem of unequal pay for equal work still exists in India despite of various efforts by legislature, executive and judiciary. While the legislature has enacted various laws to deal with the problem, various decisions by the courts have led to recognition of equal pay for equal work as a fundamental right. All these together have led to a significant improvement in the situation.

Although, times have passed but crisis still remains. The report published by International Trade Union Confederation (ITUC) in March 2009, reveals existence of gender pay gap to the extent of 30 percent in India in 2008.²¹

However, a positive change in this context has been seen as Adobe announced in september that it has bridged the gender pay gap between male and female employees in India. This comes after the company announced in early December that it had closed the gender pay parity for its employees in the US. In blog post, Adobe said that it reviewed its job structure and compensation practices over the last year and made small adjustments to its existing people practices that includes uses gender-neutral job descriptions and targeted training to identify unconscious bias. "Today we're excited to announce that we have achieved pay parity in India between women and men. Building off our achievement of pay parity in the US, we have now closed the wage gap between our male and female employees in 80 percent of our employee population," said Katie Juran in a blog post.

²¹ITUC Report 2008, Gender (in) equality in the labour market: an overview of global trends and developments Retrieved, 18th July, 2009

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